



In search of good practices in financial consumer protection

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Consumers International (CI) is the world federation of consumer groups that, working together with its members, serves as the only independent and authoritative global voice for consumers. With over 240 member organisations in 120 countries, we are building a powerful international movement to help protect and empower consumers everywhere. Founded in 1960, we are fighting for a fair, safe and sustainable future for all consumers in a global marketplace.

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Introduction

In September 2010 Consumers International (CI) launched a new global campaign calling for fairer financial services. Over the last two years we have been campaigning and lobbying globally through our World Consumer Rights Day campaign and at the G20, the OECD and the Financial Stability Board to establish new processes and principles that will support improvements in financial consumer protection around the world. Alongside this work we have also written a number of papers and booklets with recommendations and examples that we hope support CI members in their national campaigns.

Good practices in financial consumer protection

The aim of this paper was to highlight examples of 'good practice' in financial consumer protection, including regulations, practices or processes that have helped to ensure consumers of financial services are treated fairly and get the protection they need.

To help compile our examples we asked CI members to provide us with suitable examples of government regulation, industry self-regulation or co-regulation that relate to financial services such as banking, savings and credit. Examples were collected between March and April 2012.

In the survey we didn't employ a strict definition of 'good practice', but rather invited our members to decide if a practice was 'good' because it has made a significant positive difference for consumers or because it met expectations or recommendations in that area. However, even with this flexibility the term 'good practice' can be problematic as the picture is rarely black and white. In several cases reforms have been good in some respects and disappointing in others. Also, what may seem to be a 'good' practice and which may have been welcomed by our members in principle, may turn out to be disappointing. Several examples are given which demonstrate this pattern.

1. The legal, regulatory and supervisory framework for financial consumer protection

Consumer protection in financial services (FS) can derive from several sources: from generic legal texts (such as civil law codes); indirectly from laws or voluntary standards aimed at market regulation; from specific rules, statutory or voluntary, aimed at protecting the consumer in general or the consumers of FS in particular.

'Hard law' is to be found in the **EU member states** through the transposition of Directives, (Consumer and mortgage credit, Markets in Financial Instruments Directive (MIFID), distance selling of FS, etc) as well as in the **US, Australia** and several Asian countries (**China, Korea, Indonesia, Malaysia and Nigeria**). Legal drafts are underway in **Serbia, Lebanon and Seychelles**.

'Soft law' is to be found in almost all countries, but with important differences. In countries where civil law is dominant, voluntary standards and codes are seldom strong and it is sometimes necessary for them to be enforced by resort to 'hard' law (e.g. **Germany, France and USA**).

Some countries rely exclusively on codes of practice and/or voluntary standards, in some cases very elaborate and oriented towards consumer protection as in **India and Hong Kong**, or targeted at market regulation (**Kenya and Thailand**). Codes of practice can form real constraints, e.g. (**Macao and Zambia** (for members of the Banking Association only), **Nigeria and Mozambique**). They contrast with voluntary standards for the reason that most codes are elaborated at the level of professional associations and are more likely to cover entire sectors, often in consultation with state or sectoral regulators. Voluntary standards, as their name suggests, often incorporate the 'goodwill' of the market sector, are aimed at avoiding stronger legislation, and incorporate fewer, if any, sanctions beyond de-listing a company from membership of the scheme.

This spectrum of 'soft law' risks confusion. For example, if codes are 'voluntary' but contain provisions that are in the legislation (which is often the case) then they can give the false impression that legal rights are covered by a voluntary code. So the consumers can end up thinking that they have fewer rights than they have in reality. Conversely, consumers may be given the impression that the industry has graciously granted rights to consumers when in fact such rights are the result of legal obligations imposed by government.

CI members generally prefer legislation (or regulation of a mandatory nature) but recognise that it is not always possible for a variety of reasons such as lack of legislative time, and may be too slow to adapt to changes in the market. Self-regulatory codes can also bring some advantages in terms of a quicker response to changing circumstances such as new technologies. Under circumstances where a code is drafted by industry we would look to regulators to require adherence to the protection measures it contains, and to do more than simply restate legal obligations which are already in place. CI would look for consumer representation to be present in the drafting of a code and for government to retain the right to step in with its own regulatory mechanism should the code not be sufficiently rigorous in practice. CI members have successfully varied their tactics in response to these challenges, with some success, to help deliver change e.g. **France** (regulatory) and **Fiji** (voluntary).

CI defines good practice as a framework that successfully integrates financial consumer protection into legal, regulatory and supervisory frameworks and which is proportionate to risk and which protects consumers against financial fraud, abuse and error. The following examples each pick up some aspects of this definition.

With the establishment of the Consumer Financial Protection Bureau the US now has a comprehensive legal framework which our US members have welcomed.

USA: *The recently established Consumer Financial Protection Bureau (CFPB) promises to provide many of the consumer protections hitherto lacking for consumers of financial services. The CFPB is authorized to exercise its authority to ensure that:*

(1) Consumers are provided with timely and understandable information to make responsible decisions about transactions involving consumer financial products and services;

(2) Consumers are protected from unfair, deceptive, or abusive acts and practices and from discrimination;

(3) Outdated, unnecessary, or unduly burdensome regulations concerning consumer financial products and services are regularly identified and addressed in order to reduce unwarranted regulatory burdens;

(4) Federal consumer financial law is enforced consistently, without regard to (service providers') status as depository institutions, in order to promote fair competition; and

(5) Markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation.

The following example from Hong Kong relies more on a self-regulatory code drawn up by industry with supervision by regulators. CI member in Hong Kong has a clear preference for a statutory scheme.

Hong Kong: *The industry-established Code of Banking Practice (CoBP) promotes good banking practices by setting out the minimum standards which financial institutions should follow in their dealings with customers. The Code is a non-statutory one issued by the financial industry associations for voluntary compliance by financial institutions. The Hong Kong Monetary Authority (HKMA) expects financial institutions in Hong Kong to comply with the CoBP and will monitor compliance as part of its regular supervision.*

There are also examples of international voluntary codes.

