

SOUTH AFRICA

Diagnostic Review of Consumer Protection in Non-Credit Financial Services

Volume II Review against Good Practices

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Acronyms and Abbreviations

ACI	Association of Collective Investments
ADFSP	Administrative and Discretionary FSP
ASISA	Association for Savings and Investments South Africa
BASA	Bankers Association of South Africa
BEE	Black Economic Empowerment
BIS	Bank for International Settlements
CCC	Central Coordinating Committee
CED	Consumer Education Department
CIS	Collective Investment Schemes
CISCA	Collective Investment Schemes Control Act
CMA	Common Monetary Area
CMS	Council for Medical Schemes
CPA	Consumer Protection Act
CPD	Continuous professional development
DBE	Department of Basic Education
DHET	Department of Higher Education and Training
DTI	Department of Trade & Industry
EMS	Economic and Management Science
FAIS	Financial Advisory and Intermediary Services
FAISA	Financial Advisory and Intermediary Services Act
FATF	Financial Action Task Force
FET	Further Education and Training
FIAS	Financial Intermediaries Association of Southern Africa
FIC	Financial Intelligence Centre
FSB	Financial Services Board
FSOS	Financial Services Ombud Schemes Act
FSP	Financial Service Providers
GDP	Gross Domestic Product
GEPF	Government Employees Pension Fund
IDD	Initial Disclosure Document
IMASA	Investment Management Association of South Africa
IRS	Institute of Retirement Funds
KYC	Know Your Customer
LISPA	Linked Investment Service Providers Association
LOA	Life Offices' Association
LTI	Long-Term Insurance
MTO	Money Transfer Organization
NCA	National Credit Act
NCC	National Consumer Commission
NCR	National Credit Regulator

NPS	National Payment System
NT	National Treasury
OB	Outside-Broadcast
OBS	Ombudsman for Banking Services
PASA	Payment Association of South Africa
PIN	Personal Identification Number
POPIA	Protection of Personal Information Bill
PSMB	Payment System Management Body
RSP	Remittance Service Provider
SABC	South African Broadcasting Corporation
SAIA	South African Insurance Association
SAM	Solvency Assessment and Management
SANCU	SA National Consumer Union
SARB	South African Reserve Bank
SARS	South Africa Reserve System
STI	Short-Term Insurance
STO	Short-Term Insurance Ombudsman
STRIDE	Short-term Insurance Data Exchange
TCF	Treating Customers Fairly
UIF	Amended Unemployment Insurance Act

n.a. Not Available

\$1 = 7.9 Rand (November 2011)

Overview of Financial Sector

The banking sector, followed by retirement and long-term insurance, represents the largest share of the financial market. The banking sector reached a peak at the end of 2008, after which it declined by 1 percent in 2009 but was on a recovery again with an almost 2 percent growth by end of 2010. Table 1 below shows the trend in size of each of the segments of the financial market.

Table 1: Assets of Financial Institutions in South Africa

Financial Institutions	2007	2008	2009	2010
Banks	2,309	2,953	3,006	3,093
Collective Investment Schemes (CIS)	653	661	786	939
Retirement Funds	1,938.57	1,924.98	-	-
Insurance and reinsurance				
<i>Short-term Insurance</i>	<i>6.580</i>	<i>7.965789</i>	<i>8.636477</i>	-
<i>Long-term Insurance</i>	<i>1,150</i>	<i>1,083</i>	<i>1,128</i>	<i>1,279</i>
Total	6057.149	6629.95	4928.64	5311

Sources: South African Reserve Bank, FSB, ASISA

At the same time access to formal financial services is limited. South Africa has one of the lowest ratios for number of bank branches per 100 000 adults in the world and of the total banked population only 13% uses only banking products. However, South Africa has a high number of ATMs and point-of-sale terminals per 100,000 people, indicating the efforts by formal financial sectors to reach the previously excluded segments of the market. Table 2 below compares the access to banking services across the region.

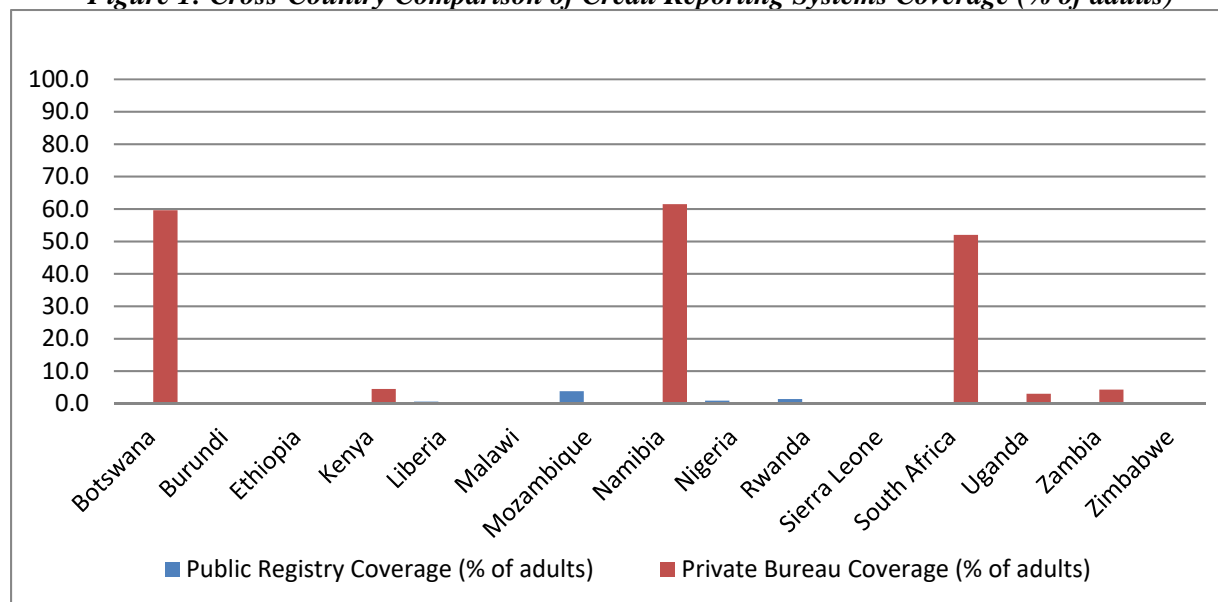
Table 2: Access to Banking Services

	Number of Bank Deposit Accounts (per thousand adults)	Value of Bank Deposits (as percentage of GDP)
Botswana	479.36	95
Burundi	23.35	2112.28
Ethiopia	93.59	456.51
Kenya	381.62	178.49
Liberia	102.08	545.23
Malawi	163.44	319.05
Mozambique	140.5	488.58
Namibia	757.61	80.38
Nigeria	461.21	119.88
Rwanda	226.15	128.48
Sierra Leone	98.62	383.61
South Africa	839.13	159.93
Uganda	173.21	215.18
Zambia	27.59	1248.9
Zimbabwe	144.36	-

Source: CGAP and World Bank, *Financial Access*, 2010

The credit reporting system in South Africa is predominantly represented by private bureaus. The coverage is expected to reach 52% by 2012, placing it amongst the leading countries in the region with regular credit reporting systems. The coverage, however, is still not enough to surpass that of Namibia and Botswana (see Figure 1).

Figure 1: Cross-Country Comparison of Credit Reporting Systems Coverage (% of adults)



Source: World Bank, *Doing Business 2012*

The efficiency of the system for enforcing contracts in South Africa is below the average of the region. With a global ranking of 81, South Africa ranks below the average in Sub-Saharan Africa which is placed at 65 overall. Although the overall ranking for South Africa on these parameters has improved by 4 points since a year ago, the duration, costs and procedures for the contracts has remained the same according to studies. These statistics correspond to procedures for enforcing commercial contracts mainly but they provide an idea of the efficiency of the system for enforcing other types of contracts as well.

Table 3: Efficiency of Systems for Enforcing Contracts in Europe

	Number of Procedures	Number of Days	Cost (as % of Claim)
Botswana	28	625	28.1
Burundi	44	832	38.6
Ethiopia	37	620	15.2
Kenya	40	465	47.2
Liberia	41	1280	35.0
Malawi	42	312	94.1
Mozambique	30	730	142.5
Namibia	33	270	35.8
Nigeria	40	45.7	32.0
Rwanda	24	230	78.7
Sierra Leone	39	515	149.5
South Africa	29	600	33.2
Uganda	38	490	44.9
Zambia	35	471	38.7
Zimbabwe	38	410	113.1
Sub-Saharan Africa	39	641	50.3

Consumer Protection in the Banking Sector

Overview

South Africa has an advanced and growing banking sector with effective regulations to monitor the rapidly changing financial environment in the country. In 2010, there were a total of 32 registered banks, comprising 12 locally controlled banks, 5 foreign-controlled banks, 2 mutual banks and 13 local branches of foreign banks (See Table 5).

Table 4: Distribution of Banking Institutions in South Africa

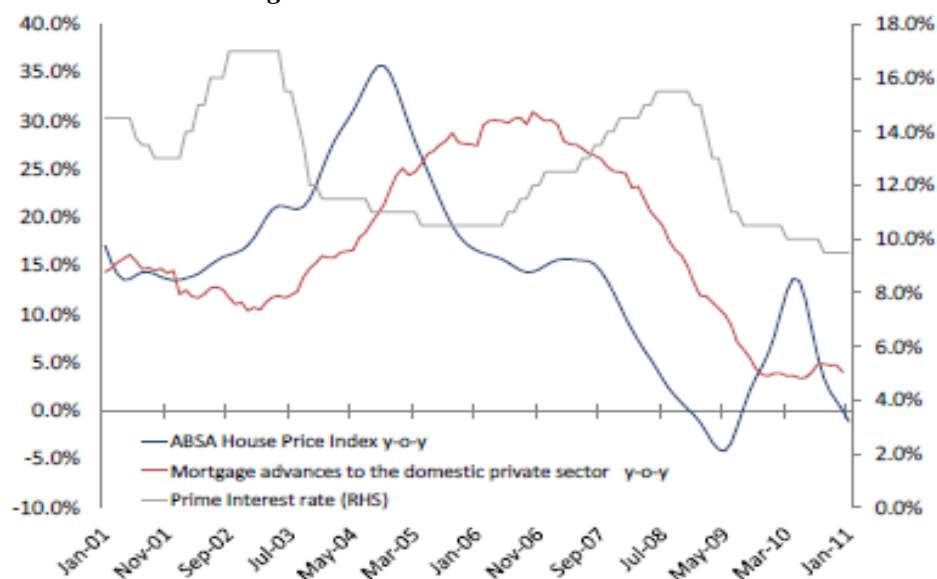
	June, 2009		June, 2010	
	Number of Institutions	Total assets in R billion	Number of Institutions	Total assets in R billion
Locally controlled banks	13	2,825	12	2826
Foreign-controlled banks	5	11	5	13
Mutual Banks	2	1	2	1
South African branches of foreign banks	14	183	13	167
Total registered banks	34	3020	32	3007

Source: South African Reserve Bank

Table 5: Sector-wise distribution of Bank Deposits (in R billion)

	2006	2007	2008	2009	2010
Households	338	400	469	510	517
% of total deposits	24%	23%	23%	23%	23%
% of GDP	19%	20%	21%	21%	19%
Non-household deposits	532	612	685	692	736
% of total deposits	38%	36%	33%	32%	33%
% of GDP	30%	30%	30%	29%	28%
Total domestic deposits	1345	1647	1967	2096	2174
% of total deposits	96%	96%	95%	96%	97%
% of GDP	76%	82%	86%	87%	82%
Non-resident deposits	56	62	106	80	73
% of total deposits	4%	4%	5%	4%	3%
% of GDP	3%	3%	5%	3%	3%
Total deposits	1401	1709	2073	2176	2247

Source: South African Reserve Bank

Figure 2: Bank loan and interest rate

Source: National Treasury <

<http://www.treasury.gov.za/documents/national%20budget/2011/A%20safer%20financial%20sector%20to%20serve%20South%20Africa%20better.pdf>>

In recent years, more banks and financial institutions have been entering the previously unbanked segments of the market. There is increased competition among banks, especially smaller banks, to capture the low income and previously unbanked markets; almost one-fourth of population is financial excluded, with 13% of the banked population availing of only banking products. To attract this difficult-to-reach segment of the population, banks are introducing new systems such as mobile banking, ATMs and point-of-sale terminals. The number of ATMs in the country has increased by 60% in less than five years, as of December 2008. As banks tap into this growing market, new regulatory issues are cropping up regarding financial awareness and consumer protection.

Legal and Institutional Framework

A list of relevant statutes, regulations and codes for the banking sector are given below:

- Banks Act, No. 94 of 1990, as amended by Act No. 19 of 2003
- Code of Banking Practice 2004, with application from October 1, 2004 - The Banking Association South Africa
- Code of Banking Practice 2012, with application from January 1, 2012 - The Banking Association South Africa
- Code of Conduct on Credit Extension, March 2007, - The Banking Association South Africa
- Companies Act, No. 71 of 2008
- Competition Act, No. 89 of 1998, as amended
- Consumer Protection Act, No. 68 of 2008, as amended
- Consumer Protection Act, Regulations
- Constitution of the Republic of South Africa, No. 108 of 1996
- Co-operatives Banks Act, No. 40 of 2007
- Determination of Fit and Proper Requirements for Financial Services Providers [Board Notice 91, 16 August 2006]
- Financial Advisory and Intermediary Services Act, No. 37 of 2002
- Financial Institutions (Protection of Funds) Act, No. 28 of 2001

- Financial Intelligence Centre Act, No. 38 of 2001
- Financial Services Board Act, No. 97 of 1990, as amended by Act No. 12 of 2000
- Financial Services Ombud Schemes Act, No. 37 of 2004
- Long-Term Insurance Act, No 52 of 1998
- Mutual Banks Act, No. 124 of 1993, as amended
- National Credit Act, No. 34 of 2005
- National Credit Act Regulations No. 8477 of 31 May 2006
- National Payment System Act, No. 78 of 1998, as amended by Act No. 22 of 2004
- Short-Term Insurance Act, No. 53 of 1998
- South African Reserve Bank Act, No. 90 of 1989, as amended by Acts No. 2 of 1996, No. 39 of 1997 and No. 57 of 2000
- Supervision of Financial Institutions Rationalisation Act, No. 32 of 1996

Government of Western Cape Province

- Western Cape Consumer Affairs (Unfair Business Practices) Act, No. 10, 2002

The Financial Services Board (FSB) is a unique and independent institution that was established to oversee the regulation of non-banking financial services industry; this includes supervision of insurers, fund managers and broking operations, particularly the regulation of Johannesburg Stock Exchange, the country's biggest stock exchange. FSB is mandated to supervise the capital markets, Collective Investment Schemes (CIS), financial service providers, insurers and reinsurers, other credit agents, nominee companies, retirement funds and friendly societies. By imposing stringent rules, monitoring compliance by these laws and taking regulatory action whenever necessary, the department also participates in investor protection and promotes a transparent and efficient financial system.

South African Reserve Bank (SARB) is responsible for the supervisions of the banking industry in South Africa. Within the reserve bank, the Registrar of Banks registers institutions as banks or mutual banks and enforces all requirements of the applicable legal regulations. SARB operates as an autonomous institution mostly, with the registrar being required to report annually to the Minister of Finance, which in turn reports to the Members of the Parliament. The SARB comprises 14 shareholders, seven of which are private shareholders; this is a unique system wherein the private sector representation is ensured at supervisory level. SARB also actively contributes to regional and international discussions on building better regulatory systems; the Secretariat of SADC Committee of Central Bank Governors is located at the SARB. SARB has also focused on developing regulatory policies in line with other industrialized countries which makes the economy attractive for foreign banks and international transactions.

The Banking Association of South Africa is a body representing all registered banks in South Africa. The Association lobbies on behalf of the industry and works towards influencing government policies and shaping the reforms in the industry; it represents both domestic and foreign banks. The Association is also involved in research and development and engagement with critical stakeholders on behalf of the banking industry to work on its many objectives including consumer protection, access to finance, financial reporting standards and codes of practice.

National Credit Regulator (NCR) is the regulatory body for the credit industry in South Africa. NCR is mandate to promote education, research and policy development in the credit industry, while also executing the functions of registering industry participants, investigating any complaints and ensuring enforcement of the regulations as prescribed by the National Credit Act, 2005; NCR also focuses on expanding access of credit market.

The Office of the Ombud for Financial Services Providers (FAIS) undertakes disputes pertaining to any financial matter between financial services providers and their clients. Although no fee is charged to the consumer and its service is accessible to all, only cases of up to 800,000 rand monetary cap can be considered through the system. FAIS is an independent authority which was established in 2002 and receives funding from FSB.

National Consumer Commission (NCC) was established with broad powers to enforce the wide-ranging rights this statute provides consumers. These include the right to equality in the consumer market, privacy, the exercise of freedom of choice, disclosure and information, fair and responsible marketing, fair and honest dealing, fair value and fair, just and reasonable terms and conditions.

The Ombudsman for Banking Services (OBS) undertakes complaints of clients of banking services in the jurisdiction and delivers dispute resolution services at no charge. To avoid political influence, the OBS has been established as an independent organization with an Adjudicator appointed the Board of Directors who discharges the responsibility of the Ombudsman. These responsibilities may be broadly defined as Assessment, Recommendation and Determination, the last of which is usually based on the Code of Banking Practice or the prescribed law.

The Office of the Credit Ombud undertakes complaints of consumers and businesses that have been misguided by the information provided by established credit bureaus or when a dispute arises between consumers and credit providers, debt counselors or payment distribution agents. Complaints within a jurisdiction that have been filed according to the complaint process are taken up by the Credit Ombud for no charge.

Good Practices: Banking Sector

SECTION A	CONSUMER PROTECTION INSTITUTIONS
Good Practice A.1.	<p><i>Consumer Protection Regime</i></p> <p>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.</p> <ol style="list-style-type: none"> Specific statutory provisions should create an effective regime for the protection of a consumer of any banking product or service. 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). The designated agency should be funded adequately to enable it to carry out its mandates efficiently and effectively. The work of the designated agency should be carried out with transparency, accountability and integrity. 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. 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	<p>Although institutional arrangements are in place in South Africa with a view to ensuring the thorough, objective, timely and fair implementation and enforcement of rules for the delivery of credit to consumers, as well as for professional banking advice of any kind, South African law does not yet provide thorough consumer protection rules, specifically regarding banking products and services. Consumer related provisions do exist in some statutes dealing with banks, including the Banks Act of 1990 (as</p>

	<p>amended) and the Financial Intelligence Centre Act of 2001 (as amended), as well as certain regulations thereunder (see, for e.g., Bank Act Regulation 48). No statute focuses <i>specifically</i>, however, on the protection of consumers of financial products and services, whether generally or in respect of banking products and services in particular.</p> <p>That said, with effect from April 1, 2011, the Consumer Protection Act (CPA) deals extensively with the obligations of <i>any</i> supplier of <i>any</i> goods and services and the corresponding rights of <i>any</i> consumer of any such product or service.</p> <p>With two important exceptions referred to in the CPA itself, this statute, thus, fixes obligations on every bank when it provides any goods or services to a consumer, as well as the rights of any consumer when he/she is offered or receives any such product or service. The exceptions are in respect of:</p> <ol style="list-style-type: none"> advice rendered to a consumer by an employee or agent of a bank; and any aspect of a bank's provision of credit to a consumer. <p>The Financial Advisory and Intermediary Services Act of 2002¹ ("FAISA") governs the rendering of advice to consumers by banks and any other financial institution. And, with certain exceptions, the National Credit Act of 2005² ("NCA") governs the provision of credit to consumers, whether by banks or any other institution.</p> <p>Under the CPA, a National Consumer Commission ("NCC") has been established with broad powers to enforce the wide-ranging rights this statute provides consumers. These include the right to:</p> <ul style="list-style-type: none"> equality in the consumer market; privacy; the exercise of freedom of choice; disclosure and information; fair and responsible marketing; fair and honest dealing; fair, just and reasonable terms and conditions; and fair value. <p>In terms of privacy, consumers have the right to restrict unwanted "direct marketing".³ If a consumer requests that a bank not contact him or her in any way, the bank must abide by the request. Choice includes the right to a cooling off period for transactions as a result of direct marketing. Within 5 business days after the goods are delivered to a consumer, the consumer may cancel the transaction and return the goods. Furthermore, the consumer must be notified of this right when the transaction is concluded.</p> <p>The consumer's right to disclosure and information includes the right to information in plain and understandable language. In order to determine whether this requirement has been fulfilled, a bank must determine if an ordinary consumer of the class of persons for whom the information is intended (and having merely average literacy skills and minimal experience of the goods or services in question) can reasonably be expected to understand the content, significance and import of the information without undue effort.</p> <p>This right also includes the consumer's entitlement to know the price of goods. Goods, therefore, must contain their price, including the price per unit if relevant. Unless there is an inadvertent and obvious error or the price was altered in some way by an unauthorized person, the consumer is entitled to the lowest price displayed.</p> <p>In addition, product labeling and trade descriptions must not be misleading.</p>
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¹ See Act No. 37 of 2002, as amended by the Financial Services Laws General Amendment Act 22 of 2008

² See Act No. 34 of 2005

³ Direct marketing means the contacting of a person directly, including *via* e-mail, with the intention of promoting or offering to supply goods or services or requesting a donation.

	<p>The consumer is also entitled to fair and responsible marketing. A bank’s marketing must not, therefore, be misleading, fraudulent or deceptive. Also, any bank’s products and services that are advertised at a specified price must be supplied at such price to the limits as advertised.</p> <p>Furthermore, the consumer has a right to fair and honest dealings. In other words, a bank must not expose a consumer to any false, misleading or deceptive representation. When dealing with a consumer, a bank must not, by words or conduct:</p> <ul style="list-style-type: none">i) imply anything that is false, misleading or deceptive concerning any material fact;ii) use an exaggeration or create ambiguity concerning any material fact; oriii) fail to disclose any material fact or fail to correct any misapprehension in a representation to a consumer concerning any material fact. <p>The consumer also has the right to fair, just and reasonable terms and conditions. This includes the right to receive notice in certain circumstances in plain language, as well as in enough time, before a transaction takes place in order to be able to read and comprehend all proposed terms. In any agreement with a consumer, these requirements apply whenever a bank seeks to:</p> <ul style="list-style-type: none">i) limit in any way the risk or liability of any person other than the consumer;ii) have the consumer assume a risk or liability;iii) impose an obligation on the consumer to indemnify any other person for any cause; oriv) obtain the consumer’s acknowledgement of any fact. <p>Finally, a consumer has the right to receive fair value, as well as good quality and safety, which includes the right to safe and good quality goods. Unless a consumer is specifically informed otherwise by a bank, a consumer may assume that any product supplied to him or her by that bank:</p> <ul style="list-style-type: none">i) is reasonably suitable for the purposes for which it is generally intended;ii) is of good quality and free of any defect;iii) will be useable and durable for a reasonable period of time, having regard to the use to which it is normally put and to all surrounding circumstances of its supply; andiv) complies with any applicable standards set in accordance with the Standards Act, 1993 (No. 29 of 1993), or any other public regulation. <p>The General Regulations under the CPA focus primarily on franchise agreements, certain advertising practices, auctions, and the labeling of products. Additional provisions, though, deal with such matters as the keeping of records and the notices and languages used by the NCC.</p> <p>The NCA established a National Credit Regulator (“NCR”) with power to:</p> <ul style="list-style-type: none">• issue regulations to all South African institutions that provide credit of any kind to consumers;• supervise the application of these regulations; and• ensure their enforcement. <p>By the terms of the Banks Act of 1990⁴, the prudential supervision of all licensed banks in South Africa is the responsibility of the Reserve Bank of South Africa (“SARB”).</p> <p>As yet, however, no separate institution of government has been formally designated as <i>the</i> sole supervisor of banks in respect of their market conduct or, in other words, regarding how banks deal with consumers.</p> <p>South African banks are subject, therefore, to incomplete and disjointed regulation in ‘quadruple peaks’, as follows:</p> <table><tr><th>Peak</th><th>Institution and governing statute</th><th>Role</th><th>Ultimate Responsible Authority</th></tr><tr><td>1</td><td>SARB under the Banks Act</td><td>Prudential Supervision</td><td>SARB</td></tr><tr><td>2</td><td>Registrar of Financial Service Providers under FAISA</td><td>Supervision and enforcement re: rendering of advice</td><td>National Treasury via the Financial Services Board (“FSB”)</td></tr></table>	Peak	Institution and governing statute	Role	Ultimate Responsible Authority	1	SARB under the Banks Act	Prudential Supervision	SARB	2	Registrar of Financial Service Providers under FAISA	Supervision and enforcement re: rendering of advice	National Treasury via the Financial Services Board (“FSB”)
Peak	Institution and governing statute	Role	Ultimate Responsible Authority										
1	SARB under the Banks Act	Prudential Supervision	SARB										
2	Registrar of Financial Service Providers under FAISA	Supervision and enforcement re: rendering of advice	National Treasury via the Financial Services Board (“FSB”)										

⁴ See Act No. 94 of 1990, as amended

	3	NCR under NCA	Supervision and enforcement re: supply of credit	Department of Trade & Industry ("DTI")	
	4	NCC under CPA	Supervision and enforcement re: consumers' rights generally	DTI	

Although the Ministry of Finance has indicated its interest in creating a twin peaks model,⁵ no government statements regarding this model, whether from the Ministry of Finance, the National Treasury, the Financial Services Board (FSB) or the Department of Trade and Industry (DTI) have yet indicated what is to happen regarding the existing jurisdiction of the NCR and NCC in respect of banks and other financial institutions in order to achieve this goal.⁶

While FAISA, NCA and CPA do create a regime for the protection of a consumer of any banking product or service, the effectiveness of this regime is difficult to measure for various reasons, including the relatively recent effectiveness of the CPA and the lack of apparent close working relationships among FSB, NCR and NCC.

Thus, no single general consumer agency, financial supervisory agency or specialized financial consumer agency is responsible for implementing, overseeing and enforcing consumer protection regarding South African banking products and services. And there is likewise, no single agency charged with collecting and analyzing all pertinent data (including consumer inquiries, complaints and disputes).

While a single designated agency should, of course, be funded adequately to enable it to carry out its mandate efficiently and effectively, it remains to be seen whether the FSB will be adequately funded to carry out any potentially expanded responsibilities. In the meantime, the NCC is especially constrained in terms of resources, with a total staff of only 26 - none of whom have any experience in financial sector matters - and a budget for its first year of operations of merely 132 million rand.

Although there is apparently no reason to doubt that the work of the various designated agencies is being carried out other than with transparency, accountability and integrity, there is much to be desired in terms of co-ordination and co-operation between the various institutions mandated to implement, oversee and enforce what does exist in terms of consumer protection and financial system regulation and supervision.

By section 17 (4) of the NCA, the NCR may, among other things:

- liaise with any regulatory authority on matters of common interest;
- participate in the proceedings of any regulatory authority; and
- advise, or receive advice from, any regulatory authority.

There is also similar language in the Competition Act in respect of the Competition Commission.

Current co-ordination and co-operation occurs primarily through the so-called "Regulators' Roundtable"⁷, which has a specific Market conduct subcommittee. This Roundtable has existed since 2008 ostensibly to coordinate the activity of all financial regulatory and oversight authorities. The National Treasury plays the lead role in this respect, coordinating the FSB, the NCR, the South African Revenue Service (SARS), the Financial Intelligence Centre (FIC) and the SARB's Banking Supervision, Financial Stability and Exchange Control Departments.

Although the law does not explicitly provide a role for the private sector in respect of consumer protection regarding banking products and services (including voluntary consumer organizations and self-regulatory organizations) and there is no State financial support for such organizations, there is no legal prohibition on such a role for the private sector.

⁵ See the National Treasury Policy Document entitled "A Safer Financial Sector to Serve South Africa Better" dated 23 February 2011 (hereinafter the "Red Paper"). This Policy Document is found on the web at www.treasury.gov.za/documents/ under "Documents: Public comments" - Papers released with the 2011 Budget.

⁶ See Feasibility (Pty) Ltd < www.feasibility.co.za > as on July 14, 2011

⁷ The Roundtable was to have been developed into a Council of Regulators chaired by the Minister of Finance under plans announced in the 2010 budget. These plans, however, have yet to materialize.

	<p>And indeed, by the terms of its preamble, purposes of the CPA are to:</p> <ul style="list-style-type: none"> • “facilitate the freedom of consumers to associate and form groups to advocate and promote their common interests; and • promote consumer participation in decision-making processes concerning the marketplace and the interests of consumers.”⁸ <p>In February 2011, the National Treasury published a discussion document entitled <i>A safer financial sector to serve South Africa better</i> (the “Red Paper”).⁹ The Red Paper sets out the Finance Minister’s proposals to:</p> <ul style="list-style-type: none"> • separate prudential and market conduct regulation into two different agencies; • create a new Financial Stability Oversight Committee, co-chaired by SARB’s Governor and the Minister of Finance; • enhance consumer protection by broadening the structure of the FSB to include regulating and supervising the market conduct of banking services within its ambit of responsibilities; • encourage greater access to financial access following a review of the Financial Sector Charter; • enhance regulatory coordination, strengthen regulators as required and formalize the Council of Financial Regulators; • table several bills with Parliament during 2011 dealing with banking, financial markets, credit rating agencies and the regulatory powers of financial supervisors; and • ensure that all businesses in the financial sector are licensed or registered. <p>The National Treasury’s Strategic Plan for the period 2011 to 2014¹⁰ is divided into various Programs. A sub-Program is devoted to Financial Sector Policy and four outputs are envisaged of relevance to the banking system.</p> <p>One output is characterized as better “consumer protection”. To achieve this, the appropriate legislative framework for a new market conduct regulator, including for retail banking, is to be established in the 2011-2012 timeframe. In this same period, “efforts” (undefined) are to be made to promote the implementation of the Competition Commission’s Banking Enquiry recommendations. Also in the 2011-2012 time frame, the consumer financial education policy is to be finalized and its implementation begun. The period from 2012-2104 is also to witness the implementation of the market conduct regulatory framework and the monitoring of the implementation of the Banking Enquiry’s recommendations, as well as the monitoring of the implementation of the consumer financial education policy. The measure of success achieved in all of these endeavors will consist of the extent to which consumers of financial (including banking) services are actually protected. How this extent will be measured against certain benchmarks, however, remains unclear.</p> <p>Another output is termed “financial stability”. In this respect, it is envisaged that the years 2011 to 2014 will be devoted, in part at least, to implementing proposals published in the Red Paper in order to strengthen the financial regulatory system. Through the same period, support to financial regulatory agencies will be provided to ensure they perform effectively in regulating the financial sector. In 2012 and 2013, legislation is to be developed to give effect to the Red Paper. And in 2013 and 2014, regulations (flowing from this legislation and more) are to be introduced to strengthen the regulatory framework for financial markets. The “measurable objective” in these respects will be the provision of specialist policy research and analysis, as well as advisory services in various areas, including regarding financial sector and regulatory reform.</p> <p>Also, as part of Financial Sector Policy, a third output is to be “financial sector transformation and access”. This is to be brought about by the finalization of the Financial Sector Code and the inclusion of access targets in the years 2011 and Banking. Work in these respects is to be followed by the monitoring of the implementation of the Financial Sector Charter’s access targets in the years 2012 to 2014. The measurement of success will be the extent to which access to banking services has been broadened and improved, with a total target by 2014 of at least 70% of South African adults being banked.</p>
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⁸ See also sections 3, 77 and 78 of the CPA.