The Smart campaign: *This international campaign was established following the criticism of profit levels in the micro-finance sector. The campaign has seven voluntary 'Client Protection principles' and has introduced 'certification', a type of audit, the successful accomplishment of which will be a prerequisite for carrying the badge of the campaign when launched later this year. The Smart Campaign is independent and housed at the Centre for Financial Inclusion.*

Consumer protection frameworks should cover not only companies that provide financial products and services but also their agents and companies that design the products. This example from Germany shows how financial advisors have been included in the regulatory framework.

Germany: *From 1 November 2012 BaFin, the German financial regulator, has implemented and administered a register for investment advisors in banks and financial institutions; this register will include the qualification of investment advisors and customer complaints in the case of bad advice/mis-selling, however it is not public. Providers are obliged to register all their financial advisors. The intention of the register is to better identify wrong financial advice and the responsible advisers and compliance officers and thus to improve the quality of financial advice. All customer complaints have to be gathered in the register. BaFin is allowed to sanction wrong advice by administrative fines. Furthermore it will have the right to impose an occupational ban of up to two years in the case of serious wrong advice. This is a national initiative.*

An important aspect of any framework is good consultation in the design of financial consumer protection, including consultation with consumer organisations.

USA: *The CFPB (see above) engages in a consultation process by which stakeholders, including consumer groups are invited to comment on proposed regulations under consideration. The CFPB is also forming a Consumer Advisory Board consisting of outside experts to inform the CFPB's work. (The agency is currently (May 2012) going through over 2,000 nominations it received for participants on the Advisory Board and is expected to announce the Board membership in the summer of 2012.*

This example from India involves consultation on a particular aspect of financial regulation. CI would look for a comprehensive commitment to consumer consultation as part of this process and for similar processes to the applied to other areas under review.

India: *The government of India in March 2011 set up the Financial Sector Legislative Reforms Commission (FSLRC) to examine, amongst other things, the architecture of the regulatory system governing the financial sector in India. The commission will also look at the most appropriate means of oversight over regulators and their autonomy from the government. Considering that consumer protection constitutes an integral facet of the laws governing the sector, structural changes to this regime may be expected.*

2. The role of oversight bodies

Essential to any effective framework is the existence of an oversight body that has *the mandate, resources and powers* to effectively protect consumers of financial services. The US CFPB meets many of CI's requirements including an explicit mandate that makes them responsible for financial consumer protection.

USA: *As provided in section 1021 of the Dodd-Frank Act, the purpose of the CFPB is to implement and enforce Federal consumer financial laws consistently for the purpose of ensuring that all consumers have access to markets for consumer financial products and services and that such markets are fair, transparent, and competitive. Beginning in July 2011, the CFPB functions as the principal national financial consumer protection body. In some cases it shares financial consumer protection duties with other bodies including the Federal Reserve Bank (FRB), the Federal Trade Commission (FTC), the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of Currency (OCC), the Office of Thrift Supervision (OTS) and various state regulatory agencies.*

Different countries have different arrangements for the relationship and location of prudential oversight and consumer protection in their national structures. Although both are clearly important to consumers, too often consumer protection has been seen as less of a priority and has been subservient to prudential supervision. Therefore CI has recommended that whatever structure a country has, it is important that there is an agency that has an explicit mandate for financial consumer protection. Below is an example of a mandate which is implicit rather than explicit, to the regret of our members in Hong Kong.

Hong Kong: *The responsibility for financial regulation is spread across a number of agencies. Financial services such as banking, savings and credit come under the jurisdiction of Hong Kong Monetary Authority. Regulatory objectives of HKMA include the safety of depositors' funds and stability of the banking system. However, the protection of financial*

consumers is not an explicit goal, and prudential supervisory measures are seen as protecting consumers indirectly.

Another example of joint functions comes from investor protection in India. The combination of functions in one organisation is potentially powerful but in this case covers a relatively narrow remit.

India: *The Securities Exchange Board of India (SEBI) has three functions rolled into one body: quasi-legislative (i.e. drafting regulations), quasi-executive (i.e. enforcement of applicable rules and regulations to its constituents) and quasi-judicial (i.e. conducts hearings and passes orders on various disputes, with in-house appellate forum). Consumer organisations are actively engaged with SEBI for investor education and protection.*

Finally there are dangers also in institutions being given extensive remits which are not then delivered. This example from Fiji could be considered to be good in principle with, as yet and in the view of our member organisation, disappointing results in practice.

Fiji: *The Reserve Bank of Fiji does have the mandate, resources and powers to effectively protect consumers of financial services. For many years these attributes have not been fully exploited by the bank and Fiji's consumers have long endured the lack of initiative and will from the RBF to offer appropriate consumer protection in financial services.*

Similarly the lack of an effective enforcement framework has hampered the application of the Fijian Consumer Credit Act.

Fiji: *Fiji does have a Consumer Credit Act (CCA) 1998 which had one major flaw – it did not assign a competent enforcement agency. There are provisions in the CCA which offer some protection to consumers but these have remained silent. For example provisions on pre-disclosure of terms and conditions before a customer signs up a credit contract, provisions for consumer hardship, etc.*

3. Minimum standards for financial products to ensure fair contract terms and charges, and comprehensibility

CI, in its recommendations on financial consumer protection, has called for regulators to be able to set minimum standards for financial products to ensure fair contract terms and charges, and comprehensibility.

Examples vary in practice. Sometimes, regulators are considered to be lax in their application of rules, sometimes they prefer to operate by agreement. On other occasions, the industry may exploit loopholes. Here are examples of the ways in which 'good practices' may be undermined in practice.

Germany: *In accordance with the EU Payment Services Directive and enhancing previous national regulations, payments from one bank account to another e.g. by credit transfer are in general to be executed (that is received and reachable at the recipient's account) at the end of the business day following the business day of placing the payment order (D+1). In Germany this applies for all payments (not only domestic ones) within EU and EFTA in Euros. Payments in another currency within the EU must not exceed four days. Payments in Euros ordered on paper may take one additional day for processing. This new standard does not only enhance the speed in which payments can be settled, it also thwarts previous attempts by payment institutions to delay payments and profit on the payment value in between. This made it impossible to compare pricing as it offered options to gain beyond the shown fees.*

Though the ruling represents an advance, there are still some issues in the EU around banks trying to circumvent the D+1 rule by setting early business day closing hours.

Brazil: *Since 2007, there have been some regulatory initiatives from the Central Bank of Brazil that establish standards for service charges, including prohibited charges, and setting out information that must be included in documents pertaining to charges. However, our Brazilian members consider that the supervisory activity has not been exercised appropriately by the Central Bank.*

Fiji: *In January 2012, the Reserve Bank of Fiji removed a number of banking fees and charges which it said “have been considered penal in nature, unfair or uncompetitive”. But rather than being a directive from a regulatory agency, the policy was the culmination of lengthy talks and an “agreement” with the heads of Fiji’s commercial banks. The policy saw the removal of the following fees effective from 1 January 2012: fees to dishonour cheques, early termination fees, fees for insufficient funds and unclaimed monies, dormant accounts and exceeding the limits for credit cards. Maximum limits were placed on: account overdrawn fees (\$15); late payment fees for credit cards (\$20); outward dishonour cheque fees (\$25); loan arrears fees (\$24); and commitment or holding fees (1%).*

The above examples are indicative of actual or potential improvement, but each time with qualifications expressed. This is not to say that CI always argues for the heaviest regulatory approach. In newly developing sectors which are helping to include consumers, CI has taken a measured approach to regulation. Regulators in **Kenya** and the **Philippines** have adopted a “watch, dialogue and learn” regulatory approach regarding the e-money industry and non-banks providing these services. The Philippines has issued an e-money circular and Kenya has a draft national payments bill which will cover e-money. Not only has e-money brought in financially excluded consumers into service but new industries (an estimated 300 businesses in Kenya alone) have sprung up around the e-money platform. East Africa is also witnessing innovations such as payment of utility bills by mobile money transfers that could be very beneficial to consumers. There is debate around the development of standards in terms of whether it should be ‘light touch’. The lighter the touch the greater the likely reliance on self-regulation and on voluntary standards. CI has been asked by ISO COPOLCO to assist them in assessing the need, if any, for international standards in these emergent areas.

‘Model’ or standard financial products that financial service providers are required to benchmark their products against can also be used to raise standards. Examples abound of standard products but these are not necessarily mandatory.

Indonesia: *In 2009 the Bank of Indonesia (Central Bank) developed a generic saving account called “Tabunganku”. Every bank is required to offer this product with similar terms and conditions. This is a saving account for very low income people, with no charge or bank administration fee. People can open an account with only Rp. 20.000 (US\$ 2.25). There will be no interest for the saving under Rp 1 million, but it is guaranteed that the saving will not decrease since there is no bank charge. CI’s member organisation YLKI considers this to be a good practice, providing access to banking services for low income consumers.*

Thailand: *Many financial service providers use “instant” contracts which contain clauses that are unfair to consumers. “Standard contracts” are prepared by government agencies, but they are not popular among these providers. According to Thai Civil Law, the providers are free to use any contracts they want.*

Germany: *The P-Konto (an account which gives consumers a certain protection from seizure/attachment/dstraint) was established in July 2010 in national legislation. The banks are legally obliged to add this protection to the account if the consumer asks for it. The P-*

Konto protects the income on the account up to a definite sum which is the 'breadline'. Hitherto, consumers could only protect their income on application from the court. Therefore the new regulations have simplified and speeded up the protection against attachment of income and guarantee a minimum income to exist. Nevertheless many financial institutions ask for high account fees (for example € 15 - 20 per month) and reduced functions of the account like online banking or using cashpoints or make use of a payment card.

The above examples show how model products do not necessarily take effect, although CI does welcome their development for companies to emulate. The weakness of the voluntary approach, as in Thailand, indicates why CI generally favours a power of prior approval by setting minimum standards. Hopefully this would not necessitate product withdrawals but would prevent abusive products entering the market in the first place. We have therefore repeatedly pointed to the French system of authorisation as applying these principles.

France: *Every financial product or service sold to non-business users must receive an authorisation from the French regulator, Autorité des Marchés Financiers (AMF). This authorisation guarantees that the product's risk level is reasonable and that the product can be understood by consumers. If the producer changes the financial product without informing the regulator, in particular if the product becomes riskier, AMF can withdraw the product's authorisation.*

In **Bolivia** and **Peru**, the regulators must review all FS contracts which must contain pre-approved terms before they can be used. In Bolivia the approval by the *Autoridad de Supervisan del Sistema Financiero* is negative (i.e. the contract can be struck down if contrary to the law) and in Peru positive (i.e. it has to be approved by the *Superintendencia de Banca y seguros*). In Peru all FS contracts have to be available online for consumers to peruse.

4. Equitable and Fair Treatment of Consumers

The G20 endorsed high level principles for financial consumer protection state that “*All financial consumers should be treated equitably, honestly and fairly*” and “*special attention should be dedicated to the needs of vulnerable groups*”. The following cases illustrate specific applications of anti-discrimination principles to financial services. There is a difficulty about taking too general an approach to discrimination. That is the issue of distinguishing arbitrary discrimination, such as that based on race or ethnicity, from discrimination which is of the nature of financial risk (e.g. higher life assurance premiums or refusal of cover for older people). Clearly we wish to protect consumers against arbitrary discrimination that offends notions of human rights. But cases are not always straightforward, for example where age and health status are involved, and in our dealings with industry, they have preferred not to address the issue explicitly.

Different approaches are used, including comprehensive approaches, identifying specific categories of consumers and a combination of both.

Mozambique: *Legislation on financial services provides for a policy of non-discrimination against any financial service consumer.*

Hong Kong: *In Hong Kong, the industry Code of Banking Practice includes provisions that promote equal opportunity and the provision of assistance to customers with disabilities.*

USA: *The US Consumer Financial Protection Bureau contains specific divisions to address the needs of vulnerable groups. The CFPB has clear information about the protections that*

may apply, information that would be useful to each group and links for filing complaints in the related areas. Examples are:

- Office of Fair Lending and Equal Opportunity
- Office of Older Americans
- Service Members and Veterans
- Advice for Students

The EU has seen its charter of fundamental rights applied to financial services thanks to the intervention of our Belgian member organisation.