⁹ See www.treasury.gov.za/

¹⁰ See: <http://www.treasury.gov.za/publications/strategic%20plan/Strat%20Plan%202011-2014.pdf>

	<p>The final Financial Sector Policy output is “competition and entry into the financial sector”. To achieve this, a Dedicated Banks Bill is to be published in 2011 or 2012 and support for, and monitoring the implementation of, the Cooperative Banks Act is to occur in this same timeframe. Then, while it is intended that support for, and monitoring the implementation of, the Cooperative Banks Act will continue in 2012-2013, proposals are to be published for a Deposit Insurance Bill. Finally, in 2013 and 2014, efforts are planned to promote competition and entry into the financial sector. Success in these respects will be measured by the number of smaller banks and non-banks, including dedicated and cooperative banks, which enter South Africa’s financial system.</p> <p>Key to the reforms is a proposed “treating customers fairly” regulatory environment, which will involve a switch from the current rules-based approach, where required behavior is stipulated, to getting companies to behave ethically within predefined broad parameters. The regulator will then have fairly wide discretion as to what is and is not acceptable.</p> <p>The principles are based on the fair treatment of customers at every stage of the product cycle, from design and marketing to advice and service.</p> <p>The FSB, established as a statutory body by the Financial Services Board Act, 97 of 1990, is financed by the financial services industry itself, with no contribution from government. It supervises the control over the activities of non-banking financial services, and acts in an advisory capacity to the Minister of Finance.</p> <p>The FSB’s functions can be summarized as follows:</p> <ul style="list-style-type: none"> • to supervise the exercise of control, in terms of any law, over the activities of financial institutions and over financial services; • to advise the Minister of Finance on matters concerning financial institutions and financial services, either of its own accord or at the request of the Minister; and • to promote programs and initiatives by financial institutions and bodies representing the financial services industry so as to inform and educate users and potential users of financial products and services. <p>The CPA provides for the accreditation of consumer protection groups and support for activities, such as consumer advice, education, publications, research and alternative dispute resolution through mediation and conciliation.</p> <p>The current legal and regulatory framework for financial consumer protection is too fragmented and it has inconsistencies, overlaps and gaps, with the result that regulatory arbitrage is possible. There are already several laws and regulations in place that cover financial consumer protection issues. In addition, there are comprehensive industry codes of conduct for the banking and short-term insurance sectors that provide self-regulatory guidance to financial institutions¹¹ at levels higher than exist in many other jurisdictions. Furthermore, there are various regulatory and industry codes, guidelines and standards that apply on a voluntary basis in the sub-sectors reviewed. As a result, it is difficult for any South African financial consumer to understand his or her legal rights.</p>
Recommendation	<p>The growing importance of financial consumer protection and financial education as given by the financial regulatory authorities (including prudential regulators) is commendable.. Of particular relevance is the leadership taken by the National Treasury in this area, manifested by the Red Paper. This leadership should continue to be exercised in all areas related to the conduct of businesses in their provision of financial services to consumers, especially in relation to the DTI generally and the NCC in particular.</p> <p>While the objective of developing a Twin-Peak financial regulatory model in South Africa is relevant, significant measures regarding institutional arrangements will need to be taken in order to achieve it.</p> <p>In the first place, a new single market conduct regulator/supervisor of financial services should be established and housed under a single line ministry, thereby consolidating the FSB and the NCR, and</p>

¹¹Industry representatives voiced concerns, however, regarding competition issues arising from self-regulatory activities. With input from the FSB, clear guidance should, therefore, be provided by the Competition Commission on both existing and planned self-regulatory initiatives.

	<p>developing a new field of market conduct supervision regarding transactional banking issues, currently covered only by the NCC.</p> <p>Institutional consolidation will ensure that consistent approaches are undertaken by a single market conduct regulator, as well as eliminate or minimize the systemic risk of contradictory financial sector policy objectives which could undermine the stability of the financial sector and thereby negatively affect the well-being of all South Africans. The new market conduct regulator should have sole responsibility for consumer protection issues in financial services in South Africa, including banking services.</p> <p>To ensure the effectiveness of the new market conduct regulator, strong experienced leadership and significant capacity-building will be needed. The new regulator should be able to exercise its mandate pro-actively. Thus, it is crucial that the regulator be equipped with enough resources to supervise the market conduct of all financial institutions, including banks, oversee the application and implementation of all pertinent laws and regulations employing proper incentives, and seek to enforce these laws and regulations employing sanctions, as appropriate, whenever transgressions occur.</p> <p>To improve financial consumer protection and market conduct supervision, the Council of Financial Regulators should constitute a forum for effective and timely coordination among all agencies playing a role in this area, including those currently under the DTI, namely the NCR, the NCC, and the Competition Commission.</p> <p>In this respect, the NCC should be welcomed, at least for the time being, as a new member of the “Regulators’ Roundtable” and should become another member of its Market conduct subcommittee. After all, while the financial sector was looking on, the NCC occupied the field of market conduct supervision pertaining to banking matters generally. Until changes are made in the legislative framework, however, there should, thus, be no begrudging the role given to the NCC by the CPA.</p> <p>It is also important to promote and support an extensive multi-stakeholder consultation process where financial industry associations, as well as consumer organizations, are encouraged to voice their views from the outset in the process of policy formulation to the formulation and public review of relevant draft legislation leading to the realization of the second of the “twin peaks”.</p> <p>Consideration should also be given to the State providing financial support to the development of consumer organizations that have at least nascent expertise in financial sector issues so that these organizations are better able to play advocacy, advisory and monitoring roles regarding financial consumer protection and improvements in financial literacy.</p> <p>In this respect, guidance from the EU may prove helpful. If specific criteria are fulfilled (as per Article 7 of Decision No. 20/2004/EC), a consumer organization may be supported financially by the EU. Furthermore, the EC has created several consultative bodies, such as the Financial Services Consumer Group, and its permanent committees include representatives of consumer organizations from each of the EU Member States. These bodies are specifically asked to ensure that consumer interests are properly taken into account in the formulation of EU financial services policy.</p> <p>As indicated, the Ministry of Finance intends to create a “twin peaks” model of banking supervision, which would leave prudential supervision with SARB, while creating a separate business conduct banking supervisor within the FSB under a yet to-be-created legislative framework. New corresponding institutional arrangements would also need to be established within FSB to give effect to the so-called “Roadmap” for Treating Customers Fairly (“TCF”), as issued in March 2011 by the FSB. The FSB’s TCF initiative was initially the subject of a Discussion Paper it issued in May 2010, based solidly on the TCF approach that originated within the United Kingdom’s FSA.</p> <p>The twin peaks model, however, will not become a reality, with the FSB acting as the banks’ market conduct regulator, unless:</p> <ol style="list-style-type: none"> the role of the NCR is rolled-into the FSB; and consumer protection rules regarding the financial services industry, and with it the banking industry, are carved out of the CPA either as a result of:
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	<ul style="list-style-type: none"> • a new statute being enacted that deals exclusively with consumer protection in financial services and which provides consumers, at the very least, with all of the rights afforded to them under the CPA when they deal with their banks;¹² or • the FSB has successfully applied to the Minister of Trade and Industry for a bank-wide exemption under section 5 (3) of the CPA from the provisions of the CPA on the grounds that the CPA overlaps or duplicates a regulatory scheme administered by the FSB in terms of some other national legislation. <p>Peaks 2 and 4 fall within the jurisdiction of the DTI, whereas Peak 3¹³ falls under the jurisdiction of the National Treasury. There will, thus, only be a twin peaks model adopted if the DTI is willing, at the very least, to relinquish NCR and CPC responsibilities to the FSB.</p> <p>Until then, it will be incumbent on FSB and NT to embrace the reality of existing NCR and NCC market conduct responsibilities and, as a result, actively to improve co-ordination and co-operation with both bodies.</p> <p>If Government accepts that it is now inappropriate to leave the agenda for consumer protection in financial services as substantially driven by agencies within the purview of the DTI and seeks to streamline, simplify and consolidate the multiplicity of regulatory agencies that are concerned, at bottom, with matters of consumer protection in the banking industry, it behooves Government to devise a detailed step-by-step action plan to accomplish this major undertaking, working in close cooperation with consumers groups, the retail banking industry, banking ombudsman services, as well as all other relevant stakeholders.</p> <p>An early consolidation of all financial consumer protection laws into a single “Financial Consumer Protection Act” is recommended. Consolidation into a single Act would, however, necessarily be the result of a detailed analysis of the strengths, weaknesses, overlaps and inconsistencies that exist in the relevant existing laws and regulations.¹⁴</p> <p>At a minimum, the new Financial Consumer Protection Act must provide consumers with as much protection as is afforded by the current regulatory regime, including by CPA and FAISA. However, it should also deal with unintended consequences, especially resulting from the CPA that could potentially undermine the liquidity, and thus the stability, of the financial sector. A case in point is the right the CPA gives to any consumer to break, with impunity, a fixed-term deposit agreement the consumer has with his or her bank.</p> <p>The drafting of the Financial Consumer Protection Act should be undertaken as a matter of some urgency by a highly qualified team of senior South African experts, with extensive initial and ongoing input from all affected stakeholders, including financial industry associations, consumer groups and all relevant government agencies. This team should also draw on international best practices, including in respect of treating consumers fairly.</p> <p>It is also important to find the most effective way to regulate institutions such as ‘stokvels’, burial societies and insurance companies, which provide “micro” financial products and services to the poor. Establishing minimum consumer protection requirements for the operations of these institutions should be another priority.</p>
Good Practice A.2	<p><i>Code of Conduct for Banks</i></p> <ol style="list-style-type: none"> <i>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.</i> <i>If a principles-based code of conduct exists, it should be publicized and disseminated to the general public.</i>

¹² Note, though, that the National Treasury believes banks should be subject to higher (but still un-defined) standards than those provided for under the CPA.

¹³ Peaks 2, 3 and 4 are from the quadruple peaks box in the Description above.

¹⁴ In addition to attention being paid to all pertinent laws and regulations of the Government of South Africa, analysis of all relevant provincial laws and regulations will also be needed, including, for example, the Western Cape Consumer Affairs (Unfair Business Practices) Act, No. 10, 2002.

	<p>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.</p> <p>d. Every such voluntary code should likewise be publicized and disseminated.</p>
Description	<p>A Code of Banking Practice, devised by the Banking Council of South Africa, has been in effect since 1 October 2004 (the "2004 Code").¹⁵ The 2004 Code is principles-based and it applies to all banks that are members of the Banking Council.¹⁶</p> <p>The 2004 Code has recently been significantly revised and updated and, according to a statement made on behalf of the Banking Association of South Africa in August 2011, the "will be released in the next few months for implementation in 2012".¹⁷ Although as at September 30, 2011, the revised Code remained to be published on the website of the Banking Association of South Africa, it had, by then, appeared for some time on the website of FNB.¹⁸</p> <p>The 2004 Code will remain in effect until January 1, 2012 when the revised version will replace it. Like its predecessor, the revised Code is principles-based, with four key principles guiding the relationship between a bank and its customers, namely: fairness, transparency, accountability and reliability. The revised Code will also apply to all banks that are members of the Banking Council.</p> <p>The remainder of this section deals primarily with the revised Code (the "New Banking Code") in view of its imminent application. As will be seen, the New Banking Code also has significant relevance to other Good Practices referred to below.</p> <p>By its terms, the New Banking Code requires member banks to "accept the jurisdiction of the Ombudsman for Banking Services, to mediate, to make binding determinations based on this Code and on the law where appropriate, and to make recommendations in other circumstances including those based on equity."¹⁹</p> <p>While much of what appears in the New Banking Code consists of a range of admirable intentions of banks towards their customers, as is true of the 2004 Code, the proper application of the New Code will not be supervised by any regulatory agency of government. Nor will the Banking Council act as a self-regulatory agency in these respects. A bank's failure to comply with the New Banking Code will, therefore, be penalized, if at all, by reason of a successful complaint having been lodged on the initiative of a bank client with the Office of the Ombudsman for Banking Services, the Office of the FIAS Ombudsman or the Office of the Credit Ombudsman.</p> <p>Action brought by a consumer against his or her bank for a failure to abide by the terms of the New Banking Code presupposes, of course, that the consumer has received, read and understood the Revised Code. In practice, however, not all bank customers are, at present, made aware of the simple existence of the 2004 Code, let alone what it requires of every bank. This is hardly surprising, however, since copies of the 2004 Code are not routinely available at the branches of any banks.</p> <p>While the 2004 Code is on the website of the Banking Association of South Africa,²⁰ this Code is on the websites of only two of South Africa's retail banks.²¹ However, at least some other banks mention on their websites that they subscribe to the 2004 Code.²²</p>

¹⁵ The complete Code is at http://www.banking.org.za/consumer_info/code_of_banking/code_of_banking.aspx

¹⁶ The membership of the Banking Council is identical to that of the Banking Association of South Africa. The membership is listed in the Annex to this Part I.

¹⁷ See: www.banking.org.za/media_centre/inet/inet.asp?uno=9612 quoting Mr. Ros Coovadia, Managing Director of the Banking Association of South Africa at a Banking Summit held on August 23, 2011.

¹⁸ See: <https://www.fnb.co.za/downloads/legal/Code-of-Banking-Practice-2011.pdf>

¹⁹ See the Preamble to the New Banking Code

²⁰ http://www.banking.org.za/consumer_info/code_of_banking/code_of_banking.aspx

²¹ These are Absa Bank and First National Bank.

²² These include Albaraka Bank, Nedbank and Standard Bank of South Africa.

	<p>In addition, in the branches of most retail banks, there appears to be little, if any, awareness on the part of front line bank staff of the existence of the 2004 Code and the New Banking Code, let alone of the obligations that these place on bank staff now and in the future.</p> <p>A few exceptions do exist, however. For instance, Capitec Bank publishes its own one page brochure entitled “Code of Banking Practice” and makes this document readily available in each of its branches. Importantly, this brochure indicates:</p> <ul style="list-style-type: none"> a) that the 2004 Code guides the bank in ensuring: (i) full disclosure to the consumer in terms of account information; (ii) professional conduct by all bank employees; and (iii) specified channels for the purpose of resolving any consumer’s complaint; b) what the consumer should do if he/she has a complaint; c) that, after a failure to reach a satisfactory outcome at branch manager level, the consumer should register his or her complaint with the bank’s Client Care Centre which will then take no more than 5 additional working days until the consumer is informed of the outcome; d) the purpose, procedures and requirements of the Ombudsman for Banking Services in the event that a complaint still remains unresolved; and e) the telephone number, email address and website of the of the bank’s Client Care Centre and of the Ombudsman for Banking Services; as well as f) the websites²³ of the Banking Association and of Capitec Bank where the 2004 Code can be obtained. <p>As indicated above, the New Banking Code updates and expands upon what now exists. In particular, it responds to concerns raised in the assessment made by the Competition Commission Banking Enquiry Report made public in December of 2008. An explicit purpose of the New Banking Code is to set minimum standards for every bank when dealing with consumers.</p> <p>Noteworthy provisions of the New Banking Code are referred to in some detail below in the Description portions under each of the relevant Good Practices.</p>
Recommendation	<p>With certain exceptions highlighted in relevant sections below, the New Banking Code is a masterful accomplishment. Indeed, on the whole, this New Code can serve as a useful model for banking associations seeking to craft such a code in other parts of the world.</p> <p>Of over-riding concern, however, must be how to ensure that the many obligations that the New Banking Code places on each bank towards consumers will be honored in practice. With no statutory or self-regulatory body in a position to enforce the New Code, it falls solely to a consumer to raise a complaint with his/her bank when the bank fails to comply. This will not be possible, however, unless the consumer is first made aware of the bank’s obligations.</p> <p>In addition, the New Banking Code sets out a series of obligations all customers have in their dealings with their banks, as well as various warnings and instructions to these same customers. These obligations, warnings and instructions are meaningless, however, unless the consumer is made aware of them. The same point applies to the numerous cases of New Banking Code obligations placed upon banks that will, however, only be triggered if a customer knows enough to make the relevant request. Unless there is widespread (indeed, blanket) coverage of the New Code throughout the South African population, these sorts of formulations unfortunately give a false impression of a banking community attempting to be helpful.</p> <p>So that that the publication and distribution of the New Banking Code is wide-spread, thorough and effective, amendments to it should be made in order to require:</p> <ul style="list-style-type: none"> a) its existence to be disclosed by banks to <i>all</i> of their individual bank customers; b) a jointly agreed executive summary of the New Banking Code to be printed in folded brochure format by each bank and then made available for consumers freely to take from a container on a prominent wall in all branches; c) banks to post, permanently, the jointly agreed executive summary, or at the very least, the Table of Contents, of the New Banking Code on a prominent wall in all branches;

²³ The Banking Association website, however, provides the 2004 Code only in English and Afrikaans while English is the first language of less than 10% and Afrikaans of some 13% of South Africa’s population. The percentage population of native isiZulu and isiXhosa speakers is higher. According to the latest statistics, the penetration of internet in South Africa amounts to less than 14% of the population, with the greatest percentage of this group concentrated in small pockets of affluent white residents in urban settings.

	<ul style="list-style-type: none"> d) banks to provide the jointly agreed executive summary of the New Banking Code to <i>all</i> of their existing individual customers as of January 1, 2012 and, thereafter, to <i>all</i> new individual customers as part of the Terms and Conditions that must be provided to each new customer when a formal relationship between a bank and a customer is initiated; e) the New Banking Code and its executive summary to be translated into all other commonly spoken languages in South Africa and then printed and made available on a regular basis in adequate numbers for wide distribution in these languages as appropriate; f) each bank to provide a customer a hard copy of the entire New Banking Code when so requested; g) each bank to place the New Banking Code on its website; h) each bank to indicate clearly on its website, as well as in one or more brochures prominently displayed and readily available in all of its branches: <ul style="list-style-type: none"> i. the list of the bank's obligations in the New Banking Code in respect of its dealings with its customers; ii. the list of the customer's obligations in the New Banking Code, as well as the warnings and instructions it provides to the customer; iii. how a consumer can obtain a copy of the New Banking Code in pdf format on the web for downloading, as well as in hard copy; iv. that the New Banking Code is binding on the bank; v. that the bank will assist any consumer who has any difficulty understanding any provision of the New Banking Code; vi. the importance of New Banking Code provisions in the event a customer of the bank has a complaint concerning any product or service provided to him/her by the bank; vii. what, precisely, the customer needs to do in the event he/she has a complaint (i.e. in the first place, in accordance with the stated procedures for dispute settlement within the bank, and then, in the event the dispute remains unresolved, the recourse the customer has to the Banking Services Ombudsman); and viii. the telephone numbers, physical and email addresses and the websites of the Banking Services Ombudsman.
Good Practice A.3	<i>Appropriate Allocation between Prudential Supervision and Consumer Protection</i> 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	<p>Prior to 1990, the prudential supervision of the domestic operations of all banks was performed by a so-called Registrar of Financial Institutions. Since then, this responsibility has fallen to SARB. Operating as part of SARB, an office headed by the Registrar of Banks is responsible for registering institutions as banks or mutual banks, as well as enforcing all of the requirements of the Bank Act. Although the Registrar acts with relative autonomy in executing his duties, he must deliver an annual report on his activities to the Minister of Finance, who in turn must table the Registrar's report in Parliament. Through the Registrar, SARB sets capital and liquidity requirements for South African banks and continuously monitors each institution's adherence to legal requirements and less formal guidelines.</p> <p>The performance of an individual institution is also monitored by SARB on an ongoing basis against developments in the banking sector as a whole. If SARB deems it necessary, inspectors can be appointed to delve into the affairs of any institution or person not registered as a bank if the Registrar has reason to suspect that such an institution or person is carrying on the business of banking. The Banks Act definition of "deposit taking" is very wide and an institution that receives funds is only exempt if it complies strictly with stated conditions.</p> <p>While SARB serves, thus, as a classic prudential regulator of South Africa's retail banks, as indicated above, there has yet to be any, <i>per se</i>, specific market conduct regulation of retail banking outside the granting of credit or the provision of advice by a bank to its customers. While the NCC since April 1, 2011 has, in theory at least, the authority to enforce sweeping consumer protection rules in respect of the provision of goods and services by <i>all</i> companies in South Africa, it remains to be seen how effective this institution can possibly be in respect of consumer protection regarding banking operations. This is due essentially to its scarce financial and human resources and lack of staff experience in the operation of any aspect of the financial system, including the banking sector in particular.</p>

	<p>Although FSB is an independent institution established by statute under the National Treasury to oversee South Africa's financial services industry in the public interest, its functions in respect of banking extend only in so far as professional advice is rendered to a customer by an employee or agent of a bank.</p> <p>There is no doubt that adequate resources are available to SARB to sustain its on-going, effective prudential supervision of commercial banks even though the demise of SARB's financial stability department seems strange in this context.</p> <p>It cannot be said, however, that resources have so far been adequately marshaled for purposes of ensuring effective implementation of business conduct regulation in respect of banks.</p>
Recommendation	<p>By means, perhaps, of a White Paper that would escalate to all of Government the positions taken in the Red Paper and the TCF Roadmap, Government should carefully consider and resolve where a future single Market Conduct Regulator for commercial banks will be situated and, as part of this exercise, fix what is to happen regarding a possible merger of CPA provisions dealing with banks, NCA and FAISA under the umbrella of a single law, perhaps to be entitled the "Financial Consumer Protection Act"²⁴. As indicated above, the Twin Peaks model requires no less. It would then be incumbent upon Government to ensure that the Second Peak receives sustainable funding comparable to the First Peak in order for all required work under the Second Peak to be performed effectively.</p>
Good Practice A.4	<p><i>Other Institutional Arrangements</i></p> <p>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.</p> <p>b. The media and consumer associations should play an active role in promoting banking consumer protection.</p>
Description	<p>In only exceedingly rare cases does the judicial system of South Africa play a role as ultimate <i>arbiter</i> in resolving any dispute initiated by a consumer regarding a consumer protection matter in respect of a banking product or service. Furthermore, it is difficult to maintain that, whenever this does occur, the process is invariably affordable and timely, however professionally delivered the rendering of justice may actually be. For the average South African citizen, fees required for legal representation alone make access to the courts, whether at first instance or on appeal, utterly unrealistic.</p> <p>In addition, concerns are expressed that South African courts do not understand how to deal with economic evidence of relevance in competition and other financial sector matters. The complaint is that, all too frequently, the courts seem to see competition cases not from the standpoint of the consumer but from that of a firm being "harassed" by the Competition Commission.</p> <p>As far as the media is concerned, there is an active and vocal <i>cadre</i> of journalists who write frequently and well on matters of consumer protection generally and regarding the provision of banking services in particular.</p>
Recommendation	<p>There should be training of new judicial recruits, as well as on-going judicial training, in respect of financial consumer matters generally and matters concerning competition in the delivery of banking services in particular.</p> <p>Continuing proper media coverage of consumer issues regarding banking products and services is to be encouraged, as is the reporting of consumer mistreatment by banks as an effective tool in promoting consumer protection through "naming and shaming". Major news outlets might, therefore, consider establishing one or more "hotlines" for consumers to voice their concerns by telephone, short message service ("sms") and/or internet communication.</p>
Good Practice A.5	<p><i>Licensing</i></p> <p>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.</p>
Description	<p>Under the Banks Act:</p> <p>i) a "bank" means "a public company registered as a bank in terms of this Act";</p> <p>ii) a "co-operative" means "a co-operative incorporated in terms of the Co-operatives Act, 1981; and</p>

²⁴ For possible comparison purposes, see the Financial Consumer Agency Act (2001) of Canada which established the Financial Consumer Agency of Canada.

	<p>iii) “mutual bank” means “ a mutual bank as defined in section 1(1) of the Mutual Banks Act, No. 124 of 1993”²⁵.</p> <p>The Banks Act, however, does not apply to mutual banks or any other institution designated by the Minister of Finance.²⁶ All retail commercial banks and all other banking institutions that provide financial services to consumers must be licensed and are subject at least to a prudential regulatory regime to ensure their financial safety and soundness.</p>
Recommendation	None
SECTION B	DISCLOSURE AND SALES PRACTICES
Good Practice B.1	<p>Information on Customers</p> <p>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.</p> <p>b. The extent of information the bank gathers regarding a consumer should:</p> <ul style="list-style-type: none"> (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	<p>When making any recommendation to a consumer from a range of options, bank employees and agents are bound by the requirements of FAISA. These require the gathering, filing and recording of sufficient information from the consumer to enable the bank to render an appropriate product or service to that consumer.</p> <p>In addition, the extent of information the bank gathers regarding a consumer must:</p> <ul style="list-style-type: none"> 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. <p>These basic requirements not only apply regarding the delivery of services but also for the purposes of complying with the Basel Core Principle 18 issued by the Bank for International Settlements (BIS) and with the standards issued by the Financial Action Task Force (FATF). In these later respects, provisions of the <u>Financial Intelligence Centre Act</u>, No. 38 of 2001 are also applicable.</p>
Recommendation	None
Good Practice B.2	<p>Affordability</p> <ul style="list-style-type: none"> 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	<p>While senior headquarter staff of South African banks like to think that their branch staff members perform well in these first three respects²⁷, there appears to be little capacity to ensure that they do. Also, it is generally accepted that there is little capacity from the FSB’s FAIS Department standpoint to “police” affordability matters.</p> <p>Also, what an individual customer of a bank needs and is able to afford are two different matters both of which, however, require the customer to disclose accurate and complete information to his or her bank. It is hardly surprising, therefore, that the New Banking Code makes it clear that all banks expect their customers “to disclose all relevant information as part of any credit application ... so that [they] may make an informed decision to grant credit”²⁸ Likewise, “the need” of the consumer must be properly disclosed by him/her before a bank can be confident that any recommendation it might make would respond appropriately. Many consumers, however, have difficulty articulating their needs and accepting, themselves, any reasonable limit on what they are able to afford.</p>

²⁵ See section 1(1) of the Banks Act of 1990 (as amended).

²⁶ Ibid, section 2

²⁷ Phase II is to explore the extent to which consumers’ credit worthiness is actually assessed when banks offer new credit products or services that are likely to increase significantly the amount of debt assumed by the consumer.

²⁸ See Banking Code, Section 3.2

	<p>When requested, however, a bank must provide its customer or potential customer with information concerning the banks products and services, including “clear and appropriate information on the different types of products and accounts available from [the bank] and their key features, to assist [the customer] to make an informed choice appropriate to [his/her] needs.”²⁹</p> <p>Also, by the terms of its preamble, a purpose of the CPA is to “improve access to, and the quality of, information that is necessary so that consumers are able to make informed choices according to their individual wishes and needs.”</p> <p>CPA Regulation 12 requires that disclosure of certain information must occur by <i>any</i> intermediary – bearing in mind that an intermediary is defined in CPA as “a person who, in the ordinary course of business and for remunerational (sic) gain, engages in the business of -</p> <ul style="list-style-type: none"> a) representing another person with respect to the actual potential supply of any goods or services; b) accepting possession of any goods or other property from a person for the purpose of offering the property for sale; or c) offering to sell a consumer, soliciting offers for selling to a consumer any goods or property that belongs to a third person, or service to be supplied by a third person, but does not include a person whose activities as an intermediary are regulated in terms of any other national legislation.”³⁰ <p>The detail contained in CPA General Regulation 8, read together with proposed Regulation 9, is designed primarily to ensure that consumers are assisted in “making informed decisions” or choices, for the purposes of Section 24(4) of the CPA.</p>
Recommendation	None
Good Practice B.3	<p><i>Cooling-off Period</i></p> <ul style="list-style-type: none"> 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 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	<p>Under certain circumstances, a customer has 5 days to terminate a loan agreement. See section 121 of the National Credit Act.</p> <p>Also, section 14 of the CPA allows a consumer to break any fixed term agreement (including one for a fixed term deposit) on the giving of 20 business days’ to the supplier (i.e. his or her bank).</p> <p>By Regulation 6 of the CPA, the maximum duration for a fixed-term consumer agreement is 24 months from the date the consumer signs the agreement. Therefore, fixed-term agreements, as these agreements are defined in the CPA and provided for in the General Regulations, must be reviewed with reference to the provisions contained in the CPA in order to ensure that they comply.</p>
Recommendation	<p>This and all other unintended consequences of the CPA need to be addressed either by amending the CPA or enacting the Financial Consumer Protection Act as referred to above.</p> <p>This topic will be analyzed in greater detail and further recommendations made in Phase II of the Diagnostic Analysis.</p>
Good Practice B.4	<p><i>Bundling and Tying Clauses</i></p> <ul style="list-style-type: none"> 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	By the terms of the New Banking Code, every bank must ensure that its customers “are clearly informed of the different types of insurance, whether the bank requires

²⁹ Ibid, Section 6.5.2

³⁰ From CPA, Section 1

	<p>insurance to be taken out, whose responsibility it is to arrange for the insurance and what insurance cover is available, including the possibility that [a customer] may use an existing insurance policy as security.” In addition, a bank must advise each customer of the risk of not taking out sufficient insurance to cover obligations in case of the customer’s death.³¹</p> <p>In many cases, a bank and an insurance company have close links by reason of the fact that they are members of the same group of companies. If not, a bank will invariably have an agreement with an insurance company by the terms of which customers of the bank are encouraged to obtain insurance products and services from the insurance company ‘partner’ of the bank. Although there are no rules regarding bundling and tying in respect of savings and transaction accounts, there are rules that apply to the provision of credit. These rules, though, do not prevent either the bundling of services and products or the use of tying clauses in contracts that restrict the choice of consumers.</p> <p>Although 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 is, in theory, free to choose the provider of the product and this information seems generally at least to be made known to the borrower, in the vast majority of cases, the practical reality is that the borrower will agree to proceed with the insurance company affiliate or partner in order simply to expedite the process of receiving his or her loan funds.</p> <p>Tying occurs when two or more products are sold together in a package and at least one of these products is not sold separately. Market surveys suggest that in most EU Member States, the majority of banks tie a current account to mortgages, personal loans and SME loans. Product tying in retail banking may weaken competition. First, tying raises costs and therefore is likely to reduce customer mobility. Second, by binding customers into buying several products from the same bank, tying is likely to discourage the entry of new players and growth of smaller players. Third, by introducing additional and perhaps unnecessary products into the transaction, tying reduces price transparency and comparability among providers. Product tying by one or more undertakings in a particular EU Member State may constitute an exclusionary abuse of dominance under Article 82 of the Treaty establishing the European Community (EC Treaty), where such undertakings have a dominant position.</p> <p>Bundling occurs when two or more products are sold together in a package, although each of the products can also be purchased separately on the market. Firms bundle for several reasons (including economies of scope, price discrimination, demand management or leverage of market power into other market segments). Bundling is not <i>per se</i> anti-competitive and it can even have positive effects on the consumer (if the price of bundled services is lower than for unbundled ones, and if convenience is increased). However, bundling has the potential to render price comparisons impossible, thus hindering competition. Also customers may be forced to accept services and products they do not need and, thus, to incur unnecessary fees and other costs associated with maintaining the bundled product or service.</p> <p>Consumers have only restricted rights to opt out of a requirement to take out insurance. This is a significant concern given the extent to which South Africa banks unjustifiably require borrowers to purchase credit life insurance before any credit is granted.</p> <p>The relevant legislative requirements are summarized below.</p> <p>There are currently “free choice” provisions in the Short-Term Insurance (STI) Act and Long-Term Insurance (LTI) Act requiring that a party to a contract be given written notice of a “free choice” as to the insurance policy to be used for the purposes of meeting a requirement for an insurance policy to be provided by way of security under a loan or lease.³² In summary, these provisions provide that such a notice must be given prior to the obligation to provide the policy becomes effective and must set out:</p> <ul style="list-style-type: none"> • If a new policy is to be entered into- the insurer who is to provide the policy and the relevant intermediary, as to whether policy benefits are to be provided for an event other than the death or disability, and as to whether the value of any mandatory policies will exceed the value of the debt or obligation;
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³¹ New Banking Code, Section 6.4

³² See Section 43 of the STI Act and Section 44 of the LTI Act.

	<ul style="list-style-type: none"> • If an existing policy is to be made available, the relevant intermediary and whether any variation to the policy so as to provide cover for an event other than the death or disability or to increase the value of any mandatory policies so as to exceed the value of the debt or obligation.³³ <p>Before any policy is provided as security, these Acts deem there to be no (?) non-compliance with the above requirements unless the policy holder has confirmed in writing that he/she was given prior notice as required, exercised his or her freedom of choice and was not subject to any coercion or inducement.³⁴</p> <p>If the above requirements are not met, the security requirement relating to the policy is void and the benefits of the policy must be provided to the person who made the policy available.</p> <p>Although the above provisions provide some protection to a consumer, they have significant limitations by reason of the fact that they do not:</p> <ul style="list-style-type: none"> • apply in relation to a short-term policy, where the requirement relates to security over immovable property or where the premiums are reasonable as compared to those generally charged for similar policies;³⁵ or • apply if the long-term policy is made available for the purposes of a credit agreement to which the NCA applies;³⁶ or • deal with the practice which is understood to have arisen of some banks requiring insurance to be taken out which includes a redundancy benefit, which benefit may not be provided under the terms of many life policies which might be held by the consumer; or • deal with the point as to whether a credit or lease provider can in fact require insurance be taken out, in contrast to the limited protection provided by section 106 of the NCA. <p>As a general rule, banks require insurance to be taken out when credit is granted and they offer a policy issued by a related insurer. Although consumers are given a “free choice”, at least 80% of customers take up the policy offered by the bank. Even though the customer may have his or her own insurance policy, it may not provide the full cover required by the bank (for example, in relation to redundancy insurance). Also, since early 2010, there has been a large increase in “unsecured” lending where the bank requires the customer to provide a credit-life policy (covering life, disability and redundancy). These loans may be as high as R 250,000 and are usually for a term of no more than 6 years. Unofficially, there was an increase of 59.78 % in unsecured lending in 2010.</p> <p>In the NCA, “credit insurance” is broadly defined to mean:</p> <p><i>“an agreement between an insurer, on one hand, and a credit provider or a consumer or both, on the other hand, in terms of which the insurer agrees to pay a benefit upon the occurrence of a specified contingency, primarily for the purpose of satisfying all or part of the consumer’s liability to the credit provider under a credit agreement as at the time that the specified contingency occurs, and includes-</i></p> <p><i>(a) a credit life insurance agreement;</i></p> <p><i>(b) an agreement covering loss of or damage to property; or</i></p> <p><i>(c) an agreement covering-</i></p> <p><i>(d) loss or theft of an access card, personal information number or similar device; or</i></p> <p><i>(e) any loss or theft of credit consequential to a loss or theft contemplated in sub-paragraph”</i></p> <p>In summary, the NCA³⁷ provides that:</p> <ul style="list-style-type: none"> • credit-life insurance can be required at all times, provided it does not exceed the total of the consumer’s outstanding obligations under the relevant credit agreement; • insurance over mortgaged immovable property can be required up to the full asset value of the property being mortgaged; and • insurance against damage or loss of other property can be required, provided it does not exceed the total of the consumer’s outstanding obligations under the relevant credit agreement.
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³³ See Subsections 43(1) and 44(1) of the STI and LTI Acts, respectively.

³⁴ See Subsections 43(2) and 44(2) of the STI and LTI Acts, respectively.

³⁵ See Subsection 43(5) of the STI Act.

³⁶ See Subsection 44(4) of the LTI Act.

³⁷ See s. 106 of the NCA

	<p>However, a credit provider cannot require a consumer to take out “unreasonable” insurance or insurance at an “unreasonable” cost. Additional provisions, in summary: (a) require the consumer to be given free choice to use his or her own policy; (b) forbid the credit provider from adding a surcharge to any premiums; and (c) require the credit provider to make certain disclosures to the consumer about the policy.³⁸</p> <p>The Competition Act prohibits a “dominant firm” selling services (which could be credit) on condition that the buyer purchases separate services (such as insurance).³⁹ However, the following three limitations on this protection apply:</p> <ol style="list-style-type: none"> the firm selling the services must be one that is “dominant”; the second service must be “unrelated to the object of the contract”;⁴⁰ and the firm must be unable to show ‘pro-competitive’ gains.⁴¹ <p>Currently, representatives of the NCR and the FSB are carrying out a review of the above-referenced provisions of the STI Act, LTI Act and the NCA.</p>
Recommendation	<p>The work of the committee of NCR and FSB representatives - to review the STI Act, LTI Act and the NCA - should be expedited. There should be early changes to the current regime requiring consumers to take out insurance. Mandatory property insurance should be permissible in relation to secured property, subject to a requirement that the policy be subject to renewal every 12 months so that the insured can consider if he/she wants to use a different insurer.</p> <p>There should be a choice of insurer in all cases where insurance is required. Consideration should be given to requiring all banks to supply consumers a list of insurers that provide equivalent policies. Insurance should not be required in any other case. If a loan is repaid early, any insurance policy entered into for the purposes of the loan should be required to be terminated. There should then be a refund of premiums for the unexpired period of the loan.</p> <p>The disclosures currently provided for in sub-sections 106 (3) to (5) of the NCA should be retained in relation to insurance which may be required. In addition, where any insurance is taken out in conjunction with a loan contract and is financed, there should be disclosure of the amount of the premiums and the commissions which are payable. If a credit provider becomes aware that a claim may be made under an insurance policy, then that provider should inform the consumer of that fact.</p> <p>Finally, consideration should be given to restricting the commissions which may be charged on credit-life insurance policies. However, it may be the case that this would not be appropriate for the lower end of the market. It is to be noted that the 2007 Panel of Enquiry led by Judge Peet Nienaber into the consumer credit insurance market in South Africa came to a similar conclusion.⁴² This Panel was convened by the SAIA and the then LOA.</p>
Good Practice B.5	<p><i>Preservation of Rights</i></p> <p>Except where permitted by applicable legislation, in any communication or agreement with a consumer, a bank should not exclude or restrict, or seek to exclude or restrict:</p> <p>(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</p> <p>(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.</p>
Description	<p>This standard requires that consumers cannot be forced to accept contractual clauses that would reduce their rights. Under the CPA,⁴³ the consumer has the right to fair, just and reasonable terms and conditions. This includes the right to receive notice in certain circumstances in plain language, as well as in enough time, before a transaction takes place in order to be able to read and comprehend all proposed terms. In any agreement with a consumer, these requirements apply whenever a bank or its employee or agent seeks to:</p> <ol style="list-style-type: none"> limit in any way the risk or liability of any person other than the consumer; have the consumer assume a risk or liability;

³⁸ Ibid, see: s 106(4)(a) and s.106(5)(a)

³⁹ See s. 8(d)(iii) of the Competition Act

⁴⁰ Arguably, credit life insurance would not be unrelated to the object of a loan contract.

⁴¹ Showing any such gain is, however, most unlikely.

⁴² See pages 268 and 269 of the Final Report.

⁴³ See section 51 of the CPA.

	<p>iii) impose an obligation on the consumer to indemnify any other person for any cause; or iv) obtain the consumer's acknowledgement of any fact.</p> <p>In addition section 16(1) of FAISA provides that authorized financial services providers, and their representatives, must be obliged by the provisions of a required code of conduct to act honestly and fairly, and with due skill, care and diligence, in the interests of clients and the integrity of the financial services industry.</p> <p>There is, however, a troubling provision in these respects in the New Banking Code which purports to permit banks to include limitations of liability, exclusions, indemnities or assumptions of risk limit in any agreement with a customer, provided simply that, before a customer enters into the agreement, the bank draws the customer's attention the limitation of liability, exclusion, indemnity or assumption of risk, as the case may be.⁴⁴</p> <p>Otherwise, the principles outlined in both parts of this Good Practice form an essential part of the common law of South Africa.</p>
Recommendation	<p>It would be helpful to have clarification from the Banking Association as to whether the limitations of liability, exclusions, indemnities or assumptions of risk referred to in Section 6.5.1.4 of the New Banking Code are intended to apply the failure of a bank to exercise its duty to act with skill, care and diligence in the provision of any financial service or product to a consumer.</p> <p>If so, the provision should be removed from the New Banking Code.</p>
Good Practice B.6	<p><i>Regulatory Status Disclosure</i> 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.</p>
Description	Regulatory status disclosure has never been a requirement for banks in South Africa and no banks voluntarily carry out this Good Practice.
Recommendation	<p>This Good Practice is in line with responsible and fair advertisement practices. The consumer should be able to verify the claims made by any bank as advertiser. For example, see the UK Financial Services and Markets Act 2000 or the UK Consumer Credit Act 1974.</p> <p>Consideration should, therefore, be given to requiring this disclosure of all banks in South Africa.</p>
Good Practice B.7	<p><i>Terms and Conditions</i> 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:</p> <ul style="list-style-type: none"> 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. <p>The Terms and Conditions should be written in plain language and in a font size and spacing that facilitates the reading of every word.</p>
Description	Under Section 6.5 of the New Banking Code, banks undertake to make full and detailed disclosures to their individual customers about their Terms and Conditions and products and services.

⁴⁴ New Banking Code, Section 6.5.1.4

	<p>In these respects, banks must ensure that:</p> <ul style="list-style-type: none"> i) their Terms and Conditions are fair, lawful and written in plain and understandable language, legal and technical language will only be used where necessary, and the Terms and Conditions will be clearly distinguishable from marketing or promotional material; ii) their Terms and Conditions are provided at the time of, or before, a contract for an ongoing banking service is concluded, except where it is impracticable to do so, in which case they must be provided as soon as practicable afterwards; iii) its staff is available to give any individual customer further clarification and to answer all queries that the customer may have about the Terms and Conditions; and iv) before an individual customer enters into an agreement with a bank, the bank draws to the customer's attention any limitation of liability, exclusion, indemnity or assumption of risk in the Terms and Conditions.⁴⁵ <p>Also, before or at the time a customer opens an account with a bank, the New Banking Code obliges the bank to advise the consumer of his/her rights and obligations relating to that account. The consumer must be informed about:</p> <ul style="list-style-type: none"> a. the type of account and how and by whom the account may be operated; b. how funds may be deposited or withdrawn from the account; c. the usual time taken for clearing a check or a payment instrument credited to the account; d. any minimum balance requirements⁴⁶ and the charges payable if the balance falls below the prescribed minimum; e. any rights of set-off claimed by [the bank]; f. the requirements for closing the account; and g. how [the bank] will deal with [the consumer's] account if it becomes dormant and has any unclaimed balance in it."⁴⁷ <p>Also, the New Banking Code requires each bank to provide its individual customers with effective and adequate disclosure of information, including the Terms and Conditions of products and services, and this information has to be in a plain and understandable language format.⁴⁸</p> <p>In addition, when a consumer becomes a customer of bank, or makes enquiry, a bank must give the consumer information about the interest rates which apply to his or her account/s "in compliance with applicable legislation".⁴⁹</p> <p>Furthermore, before, or at the time a consumer opens an account with a bank, the bank must advise the consumer "on the rights and obligations relating to that account."⁵⁰</p> <p>Also, a bank may not close a customer's account "without reasonable prior notice given to the customer at his or her last contact details."⁵¹</p> <p>In addition, <i>when requested</i>, banks are obliged by the New Banking Code to provide information to any customer or potential customer concerning its banking products and services, including:</p> <ul style="list-style-type: none"> i) clear and appropriate information on the different types of products and accounts available from the bank and their key features, to assist the customer to make an informed choice appropriate to his/her needs;
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⁴⁵ Ibid, Section 6.5.1

⁴⁶ While all banks are apparently committed to providing affordable and accessible basic banking services to all South Africans (as per Section 5 of the New Banking Code), following a relatively modest initial deposit of R100, a consumer typically can only withdraw a maximum of R30 if he/she wants the account to stay active, since R10 will be charged to open the account, R50 will be the minimum balance required and R10 will be charged for any cash withdrawal.

⁴⁷ New Banking Code, Section 7.1

⁴⁸ See New Banking Code, Section 3.1 There is no New Banking Code requirement, however, that a bank's Terms and Conditions be in a font size and spacing that facilitates the reading of every word.

⁴⁹ Ibid.

⁵⁰ Ibid.

⁵¹ Ibid.

	<p>ii) information on how to open an account and how an account works, as well as recommended safety measures;</p> <p>iii) how debit orders and stop orders work, the difference between the two and how to stop and/or cancel them;</p> <p>iv) information on electronic banking services including the special requirements and precautions which the bank expect of a customer if he/she banks electronically;</p> <p>v) the different functions of any card(s) issued to a customer; and</p> <p>vi) when a customer can withdraw funds after a deposit has been paid into the customer's account and when funds begin to earn interest.⁵²</p> <p>In addition, by Section 6.6 of the New Banking Code, banks are required to:</p> <p>i) provide a customer with information on relevant fees and charges (including all commissions payable) for the service or product that the customer may have chosen or is enquiring about;</p> <p>ii) make the bank's standard fees and charges available at all bank branches and other appropriate channels;</p> <p>iii) inform the customer of the basis of charges for services rendered that are not included in the standard fees and charges at the time the services are offered <i>or on request</i> and whether these fees and charges are negotiable;</p> <p>iv) provide calculation tools on the bank's website, in its branches or through its call centers to assist the customer to determine the cost of the bank's transaction products for the customer's specific transactions pattern in order to enable the customer to compare the bank's products with those of other institutions and, thus, to choose the one that is most appropriate;</p> <p>v) inform the customer of additional charges or expenses that he/she may have to pay, including any charges when the customer's account becomes overdrawn without prior agreement, the customer exceeds his/her overdraft limit, the customer's loan falls into arrears, when the customer makes an early withdrawal or early cancellation and when a debit order is returned;</p> <p>vi) notify the customer at least 20 business days before any changes in fees or charges take effect as well as any change in the basis on which the fees and charges are determined by using the most appropriate two or more of the following methods (in the event of credit agreements, the bank must notify the customer within 5 business days):</p> <ul style="list-style-type: none"> • letter, statement messages or other personal notices; • notices or leaflets in branches or outlets; • ATM or electronic banking system messages; • telephonic announcements, e-mail or short message service (sms); • announcements on the bank's website or any other electronic media; • media advertisements; or any other communication channel available to the bank. <p>Furthermore, when a consumer becomes a customer, <i>or upon reasonable enquiry</i>, every bank must give the customer information about the interest rates which apply to his/her account(s), <i>in compliance with applicable legislation</i>, including:</p> <p>a) when interest will be deducted from or paid to the customer;</p> <p>b) the basis on which interest is calculated; and</p> <p>c) when changes (increases or decreases) are made to the interest rates which apply to your account(s).⁵³</p> <p>With respect to switching a personal transaction account to a new bank, all retail banks state that they are committed to making it as seamless, reasonable and easy as possible.⁵⁴</p>
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⁵² New Banking Code, Section 6.5.2

⁵³ New Banking Code, Section 6.7

⁵⁴ See Ibid, Section 7.2. Deposits and loans are individual contracts which may be terminated according to their contractual terms.

	<p>The New Banking Code, however, provides warnings, as well as detailed instructions, to bank customers. The role of the customer in respect of the new bank is described in Section 7.2 and the customer is <i>permitted to request</i> a “switching guide” from the new bank that provides all necessary information to switch banks. Important information is likewise provided in Section 7.2 regarding the role of the customer in respect of the old bank.</p> <p>In addition, the New Banking Code obliges a customer’s new bank to provide the customer with a copy of the Terms and Conditions of the new account which he/she has opened, details of the standard fees and charges and interest rates that apply, together with a point of contact to assist with any queries.⁵⁵</p> <p>The obligations of the old bank include assisting a customer, if requested, by providing “the following basic transaction account information within 10 business days of receiving the customer’s proper instruction to close his/her account:</p> <ul style="list-style-type: none"> a) up to 3 months’ statements; b) a list of stop orders loaded; c) a list of beneficiaries loaded; and d) any supplementary or linked cards or accounts which may be affected by the switching”.⁵⁶ <p>Furthermore, banks undertake to assist a customer when he/she seeks to close an account that is no longer required.⁵⁷ In this respect, as a general rule, no bank may close an account without giving the customer <i>reasonable</i> prior notice at the last contact details the customer has provided.⁵⁸ The New Banking Code, does, however reserve the right to banks to protect their interests in their discretion. And in this respect, this Code seeks to exonerate any bank that closes an account without giving the customer notice if:</p> <ul style="list-style-type: none"> a) the bank is <i>compelled to do so by law (or by international best practice)</i>; b) the customer has not used the account for a <i>significant period</i>; or c) the bank has reason to believe that the account is being used for any illegal purpose.⁵⁹ <p>In addition, rules are provided in the New Banking Code for set-off in the event of a default of a customer.⁶⁰ When a customer opens an account, the bank must provide him/her with information that will include clear and prominent notice of any rights of set-off that the bank may claim over credit and debit balances in the customer’s different accounts. Banks must also inform a customer promptly after it has effected a set-off in respect of any of the customer’s accounts. Also, the bank needs to ensure that the customer receives timely statements (<i>if statements are generally produced on the relevant account</i>), which reflect the set-off position. Prior to setting off any customer’s debit and credit balances, however, banks may choose to place any of the customer’s funds on hold pending a discussion with the customer on any amount the bank believes is owed to it.</p> <p>However, before or at the time of opening a deposit, current (checking) or loan account at his/her bank, there is no requirement for a bank to provide a consumer with any of the following:</p> <ul style="list-style-type: none"> a) a summary of the bank’s complaints procedures; b) a statement regarding the existence of the office of banking ombudsman or equivalent institution and basic information relating to its process and procedures; c) the 2004 Code and the New Banking Code; and d) information on the methods of computing interest rates paid by or charged to the consumer. <p>Under the CPA’s General Regulation 56, a list of contractual terms is provided which are deemed to be “unfair and unreasonable”, as contemplated in section 120(d) of the CPA. By section 120(d), powers are afforded to the Minister of Trade and Industry to make regulations “relating to unfair, unreasonable unjust contract terms”.</p> <p>In this regard, Regulation 56 requires that a contract that is concluded between a consumer and a supplier “wholly or mainly for the purposes related to his or her business or profession” must comply</p>
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⁵⁵ Ibid, Section 7.2.1

⁵⁶ Ibid, Section 7.2.2

⁵⁷ Ibid, Section 7.3.1

⁵⁸ Ibid, Section 7.3.2

⁵⁹ Ibid, Section 7.3.3

⁶⁰ Ibid, Section 7.5

	<p>with the criteria that are contained in Regulations 56 (1) (a) and (b). They, thus, must not contain a term listed in Sub-regulation (3) and must fall outside the provisions of Sub-regulation (4). Sub-regulation (3) contains some 30 types of terms and conditions that may not be included in a consumer-related agreement.</p> <p>These provisions are further modified by Sub-regulation (4) which contains certain exemptions to the otherwise stringent provisions of Sub-regulation (3). Unfair or unreasonable contractual terms include ones that:</p> <ul style="list-style-type: none"> • exclude or limit the liability of the supplier in certain circumstances; • exclude the legal rights or remedies of the consumer in the event of total or partial non-performance or inadequate performance by the supplier; • limit the supplier's obligation to respect its commitments; • exclude the consumer's rights to take legal action or exercise any other legal remedy; • restrict the evidence available to the consumer; • impose burdens of proof onto the consumer that the law does not provide for; • allow the supplier the right to interpret any term of the contract; or • allow for the transfer of the supplier's obligations and generally arranging contractual affairs so as to benefit the supplier over the consumer. <p>The aggregate cost to consumers of using the South African banking system is many tens of billions of rand per year. Consumers routinely claim that they are systematically gouged by their banks in respect of all (or virtually all) of their banking transactions. The spread between banks' actual costs and the fees, charges and penalties applied to consumers appears to be out of line with international practice.</p> <p>The cost of regulation is not a true problem to institutions that do extraordinarily well for their shareholders. Although the real cost of credit has been thoroughly analyzed, no one has any idea of the real cost of anything else in the banking sector on which to base fair charges, fees and penalties for consumers.</p>
Recommendation	<p>As the only source of rules which will be in effect as of January 1, 2012 regarding the provision of Terms and Conditions to consumers, the New Banking Code goes a very long way in providing a wide range of important benefits to all retail banking customers.</p> <p>Consideration should be given, however, to requiring more of banks in providing consumers what they reasonably need respect of certain matters, rather than relying on consumers who in most instances will be incapable of knowing and articulating what it is they require.</p> <p>In these respects, the New Banking Code should be revised so as:</p> <ol style="list-style-type: none"> a) to require banks to provide information to any customer or potential customer concerning its banking products and services as a matter of course and not simply when requested to do so (as is now set out in Section 6.5.2); b) to require banks to inform the customer of the basis of charges for services rendered that are not included in the standard fees and charges at the time the services are offered <i>as well as</i> on request and whether these fees and charges are negotiable (thereby changing the word "or" to "as well as" before the words "on request" in Section 6.6.3); c) to require banks to give the customer information about the interest rates which apply to his/her account(s) when a consumer becomes a customer <i>as well as</i> upon reasonable enquiry (thereby changing the word "or" to "as well as" before the words "reasonable inquiry" in Section 6.7); d) to remove the words "in compliance with applicable legislation" from Section 6.7, so as to forego any possibility of a bank not complying with interest rate disclosure requirements on the basis that there is no applicable law on the matter; e) to require the new bank to provide a "switching guide" as a matter of course to any customer who seeks to switch one or more of his/her transaction accounts from his/her old bank to the new bank (thereby changing the formulation in the 3rd paragraph of Section 7.2 that now simply allows a customer <i>to request</i> the "switching guide" from the new bank); f) to define what is meant by "reasonable" in terms of prior notice a bank must generally give its customer before closing any of his/her accounts (thereby amending Section 7.3.2 accordingly);

	<p>g) to remove the reference in Section 7.3.3 to a bank being exonerated for closing a customer's account "if compelled to do so by international best practice", since: (i) no bank or customer can possibly ascertain what international best practice is in this respect; and (ii) it is wrong to hold out to any South African that a foreign practice should, let alone would, actually <i>compel</i> any action by a South African bank;</p> <p>h) to indicate what the words "significant period" mean in Section 7.3.3 in connection with a customer's lack of use of an account; and</p> <p>i) to remove the excuse for a bank not to provide a customer with a timely statement to reflect a set-off position "if statements are generally not produced on the relevant account" (thereby removing the words in parentheses in the 3rd paragraph of Section 7.5).</p> <p>Also, before or at the time of opening a deposit, current (checking) or loan account at his/her bank, there should be a requirement for a bank to provide a consumer with each of the following:</p> <p>a) a summary of the bank's complaints procedures;</p> <p>b) a statement regarding the existence of the office of banking ombudsman and basic information relating to its process and procedures;</p> <p>c) the New Banking Code; and</p> <p>d) information on the methods of computing interest rates paid by or charged to the consumer.</p> <p>As is indicated in the Red Paper, "the South African financial sector is characterized by high and opaque fees, and, in some cases, the unfair treatment of customers. For savers, particularly the poor and vulnerable, savings instruments are limited, expensive and inappropriate."⁶¹</p> <p>In addition, in his address to the International Network of Financial Services Ombudsman Schemes Conference on 30 September 2010, the Deputy Director General of the National Treasury, Mr. Ismail Momoniat said that "the banking industry is not transparent enough in disclosing its costs and making them comprehensible...". "It is clear we have to set minimum standards because the industry won't do it by itself." He also then indicated that new banking regulations would be out "pretty soon". He also called for an independent, industry-financed consumer protection agency to monitor bank charges and look after the interests of consumers. This agency would then undertake the complex task of comparing the charges different banks imposed on products which are often packaged differently, making comparisons difficult for consumers.</p> <p>The carrying out of the work plan outlined by the National Treasury's Deputy Director General should be encouraged and accelerated.</p> <p>Although the real cost of credit in South Africa has been thoroughly analyzed, the real costs of other banking sector services on which to base fair commissions, charges, fees and penalties for consumers is unknown. It is time, therefore, to consider mounting a statutory inquiry into the high cost of bank commissions, charges, fees (including interchange fees) and penalties on customers' transactions. Once the basis for establishing these costs is determined, there should be wide publicity of the results, with changes to the New Banking Code or the promulgation of appropriate regulation to follow. To date, there has been no regulation which would enable standardized and ready comparisons by consumers of the costs to them of retail banking transactions within a range of banks.</p>
Good Practice B.8	<p>Key Facts Statement</p> <p>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.</p> <p>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.</p> <p>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/she has duly received, read and understood the relevant Key Facts Statement from the bank.</p> <p>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.</p>
Description	<p>No bank is either required by regulation to provide or voluntarily provides its customers and potential customers any Key Facts Statements for its accounts, types of loans or any other of its products or services.</p>

⁶¹ See the Red Paper, op. cit., page 6

	<p>Although glossy colored brochures of at least some of their standard products are invariably made available to customers and potential customers inside the branch offices of all banks, none of these documents meet the test of a true key facts statement with all essential product-related disclosure made in a standardized and readily comparable format that applies to all banks.</p> <p>The New Banking Code⁶² admonishes customers to compare individual products and services, as well as fees and charges, of various banks using independent comparison calculators available “on the internet or in the media”. Also, all banks are to assist any customer in calculating costs for his/her specific transaction pattern.⁶³ In practice, however, consumers rarely, if ever, use any such calculators, and, banks, at least so far, do not provide any such assistance and so choosing the most appropriate product or service on the basis of an informed comparison of prices is a futile endeavor.</p> <p>So far at least, the best that the banking community has been able to devise consists of a joint undertaking either: (a) to give consumers information to assist them for purposes of comparing different banks' transaction products; (b) to refer consumers to appropriate external sources; or (c) to recommend that consumers seek advice from someone such as a legal or financial adviser.⁶⁴</p>
Recommendation	<p>Every bank should be required by regulation to provide Key Facts Statements for its accounts, types of loans and other products or services in a standardized format for the entire banking community that allows consumers the possibility of easily comparing and contrasting products and services on offer within a single bank, as well as by two or more banks.</p> <p>All Key Facts Statements should be written in plain language and translated into the languages that are in common usage in South Africa.</p> <p>As a matter of standard procedure, these Statements should then be provided by each bank to its individual customers and potential customers.</p> <p>The Statements should summarize in a page or two <i>all</i> of the key terms and conditions of each specific banking product or service on offer, including:</p> <ol style="list-style-type: none"> 1. the interest, if any, to be earned by the customer; 2. <i>all</i> interest, fees and other charges to be paid by the customer; 3. the basis on which any applicable rate of interest, fee or other charge will be adjusted; 4. the maximum rate of interest, if any, that can be applied during the life of the product or agreement; 5. how notice of any adjustment in interest earned or to be paid by the consumer, as well as notice of any adjustment in any fee or charge, will be provided to the customer; and 6. when notice of any adjustment in interest earned or to be paid by the consumer, as well as notice of any adjustment in any fee or charge, will be provided to the customer. <p>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/she has duly received, read and understood the relevant Key Facts Statement from the bank.</p> <p>Despite some general requirements with respect to the disclosure of information by financial institutions, South African consumers do not have access to simple, clear, understandable and comparable information regarding financial products and services. As a result, it is exceedingly difficult for consumers to make well informed decisions in choosing among a wide array of available financial products and services. In many countries, the promotion of clear, standardized and comparable disclosure to consumers has proven to be an effective mechanism to promote competition and bring down the cost of financial products and services.</p> <p>As a starting point, for every product and service on offer by any bank, consumers should be provided with a simple, standardized and short (1 or 2 page) “key facts statement” that, in plain and easily legible language, summarizes the key terms and conditions of the product or service. Initially at least, key facts statements should be developed for basic financial products such as the range of available bank</p>

⁶² See the 2nd paragraph of Section 7.2

⁶³ This is to be via the bank's web site, call center or branch services.

⁶⁴ See New Banking Code, Section 4.2

	<p>accounts, consumer loans, credit cards, mortgage loans and long-term and short-term insurance policies, covering life of vehicle insurance. Key facts statements and any other required disclosure materials should be developed with input from the financial industry and consumer groups, and then tested for understandability by typical target groups in order to make sure they provide clear, comparable and adequate information.</p> <p>Consumers should also be given complete information on any financial product or service they receive, including its terms and conditions, as well as a record of any personal investment advice provided to them. This information should be given in time for the consumer to make an informed decision as to whether to acquire the relevant financial product and, in any event, before it is actually acquired.</p> <p>It would also be helpful to promote the establishment and notoriety of websites that provide consumers with comparable information regarding financial products and services, such as commissions, charges, fees, interest rates and the number and types of complaints.</p> <p>In supervising the provision of disclosure documents to clients, the FSB will need to ensure that the information was properly explained to the consumer so that he/she was reasonably able to make an informed decision. Providing adequate explanation should be a legal requirement of the sales process regardless of the distribution channel that is used.</p> <p>A Key Facts Statement provides consumers with simple and standard disclosure of key contractual information of a banking product or service, contributing to the consumers' better understanding of the product or service. Key Facts Statements also allow consumers to compare offers provided by different banks before they purchase a banking product or service and provide a useful summary for later reference during the life of the financial product or service. For credit products, Key Facts Statements constitute an efficient way to inform consumers about their basic rights, the credit reporting systems and the existing possibilities for disputing information. This is of special importance when the retail banking market is opening-up to new financial consumers who are inexperienced.</p> <p>Several countries provide formats on Key Facts Statements. The UK FSA has developed mandatory key facts statements in the form of initial disclosure documents (or IDD) applicable to housing credit products, including residential mortgage credit. IDDs are supported by a regulation on Mortgage: Conduct of Business. The regulation provides recommendations for wording pre-disclosure and offering documents. In the European Union, the Directive on Credit Agreements for Consumers (2008/48/EC) includes a recommended format, namely the Standard European Consumer Credit Information form. Also the European Associations of Consumers and the European Credit Sector Associations have developed the European Standardized Information Sheet which provides a recommended format for pre-contractual information on home loans. In the US, the Truth in Lending Act (Appendix G-10) includes models for the "Schumer Box" for credit cards. Peru has developed the "Hoja Resumen" or Summary Sheet, following similar key-fact-statement principles.</p> <p>Of special concern in South Africa is the need to provide basic information to consumers in the various languages that are used by significant segments of its population.⁶⁵ It may also be helpful to test consumer understanding of mandatory disclosure statements. In the US, the Federal Reserve Board has conducted extensive consumer testing of credit card disclosure information in order to develop an easily understood format.</p>
Good Practice B.9	<p><i>Advertising and Sales Materials</i></p> <ul style="list-style-type: none"> a. Banks should ensure that their advertising and sales materials and procedures do not mislead customers. b. All advertising and sales materials 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).

⁶⁵ Simply by way of example, one of the largest banks in South Africa provides consumer information at its ATMs in six of the country's 11 official languages, but not in Afrikaans which is the third most common language spoken in the country.