European Union: *In a judgment delivered on 1 March 2011 (‘the Test-Achats ruling’), the Court of Justice of the European Union considered that enabling Member States to maintain without temporal limitation an exemption from the **unisex rule** is a violation to the objective of equal treatment between men and women in relation to the calculation of insurance premiums and benefits. This is incompatible with Articles 21 and 23 of the Charter of Fundamental Rights of the European Union.*

5. Disclosure and Transparency

We were interested in good practice examples relating to the information that is given to consumers. Plenty of countries seem to have general provisions requiring certain forms of disclosure. Sometimes provisions for certain forms of disclosure are reinforced by information being actively gathered by regulatory authorities. For example the **USA** led this field with the ‘Schumer Box’ imposing obligations regarding information and format in consumer credit and mortgage loans since the Truth in Lending Act 1968. More recently, to help consumers searching for details about various credit card terms offered by different providers, the CFPB maintains a credit card agreement database from more than 300 card issuers. The CFPB also creates prototypes available under the agency’s Know Before You Owe initiative, however these are not mandatory.

This is clearly an area where progress is being made but it has frequently required legislation and there are significant ‘implementation issues’ which suggest the need for continued vigilance.

CI sees disclosure as, if anything, too dominant in the sense that it is seen as the cornerstone of the *caveat emptor* principle (buyer beware) which consumer organisations are increasingly challenging. In considering consumer protection, the UN Blue book *Building inclusive financial sectors for development* (2006) distanced itself from the traditional ‘*caveat emptor*’ principle and reported that “*This minimalist option is often considered anti-consumer*”¹. The same point was made in the paper submitted by Bruno Levesque to the OECD’s Committee on Financial Markets in 2010². On the back of the survey of 35 countries referred to above, the paper concluded that “*The financial retail market can indeed truly be seen as one in which caveat emptor prevails*” and that “*a fairer line*” (should) “*be drawn between a ‘buyer beware’ and ‘vendor beware’ market place.*” The paper found evidence of: “*Imperfect consumer protection regulation which is in many instances based only on transparency and disclosure requirements, the efficiency of which has yet to be tested*”.

¹ UN Blue Book – *Building Inclusive Financial Sectors for Development*, 2006

² Bruno Levesque ‘*Addressing financial consumer protection deficiencies in the post crisis era*’. OECD DAF/CMF(2010)6; 2010.

Many CI members would be critical of a stance which approached general consumer protection in FS from the direction of information only. That is not to argue against improving disclosure as CI's recommendations make clear. CI's requirements for consumer information are that it be: **clear, sufficient, reliable, comparable and timely**, suitable in these respects for the consumer to compare and contrast and to make an informed decision.

Thailand:

- *The content of financial contracts must be presented to consumers in Thai*
- *If there are any changes to the contract, it is the responsibility of the financial institute to give customers at least 30 days notice in writing. For all urgent matters, financial institutes must inform customers by mail or by newspapers announcement at least 7 days prior to the change being made.*
- *Violations by consumers are those stated in the contracts only*
- *There must be a warning for guarantors on the first page of guarantee contracts*

India: *Recognising considerable divergence amongst the financial institutions in the nature and manner of disclosures made by them in their published financial statements the disclosure norms were introduced by the Reserve Bank of India for the financial institutions. The Reserve Bank of India, in March 2012, revamped the fair practices code (FPC) to be adopted by non-banking finance companies (NBFCs) that are engaged in lending. The guidelines covered general principles on adequate disclosures on the terms and conditions of a loan.*

Mozambique: *The Regulatory Authority in Mozambique, the Central Bank, issued a Notice obliging all financial services providers to state clearly the terms of contracts and charges for financial services. All the banks have it posted on their walls so that consumers can easily access the information. It has been useful for consumers, and has reduced conflicts.*

Nigeria: *The Central Bank of Nigeria (CBN) enforces compliance with interest rates by requiring commercial banks to publish their rates on their websites and National Dailies. A CBN Directive to Commercial Banks obliges them to submit to this rule and publish consolidated interest rates on a weekly basis. Furthermore, the Consumer Code of Practice Regulations requires disclosure of relevant information pertaining to a transaction.*

Similarly, the banks of **Trinidad** have a code of conduct which requires full disclosure of contract terms to clients and potential clients.

Standardised pre-contractual disclosure practices (such as standardised forms and Key Information requirements) for the presentation of information about financial service products so that consumers can easily compare products have also been introduced in a number of countries. CI has called for such requirements to meet the following criteria: clear, concise, accurate, reliable, comparable, easily accessible, and timely. Also information that focuses particularly on key features of the products and (where relevant) on possible alternative services or products. In principle, information should include prices, costs, penalties, surrender charges, risks and termination fees.

European Union: *As a result of an EU initiative since 1 June 2011, all funds have to offer a so called KIID (Key Investor Information Document). The KIID is to be a short document containing key investor information the aim of which is to facilitate retail investors' understanding of the product being offered. It is intended to allow direct comparisons to be made more easily between investment funds. The purpose of the KIID is to create a uniform document that will communicate all relevant and pertinent information about a fund to investors. It is intended to enhance transparency and comparability through the use of a short and standardised factsheet.*

Prior to the signature on a credit contract, a future borrower must receive certain data required for the contract in simplified standardised form; this obligation is shortly expected to be extended to mortgage loans under a directive currently underway.

Similarly, in **Hong Kong**, a set of rules obliges service providers to provide information on investment products in the form of key fact statements and fund factsheets.

USA: *The CFPB has developed sample financial service product agreements that it has put forward for comment. These include prototypes available under the agency's Know Before You Owe initiative. However they are not mandatory forms.*

Germany: *Created by national initiative since 1 June 2011 all financial instruments that are sold with financial advice have to have a so called **PIB** (product information sheet) of two to three pages that include the most important information about costs, risks, function, features, flexibility. Regrettably this product information is not standardised so that up to now the advantage for the consumer is not considerable. Our German members do support the general approach of simplified and understandable information in the context of financial instruments to support the consumer's understanding.*

Denmark: *Risk labelling scheme: All investment products must now be labelled green ('no-risk' government bonds etc.), yellow (exchange traded shares, regulated investment funds etc.) or red (complex products or products where you risk losing more than the invested capital).*

Annual percentage rate of charge (APR): Danish investment funds and pension schemes now have to disclose APR which comprises all cost (as opposed to TER which only measures some cost) and thus makes it easier for consumers to find the best way to save for the future. This is a much better cost measure than required by EU-regulation and it is unique that it applies to all the different ways of saving for the future.

Australia: *As part of the package of banking reforms, the Australian Government has mandated the introduction of fact sheets for major financial products. The Home Loan Fact Sheet was introduced on 1 January 2012 (variable rate loans) and the Credit Card Fact Sheet will be mandatory from 1 July 2012. CHOICE (CI's Australian member) has strongly welcomed the introduction of the one-page sheet which has standardised information to help consumers compare prices and shop around. However, a 'mystery shop' of the Home Loan Fact Sheet recently conducted by our Australian members highlighted two significant implementation issues. Firstly, the legislation requires a lender to provide the customer with a fact sheet only when the customer asks for one and it was found that lenders are adopting a very narrow view of what constitutes 'asking'. Secondly, lenders routinely offer interest rate discounts that are only disclosed once a loan application is significantly advanced. CHOICE has written to the Government highlighting these two concerns and has made suggestions for improving the system.*

Malaysia: *The Central Bank (Bank Negara) has mandated that all credit approved credit card applicants should be given a Product Disclosure Sheet which would highlight the key terms and conditions on the credit card concerned. The key information is especially related to all financial charges that would be incurred by the consumer.*

France: *As a result of government imposition, the banks have recently undertaken to propose a list of current services under identical typology in order to facilitate their comparison. Negotiation is under way in the Consultative Committee on the Financial Sector (CCFS) at the*

initiative of government to develop standardised and comparable information for insurance contracts.

6. Financial Education and Awareness

We were interested in good practice examples relating to financial education and awareness. Financial education is clearly an important aspect of consumer protection but again CI is concerned that in much of the policy debate, too much reliance is placed upon education as a form of consumer protection. CI made this point in its submission to the OECD Task Force on Consumer Protection in Financial Services in April 2011.

Here are the main points: *Consumer education is an important component of consumer protection and many CI members are enthusiastic supporters and participants in programmes on consumer education for financial literacy. Indeed, CI sees the importance of consumer education as a 'given', one of the basic consumer needs recognised by the UN in 1985. ...Nevertheless, there is a significant danger that excessive reliance is being placed on consumer education as the solution to FCP. The basic point is clearly made by the World Bank in its recent report "Financial education cannot substitute for adequate financial regulation". It is true that the level of financial capability amongst consumers has not kept pace with the increasing complexity of transactions. Moreover, the same can be said of regulators and service providers too. Financial education and development of capacity should be seen as a responsibility shared by FSPs and public services (such as education) and not left to consumer organisations alone. Greater effort should be focused on the behaviour of service providers, whose 'herd instinct' led to irresponsible lending, unstable 'securitisations', excessive leverage, and business strategies which allowed risks taken in investment and wholesale banking to infect retail banks.*

This being said there are some interesting and useful examples that countries can learn from.

CI's Indian members indicated an interesting funding source for financial education:

India: *The Ministry of Corporate Affairs has created an Investor Education & Protection Fund (IEPF) collecting unpaid and unclaimed amounts, such as unpaid dividend accounts of the companies, matured deposits and debentures lying with the companies unclaimed, etc. This Fund is being used for investor education and awareness by organising a number of education and awareness programmes.*

Hong Kong: *An Investor Education Council of Hong Kong is to be established to holistically oversee the delivery of investor education across the financial services industry, for improving the financial literacy and capability of the general public and assisting them to make better financial decisions. The source of funding is the reserve of the Securities & Futures Commission of Hong Kong, and investor education is a statutory obligation. No other levies are charged on investors or the industry.*

Nigeria: *Basically there are no consumer education programmes provided by the service providers. But CBN gives some media enlightenment talks on financial services. The Consumer Protection Council (which is a CI government member) also mounts a weekly consumer enlightenment programme "Consumers Speak" which at times focuses on financial services.*

There are examples of funding from central authorities. In the following case our national member is involved in the programme:

Malaysia: *The Central Bank is conducting financial education programmes through their own agency which is the Credit Counselling and Debt Management Agency. The Central Bank is also funding consumer movements to conduct financial education programmes for the community. The Central Bank has also prepared educational materials which are widely distributed in schools. Additionally, it has reasonably useful financial information on their website. The Central Bank is funding the publication of a Monthly Financial Bulletin for mass distribution to consumers. The Project is being undertaken by the Federation of Malaysian Consumer Associations (FOMCA). Every month 50,000 copies are distributed to all sectors of society.*

Other governments seem to have been less active, and it has fallen to our members to take the initiative:

Fiji: *The Reserve Bank of Fiji (RBF) has been running a financial literacy campaign but this has been limited in reach and scope. This has been done in partnership with the banks. The banks activities on financial literacy are however focused more on selling their products rather than actually educating consumers about their rights.*

With the RBF and other regulatory agencies not taking initiatives to educate consumers at the macro-level, the burden of financial education and awareness has fallen to the Consumer Council of Fiji, which started the piloting of a debt management and advisory service with help from AusAID. The service will go beyond personal consumer debt and financial advice to greater awareness and financial literacy. The service now has a full time dedicated staff and consumers accessing this free service will also be made aware that the Consumer Credit Act protects them when they take home loans, car loans or exchange in hire purchase transactions with credit institutions. The Council has produced brochures which have been widely distributed to the public via the Council's ongoing mobile information units and community engagements, and posters under the subject of 'Read Before You Sign' covering home loans, hire purchase and car loans. Posters have also been produced for Debt Management in Fiji's vernacular languages. The Council has in the past several months produced weekly newspaper features and advisory columns, as well as radio, cinema and TV spots, running alongside a financial services campaign in community workshops and formal engagements with stakeholders.