Description	<p>By the terms of the New Banking Code, all banks must “make sure that all marketing and promotional materials sent to [its individual customers] for advertising purposes [are] clear, fair, reasonable and not misleading”.⁶⁶</p> <p>In addition, unless a customer has opted out, his/her bank may use his/her information for marketing and advertising purposes. That said, a customer may opt out from receiving such communication at any time and a customer’s bank must give the customer information on how to exercise the right to opt out.⁶⁷</p> <p>By Part E of Chapter 2 of the CPA, all banks are required to comply with general standards for the marketing of their products and services.</p> <p>Advertising practices, as such, are also regulated in terms of the CPA. In this respect, Regulation 4 under the CPA deals with the consumer’s means of blocking or controlling direct marketing communications. Regulation 4(3) establishes the registry pursuant to sub-section 11(6) of the CPA. This registry allows consumers to register their details and, in so doing, block any direct communication. Presumably as a result, the New Banking Code prohibits banks from contacting a customer for direct marketing purposes if the customer has informed the bank or registered his/her details in a “recognized registry”⁶⁸ to exclude the customer for any direct marketing communication.⁶⁹</p> <p>Also, by the terms of the Code of Practice of the Advertising Standards Authority of South Africa,⁷⁰ (the “Advertising Code”) financial advertising is one of the so-called “Specific Categories of advertising” under its Part III.</p> <p>The Advertising Code binds advertiser, advertising practitioner and media owner, but the principal responsibility for observing its terms lies with the advertising practitioner when the services of a practitioner are retained.</p> <p>Since the primary object of the Advertising Code is the regulation of commercial advertising, except as expressly provided otherwise, it applies to all advertisements for the supply of goods or services or the provision of facilities by way of trade, and also to advertisements other than those for specific products which are placed in the course of trade by or on behalf of any trader.</p> <p>The Advertising Code further suggests that advertisements addressed to the general public for financial products or services or financial information should take care to ensure that the public are fully aware of the nature of any commitment into which they may enter as a result of responding to the advertisement.</p> <p>In this connection, the Advertising Code reminds advertisers of financial products and services that the complexities of finance may be beyond many of those to whom the opportunities they offer appeal, and that, therefore, these advertisers bear a particular responsibility to ensure that their advertisements do not take advantage, whether wittingly or not, of the lack of experience or knowledge or of the credulity of those to whose attention the advertisement is likely to come.</p>
Recommendation	<p>One of the main policy issues for disclosure and sales practices relates to misleading and comparative advertisement. Several directives in Europe hold financial institutions responsible for the content of their public announcements. These include the EU Directive on the Distance Marketing of Financial Services 2002/65/EC, the EU Directive on Misleading and Comparative Advertising 2006/114/EEC and the Unfair Commercial Practices Directive 2005/29/EEC.</p> <p>Increasingly, in many developed and middle-income countries, banks use agents to market their products such as unit trusts and credit cards. These solicitations take place outside the bank premises, including at supermarkets and fairs. Thus, ensuring that banks are liable for the acts of their agents is critical.</p>

⁶⁶ See New Banking Code, Section 3.1

⁶⁷ Ibid, Section 6.3.1

⁶⁸ Although not indicated as such, presumably this includes the Registry established under the CPA.

⁶⁹ See: New Banking Code, Section 6.3.1.5

⁷⁰ See: <http://www.asasa.org.za/>

Good Practice B.10	<p><i>Third-Party Guarantees</i></p> <p>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:</p> <ul style="list-style-type: none"> (i) the extent of the guarantee; (ii) the name and contact details of the party providing the guarantee; and (iii) in the event the party providing the guarantee is in any way connected to the bank, the precise nature of that relationship.
Description	No bank in South Africa looks to any third party to guarantee or partially guarantee any actual or future deposit or interest rate payable on a deposit and thus no advertising of this sort has occurred.
Recommendation	None
Good Practice B.11.	<p><i>Professional Competence</i></p> <ul style="list-style-type: none"> 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/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	<p>Although it would seem that most bank staff members understand the details of any product or service they sell or promote to consumers, it appears that a great many (and perhaps most) bank staff members who deal directly with consumers, prepare bank advertisements (or other materials of the bank for external distribution) or market any service or product of a bank are not fully familiar with the legislative, regulatory and code of conduct guidance requirements relevant to their work.</p> <p>This is so, notwithstanding the commitment of banks expressed in the New Banking Code to provide consumers with the highest standards of service, in part, by ensuring that ensure their "staff is trained to provide friendly and efficient service, so that [any customer's] transactions, enquiries and feedback will be attended to promptly."⁷¹</p> <p>Also, the NCR, the FAIS Department in the FSB and the NCC and the banking association have yet to 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.</p> <p>While many financial institutions rely on intermediation in their sales activities and financial advisers are often the first point of contact with financial institutions for many South Africans, the quality of financial advisers varies significantly. The FSB is currently trying to improve quality by instituting compulsory regulatory exams for all financial advisors and key individuals in financial institutions. To ensure that the regulatory exams support improved provision of financial advice, however, a FSB task-force should be established to monitor the progress of these regulatory exams and proactively act on any findings in the terms of pass rates, exam capacity before deadlines and the added value the design of the exams brings to improved provision of financial services.</p> <p>To build further on regulatory exams, the education of financial advisors and key individuals should be defined as an essential responsibility of the financial institution they work for, with the FSB approving education programs, the licensing of trainers and the monitoring of their conduct. These education programs should focus on improving the provision of financial services by enhancing the capability of all representatives who deal in any way with retail customers.</p> <p>To improve monitoring of the financial advice and ensure proper provision of service, the FAIS department of the FSB should develop its capacity and knowledge to be able to verify on a regular basis</p>

⁷¹ New Banking Code, Section 4.6

	<p>the suitability of the financial advice provided, building also on the input of the FAIS Ombud to select areas most in need of supervisory attention.</p> <p>To limit the potential for mis-selling, commission payments to financial advisors should be made only in amounts agreed in writing between the advisor and the client and, preferably, only on a pay-as-you-go basis without any prepayments. Apart from the agreed fee, no other incentive or motivating factor for any representative should be permitted.</p> <p>The issue of churning should be studied by the FSB to define its impact on consumer well-being and potential need for regulatory action. Whatever the results, when advisers recommend cancellation of a product, they should always quantify any losses the client will suffer from that cancellation. Financial institutions should be required by the FSB to structure commissions to deter churning.</p>
Recommendation	<p>The standard of professional delivery depends not only on the product or service but also on the knowledge and technical know-how of the individual delivering the product or service. Financial products are increasingly complicated, products overlap, and the delineation between banking and non-banking products is no longer clear. Thus, it is important that consumers fully understand any product, let alone a complex product before buying it. The banking industry should ensure that its employees who deliver products and services are fully knowledgeable about these products and services and are able to explain the nuances to the consumer.</p> <p>Consideration should therefore be given to having the banking industry set competency standards through certification processes. Query, though, whether the banking sector is ready, willing and able to mount such a certification process through the Banking Institute affiliated with the Banking Association.</p> <p>The NCR, the FAIS Department in the FSB, the NCC and the banking association 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.</p> <p>Efforts are especially needed to ensure that all bank staff members who deal directly with consumers or who prepare bank advertisements (or other materials of the bank for external distribution) or who market any service or product of the bank, are fully familiar with the legislative, regulatory and code of conduct requirements (including all provisions of the New Banking Code) that are relevant to their work.</p>
SECTION C	CUSTOMER ACCOUNT HANDLING AND MAINTENANCE
Good Practice C.1	<p>Statements</p> <ol style="list-style-type: none"> 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. 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. 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. 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. 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. When a customer signs up for paperless statements, such statements should be in an easy-to-read and readily understandable format.
Description	<p>By the terms of the New Banking Code, all banks must provide their individual customers, or else make available at their request, regular statements of account in order to enable their customers to manage their accounts and verify entries.⁷²</p> <p>In particular, in order to assist a customer to manage his/her account and verify entries on it, the bank must provide him/her with regular account statements, including through electronic</p>

⁷² See New Banking Code, Section 3.1

	<p>banking terminals or other means of electronic or telephone banking, if the customer has registered for any such facilities with the bank.⁷³ The New Banking Code leaves to each bank, however:</p> <ul style="list-style-type: none"> a) to determine how frequently statements will be provided on transaction and savings accounts; b) whether it is possible to have account statements provided more frequently than normally available on these types of account; and c) what the charge will be to the customer for providing these statements. <p>For accounts where statements are provided, those statements are required to show:</p> <ul style="list-style-type: none"> a) for each transaction since the previous statement: <ul style="list-style-type: none"> i) the amount of the transaction; ii) the date the transaction was made; iii) the check number of any check paid out of the customer's account; and iv) for card transactions, automatic payments, direct credits, direct debits and other payments, reference to the party who is making or receiving the payment, if such information is available to the bank; b) any fees and charges relating to the operation of the account; c) the same opening balance for each successive statement as the closing balance on the previous statement; d) the contact details for making enquiries or reporting errors in the statement as soon as the customer finds them; e) a summary and breakdown of charges and interest (both debit and credit) on every account, which may assist the customer to understand the costs of his/her transactional behavior; and f) a periodic reminder of his/her rights as a bank customer. <p>In addition, the New Banking Code indicates that "statement details <i>may</i> also be available on request".⁷⁴ Also, at a customer's request – <i>but only in certain circumstances</i>⁷⁵ – a bank will provide that customer with a statement of the following:</p> <ul style="list-style-type: none"> a) the current balance of the customer's account; b) the amount required to settle the account in full; c) any amounts credited or debited to the customer's account during any specified period; d) any amounts currently overdue and when each such amount became due; and e) any amount currently payable and the date it becomes due.
Recommendation	<p>Statements from a bank can be regarded as the most valid record and evidence of a transaction for a customer. Thus, statements need to be self-explanatory and clear. They should allow the customer to comprehend the financial consequences of the "number" in the statement and take necessary action based on the statement. This is particularly important in the case of any statements that carry finance charges, penalty interest and serious consequences of default or delayed payment.</p> <p>Banks should be obligated to provide monthly statements at low or no cost. However, with access to the internet and telephone banking, some customers may opt to receive statements on a quarterly basis. The choice should be left to the customers. Also, when customers choose paperless statements, the access to the statements, their format and details should be a fair substitute to paper statements.</p> <p>In addition, the introductory language to Section 7.4.7 of the New Banking Code should be amended:</p> <ul style="list-style-type: none"> a) by replacing the sentence "Statement details may also be available on request" with "Statement details will also be available on request"; and i) by removing the reference to "certain instances" in the introductory language to Section 7.4.7 or, at the very least, defining precisely what these instances are.
Good Practice C.2	<p><i>Notification of Changes in Interest Rates and Non-interest Charges</i></p> <ul style="list-style-type: none"> a. A customer of a bank should be notified in writing by the bank of any change in: <ul style="list-style-type: none"> (i) The interest rate to be paid or charged on any account of the customer as soon as possible; and

⁷³ Ibid, Section 7.4

⁷⁴ See New Banking Code Section 7.4.7 through 11

⁷⁵ These circumstances are undefined.

	<p>(ii) A non-interest charge on any account of the customer a reasonable period in advance of the effective date of the change.</p> <p>b. If the revised terms are not acceptable to the customer, he/she should have the right to exit the contract without penalty, provided such right is exercised within a reasonable period.</p> <p>c. The bank should inform the customer of the foregoing right whenever a notice of change under paragraph a. is made by the bank.</p>
Description	<p>By the New Banking Code, banks are required to notify a customer at least 20 business days before any changes in fees or charges take effect, as well as any change in the basis on which the fees and charges are determined.⁷⁶ There are no limits, however, on the extent to which banks may charge consumers for any transaction, provided, however, that the charge is not “unfair, unreasonable or unjust”.⁷⁷</p> <p>There is only one short section of the New Banking Code that deals explicitly with interest rates.⁷⁸ Here, rather than the bank being required to make any effort to notify the customer of a change in an interest rate, the obligation is placed squarely on the customer to make a so-called “<i>reasonable enquiry</i>”. Then, provided the bank deems the enquiry to be reasonable, the bank is required to give the customer information about the interest rates which apply to his/her account(s), <i>in compliance with applicable legislation</i>. This information includes “when changes (increases or decreases) are made to the interest rates which apply” to the customer’s account(s).⁷⁹ With impunity, therefore, a bank can refuse to cooperate on the basis that its customer’s enquiry is deemed “unreasonable”. In addition, the bank can refuse to provide information on the basis that there is no applicable legislation requiring compliance. If, however, it cedes ground on both of these preliminary matters, the bank is still not required by Section 6.7 to give the customer any advance notice of a change in interest rate or to indicate any change in the basis on which such a rate has been determined.</p> <p>There is an additional general requirement that individual customers of a bank be provided with at least 20 business days (or 5 business days in the case of credit agreements) notice before the implementation of changes in the Terms and Conditions.⁸⁰ This does not cover the matter of interest rate changes, however, at least for purposes of the New Banking Code where all references to Terms and Conditions exclude any mention of interest rates.</p> <p>Finally, under the New Banking Code, when the Terms and Conditions of a customer’s product or service change, the customer’s bank must tell the customer that he/she is entitled to terminate the product or service or switch to another product or service if he/she does not wish to accept the variation in the Terms and Conditions.⁸¹ There is no right to exit, however, without penalty, even if exit takes place within a reasonably short timeframe.</p>
Recommendation	<p>While the provisions dealing with fees and charges appear adequate, Section 6.7 of the New Banking Code should be amended:</p> <ol style="list-style-type: none"> to place the onus on banks to notify their customers of any change in interest rates; to remove the requirement on the customer to make any enquiry; to remove the words “in compliance with applicable legislation”; to define the permitted delay for notification to the customer once a change in interest rate has been made instead of employing the word “when”; and to indicate any change in the basis on which the interest rate has been determined. <p>In addition, the New Banking Code should be amended to require a bank to provide all relevant information regarding interest rates and non-interest charges in its Terms and Conditions, including the basis on which these rates and charges are determined.</p> <p>Finally, the customer should have the right to exit a contract without penalty, provided such right is exercised within a reasonably short period which must be disclosed to the customer.⁸²</p>

⁷⁶ Ibid, Section 6.6.6

⁷⁷ Under sub-section 48(1) of the CPA

⁷⁸ See New Banking Code 6.7

⁷⁹ Ibid

⁸⁰ See New Banking Code, Section 3.1

⁸¹ New Banking Code, Section 6.5.1

⁸² For a consumer’s right to exit a contract, see Guidelines 17 and 19 of the UN Guidelines for Consumer

Good Practice C.3	<p>Customer Records</p> <p>a. A bank should maintain up-to-date records in respect of each customer of the bank that contain the following:</p> <ul style="list-style-type: none"> 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. <p>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.</p>
Description	<p>The banks of South Africa appear to comply voluntarily with paragraph a. of this Good Practice. No law or regulation, however, provides the minimum permissible period for retaining all such records and requires that a customer have ready access to <i>all</i> such records free of charge or for a reasonable fee.</p> <p>The New Banking Code is restrictive and generally unhelpful in these respects. It simply provides that, at the request of a customer and within "legal and practical document retention frameworks,"⁸³ the customer's bank must provide the customer with a copy of merely the following documents the bank has relating to a banking service the customer has (or has had) with the bank:</p> <ul style="list-style-type: none"> a) a credit agreement (including Terms and Conditions, standard fees and charges and interest rates) or other contract; b) any mortgage or other security document; c) a statement of account; or d) a notice or letter of demand that has been issued to the customer.⁸⁴ <p>The bank is obliged to give the customer a copy of these documents:</p> <ul style="list-style-type: none"> a) within 10 business days, if the original came into existence within 1 year of the request; b) within 20 business days, if the original came into existence between 1 and 3 years before the request; c) otherwise within "a reasonable time"⁸⁵ or as required by "legislation applicable to certain documents".⁸⁶ <p>Finally, as also provided by the New Banking Code, a bank may charge a customer "a reasonable fee" for providing him/her with a copy of any of these documents.⁸⁷ There is, however, no definition of what fee is deemed reasonable and customers complain that these fees are sometimes excessive.</p> <p>Nowhere is there an obligation on a bank, however, to disclose to a customer all of the other documents it has pertaining to that customer as indicated in paragraph a. of this Good Practice.</p>
Recommendation	<p>A law or regulation should provide for the minimum permissible period for retaining the records referred to in paragraph a. of this Good Practice. Also, all banks should be required to publicize widely (including in the General Terms and Conditions) the charges, if any, that will be collected from any customer who seeks to have access to his or her records.</p>
Good Practice C.4	<p>Paper and Electronic Checks</p> <p>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:</p>

Protection.

⁸³ These "frameworks" are undefined.

⁸⁴ New Banking Code, Section 6.8.1

⁸⁵ This term is undefined.

⁸⁶ Ibid, Section 6.8.2 Query, however, the legislation that is apparently applicable to these certain undefined documents.

⁸⁷ Ibid, Section 6.8.3 The only exception provided for in the New Banking Code is a copy of a credit agreement or document required by the National Credit Act, in which case the original or first replacement copy will be free of charge, while fees for any further copies "may be charged as provided for by regulation".

	<ul style="list-style-type: none"> 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. <ul style="list-style-type: none"> 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: <ul style="list-style-type: none"> 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.
Description	The practices in the above respects will be assessed in Phase II.
Recommendation	To come following Phase II analysis.
Good Practice C.5	<p><i>Credit Cards</i></p> <ul style="list-style-type: none"> 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: <ul style="list-style-type: none"> 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. Banks and issuers should conduct consumer awareness programs on the misuse of credit cards, credit card over-indebtedness and prevention of fraud.
Description	This Good Practice will also be addressed in Phase II.
Recommendation	To come, following Phase II analysis.

Good Practice C.6	<p>Internet Banking and Mobile Phone Banking</p> <ul style="list-style-type: none"> 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: <ul style="list-style-type: none"> 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.
Description	<p>The Banking Code admonishes all consumers of banks who use any internet, telephone or cell phone banking services to take precautions in order to protect themselves against fraudulent transactions. And, with words directed at each of these consumers, the Banking Code states: "Ensure that you familiarize yourself with these [precautions] on [your bank's] website or internet banking portal, or with [your bank's] telephone or cell phone banking departments."⁸⁸</p> <p>However, there is nothing here about providing a hard copy of the Banking Code to any consumer, notwithstanding the fact that <i>this</i> document contains these precautions and at least 85% of all South Africans have no access to the internet.</p> <p>Each bank promises to take reasonable measures to ensure that its internet banking systems and technology are secure and are regularly reviewed and updated for this purpose. In addition, each bank undertakes:</p> <ul style="list-style-type: none"> a) to provide its customers with regularly updated information on how to access internet banking services, including details about customer ID, selection of appropriate passwords and the availability of additional authentication or security options, as well as how to maintain individual security and what a customer's liability for unauthorized transactions will be; b) to inform each customer of the applicable Terms and Conditions relating to the use of internet banking services, including any fees and charges; c) to advise each customer of the current transaction limits that apply to the bank's internet banking services (with these limits capable of being changed from time to time and being available <i>upon request</i>); d) to inform each customer of the procedures he/she must follow to report unauthorized access to his/her information, accounts or disputed transactions using his/her internet banking service and to provide each customer with effective and convenient means to notify the bank of security incidents and easily accessible contact points to report such activity as soon as the customer is aware of it; and e) to ensure that transactions of the bank's e-banking services can be traced and checked, as long as they are received by the bank's systems. <p>In order for a customer to be protected from unauthorized electronic access to his/her accounts, the New Banking Code requires the customer to ensure that he/she:</p> <ul style="list-style-type: none"> a) reviews his/her statements and reconciles his/her accounts regularly; b) changes his/her temporary password to a password of his/her choice known only to him or her. The customer is then warned that failure to change this temporary password immediately may be construed by the bank as negligence by the customer. In addition, the customer is warned, under all circumstances, against revealing his/her secret access

⁸⁸ See generally, the New Banking Code, Section 9.3

	<p>code/PIN/password or other unique means of personal identification to anyone, and especially not to one of the bank's staff members, since this can be used to access the customer's electronic banking facility. Likewise, the customer is instructed to change any of these, if he/she believes that someone may know his/her secret access code/PIN/password or other unique means of personal identification;</p> <p>c) does not use the browser facility to store his/her password in order to avoid having to enter it each time he/she makes a transaction using internet banking but, instead, types in the bank's internet address when logging in;</p> <p>d) does not use a link, but ensures that the website is that of the bank and is not fraudulent and checks the site security certificate for the internet banking site each time before banking;</p> <p>e) does not use computer terminals to which members of the public generally have access;</p> <p>f) installs and enables adequate anti-virus and security software on the computer used for internet banking and does not leave his/her computer unattended when logged into the internet banking site;</p> <p>g) treats e-mails, SMSes or calls he/she receives with caution and is aware that the bank will never ask a customer to reveal any personal account or security details (like PINs, passwords, etc) in a letter, email, sms or telephone call;</p> <p>h) takes care when entering numbers while banking, and in particular with telephone and cell phone banking, so that when payments are made, the correct amounts are transferred to the correct accounts or beneficiaries since the bank cannot reverse duplicate or erroneous payments a customer makes to other accounts without the specific consent of those account holders; and</p> <p>i) follows the advice of the bank since the bank's websites are "usually a good place to get help and guidance on how to stay safe online".</p> <p>See also Annex 1.</p>
Recommendation	See Annex 1.
Good Practice C.7	<p><i>Electronic Fund Transfers and Remittances</i></p> <p>a. There should be clear rules on the rights, liabilities and responsibilities of the parties involved in any electronic fund transfer.</p> <p>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:</p> <ul style="list-style-type: none"> (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. <p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p>
Description	<p>As provided by the Banking Code, if a customer of a bank receives money from abroad or wishes to transfer money abroad, the bank must notify the customer of any requirements from the South African Revenue Service and/or the South African Reserve Bank relating to cross-border payments and remittances.⁸⁹ In relation to foreign exchange services, the bank must, at a minimum, provide the customer a description of these services and details of the exchange rate.⁹⁰ When a customer transfers money abroad, the bank must give the customer</p>

⁸⁹ See Section 9.2 of the New Banking Code on Foreign Exchange Services and Remittances

⁹⁰ Ibid.

	<p>an indication of when the money sent should be available to the recipient, as well as any reason for potential delays.⁹¹ When money is transferred to a customer's account or received from abroad, the bank is obliged to disclose to the customer the original amount received and any commission or charges the customer is required to pay.⁹² Nowhere in the Banking Code or anywhere else is there any guidance as to what constitutes a reasonable commission or charge.</p> <p>The bank in South Africa is also required to inform the customer when he/she or the recipient of the funds being transferred must pay the foreign bank's charges. If it is not possible to provide specific details of charges, the South African bank must inform the customer of the basis on which these will be worked out.⁹³</p> <p>Where money has been transferred from abroad, the South Africa bank will credit the customer's account as soon as the receipt of funds has been confirmed and any necessary checks have been completed.⁹⁴ The National Payment System Act of 1998 was introduced to bring the South African financial settlement system in line with international practice regarding procedures on settlement systems and systematic risk management. The Act confers powers and duties on SARB regarding clearing and settlement facilities. The Payment Association of South Africa ("PASA"), under the supervision of SARB, has facilitated payment clearing house agreements. It has also introduced agreements pertaining to settlement, clearing and netting, and rules to create certainty and reduce systemic and other risks in inter-bank settlement. These developments, however, have not yet brought South Africa into line with international inter-bank settlement practice. See also Annex 1.</p>
Recommendation	An analysis should be undertaken of all costs (other than of credit) in the banking system and once it is established how these fees are actually fixed, there should be wide publicity of the results with appropriate regulation then to follow. See also Annex 1.
Good Practice C.8	<p>Debt Recovery</p> <ol style="list-style-type: none"> 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. 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. 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. Where sale or transfer of debt without borrower consent is allowed by law, the borrower should be: <ol style="list-style-type: none"> notified of the sale or transfer within a reasonable number of days; informed that the borrower remains obligated on the debt; and provided with information as to where to make payment, as well as the purchaser's or transferee's contact information.
Description	The South African practices in respect of this Good Practice will be addressed thoroughly in Phase II.
Recommendation	To come, following Phase II analysis.
Good Practice C.9	<p>Foreclosure of mortgaged or charged property</p> <ol style="list-style-type: none"> 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. 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. 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.

⁹¹ Ibid.⁹² Ibid.⁹³ Ibid.⁹⁴ Ibid. The checks in question include those required under the [Financial Intelligence Centre Act](#), No. 38 of 2001

	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.
Description	This topic will be addressed thoroughly in Phase II.
Recommendation	To come, following Phase II analysis.
Good Practice C.10	<i>Bankruptcy of Individuals</i> 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.
Description	This topic will be addressed thoroughly in Phase II.
Recommendation	To come, following Phase II analysis.
SECTION D	PRIVACY AND DATA PROTECTION
Good Practice D.1	<i>Confidentiality and Security of Customers' Information</i> 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	As provided by Section 6.1 of the Banking Code of Banking Practice, banks undertake to treat all customer personal information ⁹⁵ as private and confidential, and, as a general rule, banks will not disclose any personal information about a customer or his or her accounts, including to other companies in a banking Group (even when the individual is no longer a customer) unless under the following specific circumstances: i) when the bank is compelled by law to disclose the information; ii) when the bank has a legal duty to the public to disclose the information; iii) when the bank has to protect its interests by disclosing the information (for example, to prevent fraud); ⁹⁶ iv) when a customer has asked his or her bank or if the bank has the customer's consent to disclose the information; v) when a customer's account is in default and the customer has not made satisfactory arrangements with his or her bank for the repayment of the debt; or vi) when a customer's check has been "referred to drawer", in which case the information may be placed on a check verification service.

⁹⁵ "Personal information" is defined in the annex to the New Banking Code as including "information relating to an identifiable, living, natural person ... including:

- a) information relating to the race, gender, marital status, national, ethnic or social origin, colour, age, language and birth of the person;
- b) any identifying number, symbol, e-mail address, physical address, telephone number or other particular assignment to the person;
- c) correspondence sent by the person that is implicitly or explicitly of a private or confidential nature or further correspondence that would reveal the contents of the original correspondence."

⁹⁶ However, a bank cannot use this as a reason for disclosing information about a customer or a customer's accounts (including name and address) to anyone else.

	<p>Furthermore, if an account is in default, a bank may disclose information about a customer's personal debts and/or the manner in which a customer conducts his or her accounts to credit risk management services⁹⁷ and/or debt collection agencies if:</p> <ul style="list-style-type: none"> the customer has fallen behind with his or her payments or is in default with the terms of a product or service, the customer has not made satisfactory proposals to his/her bank for repayment of his/her debt following demand and the customer has been given at least 20 business days' notice of the bank's intention to disclose; or the bank is required by law to disclose the information to credit risk management services. <p>In addition, before transferring any customer's information to a third party service provider, a bank must take reasonable steps to satisfy itself that such information will be treated as private and confidential and is adequately safeguarded by the service provider. Furthermore, a bank must inform a customer when it records the customer's telephone conversations with the bank, as well as the reasons for doing so.</p> <p>And finally, if a customer of a bank makes use of electronic banking facilities like telephone banking, and the telephone calls are recorded, the customer's consent to disclosure may be recorded verbally.⁹⁸</p>
Recommendation	See recommendations under Annex 1.
Good Practice D.2	<p>Sharing Customer's Information</p> <ol style="list-style-type: none"> A bank should inform its customer in writing: <ol style="list-style-type: none"> 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. 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. 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. The law should prohibit the disclosure by a third party of any banking-specific information regarding a customer of a bank.
Description	See Annex 1.
Recommendation	See Annex 1.
Good Practice D.3	<p>Permitted Disclosures</p> <p>The law should provide for:</p> <ol style="list-style-type: none"> the specific rules and procedures concerning the release to any government authority of the records of any customer of a bank; rules on what the government authority may and may not do with any such records; the exceptions, if any, that apply to these rules and procedures; and the penalties for the bank and any government authority for any breach of these rules and procedures.
See Annex 1.	See Annex 1.
Recommendation	See Annex 1.
Good Practice D.4	<p>Credit Reporting</p> <ol style="list-style-type: none"> Credit reporting should be subject to appropriate oversight, with sufficient enforcement authority.

⁹⁷ "Although "credit risk management services", *per se*, are not defined in the New Banking Code, "credit risk management service providers" are defined in the Annex to the Code as: "organisations such as credit bureaux that hold information which is of relevance to lenders, for example information relating to credit risk, fraud, customer's identity and address or credit repayment profile. Banks may refer to them to assist with various decisions, e.g. whether or not to open an account or provide loans or grant credit. Banks may give information to or seek information from these service providers. The National Register of Credit Agreements instituted by the NCA is included in the ambit of this definition."

⁹⁸ This and all of the other provisions above come from Section 6.1 of the New Banking Code entitled "Confidentiality and Privacy".

	<ul style="list-style-type: none"> 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 <ul style="list-style-type: none"> 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	This topic will be addressed thoroughly in Phase II.
Recommendation	To come, following Phase II analysis.
SECTION E	DISPUTE RESOLUTION MECHANISMS
Good Practice E.1	<p><i>Internal Complaints Procedure</i></p> <ul style="list-style-type: none"> 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: <ul style="list-style-type: none"> 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	By the terms of the New Banking Code, if a customer of a bank wants to lodge a complaint with the bank, the bank must inform the customer how to do so and what to do if he/she

	<p>is unsatisfied with the outcome. At every bank, staff in a branch or “call center”⁹⁹ must assist the customer with any queries. The possibility of the customer using the bank’s website for this purpose is also mentioned.¹⁰⁰</p> <p>Within 3 business days of a bank’s receipt of a customer’s complaint, the bank is obliged to send the customer an acknowledgement addressed to the contact details the customer has provided. The bank must then let the customer know the status of the bank’s investigation of his/her complaint within 14 business days and give the customer an estimated time limit for it to be finalized. The bank must, however, complete its investigation within a “reasonable time.”¹⁰¹</p> <p>In addition, when a bank sends its final response to a customer, the bank must also tell the customer how to take his/her complaint further, if he/she is not satisfied with the outcome.</p> <p>There is, however, no requirement on any bank:</p> <ul style="list-style-type: none"> a) to have in place a written internal complaints procedure; b) to name a designated contact point for the proper handling of any complaint from a customer in any branch or otherwise; c) to have a summary of the procedure form part of the bank’s Terms and Conditions referred to in B.7 above, together with a statement in the same Terms and Conditions of how a consumer can easily obtain the complete statement of the procedure; d) 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; e) to provide the complainant with a regular written update on the progress of the investigation of the complaint at reasonable intervals; f) where applicable, to explain the terms of any offer or settlement being made to the customer/complainant; g) to offer the customer/complainant the opportunity to have an oral complaint treated by the bank as a written complaint in accordance with the above; h) to maintain up-to-date records of all complaints it has received and the action it has taken in dealing with them, including the details of each complainant, the nature of each 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; and i) to make these records available for review by any appropriate government authority.
Recommendation	<p>All banks should be required:</p> <ul style="list-style-type: none"> a) to have in place a written internal complaints procedure; b) to name a designated contact point for the proper handling of any complaint from a customer in any branch or otherwise; c) to have a summary of the internal complaints procedure form part of the bank’s Terms and Conditions referred to in B.7 above, together with a statement in the same Terms and Conditions of how a consumer can easily obtain the complete statement of the procedure; d) 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; e) to provide the complainant with a regular written update on the progress of the investigation of the complaint at reasonable intervals; f) where applicable, to explain the terms of any offer or settlement being made to the customer/complainant; g) to offer the customer/complainant the opportunity to have an oral complaint treated by the bank as a written complaint in accordance with the above; h) to maintain up-to-date records of all complaints it has received and the action it has taken in dealing with them, including the details of each complainant, the nature of each complaint, a copy

⁹⁹ No further details are provided regarding this alternative.

¹⁰⁰ New Banking Code, Section 10

¹⁰¹ Ibid, Section 3.1. What is “reasonable” is not defined and will necessarily vary, according to the circumstances.

	<p>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; and</p> <p>i) to make these records available for review by any appropriate government authority.</p>
Good Practice E.2	<p>Formal Dispute Settlement Mechanisms</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>d. The banking ombudsman or equivalent institution should be appropriately resourced and discharge its function impartially.</p> <p>e. The decision of the banking ombudsman or equivalent institution should be binding upon the bank against which the complaint has been lodged.</p>
Description	<p>By the terms of the New Banking Code, a retail bank must provide any customer of the bank with the details of the OBS <i>but only if</i> the customer "is not satisfied with the resolution of a dispute, or with the outcome of a dispute handling process."¹⁰²</p> <p>In the event that a customer's dispute cannot be resolved by his/her bank or a customer is not satisfied with the outcome of his/her bank's dispute handling process and provided the New Banking Code has come to the attention of the unsatisfied customer, the customer will learn there that he/she is "welcome to make use of the services of the Ombudsman for Banking Services".¹⁰³ Each bank also undertakes, where relevant, to give any such customer information on other Ombudsman offices, which might have jurisdiction over the customer's complaint.¹⁰⁴</p> <p>The New Banking Code also informs the customer that the OBS is available at no cost to the customer to consider any complaint of the customer that his/her bank has not been able to resolve satisfactorily.</p> <p>As also indicated in the New Banking Code, the OBS is entitled to mediate, make a determination based on the New Code or on the law where the law is reasonably certain¹⁰⁵ or make a recommendation in other circumstances, including those based on equity.</p> <p>Although a bank may decline to accept any recommendation made by the OBS, the OBS may then, at his or her discretion, publish a notice indicating that: (a) a recommendation was made; and (b) the bank refused to accept it. Also as indicated in the New Banking Code, a determination made by the Ombudsman for Banking Services may be made an order of the court.¹⁰⁶</p> <p>Again, as is made clear in the New Banking Code, all banks that are members of the Banking Association of South Africa are automatically subject to the jurisdiction of the OBS. And, each of these banks is obliged by the New Code to supply every customer with the Ombudsman for Banking Service's brochure¹⁰⁷, including the relevant address, telephone and fax numbers <i>but only following a customer's request</i>. In addition, by the terms of the New Banking Code, each bank must ensure that the Ombudsman for Banking Service's contact details are</p>

¹⁰² See New Banking Code, Section 3.1

¹⁰³ Ibid, Section 10. As indicated above, this information

¹⁰⁴ These additional possibilities are the FAIS Ombud and the Credit Ombud.