Generally, as with disclosure there seems to be some progress, albeit highly variable, and often brought about through crises of one kind or another. In **Bosnia**, there is a voluntary debt counselling centre for micro-finance following the emergence of a crisis regarding over-indebtedness. However, the MFIs themselves are not obliged to participate which unbalances matters especially when a consumer has multiple debts. Other countries that are active in the financial literacy space are the **Philippines** with a new national education campaign and an existing one for overseas migrant workers (prone to over indebtedness due to pressure to send ever more remittances). **Namibia and Rwanda's** governments are also just beginning financial literacy campaigns nationally with the help of donors. In the case of Rwanda, the donor is Visa.

7. Responsible Business Conduct of Financial Services Providers and Authorised Agents

We were interested in good practice examples of measures that help to ensure financial service providers and their agents act in the 'best interest of their customers'. CI welcomes the formula written into legislation in various jurisdictions regarding 'best interest of consumers', and we welcomed the signalling of issues concerning conflict of interest and remuneration structures in the OECD 'high level

principles' for consumer protection in FS. We seek clear definition of 'authorised agents', and of 'legal duty of care' on intermediaries. We also seek long-term evolution towards advice based on fee for service rather than sales commission, although we recognise that this will take time and will require a different approach on the part of consumers themselves.

The following indicate efforts to separate advice from remuneration or to manage and disclose conflicts of interest.

Australia: *After 20 years of campaigning, CHOICE welcomed the recently announced reforms to financial advice to address the inherent conflict of interest created by commissions. The Future of Financial Advice (FOFA) reforms mandate financial advisors putting their clients interests first.*

Fiji: *Mortgage sales in Fiji are being held without proper disclosure and transparency resulting in many homeowners losing out on the value of their lifelong home loan investments. A few steps have now been taken by the Government such as the removal of lawyers from mortgage transactions. The Real Estate Agents (Amendment) Decree 2011 has provisions that make it illegal for legal practitioners to act for credit or financial institutions for sale of land or properties by mortgage sales. The Consumer Council is still fighting for mortgaged properties to be sold via public auction so that consumers/homeowners can get a fair price on their properties and be in a better position in terms of disposing of their home loan debt.*

A number of countries also have measures to legally oblige financial service providers and their agents to act in the best interests of their clients.

India: *Certification examinations are mandatory for professionals employed in various segments of the Indian securities markets. These examinations are mandated under SEBI (Certification of Associated Persons in the Securities Markets) Regulation, 2007. Professionals in the Security Market are required to regularly update their knowledge and they are supposed to be certified to operate in the financial market by the National Institute of Security Market, authorised by SEBI. This is true for the security market, the mutual funds market as well as the insurance market.*

Denmark: *Certification scheme: Any person selling/advising on red investment products must pass a test regulated by the Danish FSA. An Education Board (where the Danish Consumer Council is represented) has been established to monitor the scheme.*

8. Protection of Consumer Assets

The protection of consumer assets should go beyond issues of fraud and misuse to include protection of consumers' deposits, savings, and other similar financial assets in the event of a bank collapse. This can include deposit guarantee schemes and prioritising consumer deposits in the event of a bank collapse.

Australia: *The Financial Claims Scheme was introduced as a temporary measure during the Global Financial Crisis to provide a Government guarantee of consumer deposits in Australia. Following campaigning by CI's Australian member, the scheme has now been made permanent to a maximum of \$250,000 per person per institution (down from \$1,000,000 under the temporary scheme) and the Government has adopted many of the transition arrangements recommended by CHOICE.*

Hong Kong: *In Hong Kong, the Deposit Protection Scheme (DPS) commenced operation in 2006 to protect depositors by paying compensation to them in the event of a bank failure. The objective of introducing the DPS is to contribute to the stability of the banking system through the*

provision of protection to depositors. A number of enhancements to the DPS were concluded in its review which include:

- raising DPS protection limit from HK\$100,000 to HK\$500,000;
- protecting secured deposits to enhance the clarity of DPS coverage;
- introducing cost mitigating measures to avoid the cost of providing better protection being transferred to depositors; and
- improving the efficiency of the DPS Board in calculating and making compensation to depositors in a payout.

The enhancements took effect on 1 January 2011, immediately after the full deposit guarantee provided by the Hong Kong Government expired.

Indonesia: Third party funds (non-bank) and interbank deposits, including current accounts, time deposits, certificate of deposits, saving accounts, and/or other similar forms of deposits are insured according to Indonesian concerning the Indonesia Deposit Insurance Corporation (IDIC), a legal entity based on the law. It is an independent institution and responsible to the President.

As of October 2008, under government regulation, the maximum amount of deposit insured per depositor within a single bank is Rp 2 billion. However there are several qualifications such as: the deposits are recorded in the bank, the depositors do not obtain the interest higher than the maximum interest rate determined by IDIC, and the depositors are not a part of the cause of the failing condition of the bank. The maximum interest rate is announced by IDIC regularly.

Unfortunately our member YLKI reports that there is no guarantee that this regulation is implemented fairly. In one case where a Bank was liquidated, consumers could not claim their deposits. The Bank had a promotion programme called 'cash back', which was given in various forms, such as gifts. The IDIC refused the claim on the grounds that the consumers had received benefit/interest higher than the maximum interest rate, as 'cash back' or gifts were considered as extra/additional interest. This issue has not been resolved yet. With this case, it seems the criteria for eligible and ineligible claims are somewhat flexibly interpreted.

European Union: Under European law any account deposits, including bank accounts, savings accounts and some closely related products are protected by either a deposit guarantee scheme or an institute guarantee scheme. The latter is run by some banking networks (savings banks, cooperate banks) and is to guarantee for the solvency of its individual member banks. Should a bank fail the other banks will restructure it or take over the accounts and fulfil the consumers' interest at best without any interruption of service. Legally guaranteed are deposit guarantee schemes that have to be partly pre-funded and that will nowadays guarantee each consumer the amount of up to 100,000 Euro per bank licence (within all of EU). With one bank a consumer may trust that even if the bank collapses, his/her money deposited will be refunded. This not only protects consumers but banks as well, because the scheme is to guarantee that consumers do not feel a need to suddenly withdraw their monies from any financial institution when they hear bad news thus causing bank runs. With the onset of the financial crisis a rule was abolished that only guaranteed 90% of the account's money.