¹⁰⁵ What constitutes a law that is "reasonably certain" and how such a determination is to be made are not disclosed.

¹⁰⁶ Whether a decision of the OBS in the form of a determination is made an order of the court, a determination is, however, binding on the bank.

¹⁰⁷ Query how many of these are published and distributed each year.

	<p>prominently displayed in all of its branches.¹⁰⁸ In the event that a bank fails to resolve a dispute with a customer, or at the request of a customer, the bank is required to provide the customer with the documentation needed to lodge a complaint with the Ombudsman for Banking Service's Office.</p> <p>Finally, the New Banking Code provides the contact details of the Office of the Ombudsman for Banking Services.</p> <p>No provisions exist, however, in law, regulation or the New Banking Code requiring:</p> <ol style="list-style-type: none"> the existence of the banking ombudsman or equivalent institution and basic information relating to the process and procedures to be made known in every bank's Terms and Conditions referred to in B.7 above; the customer to be informed of the details of the banking ombudsman and its processes and procedures, including the binding nature of decisions and the mechanisms to ensure the enforcement of decisions; what role, if any, banks have in funding the services of any banking ombudsman; and the decisions of the banking ombudsman and equivalent institutions to be binding upon the bank against which the complaint has been lodged. <p>In South Africa, there is a network of ombudsmen, some statutory (created and defined by law, funded by the government and answerable to Parliament) and some voluntary (created and funded by the industry, accountable to its boards).</p> <p>The statutory ombud of relevance to the banking sector is the FAIS (Financial Advisory and Intermediary Services) Ombudsman. The relevant voluntary ombudsmen are the OBS and the Credit Ombudsman. The voluntary ombudsman schemes are recognized under the Financial Services Ombud Schemes (FSOS) Act of 2004, which makes provisions for the recognition of voluntary ombudsman schemes. It also establishes the Financial Services Ombud Schemes Council that should act as a coordinating body of the recognized voluntary ombud schemes. When deciding a case, the ombudsmen consider the law as well as equity and fairness. Using equity in decision-making is one of the conditions for recognition of the scheme under the FSOS Act.</p> <p>The consumer is free to approach any ombud he/she deems relevant to his/her case. If the ombud believes he has no jurisdiction in respect of the specific dispute, he forwards the case to the proper ombud. The FAIS Ombud is the ultimate catch-all for any complaints across financial services. However, there are no provisions for joint cases. Thus, if a case has, for example, a banking services part and a financial advice part, the consumer would have to approach both the OBS and the FAIS Ombud separately. Two investigations would then be conducted and two decisions made. Some consumers may, therefore, seek to extend their complaints so that more than one ombud takes jurisdiction so as to see which brings the best result. In addition, the plethora of ombud services inevitably leads to increased costs to the industry, the ombudsman system and the consumer.</p> <p>If a consumer does not know which ombudsman to approach, he can telephone a call center operated jointly by all ombudsmen. After describing his case, he will then be redirected to the proper ombud. Also, having several ombudsmen schemes creates inevitable delays when a complaint is ultimately to be directed to another ombud after an investigation has been conducted by the first approached ombud. South Africans are becoming more aware about ombudsmen services as numbers of complaints continue to grow. However, more could be done by banks to inform customers about the three relevant ombudsmen. While insurance companies are required in the claim denial letters to inform their customers about their right to refer a denied claim to the insurance ombudsman, only some 40% of complainants in 2010 learned about the OBS through their banks (almost as high a share as by word of mouth at 36%).¹⁰⁹ However, the trend is improving as only some 25% of complainants learned about the OBS through their banks in 2009.¹¹⁰</p>
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¹⁰⁸ It remains to be seen how effective this and many other requirements of the New Banking Code will prove to be. With all too rare exceptions, the contact details of the OBS are, with impunity, nowhere (let alone prominently) displayed in the branches of banks.

¹⁰⁹ Ombudsman for Banking Services, "An Account of Activities for the period 1 January – 31 December 2010", P. 13

¹¹⁰ Ombudsman for Banking Services, "An Account of Activities for the period 1 January – 31 December 2009", P. 12 See: <http://www.obssa.co.za/documents/2009_obs_annual_report.pdf>

	<p>That said, with the percentage of knowledgeable complainants still so low, consumer access to ombudsmen schemes continues to be a problem. For example, as there are no toll-free numbers for calling from mobile phones (and penetration of landlines is very low in many areas of the country), many poor people cannot afford to consult with any ombudsman service. Also, as most ombudsmen have only a single office (the Credit Ombudsman being an exception with three offices) and all claims must be submitted in writing, it is undoubtedly the case that a great many complaints are never formally lodged.</p> <p>The OBS and Credit Ombudsman schemes are based on industry agreements and rely on cooperation from all retail banks, peer pressure being the only tool they can use to win the banking community's full and speedy cooperation. Although separate boards are responsible for the voluntary ombudsman schemes, there are no clear rules regarding the composition of either board and the ratio of relevant required backgrounds of board members. Most boards include industry representatives and consumer representatives, some also include independent directors.</p> <p>The ombudsman system also lacks a uniform way of financing individual ombudsman offices. While the FAIS Ombudsman is financed from the state budget, some of the voluntary ombudsman are financed by financial institutions with fees based on their market share as well as number of complaints, while other voluntary ombudsman are financed only by fees charged to financial institutions for every complaint lodged against the institution.</p> <p>Any bank customer who has a complaint against his or her bank may approach the OBS for assistance.¹¹¹ The service is free and the only requirements that must be met are that:</p> <ul style="list-style-type: none"> • the complaint must be within the jurisdiction of the OBS; and • the customer must have followed the bank's complaint handling procedures before approaching the OBS for assistance. <p>The OBS resolves complaints by investigating matters according to its rules. If the matter has not been resolved by negotiation after investigation, a formal decision may be taken. The decision may be in the form of a <i>determination</i> that is binding on the bank or a <i>recommendation</i> that is not.</p> <p>The OBS cannot assist a bank customer if his/her complaint involves:</p> <ol style="list-style-type: none"> a) a bank's commercial decision about lending or credit, interest rates or bank charges, unless there has been maladministration; b) a matter that would more appropriately be dealt with by a court of law or another dispute resolving process; or c) a matter which is or has been the subject of litigation, subject to certain exceptions. <p>In other words, the OBS cannot deal with an alleged illegality of an interest charge or any other fee. Nor can it deal with any systemic issue. For example, there is provision in NCA making set-offs under the NCA illegal. Once retail commercial banks took the position, however, that the NCA was contestable in this respect, the OBS backed off due to the systemic aspect of the matter.</p> <p>A complainant is free to sue in court or enter into any other dispute resolving process (including that offered by the NCC) at any time while the complaint is being dealt with by the OBS, provided he/she informs the OBS so the file will be closed.</p> <p>Since 2000, the OBS has operated entirely independently of the banks. The OBS is an <i>independent</i> and impartial body that reports to the Board of the OBS, not to the banks. The OBS cannot make rules for the banking industry or deal with policy issues, nor can it give general advice about banking or financial matters. Commercial decisions taken by banks regarding fees or the granting of credit are outside the jurisdiction of the OBS unless maladministration has occurred. As such, the OBS cannot assist a customer in getting a bank to approve credit or alter any terms of repayment on a loan.</p> <p>Finally, it is important to note that, as of April 1, 2011, an additional adjudicatory body has appeared on the scene in the form of the NCC. By the terms of its preamble, a purpose of the CPA is to develop effective means of redress for consumers. As a result, the NCC intends to play a significant dispute settlement role in respect of consumer complaints regarding the provision of financial products and services generally and banking products and services in particular.</p>
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¹¹¹ Although South Africa also has an Ombudsman Scheme for matters relating to credit, this separate scheme will be analyzed in the context of Phase II of this diagnostic assessment.

Recommendation	<p><i>The system of ombudsman</i></p> <p>A study should be conducted to analyze options for bringing all ombudsman services under one roof. However, it should primarily be an operational change, allowing for better coordination of cases, joint judgment when several aspects of financial services are involved, and the avoidance of forum shopping or dealing with the same case by several ombudsmen. There should be stronger and more regularized working relationships among all financial sector ombudsmen offices, but, especially for banking sector complaints, among the OBS, and Credit and FAIS Ombudsmen.</p> <p>The main focus of improved coordination should be on increased efficiency, lower costs of operation and easier access to justice for consumers. If a single financial services ombudsman organization is created, it should still retain its individual areas of expertise along the lines of today's ombudsmen and build on their substantive experience.</p> <p>The unified ombudsman would also wield statutory powers to ensure cooperation of financial institutions. The powers should be designed to provide speedy provision of documents needed for decision-making. Also, strict limits for case decisions should be set, with 30 days for simple cases and 60-90 days for complex cases.</p> <p>While possible improvements in the ombudsman system are being analyzed, the Financial Services Ombudsmen's Schemes Council should be given more powers, resources and responsibilities to enhance its impact and allow it a support structure¹¹², especially in the areas of raising public awareness about the ombudsmen schemes, staff exchanges, more effective case sharing, and possible sharing of administrative services to lower costs of operation.</p> <p>As the FAIS Ombudsman is the catch-all for complaints that no other ombudsman deals with, his powers should be expanded to include non-regulated financial products that are offered by banks and financial advisors.</p> <p>The ombudsman-related issues arising from the CPA should be officially clarified as soon as possible; especially in the areas of accreditation (i.e. whether voluntary ombudsmen should be accredited with the NCC¹¹³ if they have already been recognized under financial services legislation) and jurisdiction to avoid forum shopping (i.e. whether all cases should first go to the NCC¹¹⁴ or whether the NCC should only deal with cases outside the jurisdiction of existing financial services ombudsmen).</p> <p>It would also be helpful if the various ombudsmen's offices published (on their websites and in brochures) statements regarding their respective jurisdictions so as to differentiate each ombudsman's office from one another in these respects. The cost involved should be financed by all relevant financial institutions or their associations. Banks should therefore fund the cost of brochures delineating the respective jurisdictions of the OBS and the Credit and FAIS Ombudsmen and then have these brochures readily available for distribution in each branch office.</p> <p>In accordance with recommendations of the Competition Commission, the jurisdiction/mandate of the OBS should be expanded to include enforcement and monitoring of compliance with codes of conduct for information disclosure and switching. Also, the OBS should be the only office to adjudicate disputes between banks and their individual customers.</p> <p><i>Access and disclosure rules</i></p> <p>To facilitate better knowledge of customers and their access to ombudsmen schemes, all banks should be required to:</p> <ul style="list-style-type: none"> • inform their customers about the existence of the relevant ombudsmen in all of their marketing materials discussing complaints, including contact information and basic rules for approaching each relevant ombudsman;
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¹¹² The Financial Services Ombudsman Schemes Act should be amended accordingly. Query, however, how to reconcile the potential conflict between the Ombudsmen Council, the NCR, the NCC and the FSB as the envisaged retail banking market conduct regulator and overlapping areas of jurisdiction, with resultant confusion in the minds of consumers.

¹¹³ Under section 69 of the CPA

¹¹⁴ As stipulated under sub-section 70(2) of the CPA

	<ul style="list-style-type: none"> • inform customers about the existence of the relevant ombudsmen and their right to approach him when they offer to settle or decline to settle any consumer complaint; • have the necessary ombudsman office forms at all bank branches for their customers to fill in with their complaints; and • deliver a customer's submission to the relevant ombudsman within 5 working days, if a customer decides to submit his or her complaint to the ombudsman via the branch office of the bank. <p>The OBS and the FAIS and the Credit Ombudsmen should make consumer education about their services an integral part of their mission and should devote a part of their budget to improving access to their services. In all of their consumer education activities, these ombudsmen should inform the public not only about the existence of their offices, but also about the existence and various jurisdictions of all ombudsmen schemes. Coordination among all ombudsmen is highly recommended to make sure communications to consumers are as effective as possible. In this respect, a joint awareness campaign might usefully be planned and executed on an on-going basis. The existing research¹¹⁵ shows that only a very limited number of consumers know about any ombudsman services in South Africa (only 11% of respondents have heard about the OBS and a mere 9% of the Credit Ombudsman, with most of these being full-time employees with higher education).</p> <p>While the joint hotline that directs consumers to the proper ombudsman is a significant improvement over previous practice, it should be promoted more actively. Other joint activities, e.g. a joint website about consumer rights and the ombudsman system could be considered. Also, closer cooperation with consumer protection offices in the provinces could be an effective tool to increase awareness about the ombudsmen, as well as an effective tool to collect complaints.</p> <p>In terms of access, rules for who can use an ombudsman's services (private individuals and small companies) should be unified across all ombudsmen schemes. In addition, there should be consistent rules for the provision of services by all Ombudsman schemes in the financial services industry. And each Ombudsman scheme and financial institution should be required (or at least encouraged) to make these rules known on its website and in printed brochures.</p> <p>Also, existing monetary caps should be reviewed and in some areas (especially for the FAIS Ombudsman) significantly increased to make the Ombudsman's services relevant in the context of the prevailing market.¹¹⁶</p> <p><i>Financing</i></p> <p>For voluntary schemes, risk-based fees are preferable to fixed fees for every complaint lodged. The ombudsman should be able to plan his budget properly and should not be motivated to increase the number of cases dealt with in order to finance his budget. Risk-based payments should be based primarily on the size of the financial institution in a given area and the number of complaints lodged against that institution in the given area in the previous year.</p> <p>In the event that a single ombudsman's office is developed for the financial services industry in the future, joint government-industry financing should be considered, with the industry contributing to sector-specific budgets based on the same system as described in the previous paragraph.</p> <p><i>Law vs. equity and predictability of rulings</i></p> <p>While the fundamental reasons why ombudsmen should use equity and fairness are sound, the financial industry should receive proper guidance from the ombudsmen on their approach in these respects. As each case inevitably has specifics that tend not to allow for the application of precedent, the ombudsmen should actively communicate and explain their way of thinking on oft-repeated cases and should strive for as unified a decision-making as possible.</p> <p>Such an approach should also lead to improvements in banks' disclosure documents and complaints handling policies in order to avoid the most frequently repeated issues.</p>
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¹¹⁵ See the survey conducted by Ipsos Markinor for the OBS in December 2009.

¹¹⁶ At present, the FAIS Ombudsman cannot deal with any claim that seeks damages in excess of R800,000 (i.e. some US \$97,000 at the exchange rate in effect in mid-September 2011).

	<p><i>Corporate governance</i></p> <p>The boards of voluntary ombudsmen should include representatives of financial institutions and consumer organizations, with industry representatives forming only a minority of members. There should also always be a FSB representative on the board to monitor the functioning of the ombud as well as the behavior of banks when dealing with individual cases brought against them.</p> <p><i>Impact on financial regulation</i></p> <p>All ombudsmen should be required to report annually in writing to the National Treasury and the FSB on systemic risk issues when dealing with cases brought to them. The Treasury and the FSB should be required to react officially to each ombud report and to employ the findings in order to improve financial services legislation if needed or to change supervisory processes or both.</p> <p>Ombudsmen should also be actively consulted when any new financial services legislation is being drafted, including the Financial Consumer Protection Bill recommended under Good Practice A. 1 above.</p> <p>The OBS and the Credit and FAIS ombudsmen should also actively communicate with the Banking Association to discuss potential self-regulatory improvements of the practices of banks. All banks under the jurisdiction of these ombudsmen should receive a yearly statement with the share of complaints against them compared to the total number of the complaints in order to measure their "market share". These statistics should also be provided to the FSB and included in FSB's risk-based supervision planning.</p> <p><i>Other issues</i></p> <p>When dealing with any dispute, the ombud should have statutory powers to subpoena relevant documents to speed up the process of information gathering and have all relevant information quickly accessible.</p> <p>All ombudsmen should coordinate their communication and media policies, providing the media with easy-to-understand press releases about case rulings and settlement examples (no names included), so that the media can be inspired to cover the behavior in question as well as the work of the ombud. The current FAIS Ombud media policy and the case summaries in the Banking Ombud Annual Report or the Short-Term Insurance Ombud Annual Report or quarterly newsletters with case studies could be used as an inspiration.</p>
Good Practice E.3	<p><i>Publication of Information on Consumer Complaints</i></p> <ul style="list-style-type: none"> a. Statistics and data of customer complaints, including those related to a breach of any code of conduct of the banking industry should be periodically compiled and published by the ombudsman, financial supervisory authority or consumer protection agency. b. Regulatory agencies should publish statistics and data and analyses related to their activities in respect of consumer protection regarding banking products and services so as, among other things, to reduce the sources of systemic consumer complaints and disputes. c. Banking industry associations should also analyze the complaint statistics and data and propose measures to avoid the recurrence of systemic consumer complaints.
Description	<p>While some statistics and data on customer complaints are periodically compiled and published by ombudsman offices, to date, no financial regulatory authority performs this role. Regular complaints demonstrate that banks fees and charges constitute an on-going problem of significance.¹¹⁷</p> <p>Also, although the NCC has stated that in its first 10 weeks of operation some 20% of all approximately 3,000 complaints filed with it in this period pertained in one way or another with financial products or services, the NCC has yet to publish any related statistics and data so that a reduction in the sources of systemic consumer complaints and disputes can be reduced.</p> <p>Also, to date at least, the Banking Association has not been involved in analyzing any complaint statistics and data with a view to proposing measures to avoid the recurrence of systemic consumer complaints.</p>
Recommendation	<p>Apart from providing useful quantitative information, statistics provide the tools needed for predictions and forecasting that form essential input for policy decision-making. However, the collection of statistics and data alone is not sufficient. Publication of the statistics and data should be required to inform the</p>

¹¹⁷ See NT Policy, op cit., page 6

	<p>public of common problems affecting consumers and to increase the knowledge and awareness of consumers.</p> <p>By analyzing the statistics and data, regulators and banks can identify recurring problems and areas of weakness in banking practices. They can then take steps to deal with the source of the problems. The analysis is also critical for regulators to identify the correlation between the issues raised in the consumer complaints and systemic issues or weaknesses that may affect the soundness of the banking system itself.</p>
SECTION F	GUARANTEE SCHEMES AND INSOLVENCY
Good Practice F.1	<p><i>Depositor Protection</i></p> <ol style="list-style-type: none"> 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. If there is a law on deposit insurance, it should state clearly: <ol style="list-style-type: none"> the insurer; the classes of those depositors who are insured; the extent of insurance coverage; the holder of all funds for payout purposes; the contributor(s) to this fund; each event that will trigger a payout from this fund to any class of those insured; and the mechanisms to ensure timely payout to depositors who are insured. On an on-going basis, the deposit insurer should directly or through insured banks or the association of insured commercial banks, if any, promote public awareness of the deposit insurance system, as well as how the system works, including its benefits and limitations. 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. 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. The deposit insurer should receive or conduct a regular evaluation of the effectiveness of its public awareness program or activities.
Description	<p>By Part 1(1A) (b) of the Banks Act, the Registrar of Banks can take necessary measures to protect depositors when a bank is unable to meet its obligations including the return of deposits. While it is generally posited that the safety of deposits in at least the four Big Banks is implicitly guaranteed by government on the basis that each of these institutions is “too big to fail”, there is no explicit deposit insurance scheme in South Africa. After long debate over the pros and cons of such a scheme, however, the National Treasury is now actively pursuing the introduction of draft legislation that, once enacted, would provide for at least a certain level of insurance on consumers deposits in all banks.</p>
Recommendation	<p>In formulating draft legislation in these respects, the drafter should take into careful consideration all of the elements of this Good Practice.</p> <p>A deposit insurance system should clarify the authority’s obligations to depositors, limit the scope for discretionary decisions, promote public confidence, help to contain the costs of resolving failed institutions, and provide an orderly process for dealing with bank failures.</p> <p>In order to be credible, the deposit insurance system should be part of a well-conceived financial system safety net that is properly designed and implemented. It should be supported by strong prudential regulation and supervision, sound accounting and disclosure regimes, and the enforcement of effective laws. To be effective, any deposit insurance system must be supported by a high level of public awareness about its existence, its benefits and its limitations. Although any new deposit insurance system should ideally be able to deal with a limited number of simultaneous bank failures, the resolution of a systemic banking crisis will obviously require all financial system safety-net participants to work together effectively.</p> <p>The BIS Core Principle 23 issued in September 2005, the EU Directive on Deposit Guarantee Schemes 1994/19/EC, and the key conclusions of the APEC Policy Dialogue on Deposit Insurance in 2005 provide guidance for this Good Practice.</p>
Good Practice F.2	<i>Insolvency</i>

	<p>a. Depositors should enjoy higher priority than other unsecured creditors in the liquidation process of a bank.</p> <p>b. The law dealing with the insolvency of banks should provide for expeditious, cost effective and equitable provisions to enable the maximum timely refund of deposits to depositors.</p>
Description	<p>The law regarding the management of a bank in financial difficulty, the appointment of a curator to such a bank and the investigation of affairs of a bank in curatorship is contained in Chapter V of the Banks Act.</p> <p>If, in the opinion of the Registrar of Banks, a bank will be unable to repay, when legally obliged to do so, deposits made with it or will probably be unable to meet any other of its obligations, the Minister of Finance may, with consent of the chief executive officer or chair of the board of directors of the bank, appoint a curator to the bank.¹¹⁸</p> <p>Thereafter, in the event the curator believes there is no reasonable probability that the bank will be able to pay its debts or meet its obligations and become successful, the curator must forthwith so inform the Registrar.¹¹⁹ The money of the bank is then applied by the curator in the first place to “paying the costs of the curatorship and in the conduct of the bank’s business in accordance with the requirements of the curatorship and, as far as the circumstances permit, in the payment of the claims of creditors which arose before the date of the curatorship.”¹²⁰</p> <p>The Minister of Finance may, however, empower the curator in his or her discretion, but subject to any condition which the Minister may impose, to make payments to any creditors of the bank at such time, in such order and in such manner as the curator deems fit.¹²¹ There is, thus, no requirement for depositors to enjoy higher priority than other unsecured creditors in the liquidation process of a bank. Instead, they are at the mercy of the curator’s discretion, subject to any condition the Minister of Finance may impose.</p>
Recommendation	Consideration should be given to amending the Banks Act to allow all individual depositors at a bank to enjoy higher priority than other unsecured creditors in the liquidation process of the bank and otherwise to enable the maximum timely refund of deposits to these depositors.
SECTION G	CONSUMER EMPOWERMENT
Good Practice G.1	<p><i>Broadly based Financial Capability Program</i></p> <p>a. A broadly based program of financial education and information should be developed to increase the financial capability of the population.</p> <p>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.</p> <p>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.</p>
Description	<p>An <i>ad hoc</i> program has existed within SARB has produced booklets dealing with various topics of financial consumer protection education and financial literacy for youth and adults but SARB envisages that it is likely this will soon be taken over and expanded by CPC. The dissemination of these SARB-created booklets has been through SARB agencies only and appears to have been less than truly effective.¹²²</p> <p>NOTE: By the terms of its preamble, a purpose of the CPA is to “promote and provide for consumer education, including education concerning the social and economic effects of consumer choices.”</p>
Recommendation	<p>Most South Africans are not well aware of their rights and responsibilities as financial consumers, and are unable to understand basic concepts regarding financial products and services.</p> <p>The critical need to address the financial capability issue as a first priority is evident. There are multiple financial education initiatives in South Africa that are undertaken by Government bodies, regulators,</p>

¹¹⁸ See the Banks Act, Section 69 1) a)

¹¹⁹ Ibid, Section 69 2D)

¹²⁰ Ibid, Section 69 2E)

¹²¹ Ibid, Section 69 3) b)

¹²² What are these agencies, how many exist and where are they are still questions to be answered.

	<p>industry associations, consumer organizations, NGOs, and private sector entities. However, these initiatives are piece-meal and lead to duplication of programs, ineffective allocation of limited resources and far-too limited monitoring and impact evaluation.</p> <p>In order to assess the quality of financial education initiatives and differentiate between commercial and educational purposes, a strong case can easily be made for public involvement in financial education for consumers. While some financial institutions are proud to state that they support and deliver financial education programs, too often these programs amount to little more than institution-specific marketing programs. The mixing of marketing and educational messages should be prohibited.</p> <p>There should be a government authority leading the financial education agenda in South Africa, promoting multi-stakeholder coordination and exchange of lessons learned. The National Treasury has already taken responsibility to lead the formulation of a national financial education policy, which will be followed by a national financial education strategy. Thus, it is important that Treasury continues to drive this process, accelerate it, and send a clear message to stakeholders that it will take a leading role in the coordination and development of such a strategy.</p> <p>A national policy for consumer education and financial literacy is underway and this should soon be finalized and endorsed by the Government. In addition, a Central Coordinating Committee (CCC) for resulting program purposes should be created and a national strategy developed as soon as possible, including an action plan for program implementation and measurement. The role of the CCC is crucial to provide proper coordination of actions and ensure support for the most efficient and large-scale financial literacy initiatives. In terms of funding, consideration should be given to pooling funds for major financial literacy programs as sanctioned by the CCC. A central repository of all projects should be maintained and monitoring and evaluation should be made a part of every project.</p> <p>The results of the nationwide financial capability survey should serve as baseline for the overall evaluation of the financial education program. The results should be widely disseminated and the data made readily available to all relevant stakeholders. The survey should be repeated every 3-5 years to monitor developments and tailor financial education programs accordingly.</p> <p>To support empowerment of consumers, and in cooperation with other stakeholders, the FSB should develop a simple, easily readable guide to financial advice, showing customers what they should expect and what their rights are, striving for the widest possible distribution of the guide.</p> <p>Consumer responsibility must be ensured through client education.</p> <p>See also recommendations under Annex 2.</p>
Good Practice G.2	<p><i>Using a Range of Initiatives and Channels, including the Mass Media</i></p> <ol style="list-style-type: none"> A range of initiatives should be undertaken by the relevant ministry or institution to improve people's financial capability regarding banking products and services. 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. 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	See Annex 2.
Recommendation	See Annex 2.
Good Practice G.3	<p><i>Unbiased Information for Consumers</i></p> <ol style="list-style-type: none"> 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. 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	Again, by the terms of its preamble, a purpose of the CPA is to promote and provide for consumer education, including education concerning the social and economic effects of consumer choices.

Recommendation	See Annex 2.
Good Practice G.4	<i>Consulting Consumers and the Financial Services Industry</i> <ol style="list-style-type: none"> 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. The relevant authority or institution should also undertake consumer testing with a view to ensuring that proposed initiatives have their intended outcomes.
Description	See Annex 2.
Recommendation	See Annex 2.
Good Practice G.5	<i>Measuring the Impact of Financial Capability Initiatives</i> <ol style="list-style-type: none"> 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. The effectiveness of key financial capability initiatives should be evaluated by the relevant authorities or institutions from time to time.
Description	See Annex 2.
Recommendation	See Annex 2.
SECTION H	COMPETITION AND CONSUMER PROTECTION
Good Practice H.1	<i>Regulatory Policy and Competition Policy</i> 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	<p>The stated purpose of the Competition Act (No. 89 of 1998) is to promote and maintain competition in South Africa in order to:</p> <ul style="list-style-type: none"> • promote the efficiency, adaptability and development of the economy; • provide consumers with competitive prices and product choices; • promote employment and advance the social and economic welfare of South Africans; • expand opportunities for South African participation in world markets and recognize the role of foreign competition in the Republic; • ensure that small and medium-sized enterprises have an equitable opportunity to participate in the economy; and • promote a greater spread of ownership, in particular to increase the ownership stakes of historically disadvantaged persons. <p>Although the NCC, the NCR and the Competition Commission are each required by statute to consult with relevant authorities, the aim is nowhere stated to be to ensure the establishment, application and enforcement of consistent policies regarding the regulation of financial services.</p>
Recommendation	Consultations among all relevant authorities and institutions, including the Competition Commission, the National Treasury, FSB, the NCC, the NCR and the Banking Association should be required for the purpose of ensuring the establishment, application and enforcement of consistent policies regarding the regulation of financial services.
Good Practice H.2	<i>Review of Competition</i> Given the significance of retail banking to the economy as a whole and to the welfare of consumers, competition authorities should: <ol style="list-style-type: none"> monitor competition in retail banking; 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 make recommendations publicly available on enhancing competition in retail banking.
Description	<p>In 2003, at the request of the National Treasury, a task group was appointed to report on competition in South African banking. And, with assistance readily provided by SARB, the group's Report was published in April 2004.¹²³ One of various significant findings of this Report was that the fees and charges levied on consumers by their banks were unreasonably high.</p> <p>Subsequently, in 2006, a Research Report was prepared for the Competition Commission of South Africa by FEASibilty (Pty) Ltd, an economic research company headed by Dr. Penelope Hawkins. This Research</p>

¹²³ See: *Competition in South African Banking*, Task Group Report for the National Treasury and the South African Reserve Bank by Falkena, Hans (Chairman); Davel, Gabriel; Hawkins, Penelope; Llewellyn, David; Luus, Christo; Masilela, Elias; Parr, Geoff; Plenaar, Johnny; and Shaw, Henry, April 2004, 162 pages

	<p>Report was commissioned due to on-going public concern about excessive charges being levied by banks and other providers of payment services to consumers.</p> <p>As a result, in August 2006, a formal Banking Enquiry panel was established by the Competition Commission¹²⁴ to enquire into particular aspects of competition in retail banking and the national payment system in South Africa. It completed its work in June 2008 and the Commission released the full, non-confidential, version of the Banking Enquiry Report to the public in December 2008.¹²⁵</p> <p>The Banking Enquiry dealt with such issues as plain language requirements, the facilitation of switching accounts, the basic comparison of costs and the disclosure of costs with the salutatory result that these issues are now dealt with in the soon to-be-agreed revised Code of Banking Practice.</p> <p>That said, there are on-going concerns that the Big Banks collectively corner more than 80% of the traditional retail banking market in the country and share some 90% of the personal transactional account segment. Thus, South Africa's retail banking sector is very concentrated regardless of how the market is defined. And with this market power comes the implicit ability of these banks to maintain prices above competitive levels. In addition to market shares and concentration, competition in the banking sector is also influenced by high barriers to entry. In this regard, work on the Financial Sector Policy outputs in the so-called "sub-Program" devoted to Financial Sector Policy under the National Treasury's Strategic Plan for the period 2011 to 2014¹²⁶ is to be encouraged.</p> <p>One of these Financial Sector Policy outputs consists of "competition and entry into the financial sector". To achieve this, a Dedicated Banks Bill is to be published in 2011/2012, and monitoring the implementation of, the Cooperative Banks Act is to occur in this same timeframe. Then, while it is intended that support for, and monitoring the implementation of, the Cooperative Banks Act will continue in 2012-2013, proposals are to be published for a Deposit Insurance Bill. Finally, in 2013 and 2014, efforts are planned to promote competition and entry into the financial sector. Success in these respects will be measured by the number of smaller banks and non-banks, including dedicated and cooperative banks, which enter South Africa's financial system.</p> <p>In addition, numerous pertinent recommendations from the Banking Enquiry remain to be honored, including in respect of the following:</p> <ul style="list-style-type: none"> - Pricing, penalty fees, ATMs and direct charging; - The standards and criteria required for transparency and disclosure; - The measures needed to reduce costs and improve the comparability of banks' product offerings and prices; - The measures required to reduce switching costs and to assist consumer switching; - The required expansion of the mandate of the OBS; - The needed imposition of a cap on the price of processing rejected debit orders (at approximately R5 per dishonoured item); - The required installation of Banks systems to enable customers to cancel any direct debit instruction at any time by phone, internet or over-the-counter at a branch; - The replacement of the current inter-bank pricing system of carriage with a model of direct charging by ATM stream; - The inauguration and enforcement of an independent, objective and transparent regulatory process for determining interchange in the payment card and other relevant payments' streams; - The alignment of explicit access to finance policies for banks and non-banks; - The development of an access to finance regime that includes non-bank providers of payment services to allow for their participation, under effective regulation and supervision, in both clearing and settlement activities in appropriate low-value, retail payment streams; - Revisions to the National Payment System Act; - The revision to the membership and governance of PASA to include qualified non-bank participants; and - The establishment of a Payment System Ombud.
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¹²⁴ Under in terms of Section 21 of the Competition Act No.89 of 1998

¹²⁵ See: <http://www.compcom.co.za/enquiry-in-to-banking/>

¹²⁶ See: <http://www.treasury.gov.za/publications/strategic%20plan/Strat%20Plan%202011-2014.pdf>

Recommendation	<p>While investment and merchant banking remains the most competitive front in the banking industry, the "big four" banks continue to consolidate their grip on the retail market.</p> <p>Thus, in order to engender much needed competition in the retail banking sector, while at the same time increasing access to deposit services and finance for all South Africans, it is recommended that careful consideration be given to introducing a model of bank licensing based upon the risks a prospective bank will be undertaking. For example, if a company wishes merely to carry out basic retail deposit taking and loan transactions where the net exposure of depositors is minimal, it should not have to face the high hurdle of R250 million by way of start-up capital that is presently imposed on all South African banks.</p> <p>The availability of choice and reasonable fees and charges will undoubtedly increase the well-being of consumers. Other than the various recommendations of the Banking Enquiry that have already been implemented, steps should be taken to ensure that all remaining recommendations in respect of the matters referred to above are carefully considered and acted upon by all relevant authorities and institutions, including, where appropriate, by the Banking Association in terms of amendments to the New Banking Code.</p>
Good Practice H.3	<p><i>Impact of Competition Policy on Consumer Protection</i></p> <p>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.</p>
Description	<p>As indicated above, the Competition Commission has evaluated competition in retail banking in South Africa with this the impact of certain banking practices on consumer welfare and the extent to which these practices adhere to the competition policies of the South African Government. Also, this work inevitably entailed at least some collaboration with other regulatory agencies. The resulting product was and remains a model in these respects.</p> <p>Once the FSB takes responsibility for business conduct regulation of the retail banking sector, further work in this field will inevitably involve close cooperation between the Commission and the FSB.</p>
Recommendation	None

Consumer Protection in the Collective Investment Funds Sector

‘Collective investment scheme’ is defined as a scheme, in whatever form, including an open-ended investment fund, in pursuance of which members of the public are invited or permitted to invest money or other assets in a portfolio by the CISC Act. In South Africa, managers of collective investment schemes (CIS) are mostly members of large financial conglomerates that also offer other financial products and often also include in-house distribution networks. As of June 2011, there were 43 registered CIS managers based in South Africa. Foreign-based collective schemes also have a presence in the market; as of June 2011, there were 63 FSB-approved foreign collective investment schemes available to investors. However, since the registration process for foreign funds is rather extensive, many international CIS players avoid the South African market. Foreign funds thus manage only 4% of total assets under management in CIS schemes in South Africa, creating only very limited competition to the local funds. The table below gives a description of the total assets in the sector, segregated by type of fund.