Germany: In Germany the default of minor banks presented no problems in the past. A deterioration occurred when three out of four Icelandic banks defaulted almost at the same time in autumn 2008. Iceland applied the same legal principle as in the EU for German consumers who had substantial deposits with one of the Icelandic banks. Though the Icelandic scheme failed to provide immediate compensation they actually managed after a few months not only to reimburse the legal limit but the whole deposit (without interest payments). This shows the overall importance of these schemes.

CI has also favoured the development of credit reference agencies as a means of promoting responsible lending. This practice is developing rapidly in several countries. For example:

India: *With the setting up of CIBIL (Credit Information Bureau of India Ltd.), the Banks provide the credit rating of customers, who are defaulters, to CIBIL. The financiers use this information before sanctioning the loan.*

Nigeria: *The Central Bank of Nigeria Guidelines on credit reporting deal with this issue. To this end, some credit bureaus have been licensed by CBN. They are liable for the validity of their reports on consumers as the law imposes a duty on them to provide accurate and reliable information.*

South Africa's National Credit Act and National Credit Regulator merits mention on several fronts. Firstly, the law requires banks not to lend recklessly imposing an obligation that they must assure appropriateness of product for the consumer, which goes beyond ability to repay. Furthermore, debt counselling is mandatory for the over-indebted, plus maintaining statistics on how many consumers are 'credit impaired' in the country (posted on the NCR's site with quarterly reporting on same and the debt market) and an active public outreach and educational unit to promote financial literacy. Debt counselling is also required in **Malaysia** and the **Netherlands** and in consequence legal provisions sometimes allow for debt relief in the form of reduced principal.

9. Protection of Consumer Data & Privacy

Consumers have a right to be informed about data sharing, to access data and to require inaccurate, or unlawfully collected or processed data to be deleted or corrected.

USA: *In late 2011 the CFPB published an Interim Final Rule regarding the disclosure of non-public personal information about consumers to third parties and the requirement that financial institutions provide certain privacy notices to consumers. This Interim Final Rule combines existing rules from other financial consumer protection agencies existing prior to the CFPB. Among the protections contained in this Interim Final Rule are the following provisions:*

Entities must provide initial privacy notices to customers that are clear and conspicuous and that accurately reflect the entities' privacy policies and practices. The notice is required when the entity establishes a customer relationship. As a general rule the entity is required to provide annual notices to continuing customers. They are obligated to notify consumers of revisions to the terms when they occur. Some of the categories of information which must be disclosed include:

- *The categories of non-public personal information collected*
- *The categories of non-public personal information disclosed*
- *The categories of affiliates and non-affiliated third parties to whom the entity discloses non-public personal information*
- *An explanation of the consumer's right to opt out of the disclosure of non-public personal information to non-affiliated third parties, including the method(s) by which the consumer may exercise that right at that time*

The Interim Final Rule provides a model privacy form, though use of the model form is not required.

The Interim Final Rule contains detailed guidance on how to make a notice “clear and conspicuous” and “reasonably understandable” as well as guidance for how to design notices for a website. Additionally, states have laws requiring the disclosure of privacy breaches involving consumers’ personal information.

10. Complaints Handling and Redress

Complaints handling and redress mechanisms should be accessible, affordable, independent, fair, accountable, timely and efficient. The following is one of the most comprehensive examples.

Denmark: *Financial Services Complaint Boards: For more than 20 years financial services complaint boards have been in place in Denmark. The Boards have been established by the Danish Consumer Council in cooperation with the relevant industry organisation. In practice virtually all complaints are settled at the Danish Complaint Board of Banking Services and the Danish Mortgage Credit Complaint Board. Each case is prepared by an independent secretariat and settled by majority vote taken by a judge, two representatives of the Danish Consumer Council and two representatives of the industry. Compliance with the ‘rulings’ is very high, and the cost to consumers relatively modest (about 20 EUR). Referrals to the Complaints Board doubled from 2008 to 2009 and have since fallen back to just above the 2008 level. When rulings are not followed by the bank the Danish Consumer Ombudsman may take the case to court on behalf of the consumer (there is no guarantee for this, but it happens in most cases).*

Effective financial services ombudsman or similar institutions can also offer consumers effective means of redress. Ombudsmen systems have developed rapidly in recent years in this and other sectors. Attempts are being made to improve geographical coverage sometimes through branch offices or roving offices in marketplaces. The **Peruvian** ombudsman has tried outreach to the rural areas for example. In **India**, there are Reserve Bank ombudsmen in 15 major cities and they will soon have jurisdiction over micro-finance institutions as well, but again they are only in urban areas. A further limitation is that ombudsmen do not normally handle unregulated financial institutions; thus those most likely to financially serve and abuse the poor may be completely ignored.

Many systems exist sometimes side by side in the same countries. Many consumer associations have complaints resolution services for members and many deal with FS, notably concerning over-indebtedness, and credit. For example, 45% of problems brought to the Centre for Consumer Rights Protection in **Thailand** concern FS of which 75% are linked to credit cards and over-indebtedness.

Nigeria: *Central Bank of Nigeria, Nigerian Insurance Deposit Corporation and Nigeria Securities and Exchange Commission. Consumers of financial services in Nigeria are entitled to lodge their complaints with any of the agencies mentioned above as appropriate or the Consumer Protection Council which is the apex consumer protection agency in Nigeria charged with the mandate of seeking redress for aggrieved consumers in relation to all products and services. An aggrieved consumer can also institute a civil action to enforce his rights.*

India: *Indian systems have some examples favoured by our members, where the regulatory frameworks have successfully integrated financial service protection into regulatory and supervisory frameworks. Some such examples are given below:*

A. The Banking Ombudsman Scheme in India was created pursuant to a decision by the Government of India to enable resolution of complaints of customers of banks. The service is provided by the Reserve Bank of India (RBI) to enable an efficient and inexpensive mechanism. The Banking Ombudsmen Scheme came into effect in 2006. It is a quasi-judicial authority.

B. The Grievance Redressal Mechanism was established by the Securities Exchange Board of India through launch of a portal for filing grievances and regulations requiring intermediaries to download complaints against them (through secured access) with direction to reply within 15 days with SEBI and sending a copy to the complainant.

C. India's Consumer Protection Act, 1986, is widely known for its establishment of machinery for quick and cheap redressal at the doorsteps of the complainant. The consumers need not go through the Company's redressal mechanism, at different levels, to file a complaint with the Consumer Courts.

D. The Government of India has set up a number of Mediation Centres to resolve the complaints amicably through dialogue as far as possible, before going to the Courts. This is a new initiative to reduce the load of consumer courts.

There are many independent consumer groups and/or autonomous agencies helping with dispute resolution in particular in countries which do not have a central independent agency for the protection of consumers dedicated to FS. Examples given to us by members in 2011, include such varied countries as **Benin, Cameroon, Côte d'Ivoire, Germany, Greece, Hong Kong, Hungary, India, Indonesia, Kazakhstan, Kenya, Korea, Lebanon, Malaysia, Mozambique, Nigeria, Romania, Thailand, Uganda and Vietnam.**

Fiji: *There was some hope when the Reserve Bank made policy directions to banks to improve their complaints redress mechanisms and the RBF's own set up – Complaints Management Forum and Complaints Unit. However, these have not been effective and do not have powers to penalise financial institutions that have engaged in unfair trade practices or have abused consumers' rights.*

The RBF also established a 'Complaints Management Forum' consisting of financial institutions, the Fiji Commerce Commission, Consumer Council of Fiji and business groups. The forum purports to discuss and address issues arising from complaints against financial institutions. The regulator also set up a Complaints Handling Unit within its Financial Systems Development and Compliance Group. This unit has no legal powers to impose penalties on financial institutions who have engaged in unfair trade practices.

Hong Kong: *In Hong Kong, the Financial Dispute Resolution Centre (FDRC) will be in operation by mid-2012 to administer an independent and impartial dispute resolution scheme with an aim to resolve monetary disputes between individuals and financial institutions through "mediation first, arbitration next". The FDRC is governed by a Board of Directors to oversee its operation and formulate the overall policy and strategy. This Board has included a consumer protection expert (Ms Connie Lau of Hong Kong Consumer Council) as one of the four non-official members.*

Malaysia: *For consumer redress the consumer can approach the National Consumer Complaints Centre, operated by FOMCA (CI's Malaysian member). Furthermore, consumers can also get redress at the Financial Mediation Bureau. The services are affordable and reasonably efficient. The FMB is an independent body set up to help settle disputes between individuals and financial services providers who are its members. The FMB provides free, fast, convenient and efficient avenue to refer disputes for resolution as an alternative to the*

courts. These disputes may be related to Banking as well as Insurance and Takaful (Islamic insurance).

Bangladesh: Bangladesh Bank has recently established a Consumers' Interests Protection Centre (CIPC) in its Head Office in Dhaka as well as its nine branch offices with view to establishing safeguards for the interests of the consumers of banks and financial institutions in the country.

A consumer can lodge his or her complaints to the CIPC by dialling a hotline number, sending an email or fax, using an electronic complaint form or informing against banks/financial institutions to the CIPC in person. The complaints procedure is also mentioned on the website of Bangladesh Bank. The current redress mechanism of Bangladesh Bank is only carried out its own Inspection and Vigilance Department; representatives from consumer organisations have not yet been included in the complaint handling mechanism. Consumers Association of Bangladesh has already taken an initiative to work on this.

11. Competition

CI has called for governments to promote competition in financial services by making it easier for consumers to search, compare and (where appropriate) switch between products and providers easily and at a reasonable cost (which is clearly disclosed). Where necessary these measures should also be supplemented by steps to enable new entrants and prevent anti-competitive behaviour.

Most countries surveyed have competition rules which are reinforced by agreements, voluntary commitments and codes of practice, targeted at mobility and comparability of products on the market.

In France:

- *Under pressure from government regulation, commitments have been made by banks to display their tariffs in standard form, in bank premises and on the internet.*
- *A commitment was made in 2009 by the banks to facilitate consumers' decisions to move their accounts.*
- *Discussions are underway to unify policy cancellation deadlines for life insurance with a view to facilitating consumer decisions to change insurers.*

Brazil: *Since 2006 there has been specific regulation for switching credit between banks, but only recently (April 2012) were there governmental measures requiring state banks to reduce interest rates and create an appropriate environment conducive to competition among the biggest retail banks. Our Brazilian member IDEC has some reports of difficulties created by private and state banks and encountered by consumers seeking to switch credit: requirements related to account opening time, the purchase of another bank product or service.*

Germany: *BaFin (the financial services authority) has issued guidelines on form and content for advertising on investment products, with reference to both comprehensibility and comparability.*

India: *A recent court case condemned the practice of four banks which imposed a penalty charge for the early closure of housing loans. This practice prevents borrowers from switching to another bank which is offering a lower rate.*

Zambia: *The government publishes industry-wide bank charges annually in the national media to enhance consumer awareness.*

Government monitoring should also play an important part of any strategy to promote competition in the sector but unfortunately there is relatively little evidence of this in many countries.

USA: *Among its duties under the Dodd-Frank Act, the CFPB has authority to ensure that Federal consumer financial law is enforced consistently, without regard to the status of service providers as depository institutions, in order to promote fair competition. Our US members are encouraged by the statements made on March 28, 2012 by Richard Cordray, the Director of the CFPB, before the U.S. Chamber of Commerce regarding the importance of regulation in promoting healthy competition. For example:*

“. . . reasonable rules in the marketplace can exert a positive influence on financial innovation. When every competitor has to disclose the actual cost of a credit product, it is easier for a new firm to enter the market and show that it offers consumers a lower price. And though over-regulation can indeed stifle entrepreneurship, under-regulation can also lead to terrible anti-business results. Violations of the law that confer an illegitimate advantage, yet go unaddressed, constitute the worst form of unfair competition...So to foster true competition, we need even-handed and reasonable oversight of the marketplace.”

Vietnam: *Our members report that as of now there has been no specific monitoring by the government (competition authorities) of competition issues in the financial sector. Moreover, the competition authorities did undertake one or two market studies into the financial sector (banking services, insurance) to understand the market and find out whether there has been any competition concern. They found none.*