Table 6: Distribution of Total Assets by Fund Type

	TOTAL ASSETS			
	31/12/2010	31/12/2009	31/12/2008	31/12/2007
	Rm	Rm	Rm	Rm
Domestic funds	891,711	706,273	624,165	609,623
as % of GDP	31.1%	31.7%	28.8%	27.1%
Worldwide funds	6,146	6,177	6,224	7,501
as % of GDP	0.2%	0.3%	0.3%	0.3%
Foreign funds	40,925	36,232	30,812	36,339
as % of GDP	1.4%	1.6%	1.4%	1.6%
Funds of funds	121,516	103,099	98,866	109,842
as % of GDP	4.2%	4.6%	4.6%	4.9%
TOTAL	938,779	786,117	661,201	653,463
as % of GDP	32.8%	35.3%	30.5%	29.0%

Note: "Funds of funds" above contain only a small segment of new money while most of it is covered within the first three categories. Therefore, the total (and the total related to GDP) is lower than the simple total of the four categories.

Source: ASISA

Higher diversity of the CIS market is being achieved by extensive white-labeling of mutual funds, as CIS managers set up mutual funds for financial advisory companies and brand them as requested by the advisors. Financial advisors can then recommend investments into "their" mutual funds without the necessity of a CIS license. Due to the reduced investment burden on clients, the scheme is able to capture low-income pockets where people have fewer financial resources and limited knowledge of the complex products and financial markets. Moreover, since investors have greater flexibility in determining the level of investment in one type of issue, they can more easily diversify their portfolio by buying "units" of different funds.

The CIS industry emerged as one of the few strong areas since the financial crisis that hit both the domestic and global financial markets. Moreover, in 2010, CIS has more than R1 trillion assets under management in domestic funds, of which R109 billion investments were made within the year, showing the

high correlation with the poor performance of the equity markets due the crisis. Both equity and fixed income investment portfolios have been in demand by investors through this period. This was most likely due to the increased interest of investors to make large contributions to Collective Investment Schemes to minimize the risks of the volatile financial markets during the crisis. Collective Investment Scheme in Bonds also has not been performing well since the financial crisis, with some of the schemes closing operations due to lack of improvement in performance.

In South Africa, managers of collective investment schemes (CIS) are mostly members of large financial conglomerates that offer also other financial products and often also include in-house distribution networks. All key CIS managers are members of ASISA, the Association for Savings and Investments South Africa.

Legal and Institutional Framework

The key laws covering the Collective Investment Schemes (CIS) are:

- The Collective Investment Schemes Control Act (Act No. 45 of 2002, Cisca).
- The Financial Advisory and Intermediary Services Act (Act No. 37 of 2002, FAIS Act).
- The Consumer Protection Act, 2009 (CP Act) does not apply to intermediary services regulated by the FAIS Act, for the 18 months from 1 April, 2011. However it does apply to CIS unless exemption is granted by the Minister of Trade and Industry.
- There is a single statutory Ombudsman scheme applicable to the CIS industry, the Financial Advice and Intermediary Services Ombudsman ("FAIS Ombud"), with his powers defined by the Section VI. of the Financial Advisory and Intermediary Services Act.
- The main statutory Codes are the General Code of Conduct for Authorized Financial Services Providers and Representatives (FAIS Conduct Code) and Codes of Conduct for Administrative and Discretionary FSP's.
- There are also numerous voluntary codes, standards and guidelines, mostly created by the former Association of Collective Investments (which is now part of ASISA, the Association for Savings and Investment of South Africa). Most of the voluntary regulations relate to disclosure, fund classification and similar issues.

The Financial Services Board (FSB) is an independent institution that was established to oversee the regulation of non-banking financial services industry; this includes supervision of insurers, fund managers and broking operations, particularly the regulation of Johannesburg Stock Exchange, the country's biggest stock exchange. FSB is mandated to supervise the capital markets, Collective Investment Schemes (CIS), financial service providers, insurers and reinsurers, other credit agents, nominee companies, retirement funds and friendly societies. FSB acts as the Registrar of CIS managers as well as the supervisor for financial advisors that intermediate CIS investments. Thus, FSB has the authority to register, regulate, and inspect collective investment schemes, along with asset managers and certain financial advisors. Within FSB, the CIS are supervised by the CIS department, which focuses on securities, property and participation bonds, issued by both local and foreign institutions. By imposing stringent rules, monitoring compliance by these laws and taking regulatory action whenever necessary, the department also participates in investor protection and promotes a transparent and efficient financial system. The FAIS Department supervises the distributors of CIS.

The Office of the Ombud for Financial Services Providers (FAIS) undertakes disputes pertaining to any financial matter between financial services providers and their clients. Although no fee is charged to the consumer and its service is accessible to all, only cases of up to 800,000 rand monetary cap can be considered through the system. FAIS is an independent authority which was established in 2002 and receives funding from FSB.

Financial Intermediaries Association of Southern Africa (FIAS) represents more than 15,000 licenses financial service advisers in the region. FISA follows a Code of Conduct in representing the large body of members to the financial industry, regulatory bodies and other stakeholders, to protect the rights of its members and promote their interests in the rapidly transforming financial market of South Africa.

Association for Savings and Investments South Africa (ASISA), formed in 2008, represents the majority of savings and investments industry in the country. The association was formed by members of the Association of Collective Investments (ACI), the Investment Management Association of South Africa (IMASA), the Linked Investment Service Providers Association (LISPA) and the Life Offices' Association (LOA); since the formation of ASISA, these associations have closed down and all key CIS managers are now members of ASISA. As a representative of CIS, ASISA works towards a healthy, transparent and sustainable financial environment to promote growth and equal opportunity. ASISA aims to not only represent its members but to also provide investors and regulators a platform for market updates, latest research and statistics on the industry.

Good Practices: Collective Investment Funds Sector

SECTION A	INVESTOR PROTECTION INSTITUTIONS
Good Practice A.1	<p>Consumer Protection Regime</p> <p>The law should provide for clear rules on investor protection in the area of securities markets products and services, and there should be adequate institutional arrangements for the implementation and enforcement of investor protection rules.</p> <ol style="list-style-type: none"> There should be specific legal provisions which create an effective regime for the protection of investors in securities. There should be a governmental agency responsible for data collection and analysis (including complaints, disputes and inquiries) and for the oversight and enforcement of investor protection laws and regulations.
Description	<p>The consumer protection in the securities sector (in the terms of the collective investment schemes, as other areas of the securities sector are outside the scope of this review) is based on two key laws – the Collective Investment Schemes Control Act (CISCA), providing the rules for establishment, operation and supervision of Collective Investment vehicles, and the Financial Advisory and Intermediary Services (FAIS) Act (Act No. 37 of 2002), providing additional rules for advising on and selling of collective investment products to the general public.</p> <p>The Consumer Protection Act also has its role in strengthening the position of consumers in financial services. However, there are significant uncertainties regarding the jurisdiction of the CP Act in relation to CIS. For further details on the CP Act and its interaction with the financial sector legislation, please see the Annex to the Banking Section of this report.</p> <p>Section 2 (1) of CISCA requires Collective Investment Schemes (CIS) managers to conduct their business:</p> <ul style="list-style-type: none"> honestly and fairly with skill, care and diligence in the interest of investors and the CIS industry <p>Section 4 of CISCA provides further guidelines on the duties of the CIS manager in securities, and Section 5 of CISCA provides further guidelines on the duties of the CIS manager in property.</p> <p>CISCA also provides standard protection of client funds by requiring that the assets of the investors must be properly protected by application of the principle of segregation and identification, thus making sure that in case of bankruptcy of the CIS, client investments are protected and can be either paid out or transferred to another CIS operator. Unlike in several other jurisdictions (e.g. the European Union under the Markets in Financial Instruments Directive), CISCA rules provide the same protection to all investors, retail and professional alike.</p> <p>The CIS industry is regulated by the Collective Investment Scheme department of the Financial Services Board. In the terms of reporting, the CIS department receives on a monthly basis the capital adequacy reports to constantly monitor whether the CIS manager has enough capital to run the CIS. On a quarterly</p>

	<p>basis, the CIS department receives portfolio holding reports to ensure that the manager adheres to the limits as prescribed in the legislation and annually the CIS department monitors the annual statements of the CIS manager and of its portfolios.</p> <p>Besides reviewing regulatory filings, the FSB developed an active on-site visit program of CIS based on a risk-based approach. As there are only 43 domestic CIS managers registered with the FSB, the supervisor is able to conduct a hands-on supervision of all institutions. However, as demand for white-label funds grows in South Africa, the FSB should make sure there is no confusion of consumers as to who actually provides CIS management services of these white-label funds. There are also 63 foreign CIS managers whose funds have been approved for distribution in South Africa by the FSB. When compared with hundreds of large foreign CIS managers, the number is very low and opening of the market to more foreign CIS should increase competition and provide investors with improved choice.</p> <p>However, continuous attention should be paid to sufficient capacity and proper alignment of the priorities of the CIS department compared to the overall FSB priorities, especially with the upcoming implementation of the Treating consumers fairly (TCF) approach. TCF will require an updated approach to supervision and the CIS staff at the FSB should be preparing with new supervisory rules and with inspection staff being trained. Also, the CIS department should be seen by the industry as using its enforcement powers rigorously and effectively.</p> <p>The FSB enforcement powers were significantly strengthened with the creation of the Enforcement Committee (established by the Financial Institutions (Protection of Funds) Act, 2001) that has jurisdiction for all FSB-administered laws since 2009. The Enforcement Committee is an administrative body established to adjudicate on all alleged contraventions of legislation, regulations, codes of conduct, etc. administered by the Financial Services Board. The Committee may impose unlimited penalties, compensation orders and cost orders. Such orders are enforceable as if it was a judgment of the Supreme Court of South Africa. Transcripts of the Committee's determinations are publicly available at the FSB website to improve public awareness of actions taken against financial institutions.</p> <p>Financial Advice and Intermediary Services Act</p> <p>The relevant rules are contained in the <i>“General code of conduct for authorised financial services providers and representatives”</i> made under s. 15 of the FAIS Act (FAIS Code). This Code is binding on authorised financial services providers and their representatives (s. 15(1)(b)). In summary, it regulates the conduct of financial services providers and their representatives who provide advice to clients and intermediary related services.</p> <p>To begin with, it is important to note the following definitions that are critical for an understanding of the Code:</p> <p><i>“direct marketing” means the rendering of financial services by way of telephone, internet, media insert, direct mail, or electronic mail, excluding any such means which are advertisements not containing transaction requirements.</i></p> <p><i>“provider” means an authorized financial services provider, and includes a representative;</i> (s. 1(1) of the FAIS Code).</p> <p>Also relevant are the following definitions in s. 1(1) of the FAIS Act:</p> <p><i>“financial services provider” means any person, other than a representative, who as a regular feature of the business of such person -</i></p> <ul style="list-style-type: none"> <i>(a) furnishes advice; or</i> <i>(b) furnishes advice and renders any intermediary service; or</i> <i>(c) renders an intermediary service;”</i> <p><i>“advice” means, subject to subsection (3)(a), any recommendation, guidance or proposal of a financial nature furnished, by any means or medium, to any client or group of clients -</i></p> <ul style="list-style-type: none"> <i>(a) in respect of the purchase of any financial product; or</i> <i>(b) in respect of the investment in any financial product; or</i> <i>(c) on the conclusion of any other transaction, including a loan or cession, aimed at the incurring of any liability or the acquisition of any right or benefit in respect of any financial product; or</i>
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	<p>(d) on the variation of any term or condition applying to a financial product, on the replacement of any such product, or on the termination of any purchase of or investment in any such product, and irrespective of whether or not such advice –</p> <ul style="list-style-type: none"> • is furnished in the course of or incidental to financial planning in connection with the affairs of the client; or • results in any such purchase, investment, transaction, variation, replacement or termination, as the case may be, being effected; <p>“intermediary service” means, subject to subsection (3)(b), any act other than the furnishing of advice, performed by a person for or on behalf of a client or product supplier –</p> <p>(a) the result of which is that a client may enter into, offers to enter into or enters into any transaction in respect of a financial product with a product supplier; or</p> <p>(b) with a view to –</p> <ul style="list-style-type: none"> • buying, selling or otherwise dealing in (whether on a discretionary or non-discretionary basis), managing, administering, keeping in safe custody, maintaining or servicing a <i>financial product</i> purchased by a client from a product supplier or in which the client has invested; • collecting or accounting for premiums or other moneys payable by the client to a product supplier in respect of a financial product; or • receiving, submitting or processing the claims of a client against a product supplier; <p>“representative” means any person, including a person employed or mandated by such first-mentioned person, who renders a financial service to a client for or on behalf of a financial services provider, in terms of conditions of employment or any other mandate, but excludes a person rendering clerical, technical, administrative, legal, accounting or other service in a subsidiary or subordinate capacity, which service –</p> <p>(a) does not require judgment on the part of the latter person; or</p> <p>(b) does not lead a client to any specific transaction in respect of a financial product in response to general enquiries ;</p> <p>“Product supplier” means any person who issues a financial product by virtue of an authority, approval or right granted to such person under any law, including the Companies Act, 1973 (Act No. 62 of 1973)</p> <p>The following is a simplified high level summary of relevant provisions of the FAIS Code which have potential to apply to the CIS sector in relation to the information, disclosure and contractual practices the subject of this Good Practice. The following is a list of obligations which apply to a provider other than a direct marketer:</p> <ul style="list-style-type: none"> • A provider must ensure that representations to a client meet certain standards In particular, they must be factually correct, be in plain language, adequate and appropriate “taking into account the factually established or reasonably assumed level of knowledge of the client;”, express monetary obligations in monetary terms unless to do so is not reasonably determinable in which case a method of calculation must be given). Importantly, there is an obligation to ensure that representations must be “provided timeously so as to afford the client reasonably sufficient time to make an informed decision about the proposed transaction” (s. 3(1)(a)); • Actual or potential conflicts of interest must be disclosed and there is an obligation to “take all reasonable steps to ensure fair treatment of the policyholder” (s. 3(1) (b) and (c)); • The interests of the policy holder appropriate priority over those of the provider (s. 3.1(d)); • Transactions must be accounted for ((s. 3(1)(e)); • The provider must not act on information not known to the policy holder which could affect the costs to the client (s. 3(1)(f)); • Record keeping – the requirement is to keep disclosure records at least five years after termination of the financial service (if known to the provider) or completion of the service and these records must be made available on request to the client (s. 3(2)); • Privacy – there are confidentiality obligations imposed on the provider (s. 3(2)); • Information on product supplier – certain information must be given to the client “at the earliest reasonable opportunity,” about the product supplier, contractual relationships between the product supplier and the provider and an obligation on providers not to make, in effect, unfair comparisons between products (s. 4(1)); • Comparisons: there is an obligation on providers to make comparisons in the interests of the concerned client and not to make, in effect, unfair comparisons between products (s. 4(3) and (4));
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	<ul style="list-style-type: none"> • Information on provider – certain information must be given to the client “<i>at the earliest reasonable opportunity</i>,” about the provider (s. 5); • Information about the financial service: extensive information must be given to the client about the service “<i>at the earliest reasonable opportunity</i>,” including information about name, class or type of service, any investment component, monetary obligations to the provider and the product supplier, exclusions, waiting periods, minimum benefits, guarantees, tax considerations and cooling off rights (s. 7 (1)); • Blank forms: there is a prohibition on providers requesting a client to sign a blank or incomplete form (s. 7(2)); • Statements of account – they must be provided on request by a provider (s. 7(3)) • Advice - there are extensive obligations on a provider to determine the suitability of advice which is provided before actually providing the advice, to take reasonable steps to ensure that the client understands the advice, to ensure that the client understands the implications of not providing full information and to make and maintain a record of the advice and give to give it to the client in writing (however there is no requirement to provide the record before the financial service is acquired) (ss. 3(2), 8 & 9). <p>The following obligations also apply to a provider:</p> <ul style="list-style-type: none"> • Advertising: there are obligations to ensure that advertising by any provider is not untrue, false or misleading, contains warnings about any forecasts, projections, references to past and future performances and prominently displays any reference to the risks with any product (s. 14(1)); • Telephone records: advice provided by telephone must be recorded and provided to the client and the Registrar on request within 7 days of the request. Further, certain basic information must be given about the provides (s. 14(2)); and • Radio: any radio advertisement must contain the business name of the provider (s. 14(3)). <p>The following obligations apply to a direct marketer (i.e. a provider who provides a financial service otherwise than on a face to face basis):</p> <ul style="list-style-type: none"> • Information on product supplier: certain information must be given to the client “<i>at the earliest reasonable opportunity</i>,” about the direct marketer (s.15(1)). • Advice by direct marketer: a direct marketer (i.e. a provider who provides a financial service otherwise than on a face to face basis) advising a client must make enquiries as to whether a financial service is appropriate and must provide the client with information about the product supplier, the nature, class or type of the financial product, the nature and extent of benefits and how they are calculated, monetary obligations, cooling off rights and material risks. This information must be provided “<i>at the earliest reasonable opportunity</i>”. (s. 15(2)). These obligations are less extensive than those that apply when advice is given directly to a client (i.e. not by direct marketing). For example, there is no requirement to take reasonable steps to ensure that the client understands the advice or the implications of not providing full information (s. 7(1)) and 8 of the FAIS Code). (see s. 7(1)) and 8). • Further information from a direct marketer: additional information must be provided on the product supplier’s details, the extent to which a product is realizable, how benefits will be paid, early termination restrictions and charges, amounts payable to the direct marketer, on request past investment performance, consequences of non-compliance with contractual obligations, “abbreviated information” about premium increases, “concise details” of restrictions such as exclusions and penalties, guaranteed minimum benefits and advice about the recording of telephone calls (s. 15(3)). <p>Consumer Protection Act (CP Act)</p> <p>The Banking Sector Section contains a detailed summary of the CP Act. Accordingly the following is only a simplified high level summary of provisions of the CPA which have potential to apply to the CIS sector in relation to the information, disclosure and contractual practices the subject of this Good Practice. The relevant provisions apply to:</p> <ul style="list-style-type: none"> • Protection against discriminatory marketing (s.8); • The right to receive information in plain and understandable language (s. 22); • The obligation not to charge more than the displayed cost of a service (such as an advertised premium) (s. 23); • The prohibition against false, misleading and deceptive representations and agreements (ss. 29, 41and 51);
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	<ul style="list-style-type: none"> • The right to rescind an agreement in the specified cooling off period (ss. 16 and 29) (see also Good Practice A.4 'Licensing'); • Unconscionable conduct (s. 40); • Fraudulent schemes and offers (s. 42); • Pyramid and related schemes (s. 43); • Unfair, unreasonable and unjust contract terms (s. 48); • The obligation to draw certain provisions to the attention of the consumer, such as limitations of liability and an assumption of risk by the consumer (s. 49).
Recommendation	<ol style="list-style-type: none"> 1. Clarity must be achieved as to the interaction between the Consumer Protection Act and the financial services legislation, between the Consumer Protection Commission and the FSB and the various ombud schemes. 2. The laws applying to the financial sector should be consolidated under the jurisdiction of a single regulator. The regulator should probably be the FSB under the new Twin Peaks regulatory scheme which has been proposed. In order to achieve this outcome, it seems clear from the consultative process that the FSB will need extensive additional resources to supervise and enforce the new laws and extensive retraining of the staff to implement TCF into the supervisory processes. 3. Rules for white-labeling of mutual funds should be defined and implemented so that investors are not confused as to the real operator of the CIS. CIS license holders that white-label funds for third parties should be responsible for proper conduct of portfolio management of the funds and for all compliance issues. There should be additional disclosure helping the investors understand whom to approach in cases of complaints. 4. The South African CIS market should be opened more to the foreign CIS managers registered at markets with strong supervisory regime (e.g. the European Union or the United States). A two-tier approach might be introduced as the first step, with passport-holding foreign funds only available as investments of funds of funds (under certain total threshold of foreign funds in the portfolio) and full registration procedure for funds that would be directly marketed to investors. 5. CIS and FAIS departments of FSB should conduct regular yearly analysis of their supervisory capacity and react quickly should any gaps be identified. CIS managers should undergo comprehensive onsite visits every year, as well as medium and high risk FAIS providers.
Good Practice A.2	<p><i>Code of Conduct for Securities Intermediaries, Investment Advisers and Collective Investment Undertakings</i></p> <ol style="list-style-type: none"> a. Securities intermediaries, investment advisers and CIUs should have a voluntary code of conduct. b. If such a code of conduct exists, securities intermediaries, investment advisers and CIUs should publicize the code to the general public through appropriate means. c. Securities Intermediaries, Investment Advisers and CIUs should comply with the code and an appropriate mechanism should be in place to provide incentives to comply with the code.
Description	<p>The principal relevant Codes are the following:</p> <ul style="list-style-type: none"> • The binding FAIS Code (see the description of this Code in Good Practice A.2 'Code of Conduct'); • The binding Codes of Conduct for Administrative and Discretionary FSP's which are made under s. 15 of the FAIS Act; • Numerous voluntary codes, standards and guidelines, mostly created by the former Association of Collective Investments (which is now included into ASISA). <p>FAIS Code</p> <p>This Code is binding on authorised financial services providers and their representatives (s. 15(1)(b)). In summary, it regulates the conduct of financial services providers and their representatives who provide advice to clients and intermediary related services.</p> <p>See the description of this Code in Good Practice A.2. The Code contains extensive provisions which are relevant in the consumer protection area for regulated providers and their representatives.</p> <p>Codes of Conduct for Administrative and Discretionary FSP's</p> <p>These Codes (ADFSP Codes) are made under s. 15 of the FAIS Act and have the force of law. They apply to financial service providers who carry out specialised functions in relation to any type of financial services. Both codes have a similar objective "to ensure that clients to whom financial services are rendered, subject to the provisions of this Code will be able to make informed decisions, that their financial needs regarding financial products are appropriately and suitably satisfied and that for those purposes, administrative FSP's and their representatives are obliged to comply with the provisions of this Code."</p> <p>The following definitions are relevant for the purposes of the Codes:</p>

	<p><i>"administrative FSP" means a FSP, other than a discretionary FSP— that renders intermediary services in respect of financial products referred to in paragraphs (a), (b), (c) (excluding any short-term insurance contract or policy referred to therein), (d) and (e), read with paragraphs (h), (i) and (f) of the definition of "financial product" in section 1(1) of the Act, on the instructions of a client or another FSP and through the method of bulking; and acting for that purpose specifically in accordance with the provisions of this Code, read with the Act, the General Code (where applicable), and any other applicable law;</i></p> <p><i>"bulking" means the aggregation by an administrative FSP of-</i></p> <p><i>a) clients' funds when buying or investing in financial products on behalf of clients, and the subsequent allocation of such financial products to each client separately in the records of the FSP;</i></p> <p><i>b) the financial products belonging to clients when selling such financial products on their behalf, and the subsequent allocation of the proceeds of such sale to each client separately in the records of the FSP;</i></p> <p><i>"discretionary FSP" means a FSP-</i></p> <p><i>a) that renders intermediary services of a discretionary nature as regards the choice of a particular financial product referred to in the definition of "administrative FSP" in this subsection, but without implementing any bulking; and</i></p> <p><i>b) acting for that purpose specifically in accordance with the provisions of the Code set out in Chapter II of this Schedule, read with the Act, the General Code (where applicable) and any other applicable law;</i></p> <p>In summary, the Code of Conduct for Administrative FSP's has the following rules (in summary):</p> <ul style="list-style-type: none"> • Prohibitions: there are prohibitions on disclosing client data to third parties, on netting of transactions, and on exercising certain votes on behalf of a client and providing certain information to the client (s. 3); • Dealing with authorized persons: an FSP must ensure, if they deal with a person who is providing intermediary services on behalf of another person, that the latter person is authorized as required (s. 4); • Agreement and mandate: there must be a signed written agreement with a client containing certain matters, including information about the client's mandate who is authorized to operate the account, costs, fees and benefits, the giving of instructions and the name in which products will be held. This agreement must be in a standard form approved by the Registrar (s. 5); and • Termination of client mandate: there are obligations to return cash, provide a statement and to ensure that the independent nominee returns relevant financial products and documents of title (s. 6); • Record keeping: there are requirements to maintain records in relation to a client's financial products (s. 7); • Insurance: the FSP must maintain suitable guarantees or professional indemnity or fidelity insurance cover (s.8); • Nominee agreements: an administrative FSP must maintain an agreement with a custodian to hold clients' financial products as a nominee (s. 9); • Reporting to clients: in summary, the rules are that clients must be given information on request and at 3 monthly intervals such as to enable financial records to be kept and the determination of the composition and market value of the investment and any changes over the period (s. 10) <p>Code of Conduct for Discretionary FSP's</p> <p>Many of the provisions in this Code are similar to those in the Code of Conduct for Administrative FSP's. Highlighted below are the more significant differences:</p> <ul style="list-style-type: none"> • Information for client: a client must be given, on request and in a comprehensible and timely manner, any reasonable information regarding the financial products of the client, market practices and the risks inherent in the different markets and products (s. 4(a)); • Product suitability: before an agreement is made with a client, the FSP must obtain information about the client's financial circumstances, needs and objectives and other relevant information and identify the financial products that best suit the client (s. 4(b)); • Agreement and mandate: there must be a signed written agreement with a client containing certain matters, including those mentioned above in relation to an administrative FSP and details of investment objectives and a statement about risks (s. 5); • Reporting to clients: the rules about reporting to clients are similar to those mentioned above in relation to an administrative FSP. However additional information must be provided in relation to financial products bought and sold , cash receipts and payments, non-cash transactions, profits and losses and there must be detailed information about foreign financial products (s. 6); and
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	<ul style="list-style-type: none"> • Hedge Funds FSPs: there are also requirements for additional information which must be given about hedge fund FSPs. <p>Voluntary Codes of Conduct, standards and guidelines, prepared by the former Association of Collective Investments (ACI)</p> <p>The ACI prepared various Codes, Standards and Guidelines during the course of its existence. However, the ACI has now been merged into ASISA and, as a result, these Codes are being reviewed, combined and removed.</p> <p>ASISA, the Association for Savings and Investment of South Africa, was formed in 2008 by members of the Association of Collective Investments (ACI), the Investment Management Association of South Africa (IMASA), the Linked Investment Service Providers Association (LISPA) and the Life Offices' Association (LOA).</p> <p>The founding associations used to operate many self-regulatory codes and recommendations but lately, competition issues were raised in relation to self-regulation. Therefore, all ASISA Codes, Standards and Guidelines are now considered to be voluntary recommendations only, pending a three-step approach:</p> <ul style="list-style-type: none"> • review all existing Codes, Standards and Guidelines and update, combine or remove them to have a limited number of Codes, Standards and Guidelines with as wide-ranging validity as possible • work with the Competition Commission to ensure compliance of the Codes, Standards and Guidelines with the Competition Act • involve the FSB as a counterparty to get input and support for the Codes, Standards and Guidelines, utilizing FSB knowledge of current market issues and its supervisory experience
Recommendation	<ol style="list-style-type: none"> 1. The Competition Commission should speedily provide rulings on ASISA self-regulatory documents. 2. Legal provisions should be enacted to allow the FSB to officially approve ASISA self-regulatory documents, making them officially acceptable industry standards. 3. ASISA Codes, Standards and Guidelines should be binding to all ASISA members, with ASISA having sufficient disciplinary powers to assure compliance with the standards. 4. Should non-members of ASISA decide not to comply with FSB-approved ASISA Codes, Standards and Guidelines, they should include in their disclosure materials and on their websites information about areas where they are non-compliant, including explanation of reasons for non-compliance. The same information should be filed with the FSB and should be taken into account when defining risk profiles of supervised institutions.
Good Practice A.3	<p>Other Institutional Arrangements</p> <ol style="list-style-type: none"> a. The judicial system should provide an efficient and trusted venue for the enforcement of laws and regulations on investor protection. b. The media should play an active role in promoting investor protection. c. The private sector, including voluntary investor protection organizations, industry associations and, where permitted, self-regulatory organizations should play an active role in promoting investor protection.
Description	<p>In terms of section 15 (1) (a) and (b) of CISC, the Registrar after an investigation may apply to the court for a winding-up or judicial management order in respect of the manager or of a CIS as if he or she were a creditor thereof. According to the section 15 (1) (c) of CISC, the Registrar may also apply to the court under Section 5 of the Financial Institutions (Protection of Funds) Act (Act No. 28 of 2001) for the appointment of a curator for the business of the manager or for the business of a portfolio. However, all the above mentioned options involve a court decision which takes time. There are also no provisions that would allow the Registrar to transfer the management of CIS funds to another CIS license holder, thus allowing for an uninterrupted management of funds.</p> <p>If any person feels aggrieved by certain decisions of the FSB (i.e. Registrar of Securities Services), it may refer the matter to the Appeal Board of the FSB. The judicial process is also available should the aggrieved party not be satisfied with the decision of the Appeal Board. The Financial Institutions (Protection of Funds) Act in its section 6D provides that the Enforcement Committee, established in terms of the Financial Services Board Act, may apply administrative sanctions for contraventions of FSB administered legislation. In terms of section 6D of the Financial Institutions Act, the Enforcement Committee may impose a monetary fine or order for the respondent to pay damages. However, in the terms of access to justice by customers, many interviews conducted by the World Bank team had pointed out the fact that using courts is expensive for individuals and that it is not an option pursued by many. Therefore, a well-designed system of ombuds with full coverage of the financial sector, is of utmost importance in the terms of access to justice.</p>

	<p>The media in South Africa follow consumer protection issues quite closely, especially with help of active consumer protection organizations. There is also a wide range of radio programs on consumer protection issues, as well as TV programs.</p> <p>Investor protection issues in the private sector are dealt with both at the industry and by ASISA. ASISA can thus cover issues of financial products producers from a wider perspective than only one sector, making it a more effective partner for a regulatory dialogue and self-regulatory activities. ASISA also operates several consumer education programs and this area of its operation could be strengthened.</p> <p>There are also several strong consumer organizations that are active in the area of financial services (e.g. the National Consumer Forum or the South Africa National Consumer Union) and should form a counterpart to the industry associations in regulatory dialogue and in the development and application of consumer protection rules. Representatives of consumer associations also regularly serve as board members of various voluntary ombuds. However, their resources seem to be rather thin which limits their impact on provision of financial services.</p>
Recommendation	<ol style="list-style-type: none"> 1. The Registrar should be given power to nominate a curator or transfer funds to another CIS operator if the immediate action is in the best interest of CIS clients. The Registrar's decision could be appealed at the High Court but the appeal could not stay the decision of the Registrar. 2. All the ombuds and the FSB should publish summaries of its rulings and "lessons learned" in plain language, allowing both the media and the public better understand its decisions. Also, the ombuds should proactively use case decisions in the media to promote consumer-friendly behavior of financial institutions and improve financial education and understanding of consumer rights of the public. 3. ASISA should either coordinate member activities in financial education under the Financial Services Charter (where financial institutions committed to invest 0.2% of their profits into financial education programs) or establish a foundation that would receive at least a part of the member contributions and use the money to operate especially long-term projects supporting consumer protection. 4. The government (primarily the National Treasury and the FSB) should support consumer groups that are active in the area of financial services and help develop their capabilities to serve as counterparts of financial industry associations in regulatory dialogue and in ensuring effective consumer protection for consumers of financial services.
Good Practice A.4	<p>Licensing</p> <ol style="list-style-type: none"> a. All legal entities or physical persons that, for the purpose of investment in financial instruments, solicit funds from the public should be obliged to obtain a license from the supervisory authority. b. Legal entities or physical persons that give investment advice and hold customer assets should be licensed by the securities supervisory authority. c. If a jurisdiction does not require licensing for legal entities or physical persons that give only investment advice, such persons should be supervised by an industry association or self-regulatory organization and the anti-fraud provisions of the securities laws or other consumer laws should apply to the activity of such persons.
Description	<p>All entities that solicit funds from the public are required to obtain a license from the Financial Services Board as the supervisory agency.</p> <p>In order to obtain authorization to represent the CIS, applicants must satisfy the Registrar of Financial Services Providers that the entity as well as its key individuals (persons managing and overseeing the rendering of financial services) comply with the fit and proper requirements as detailed in the Determination of Fit and Proper Requirements for Financial Services Providers, 2008, issued by the Financial Services Board under the Financial Advisory and Intermediary Services Act of 2002.</p> <p>The Determination of Fit and Proper Requirements is divided into four main areas that are considered when an application for licensing of an entity or approval of a key individual is considered by the FSB, namely:</p> <ul style="list-style-type: none"> • honesty and integrity; • competence and; • operational ability; and • financial soundness. <p>As for the licensing of the CIS distributors, financial advisers and intermediaries must meet extensive competency and operational ability requirements under the <i>Determination of Fit and Proper Requirements</i></p>

<p>for <i>Financial Services Providers, 2008</i>, made pursuant to section 8(1) of the FAIS Act. These requirements relate to the following matters for a financial services provider, a representative and a key individual:</p> <ul style="list-style-type: none"> • Personal character qualities of honesty and integrity (Part II); • Competency Requirements: in summary an applicant for registration as a financial services provider must meet minimum experience and applicable qualification requirements and must have completed the relevant regulatory examinations before the Registrar will approve the appointment. The exams are required to relate to the rendering of financial services applicable to specific categories or subcategories to clients and factual knowledge of the law (Parts III to V); • Continuous professional development (CPD): the Registrar may also prescribe CPD requirements (Part VII); • Operational ability: there are detailed requirements for operational matters, including requirements for basic operational resources, detailed service level agreements with outsourced service providers, extensive internal controls, system controls and compliance measures, record keeping and key individuals (Part VIII); and • Financial soundness: these requirements relate to certain asset ratios and other financial matters (Part IX). <p>There are five categories of licenses (defined in the Article 1(1) of the Determination of Fit and Proper Requirements that an applicant can apply for. All applicants as well as nominated key individuals must comply with the above fit and proper requirements. In the area of honesty and integrity, the FSB may use any information in its possession or brought to its attention (as stated in the Article 2 (1)). The list in Article 2 (3) only lists examples but the FSB has been provided with enough flexibility to act on any information it has about the individual.</p> <p>As for specific educational qualifications and experience, key individuals of financial service providers are required to have at least one year practical experience in the managing and oversight of a business Article 4 (1) (c), and where a key individual also fulfills the role of the representative, he/she is also required to have a minimum level of experience in respect of all the specific financial products in which he/she intends to render financial services (6 months to 3 years). For the experience to be valid, the Registrar requires references from previous employers to confirm the applicant's experience. The experience can be gained either within or outside South Africa as long as it is relevant to the area to be covered by the person in his position.</p> <p>The key individual must meet the competence requirements at date of application for approval as a key individual. For investment advisers the competence requirements consist of:</p> <ol style="list-style-type: none"> a. relevant experience, b. a recognized qualification(s); and c. the regulatory examination(s) as applicable to the regulatory role of the key individual/representative. <p>The regulatory examinations refer to examinations prescribed by the Registrar, set in accordance with the qualifying criteria for the purpose of meeting the competency requirements of this Determination.</p> <p>There are two levels of Regulatory Examinations, i.e. Regulatory Examination level 1 and Regulatory Examination level 2:</p> <ul style="list-style-type: none"> • Regulatory Examination level 1 focuses in particular on testing the application of factual knowledge of key individuals in relation to their regulatory role and responsibility as a key individual, the relevant legal provisions, their appreciation of the legal meaning and implications of these provisions, and their ability to apply these provisions correctly. • Regulatory Examination level 2 is product specific, and focuses in particular on product knowledge as it relates to the various subcategories of financial products, and the processes and procedures that should be followed for each financial product when rendering financial services or giving advice in relation to the specific financial products. <p>At the time of this review, Regulatory Examination level 1 was being conducted, with all financial advisors and key individuals required to pass the examination by December 31, 2011.</p> <p>In the area of anti-fraud prevention and prevention of deceptive conduct the Registrar may (in terms of section 14 of CISCA) conduct an investigation into the business of a persona, whether registered or authorized in terms of CISCA or not, who is involved in the administration of the CIS or soliciting of investment in a CIS. In addition to the powers and duties conferred or imposed upon him by CISCA, the Registrar has, in respect of a person referred above, all the powers and duties conferred or imposed upon him by the Inspection of Financial Institutions Act, 1998.</p>

Recommendation	<ol style="list-style-type: none"> 1. Establish a task-force to monitor the regulatory exams and proactively act on any findings in the terms of pass rates, examinatory capacity before the deadlines and the added value the design and content of the exams bring to improved provision of financial services, especially in the terms of client interaction. 2. Consider defining education of key individuals and representatives as one of the responsibilities of the financial institution they work for, with the FSB approving education programs, licensing trainers and monitoring their conduct. The education programs should focus on improving provision of financial services and better financial advice capability of representatives.
SECTION B	DISCLOSURE AND SALES PRACTICES
Good Practice B.1	<p>General Practices</p> <p>There should be disclosure principles that cover an investor's relationship with a person offering to buy or sell securities, buying or selling securities, or providing investment advice, in all three stages of such relationship: pre-sale, point of sale, and post-sale.</p> <ol style="list-style-type: none"> a. The information available and provided to an investor should inform the investor of: <ol style="list-style-type: none"> i) the choice of accounts, products and services; ii) the characteristics of each type of account, product or service; iii) the risks and consequences of purchasing each type of account, product or service; iv) the risks and consequences of using leverage, often called margin, in purchasing or selling securities or other financial products; and v) the specific risks of investing in derivative products, such as options and futures. b. A securities intermediary, investment adviser or CIU should be legally responsible for all statements made in marketing and sales materials related to its products. c. A natural or legal person acting as the representative or tied-agent of a securities intermediary, investment adviser or CIU should disclose to an investor whether the person is licensed to act as such a representative and who licenses the person. d. If a securities intermediary, investment adviser or CIU delegates or outsources any of its functions or activities to another legal entity or physical person, such delegation or outsourcing should be fully disclosed to the investor, including whether the person to whom such function or activity is delegated is licensed to act in such capacity and who licenses the person.
Description	<p>As for the disclosure principles that apply to pre-sale, point of sale and post-sale aspects of the relationship, section 3 of CISCA requires that the investor must be given "information that is necessary to enable the investor to make an informed decision, timeously and in a comprehensible manner", before entering into a transaction.</p> <p>The FAIS Act imposes extensive disclosure obligations on any person providing advice or intermediary services (both widely defined to include all marketing or promotional activity) in respect of any financial product, with specific additional obligations regarding investment products (which would include CIS). Key rules are defined in the FAIS General Code of Conduct, in particular section 3 (1) (a), section 7 and section 14, with specific rules defined by the FAIS Code of Conduct for Administrative and Discretionary financial service providers (FSP), which imposes further obligations on platform providers (administrative FSPs) and investment managers (discretionary FSPs).</p> <p>The Collective Investment Schemes Control Act (Section 3) prescribes general disclosure obligations for CIS managers and Section 100 provides for specific information to be included in any price list, advertisement, brochure or similar document published by a manager or by any of its authorized agents.</p> <p>The CISCA also provides that the Registrar may license an association of CIS managers (Sections 25 to 38), and one of the criteria for granting such a license is that the association's Rules must provide, to the Registrar's satisfaction, for disclosure of information, including the risks an investor is exposed to (see Schedule 4 of CISCA).</p>
Recommendation	<ol style="list-style-type: none"> 1. Regularly test understandability of disclosure materials for an average client and strive to make disclosure as understandable as possible. 2. Legally bind representatives selling the products to explain disclosure material to ensure consumers understand the content and implications of disclosed information. 3. Update supervisory processes to effectively monitor proper disclosure, including proper explanation of disclosed facts, and use appropriate sanctions when disclosure requirements are not met.
Good Practice B.2	Terms and Conditions

	<p>a. Before commencing a relationship with an investor, a securities intermediary, investment adviser or CIU should provide the investor with a copy of its general terms and conditions, as well as any terms and conditions that apply to the particular account.</p> <p>b. The terms and conditions should always be in a font size and spacing that facilitates easy reading.</p> <p>c. The terms and conditions should disclose:</p> <ul style="list-style-type: none"> (i) details of the general charges; (ii) the complaints procedure; (iii) information about any compensation scheme that the securities intermediary or CIU is a member of, and an outline of the action and remedies which the investor may take in the event of default by the securities intermediary or CIU; (iv) the methods of computing interest rates paid or charged; (v) any relevant non-interest charges or fees related to the product; (vi) any service charges; (vii) the details of the terms of any leverage or margin being offered to the client and how the leverage functions; (viii) any restrictions on account transfers; and (ix) the procedures for closing an account.
Description	For detailed description, see the section above. Disclosure requirements do not cover all of the items above and do not provide for minimum size or specific layout to facilitate comprehension.
Recommendation	<ol style="list-style-type: none"> 1. Based on consultations with the CIS and FAIS industries, the FSB should either develop a model disclosure for main product lines or approve self-regulatory disclosure rules prepared jointly by ASISA and FAIS associations. Approval of self-regulatory disclosure rules by the FSB should make them binding to all market participants. 2. Regularly test understandability of disclosure materials for an average client and strive to make disclosure as understandable as possible. 3. Legally bind representatives selling the products to explain disclosure material to ensure consumers understand the content and implications of disclosed information. Establish supervisory procedures to monitor compliance with the requirement.
Good Practice B.3	<p>Professional Competence</p> <p>Regulators should establish and administer minimum competency requirements for the sales staff of securities intermediaries, investment advisers and CIUs, and collaborate with industry associations where appropriate.</p>
Description	The professional competence requirements are described in Section A.4 above.
Recommendation	See Section A.4 above.
Good Practice B.4	<p>Know Your Customer (KYC)</p> <p>Before providing a product or service to an investor, a securities intermediary, adviser or CIU should obtain, record and retain sufficient information to enable it to form a professional view of the investor's background, financial condition, investment experience and attitude toward risk in order to enable it to provide a recommendation, product or service appropriate to that investor.</p>
Description	<p>Section 3 (2) of the FAIS General Code of Conduct requires that:</p> <ol style="list-style-type: none"> a) A provider must have appropriate procedures and systems in place to: <ul style="list-style-type: none"> i) record such verbal and written communications relating to a financial service rendered to a client as are contemplated in the Act, this Code or any other Code drafted in terms of section 15 of the Act; ii) store and retrieve such records and any other material documentation relating to the client or financial service rendered to the client; and iii) keep such client records and documentation safe from destruction. b) All such records must be kept for a period of five years after termination, to the knowledge of the provider, of the product concerned or, in any other case, after the rendering of the financial service concerned. c) Providers are not required to keep the records themselves but must ensure that they are available for inspection within seven days of the registrar's request. d) Records may be kept in an appropriate electronic or recorded format, which are accessible and readily reducible to written or printed form.
Recommendation	A copy of a record of advice be required to be given to, and signed by, the client in all cases with another copy maintained for at least 5 years after the relationship between the customer and financial advisor ended. This record should be required to be expressed in clear language and at least in 10 point font.
Good Practice B.5	Suitability

	A securities intermediary, investment adviser or CIU should ensure that, taking into account the facts disclosed by the investor and other relevant facts about that investor of which it is aware, any recommendation, product or service offered to the investor is suitable to that investor.
Description	<p>The Financial Services Board published an informative document Treating Consumers Fairly (TCF): The Roadmap in March 2011. Although the TCF initiative does include an outcome to the effect that any advice provided must be appropriate to the consumer's needs, this is already regulated in detail under FAIS, which sets out detailed requirements for a suitability analysis (including but not limited to risk profiling) of the client to be undertaken before providing any advice (sections 8 and 9 of the FAIS General Code of Conduct, as well as sections 15 (2) (a), 15 (2) (c) and 15 (4) in respect of direct marketers).</p> <p>As the FAIS Department at FSB uses a comprehensive risk-based monitoring program of supervised FAIS providers, on-site reviews include reviews of advice protocols, client files, records of advice, etc. The FAIS department at the FSB performs on-site inspections at about 400-500 FAIS licensees a year, focusing primarily on internal risk management and control systems, segregation of assets and compliance operations.</p> <p>The FAIS Ombud also frequently investigates individual complaints relating to inappropriate advice and typically analyses the quality of the suitability analysis conducted. The TCF program will further enhance consumer protection around suitability of products offered by imposing an obligation on product manufacturers themselves to ensure that the products and promotional materials are appropriately targeted to identified target markets (as opposed to specific individual needs, which remains the responsibility of the adviser).</p>
Recommendation	<ol style="list-style-type: none"> 1. Step up monitoring of the suitability of advice provided during onsite inspection of FAIS and develop skills at the FSB for more efficient supervision in this area, focusing on whether the client really understands disclosure material provided and the services provided. 2. The FSB and the FAIS Ombud should, in cooperation with the FAIS industry association and other industry associations if possible, develop a short, plain language guide to financial advice. 3. Have the FSB and the FAIS Ombud regularly publish plain language examples of inappropriate advice as part of their financial capability building of South Africans.
Good Practice B.6	<p>Sales Practices</p> <ol style="list-style-type: none"> a. Legislation and regulations should contain clear rules on improper sales practices in the solicitation, sale and purchase of securities. Thus, securities intermediaries, investment advisers, CIUs and their sales representatives should: <ol style="list-style-type: none"> (i) Not use high-pressure sales tactics; (ii) Not engage in misrepresentations and half truths as to products being sold; (iii) Fully disclose the risks of investing in a financial product being sold; (iv) Not discount or disparage warnings or cautionary statements in written sales literature; (v) Not exclude or restrict, or seek to exclude or restrict, any legal liability or duty of care to an investor, except where permitted by applicable legislation. b. Legislation and regulations should provide sanctions for improper sales practices. c. The securities supervisory agency should have broad powers to investigate fraudulent schemes.
Description	These issues are largely dealt with in the FAIS Act or FAIS Code and the voluntary industry codes. However, supervision of compliance with the rules is limited and often based on complaints lodged with the FSB or the FAIS Ombud.
Recommendation	No recommendation.
Good Practice B.7	<p>Advertising and Sales Materials</p> <ol style="list-style-type: none"> a. All marketing and sales materials should be in plain language and understandable by the average investor. b. Securities intermediaries, investment advisers, CIUs and their sales representatives should ensure their advertising and sales materials and procedures do not mislead the customers. c. Securities intermediaries, investment advisers and CIUs should disclose in all advertising, including print, television and radio, the fact that they are regulated and by whom.
Description	Section 3 of CISCA requires that the investor must be given "information that is necessary to enable the investor to make an informed decision, timeously and in a comprehensible manner", before entering into a transaction. While this broad definition leaves specific way of fulfillment to each CIS, there are no regulations as to specific warnings a potential investor should be given, neither any rules regarding specific size of these warnings.

	<p>Section 106 of CISCA prohibits the making of false and misleading statements or dissemination of information, which should be reasonably known to be false or misleading, to induce persons to deal in a participatory interest or to inflate, depress or maintain the price of a participatory interest.</p> <p>Section 107 of CISCA prohibits anyone from inducing another person to purchase or deal in a participatory interest by making or publishing a misleading, false or deceptive statement, promise or forecast; or by concealing material information.</p> <p>Section 109 of CISCA provides that the Registrar may charge that a person who contravenes or fails to comply with any provision of CISCA or any rule or directive of an association, or regulation, notice or directive is liable to any person for any loss or damage suffered by the person as a result of such contravention or failure.</p> <p>All CIS are also required to disclose in all forms of advertising and in sales materials that they are regulated by the FSB, thus pointing out to whom a consumer should address his concerns.</p> <p>The FAIS Code expressly states that advertisements “<i>must not contain any statement, promise or forecast which is fraudulent, untrue or misleading</i>” (s. 14(1)(a)). There are also extensive provisions requiring warnings about projected returns and other matters” (s. 14(1)(b)).</p> <p>The FAIS Act also gives the Registrar the potential to debar a representative for failure to comply with the Act (including the FAIS Code) and to seek civil and criminal sanctions (ss. 14A, 32, 34 and 36). This should have the effect of making an insurer liable for a failure to comply with the above provisions.</p>
Recommendation	<ol style="list-style-type: none"> 1. The FSB should institute a monitoring process for advertising and its understandability. 2. Alternatively, the FSB should empower ASISA to monitor advertising and companies' compliance with the plain language requirement. 3. Warnings about risks of investment products (i.e. that the invested capital or returns are not guaranteed – unless there is a specific guarantee – and that the investor can suffer a loss due to market fluctuations) should be included in all print advertisements as well as in point-of-sale materials, with FSB-defined wording and minimum size of print to make the warnings readable and clearly visible in the materials.
Good Practice B.8	<p><i>Relationships and Conflicts</i></p> <ol style="list-style-type: none"> a. A securities intermediary, investment adviser or CIU should disclose to its clients all relationships that it has which impact on the client's account, such as banks, custodians, advisers or intermediaries which are used to maintain and manage the account. b. A securities intermediary, investment adviser or CIU should disclose all conflicts of interest that it has with the client and the manner in which the conflict is being managed.
Description	<p>An integral part of the contract materials for a securities investment is an agreement about fees payable to the financial advisor. The CIS then acts on these instructions and deducts agreed sums from money invested by the client.</p> <p>A portion of the industry (anecdotal evidence suggests slightly over 50% of the market) also pays additional bonuses to advisors, usually based on volume of new sales or assets under management brought by the advisor. These arrangements are not disclosed to the client.</p>
Recommendation	Regulation should outlaw any motivational systems for distributors besides a clearly defined fee that is agreed between the client and the adviser at the time of contract conclusion or contract update.
Good Practice B.9	<p><i>Specific Disclosures by CIUs</i></p> <ol style="list-style-type: none"> a. CIUs should disclose to prospective and existing investors: <ol style="list-style-type: none"> (i) the CIU's policies with regard to frequent trading and the risks to investors from such policies; (ii) any inducements that it receives to use particular intermediaries or other financial firms, such as “soft-money” arrangements; and (iii) a fair and honest description of the performance of the CIU's investments over several different periods of time that accurately reflect the CIU's performance. b. In addition, a CIU should provide a Key Facts Statement for each fund that it is offering to the client that succinctly explains the fund in clear language. Such document is in addition to any other disclosure documents required by law.
Description	The FAIS General Code of Conduct imposes specific obligations on intermediaries (as opposed to the CIS managers themselves) to disclose details of rebates or platform fees (see section 7 (1) (c) (iii) (dd) and (ee)).

	<p>In the Part 3A, the FAIS General Code also requires disclosure of any actual or potential conflicts of interest, and directly prohibits certain types of incentives received or provided to third parties (which would include CIS managers). The Collective Investment Schemes Control Act also prescribes specific information about (inter alia) trading practices to be included in the Deed of the CIS scheme (See Schedules 1 and 2 of CISCA).</p> <p>There are no provisions specifically designed for a unified Key Facts Statement or a mutual fund fact sheet but the various disclosure requirements described above would apply to fund fact sheets. ASISA is also currently working on developing unified disclosure rules for its members, including the CIS.</p>
Recommendation	ASISA should develop and submit to the FSB for approval, a Key Facts Statement, using plain language, standardized vocabulary and standardized computations. The format should also be standardized. After approval by the FSB, all CIS should be required to provide all clients with these Key Facts Statements.
Good Practice B.10	<p>Specific Disclosures by Investment Advisers</p> <p>a. Investment advisers should disclose to prospective and existing clients:</p> <p>(i) whether the investment adviser is also registered in another capacity and whether the adviser deals with the client's account in the second registered capacity; and</p> <p>(ii) whether the financial instruments that the investment adviser is recommending are held in the adviser's own inventory or the inventory of a legal or natural person related to the adviser and will be bought from or sold to its own inventory or the inventory of a related party.</p> <p>b. An investment adviser should provide prospective and existing clients with a Key Facts Statement for each product or service that is being offered or sold to the client that succinctly explains the product or service in clear language.</p>
Description	<p>As for point (a), see the disclosure requirements described above.</p> <p>As for point (b), all mutual funds offer fund factsheets but more work should be done, probably on ASISA level, to standardize both the content and format to make factsheets easily comparable.</p>
Recommendation	ASISA should – in cooperation with financial advisor associations and consumer groups if possible – develop a standardized Key Facts Statement for all CIS products, with focus on standardized vocabulary, standardized format and understandable content.
SECTION C	CUSTOMER ACCOUNT HANDLING AND MAINTENANCE
Good Practice C.1	<p>Segregation of Funds</p> <p>Funds of investors should be segregated from the funds of all other market participants.</p>
Description	Under the terms of section 2 (2) of CISCA, the assets of investors must be properly protected by means of segregation and identification. Section 105 of CISCA further defines the separation of funds of investors and other persons, with regulation on par with international standards.
Recommendation	No recommendation.
Good Practice C.2	<p>Contract Note</p> <p>a. Investors should receive a detailed contract note from a securities intermediary or CIU confirming and containing the characteristics of each trade executed with them, or on their behalf.</p> <p>b. The contract note should disclose the commission received by the securities intermediary, CIU and their sales representatives, as well as the total expense ratio (expressed as total expenses as a percentage of total assets purchased).</p> <p>c. In addition, the contract note should indicate the trading venue where the transaction took place and whether (i) the intermediary for the transaction acted as a broker in the trade, (ii) the intermediary or CIU acted as the counterparty to its customer in the trade, or (iii) the trade was conducted internally in the intermediary between its clients.</p>
Description	<p>In terms of the clause "units to be sold only on payment in full" in the deed, a manager must issue a purchase note or statement of account to a purchaser reflecting the sale of relevant participatory interest in the CIS.</p> <p>Furthermore, the clause "Certificate" in the deed requires a manager to issue a certificate or statement representing the said participatory interest in the name of the investor. A certificate must, for each portfolio, contain at least the serial number of the certificate, the number of participatory interest, the full name and address of the investor, the name and address of the manager and the trustee and the date on which the name of the investor has been entered in the register as the investor represented by the certificate.</p> <p>The note also has to state the commission paid to the CIS or the sales representative as a percent of total assets purchased. ASISA (the industry association) has also developed standards of costs disclosure,</p>

	focusing on disclosing fees directly in rand wherever applicable and using percentages only as a second option.
Recommendation	No recommendation.
Good Practice C.3	<p>Statements</p> <p>a. An investor should receive periodic, streamlined statements for each account with a securities intermediary or CIU, providing the complete details of account activity in an easy-to-read format.</p> <ul style="list-style-type: none"> (i) Timely delivery of periodic securities and CIU statements pertaining to the accounts should be made. (ii) Investors should have a means to dispute the accuracy of the transactions recorded in the statement within a stipulated period. (iii) When an investor signs up for paperless statements, such statements should also be in an easy-to-read and readily understandable format. <p>b. If a legal or natural person who provides only investment advice to customers also holds client assets, the client statements should be prepared by and sent from the custodian for the assets and not from the investment adviser.</p>
Description	<p>In terms of the clause "units to be sold only on payment in full" in the deed, a manager must issue a purchase note or statement of account to a purchaser reflecting the sale of relevant participatory interest. Furthermore, the clause "Certificate" in the deed requires a manager to issue a certificate or statement representing the said participatory interest in the name of the investor. A certificate must, for each portfolio, contain at least the serial number of the certificate, the number of participatory interest, the full name and address of the investor, the name and address of the manager and the trustee and the date on which the name of the investor has been entered in the register as the investor represented by the certificate.</p> <p>If the investor wants to dispute the accuracy of statements, he should approach the CIS manager. If the complaint is not resolved to his satisfaction, he can then approach the FAIS Ombudsman.</p>
Recommendation	No recommendation.
Good Practice C.4	<p>Prompt Payment and Transfer of Funds</p> <p>When an investor requests the payment of funds in his or her account, or the transfer of funds and assets to another securities intermediary or CIU, the payment or transfer should be made promptly.</p>
Description	<p>In terms of the clause "Manager to repurchase participatory interests" in the deed, it is incumbent on a manager to repurchase any number of participatory interests offered to it by an investor. For this purpose, the manager must determine a point in time by when repurchase requests must be received for the purpose of determining a valuation point to be used for the pricing calculation on a pricing date, which valuation point may not be more than 24 hours prior or after the time when repurchase requests must have been received.</p> <p>The clause "Date of payment of repurchase price" in the deed provides that the payment in respect of an offer for the repurchase of a participatory interest must be made to the holder of such participatory interest within days of the receipt of such offer.</p>
Recommendation	No recommendation.
Good Practice C.5	<p>Investor Records</p> <p>a. A securities intermediary, investment adviser or CIU should maintain up-to-date investor records containing at least the following:</p> <ul style="list-style-type: none"> (i) a copy of all documents required for investor identification and profile; (ii) the investor's contact details; (iii) all contract notices and periodic statements provided to the investor; (iv) details of advice, products and services provided to the investor; (v) details of all information provided to the investor in relation to the advice, products and services provided to the investor; (vi) all correspondence with the investor; (vii) all documents or applications completed or signed by the investor; (viii) copies of all original documents submitted by the investor in support of an application for the provision of advice, products or services; (ix) all other information concerning the investor which the securities intermediary or CIU is required to keep by law; (x) all other information which the securities intermediary or CIU obtains regarding the investor.

	b. Details of individual transactions should be retained for a reasonable number of years after the date of the transaction. All other records required under a. to j. above should be retained for a reasonable number of years from the date the relationship with the investor ends. Investor records should be complete and readily accessible.
Description	Section 4 (4) (b) require the CIS manager to keep proper records. The minimum for which the records should be kept is not set.
Recommendation	The FSB should set minimum times for record keeping.
SECTION D	PRIVACY AND DATA PROTECTION
Good Practice D.1	<i>Confidentiality and Security of Customers' Information</i> Investors of a securities intermediary, investment adviser or CIU have a right to expect that their financial activities will remain private and not subject to unwarranted private and governmental scrutiny. The law should require that securities intermediaries, investment advisers and CIUs take sufficient steps to protect the confidentiality and security of a customer's information against any anticipated threats or hazards to the security or integrity of such information, and against unauthorized access to, or use of, customer information.
Description	AIS Code, Section 3 (3) says that a provider may not disclose any confidential information acquired or obtained from a client or, subject to section 4 (1), a product supplier in regard to such client or supplier, unless the written consent of the client or product supplier, as the case may be, has been obtained beforehand or disclosure of the information is required in the public interest or under any law. A new draft of data protection law (the so-called Protection of Personal Information Act) is currently being discussed. The law should implement OECD principles on personal data protection, including the possibility to seek damaged for lost or misused personal information.
Recommendation	No recommendation.
Good Practice D.2	<i>Sharing Customer's Information</i> Securities intermediaries and CIUs should: (i) inform an investor of third-party dealings in which they are required to share information regarding the investor's account, such as legal enquiries by a credit bureau, unless the law provides otherwise; (ii) explain how they use and share an investor's personal information; (iii) allow an investor to stop or "opt out" of certain information sharing, such as selling or sharing account or personal information to outside companies that are not affiliated with them, for the purpose of telemarketing or direct mail marketing, and inform the investor of this option.
Description	See Annex 1.
Recommendation	No recommendation.
Good Practice D.3	<i>Permitted Disclosures</i> a. If there are to be any specific procedures and exceptions concerning the release of customer financial records to government authorities, these procedures and exceptions should be stated in the law. b. The law should provide for penalties for breach of investor confidentiality.
Description	See point D.1 for more information.
Recommendation	No recommendation.
SECTION E	DISPUTE RESOLUTION MECHANISMS
Good Practice E.1	<i>Internal Dispute Settlement</i> a. An internal avenue for claim and dispute resolution practices within a securities intermediary, investment adviser or CIU should be required by the securities supervisory agency. b. Securities intermediaries, investment advisers and CIUs should provide designated employees available to investors for inquiries and complaints. c. Securities intermediaries, investment advisers and CIUs should inform their investors of the internal procedures on dispute resolution. d. The securities supervisory agency should provide oversight on whether securities intermediaries, registered investment advisers and CIUs comply with their internal procedures on investor protection rules.
Description	Under the determination of fit and proper requirements and conditions for managers of CIS regulation, the CIS manager is required to establish internal dispute resolution mechanism. Each CIS thus must have a designated employee for enquiries and complaints and investors must be informed about internal dispute resolution and claim procedures. To make sure the internal system is in place and operating properly, the FSB assesses the compliance to these regulations during the on-site visits. Under the Financial Institutions Act (Section 6) the Registrar

	<p>may also approach the High Court to compel a financial institution to comply with the law, an instruction of the Registrar or for a declaratory order. The Registrar may also publish a statement indicating that a financial institution is believed to have contravened the law. In terms of Section 6A, the Registrar may also refer the matter to the Enforcement Committee, if the law in question does not enable the Registrar to impose an administrative penalty.</p> <p>If an individual is not satisfied with how his complaint was handled by the CIS, he can bring his case to the FAIS Ombud or approach the CIS department at the FSB. In 2010, the CIS department at the FSB dealt with only eight complaints from customers.</p>
Recommendation	No recommendation.
Good Practice E.2	<p>Formal Dispute Settlement Mechanisms</p> <p>There should be an independent dispute resolution system for resolving disputes that investors have with their securities intermediaries, investment advisers and CIUs.</p> <ol style="list-style-type: none"> A system should be in place to allow investors to seek third-party recourse, such as an ombudsman or arbitration court, in the event the complaint with their securities intermediary, investment adviser or CIU is not resolved to their satisfaction in accordance with internal procedure, and it should be made known to the public. The independent dispute resolution system should be impartial and independent from the appointing authority and the industry. The decisions of the independent dispute resolution system should be binding on the securities intermediaries and CIUs. The mechanisms to ensure the enforcement of these decisions should be established and publicized.
Description	No explicit reference is made to an ombudsman or another independent dispute resolution system in CISCA. In the absence of the recognized ombudsman scheme, the statutory ombudsman (the FAIS ombud) has the jurisdiction. The ombud system of South Africa is reasonably well-known to the public and most financial institutions inform their clients about relevant ombudsman service. The FAIS ombudsman is a statutory ombudsman and thus is required to be impartial and independent. His decisions are binding on the CIS and his enforcement mechanisms are public.
Recommendation	For recommendations, see the separate Annex regarding the system of ombuds in South Africa.
SECTION F	GUARANTEE SCHEMES AND INSOLVENCY
Good Practice F.1	<p>Investor Protection</p> <ol style="list-style-type: none"> There should be clear provisions in the law to ensure that the regulatory authority can take prompt corrective action on a timely basis in the event of distress at a securities intermediary, investment adviser or CIU. 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. 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. The legal provisions on the insolvency of securities intermediaries, investment advisers and CIUs should provide for expeditious, cost-effective and equitable provisions to enable the timely payment of funds and transfer of financial instruments to investors by the insolvency trustee of a securities intermediary or CIU.
Description	<p>If a CIS becomes distressed, the Registrar starts an investigation under Section 14 of CISCA. Based on the investigation findings, the Registrar may direct a manager to withdraw from the administration of a CIS, whereupon the trustee or custodian must in accordance with the Registrar's directions but subject to CISCA arrange for another manager to take over the administration of the CIS.</p> <p>According to the section 15 (1) (c) of CISCA, the Registrar may also apply to the court under Section 5 of the Financial Institutions (Protection of Funds) Act (Act No. 28 of 2001) for the appointment of a curator for the business of the manager or for the business of a portfolio.</p> <p>There are no provisions regarding guarantee schemes.</p>
Recommendation	The Registrar should be given power to nominate a curator or transfer funds to another CIS operator if the immediate action is in the best interest of CIS clients. The Registrar's decision could be appealed at the High Court but the appeal could not stay the decision of the Registrar.
SECTION G	CONSUMER EMPOWERMENT
Good Practice G.1	<p>Broadly based Financial Capability Program</p> <ol style="list-style-type: none"> A broadly based program of financial education and information should be developed to increase the financial capability of the population.

	<ul style="list-style-type: none"> 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	<p>The FSB's Consumer Education Department conducts extensive awareness and education campaigns regarding the importance of budgeting, saving and simple financial planning in general, which includes basic information regarding the types of savings products available.</p> <p>The Collective Investment Schemes Control Act provides that CIS managers must promote investor education, either directly or through initiatives undertaken by an association. The Act also caters for licensing of an association, subject to stated criteria (Sections 25 to 38 and Schedule 4).</p>
Recommendation	For recommendations in this area, see annex on financial education.
Good Practice G.2	<p><i>Using a Range of Initiatives and Channels, including the Mass Media</i></p> <ul style="list-style-type: none"> a. A range of initiatives should be undertaken to improve people's financial capability. b. This should include encouraging the mass media to provide financial education, information and guidance.
Description	For more information, see the annex on financial education.
Recommendation	For recommendations in this area, see the annex on financial education.
Good Practice G.3	<p><i>Unbiased Information for Investors</i></p> <ul style="list-style-type: none"> a. Financial regulators should provide, via the internet and printed publications, independent information on the key features, benefits and risks—and where practicable the costs—of the main types of financial products and services. b. Non-governmental organizations should be encouraged to provide consumer awareness programs to the public regarding financial products and services.
Description	For more information, see the annex on financial education.
Recommendation	For recommendations in this area, see the annex on financial education.
Good Practice G.4	<p><i>Measuring the Impact of Financial Capability Initiatives</i></p> <ul style="list-style-type: none"> a. The financial capability of consumers should be measured through a broad-based household survey that is repeated from time to time. b. The effectiveness of key financial capability initiatives should be evaluated.
Description	For more information, see the annex on financial education.
Recommendation	For recommendations in this area, see the annex on financial education.

Consumer Protection in the Insurance Sector

The South African insurance industry is a major financial service sector that caters to a very diverse and large market, divided broadly into three categories: one, high net worth individuals who demand sophisticated products and services; two, traditional investors who are a part of the normal economy and take up modern, well-developed products and prefer a mix of traditional and unit-linked savings vehicles as well as up-to-date protection policies; finally, the small but gradually growing market of lower income groups as micro-insurance and financial inclusion become significant mandates of insurance providers. The industry caters to these segments through long-term and short-term insurance products, also referred to as life and non-life insurance products. Insurance penetration—premiums in relation to GDP—is third highest globally at 15.3 percent of GDP (2008)¹²⁷. Overall, insurance contributes between 2 percent and 2.5 percent of South African GDP. Moreover, a few key players capture most of the insurance industry, leading to a high level of concentration and interconnectedness.

Table 7: Premium Income v GDP: Long-Term Insurers (in billion ZAR)

	2007	2008	2009
Premium Income	226.1	253.7	207.8
GDP %	11.21%	11.52%	8.58%

Source: Financial Services Board Annual Report 2009

Table 8: Premium Income v GDP: Short-Term Insurers (in billion ZAR)

	2009	2008	2007
Premium Income	68.1	61.8	58.4
GDP %	2.81%	2.81%	2.90%

Source: Financial Services Board Annual Report 2009

Within the industry, long-term insurance market is much larger, with total assets worth 80 per cent of GDP, which is higher than both total pension fund assets and aggregate mutual funds, and about two-thirds of total banking sector assets. The large of retirement savings market is the biggest contributor to the large size of the long-term insurance sector; retirement funds are underwritten, and often also established and managed by insurance companies, adding to almost 50 per cent of total assets of long-term insurance firms. Liberty Group, Momentum Group, Old Mutual and Sanlam, and Metropolitan are the leading long-term insurance firms. Old Mutual, the leading firm in number of total assets, owned total assets worth 443.14 billion ZAR in 2010 and worth 408.33 billion ZAR in 2009; Sanlam' total assets were worth 303.41 billion ZAR in 2010 and 282.46 billion ZAR in 2009; Momentum Group, an international company with branches in South Africa, owned total assets worth 198.87 billion ZAR in 2010 and total assets worth 187.69 billion ZAR in 2009; Liberty Group' total assets were worth 186.27 billion ZAR in 2010 and 172.82 billion ZAR in 2009.

Table 9: Insurance Market Size in 2009

	Life	Non-life	Personal accident and health	Total market
Premium in ZAR mn	292,808.53	46,967.49	82,730.98	422,507.00
Premium in USD mn	34,554.98	5,542.74	9,763.27	49,860.99

¹²⁷ "South Africa: Report on the Observance of Standards and Codes on Banking Supervision, Insurance Supervision, and Securities' Regulation", December 2010 <<http://www.imf.org/external/pubs/ft/scr/2010/cr10352.pdf>>

% of total market	69.30	11.12	19.58	100.00
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Source: AXCO 2011, "Insurance Market Report"

Table 10: Number of insurers: Long-Term Insurers

The number of long-term insurers registered as at 31 March 2010- 2008 was as follows:

Types of Long-Term Insurers	2010¹²⁸	2009¹²⁹	2008¹³⁰
Typical insurers	30	31	26
Niche insurers	8	9	9
Linked insurers	15	15	15
Cell captive insurers	7	7	7
Assistance insurers	10	10	10
Insurers in run-off	9	9	9
Reinsurers			
Long-term only	3	3	3
Long- and short-term (composite)	3	4	3
TOTAL	85	88	82

Source: Financial Services Board Annual Report 2009

The short-term insurance industry, as of 2010, had a total market share of 56.4 billion ZAR, based on GWP, with a few key players capturing majority of the market. Mutual & Federal, Santam, Hollard and Zurich, a Switzerland headquartered insurance firm, have been the major players capturing 60% of the market in 2010. The short-term insurance division of Mutual and Federal Insurance had total assets worth 8.62 billion ZAR in 2010 and 8.19 billion ZAR in 2009; short-term insurance division of Santam had total assets worth 14.23 billion ZAR in 2010 and 14.33 billion ZAR in 2009; and short-term insurance division of Zurich had total assets worth 4.69 billion ZAR in 2010 and 4.11 billion ZAR in 2009.

Table 11: Market share based on GWP: Short-term insurance industry

	2008		2009		2010	
	Market Share %	Market share in R	Market Share %	Market share in R	Market Share %	Market share in R
Absa	5.4%	275.4	5.6%	3046.4	6.2%	3496.8
AIG	3%	153	6.7%	3644.8	7.2%	4060.8
Auto & General	6.4%	326.4	3.3%	1795.2	3.4%	1917.6
Guardrisk	4.7%	239.7	4.6%	2502.4	5.4%	3045.6
Hollard	8.6%	438.6	8.7%	4732.8	9.2%	5188.8
Mutual & Federal	16.9%	861.9	14.5%	7888	14%	7896
Regent	3.4%	173.4	3.3%	1795.2	3%	1692
Santam	27.5%	1402.5	27.8%	15123.2	28.5%	16074
Zurich	10.1%	515.1	9.2%	5004.8	7.5%	4230
Other	14.1%	719.1	16.4%	8921.6	15.6%	8798.4
TOTAL	100%	5100	100%	54400	100%	56400

Source: KPMG, "The South African Insurance Industry Survey" 2010, 2009

¹²⁸ Source: Financial Services Board Annual Report 2010, page 40

¹²⁹ Source: Financial Services Board Annual Report 2010, page 40

¹³⁰ Source: Financial Services Board Annual Report 2009, page 39

Given the vast network in the country, the industry has been relatively resilient to the impacts of the recent financial crisis. In 2009, the premium on life insurance grew by 11.54% compared to in 2008, placing South Africa to the 13th ranked country in the world for premium volume for life business. In non-life insurance sector, a similar steady growth was visible; compared to 2008, the gross written non-life premiums increased by approximately 10.2%, amounting ZAR 68.1bn (USD 8.04bn), excluding SASRIA Ltd.

As more insurers enter the low income segments, insurers are catering to their specific needs by offering regular investment and protection policies as well as customized policies, especially through micro-insurance products. Micro-insurance has experienced a greater success in life insurance, however, the market for non-life insurance is also picking up as households acquire more valuable assets. Insurance providers are also creating customized products such as funeral policies to cater to niche demands of low income groups. Customers are also offered a wide range of riders such as for fatal accident, permanent disability, dreaded disease, waiver of premiums, advance underwriting, funeral benefits for the extended family and inflation increases that apply to both premium and sums assured. In 2007, following the Financial Sector Charter, the new Zimele brand was launched with the purpose of catering to the 17.5 million people with incomes of less than ZAR 3,000 (USD 366) per month. Zimele products are required to follow a prescribed set of standards regarding fair charges, easy access and decent terms in line with the FSC requirements of accessibility, appropriateness, simplicity and affordability.

The insurance sector in South Africa is well regulated, providing for a transparent, ethical, stable and smooth functioning market across sectors. Through its insurance division, Financial Services Board supervises the long-term and short-term insurance industries, for both life and non-life insurance markets. The provisions for this supervision are laid under the terms of the Long-term Insurance Act 52 of 1998 (LTIA 98) and the Short-term Insurance Act 53 of 1998. To keep the regulatory procedures in line with the rapidly changing insurance market, FSB is initiating a new Solvency Assessment and Management (SAM) regime for both long-term and short-term insurers. Moreover, the current regulatory framework for the insurance sector should be modified, if necessary, to improve the support for provision of appropriate insurance products to low-income South African households. SAIA recently approved a new code of conduct applicable to short-term insurers to promote standardized self-regulatory mechanism, focusing on a transparent and ethical practice from not only by the signatory insurers but also by their contracted associates. To incorporate the agenda of corporate governance in the insurance industry, the 'Code of and Report on Governance Principles for South Africa' is followed by a number of insurance firms, which is a set of guidelines in use in previous version since 1994.

Legal and Institutional Framework

Short-Term Insurance Act, 1998 applies to insurers who provide: an engineering policy, a guarantee policy, a liability policy, a miscellaneous policy, a motor policy, an accident and health policy, a property policy, a transportation policy or any combination (s. 1(1)). However it does not apply to various insurance products. They include those the subject of the Land Bank Act, certain agricultural co-operatives registered under the Co-operatives Act, an unemployment insurance fund established under the Unemployment Insurance Act or a collective bargaining agreement under the Labour Act.

Long-Term Insurance Act, 1998 applies to insurers who provide: an assistance policy (up to R10,000), a disability policy, a fund policy, a health policy, a life policy or a sinking fund policy or a combination of any of them (s.1). However it does not apply to various insurance products. They include those the subject of the Land Bank Act, certain agricultural co-operatives registered under the Co-operatives Act, or a collective bargaining agreement under the Labour Act.

Friendly Societies Act, 1956 provides for the registration and supervision of a “friendly society” which is defined to mean, in summary, an association of persons established for the specified purposes and a related business (s. 1(1)). Insurance cover provided by a registered friendly society is not subject to the STI Act or the LTI Act where the value of the benefits does not exceed R5,000 or another prescribed amount (s.7(2)(b)(ii) in the LTI Act and s. 7 (2)(c) in the STI Act)

Medical Aid Schemes Act, 1998 provides for the registration and conduct of medical schemes. It prevails over the STI Act and the LTI Act. However the future of this legislation is not clear in light of the 11 August 2011 release of the Green Paper on National Health Insurance (NHI). However this is seen as being a multi - year project so it is premature to comment on its implications for consumers at this stage.

Financial Advisory and Intermediary Services Act, 2002 regulates the conduct of financial services providers and their representatives who provide advice and client or provider related services. It applies in relation to services covered by the STI Act, the LTI Act, the PF Act and the MS Act.

Labour Relations Act, 1995: Insurance cover may be provided in a fund established pursuant to a collective agreement referred to in section 23 of the Act. Such an agreement may be negotiated by trade union Bargaining Council established under s. 28 of the Act. However there is an exemption from the requirements of the STI Act, the LTI Act and the FAIS Act for the providers of any Bargaining Council Agreement (respectively ss. 7(2)(c) in each of the STI and LTI Acts and s.1 of the FAIS Act and especially the definitions of “advice” and “financial product”; **Land Bank Act, 1944:** Land and Agriculture Bank of South Africa does not need to comply with the registration requirements of the STI Act or the LTI Act in relation to any insurance business it may provide in so far as it acts in accordance with the Land Bank Act (ss. 7(2)(h) and 7(2) (e) respectively); **Co-operatives Act, 2005:** A registered co-operative may provide certain insurance services. However both the STI Act and the LTI Act provide an exemption from the registration requirement for an agricultural co-operative registered under the Act to the extent that it provides the relevant category of insurance on the basis that benefits are not guaranteed and in respect of which liability is limited to the amount standing to the credit of a fund specially maintained for the purpose (ss. 7(2) (f) and 7(2) (g) respectively). In addition, the Financial Services Ombud Schemes Act, 2004 makes provision for the recognition of voluntary ombudsman schemes, such as those relating to the STI Ombudsman and the LTI Ombudsman. The Consumer Protection Act, 2009 makes provision for the certification of voluntary ombudsman schemes. The National Credit Act, 2005 applies to credit insurance products. The Unemployment Insurance Act, 1966 makes provision for the establishment of an unemployment insurance fund. However the STI Act does not apply to the providers of such a fund (s.7 (2) (g)). Note that the CPA does not apply to long term and short term insurance or intermediary services regulated respectively by the STI Act, the LTI Act and the FAIS Act, for 18 months from April 1, 2011.

The Financial Services Board (FSB) is a unique and independent institution that was established to oversee the regulation of non-banking financial services industry; this includes supervision of insurers, fund managers and broking operations, particularly the regulation of Johannesburg Stock Exchange, the country’s biggest stock exchange. FSB is mandated to supervise the capital markets, CIS, financial service providers, insurers and reinsurers, other credit agents, nominee companies, retirement funds and friendly societies. By imposing stringent rules, monitoring compliance by these laws and taking regulatory action whenever necessary, the department also participates in investor protection and promotes a transparent and efficient financial system. FSB regulates the insurance industry according to the regulations set by Registrar of Short-term Insurance Act (1998), Long-Term Insurance Act (1998), Friendly Societies Act (1956), Financial Advisory and Intermediary Services Act (2002) and Financial Services Ombud Schemes Act (2004), and reports to Minister of Finance and National Treasury under this function. FSB applies these responsibilities through the Registrar of Short-Term Insurance and Registrar of Long-term Insurance.

National Consumer Commission (NCC) was established with broad powers to enforce the wide-ranging rights this statute provides consumers. These include the right to equality in the consumer market, privacy, the exercise of freedom of choice, disclosure and information, fair and responsible marketing, fair and honest dealing, fair value and fair, just and reasonable terms and conditions. With this mandate, NCC under consumer protection issues in insurance sector and exercises regulatory rights as assigned to it under the Consumer Protection Act (2009).¹³¹

National Credit Regulator (NCR) is the regulatory body for the credit industry in South Africa. NCR is mandate to promote education, research and policy development in the credit industry, while also executing the functions of registering industry participants, investigating any complaints and ensuring enforcement of the regulations as prescribed by the National Credit Act, 2005; NCR also focuses on expanding access of credit market.

Council for Medical Schemes provides regulatory supervision of financial products in the medical field, particularly private health financing through medical schemes. The Council undertakes cases dealing with the 110 medical schemes in South Africa that cater to approximately 8.1 million beneficiaries, with a total annual contribution of about R84.9 billion, as of 2010. The Council was created under the Minister of Health and conducts the supervisory role as outlined by the Medical Schemes Act; **Registrar of Labour Relations maintains records of trade unions, employers' organizations, federations of trade unions, federations of employers' organizations, and councils.** The Registrar maintains these records and additional responsibilities assigned to it, according to the Registrar by the Labour Relations Acts (1995); **Unemployment Insurance Commissioner supervises the setting-up, payment, and enforcement of the Unemployment Insurance Fund.** The Minister of Labour assigns an employee of the Department of Labour as the Unemployment Insurance Commissioner who conducts supervisory proceedings according the Amended Unemployment Insurance (UIF) Act.

South African Insurance Association (SAIA) promotes and represents the short-term insurance industry to all stakeholders, including government policy-makers. With a total of 60 members currently, SAIA represents most of the short-term insurance industry on issues pertaining to goodwill, legal affairs, motor insurance and reinsurance, Short-term Insurance Data Exchange (STRIDE), Solvency Assessment and Management (SAM) implementation, and other sustainability, transformational, administrative and financial issues.

Ombudsman for Long-term Insurance aims to provide free and timely mediatory services to members of the long-term insurance industry and the clients of an insurance policy. The ombudsman service provides an intermediate step before taking a complaint to the courts when a satisfactory decision has not been reached by the involved parties; **Ombudsman for Short-term Insurance provides services free and efficient dispute resolution services to holders of short-term insurance policies, within the prescribed rules.** The ombudsman service for short-term insurance, as for long-term insurance, is an alternate for complainants before they reach out to courts; **The Office of the Ombud for Financial Services Providers (FAIS) undertakes disputes pertaining to any financial matter between financial services providers and their clients.** Although no fee is charged to the consumer and it service is accessible to all, only cases of up to 800,000 rand monetary cap can be considered through the system. FAIS is an independent authority which was established in 2002 and receives funding from FSB.

Association for Savings and Investments South Africa (ASISA), formed in 2008, represents the majority of the savings and investments industry in the country. The association was formed by members of the Association of Collective Investments (ACI), the Investment Management Association of South Africa (IMASA), the Linked Investment Service Providers Association (LISPA) and the Life

¹³¹ Note exemptions for STI and LTI Act regulated industries for 18 months from 1 April 2011.

Offices' Association (LOA); since the formation of ASISA, these associations have closed down and all key insurance companies are now members of ASISA. As a representative of insurance industry, ASISA works towards a healthy, transparent and sustainable financial environment to promote growth and equal opportunity. ASISA aims to not only represent its members but to also provide investors and regulators a platform for market updates, latest research and statistics on the industry.

National Consumer Forum (NCF) is an independent not-for-profit organization dedicated to upholding the rights and interests of consumers in South Africa. It is affiliated with Consumers International (CI) and is active in organizing campaigns for establishing a fair market place and a consumer friendly South Africa.

Good Practices: Insurance Sector

SECTION A	CONSUMER PROTECTION INSTITUTIONS
Good Practice A.1	<p><i>Consumer Protection Regime</i></p> <p>The law should provide for clear rules on consumer protection in all matters of insurance and there should be adequate institutional arrangements for implementation and enforcement of consumer protection rules.</p> <ol style="list-style-type: none"> There should be specific provisions in the law, which create an effective regime for the protection of retail consumers of insurance. The rules should prioritize a role for the private sector, including voluntary consumer organizations and self-regulatory organizations.
Description	<p>The consumer protection rules applying to insurance are extensive but unclear in a number of respects due to:</p> <ul style="list-style-type: none"> the multitude of different Acts, regulations, rules and codes (both mandatory and voluntary) that apply to the industry; the numerous regulators and Ministries that have responsibilities in this sector; and the numerous statutory and voluntary ombudsmen schemes that deal with complaints from consumers. <p>The private sector is given only a very limited role under this regime.</p> <p><u>Consumer Protection Regime</u></p> <p>Both the STI Act and the LTI Act, and the Policy Holder Protection Rules made under those Acts contain limited consumer protection provisions which are backed up by the rules applying to intermediaries in the FAIS Act and the binding codes made under the FAIS Act. There are also numerous voluntary codes that apply to the industry. However this structure is fragmented and there are gaps and overlaps.</p> <p>A brief summary of the relevant consumer protection provisions in the insurance specific Acts and relevant regulations is provided below, with a very brief description of other Acts which also make some provision for insurance to be provided. Relevant details are in the responses to the Good Practices. A discussion of the relevant codes is in Good Practice A.3.</p> <p>We also note our understanding that there appear to be a multitude of different types of burial societies and funeral parlors in South Africa which provide a form of insurance and many of which are either providing unregistered short- term insurance, or are unregistered friendly societies. Many of these are, however, fraudulent scams. This is a concern especially given that this is an extensive industry targeted at the poorest.</p> <p>A burial society is prima facie covered by the Friendly Societies Act, 1956 (FS Act). The FS Act provides for the registration and supervision of a "friendly society" which is defined to mean, in summary, an association of persons established for specified objects and a related business (s. 1(1)). Such objects are expressly stated to include insurance or other benefits to cover (in summary) expenses incurred in connection with the death or funeral of a member or relatives or dependants or during a period of confined</p>

	<p>mourning.¹³² A friendly society must be registered under the FS Act unless an exemption applies.¹³³ For example, s. 3(1)(b) exempts a friendly society whose aggregate value of income does not exceed R100 000 per annum.</p> <p>Insurance cover provided by a registered friendly society is not subject to the STI Act or the LTI Act where the value of the benefits does not exceed R5,000 or another amount prescribed by the Minister (s.7(2)(b)(ii) in the LTI Act and s. 7 (2)(c) in the STI Act).¹³⁴ Further, a co-operative is exempt from the provisions of the Long-Term Insurance Act 1998 (LTI Act) (which covers life insurance) if there is no guarantee of the benefits which are provided.¹³⁵ It is understood that thousands of small, informal burial societies rely on this exemption.</p> <p>A co-operative burial society may also be registered under the Co-operatives Act 2005 and must be so registered if it holds itself out as carrying on the business of a registered co-operative or uses the word “co-operative” or co-op” etc. as part of its name.¹³⁶</p> <p>The Consumer Protection Act would seem to apply to such entities (subject to exemptions for products such as short-term insurance) but there are inadequate resources available for enforcement.</p> <p>In summary, the thousands of small, informal burial societies will not be required to register under the new Microinsurance Act (assuming it eventuates). The latter bodies will, however, still be required to comply with co-operatives legislation and will be required to register as a microinsurer when they reach a certain membership threshold. At present it is envisaged that this threshold will be 2,500 members. It is also envisaged that friendly societies will be required to transition into a co-operatives structure, with the result that the the Friendly Societies Act, 25 of 1956 will be repealed and existing friendly societies will be required to transition to the Co-operatives Act, 14 of 2005.</p> <p><u>Enforcement of Consumer Protection Regime</u></p> <p>Enforcement of FSB administered legislation is done through the Enforcement Council. The Council was established by the Financial Institutions (Protection of Funds) Act, 2001. The following extract from the FSB website gives a high level overview of the role of the Enforcement Committee:</p> <p><i>The Enforcement Committee is an administrative body established to adjudicate on all alleged contraventions of legislation, regulations, codes of conduct, etc. administered by the Financial Services Board. The Committee may impose unlimited penalties, compensation orders and cost orders. Such orders are enforceable as if it was a judgment of the Supreme Court of South Africa</i></p> <p><i>The FSB has stipulated effective enforcement as an important factor in its strategic plan. To aid effective enforcement, the FSB Enforcement Committee (EC) was established by statute in the Financial Institutions (Protection of Funds) Act, 2001. The Committee considers cases of alleged contraventions of legislation administered by the FSB. The Committee is appointed by the Board of the FSB.</i></p> <p><i>EC members are appointed for their knowledge and experience (with reference to the different industries). In addition, the chairperson and deputy chairpersons must either be advocates or attorneys with more than 10 years’ experience, or judges.</i></p> <p><i>Which cases may be referred</i></p> <p><i>If the registrar is of the opinion that any provision of any Act¹³⁷ administered by the FSB has been contravened, he may refer the case to the EC¹³⁸. However, if the registrar himself is by law empowered to impose a penalty; such case may not be referred to the EC¹³⁹. In other words, the registrar and the EC do not have dual jurisdiction.</i></p>
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¹³² FS Act ss. 1 and 2.

¹³³ FS Act s.5.

¹³⁴ The National Treasury Microinsurance Policy Document 2011 suggests that this amount is now R7 500 (page 18).

¹³⁵ S.94 Co-operatives Act, 2005

¹³⁶ SS. 4 and 12.

¹³⁷ This includes all subordinate legislation issued in terms of Acts administered by the FSB.

¹³⁸ See section 6A(1)(a) of the FI Act.

¹³⁹ See section 6A(1)(a) of the FI Act.

	<p><i>In simple cases of late submissions and returns, the registrar retains his authority to impose penalties. Every other case of non-compliance with FSB legislation (and subordinate legislation), may be referred to the EC. (Emphasis added)</i></p> <p>The Enforcement Committee has broad powers but the FSB needs resources to proactively monitor market conduct more rigorously (as well as supervising individual institutions) and using its enforcement powers more rigorously. There are apparently some good examples of where this has been done (for example in relation to causal event charges for certain retirement and annuity products) but it seems that more needs to be done. A possible indication of a lack of resources is the fact that the FSB Annual Report for 2010 referred to only one enforcement action by the Committee and one prosecution for breaching licence conditions.¹⁴⁰</p> <p>The FSB will also need to have further resources to administer any new regulatory regime which applies to micro insurance. This view was also expressed by the FSB in a meeting.</p> <p>Private Sector Regime</p> <p>The abovementioned legislation makes very little provision for involvement of the private sector in the administration of insurance laws.</p> <p>The principal exception is in the laws administered by the FSB which provide for Advisory Committees to be appointed by the Minister (s. 6 of STI Act, s. 6 of LTI Act and s. 5 of the FAIS Act). These Committees can investigate and report on any matters relevant to the sector in question. This can be done on their own initiative or at the request of the relevant Minister or Registrar.</p> <p>Another exception is in the provision for consumer groups to be accredited under s. 78 of the CP Act. Such a group may then initiate actions in the interests of consumers and intervene in any forum contemplated by the Act. However at this stage no such groups have been accredited.</p> <p>There are three important industry associations in the insurance context which have different degrees of control over their members' market conduct through various codes and standards. The relevant codes and standards are discussed in Good Practice A.3. The associations are:</p> <ul style="list-style-type: none"> • The Association for Savings and Investment SA (ASISA) which represents the majority of South Africa's life insurance companies as well as collective investment schemes management companies, asset managers, linked investment service providers and multi-managers. It was formed in October 2008, as a result of a merger of 4 different industry associations. As at the end of December 2010, its 160 member companies managed R3.2 trillion in assets.¹⁴¹ This figure represents approximately 90% of the assets managed by the various sectors. • The South African Insurance Association (SAIA) which represents the majority of South Africa's short term insurance industry. Its website states that: <i>The South African Insurance Association (SAIA) represents most of the short-term insurance companies in South Africa and is authorized to negotiate on their behalf. The Association has more than 57 members, with a Chairman and vice-Chairman elected from its Board. Members of the SAIA abide by the SAIA Code of Conduct and participate in the Office of the Ombudsman for Short-term Insurance. The SAIA also participates and is represented in various organizations within and outside the insurance industry. The Association is managed by a Chief Executive and a Deputy Executive, with a permanent staff of approximately 25 people.</i>¹⁴² • The Financial Intermediaries Association of Southern Africa (FIA) which represents more than 15,000 licensed financial services advisers throughout Southern Africa.¹⁴³ This would include insurance agents and brokers regulated by the FAIS Act.
Recommendation	<p>The following "big picture" legislative comments and recommendations are made having regard to the need for consumer protection, clarity for both consumers and the industry as to the law and so as to minimize the costs of supervision and regulatory arbitrage:</p>

¹⁴⁰ Source: Financial Services Board Annual Report 2010, pages 47 and 54

¹⁴¹¹⁴¹ Source: ASISA Annual Report 2010, page 1

¹⁴² <http://www.sainsurance.co.za/>

¹⁴³ <http://www.fiaweb.biz/about/>

	<ul style="list-style-type: none"> Fragmented approach to insurance regulation with extensive, but confusing, coverage and some gaps and overlaps means a single law is more appropriate: at present there appear to be 8 Acts which make provision for some kind of long-term insurance, and nine which provide for short-term insurance as evidenced by the exclusions listed in s. 7(2) of the LTI Act and s. 7(3) of the STI Act. This position will be further complicated by the proposed Microinsurance Act and the consequential amendments that are proposed to be made to other legislation for the purposes of that Act. Ideally the relevant legislation would form part of a single law applying to all financial services which reflects the principles in the Treating Customers Fairly Roadmap as well as other recommendations in the mission's report. Exemptions for some insurance and pension funds need to be reconsidered: there are various types of insurance funds which seem to be virtually completely unregulated from the consumer protection perspective and should be regulated. This includes the Government Pension Fund and the Collective Bargaining Funds (although the latter are subject to prudential regulation by the FSB). Responses from various stakeholders indicate that these exclusions need to be addressed as a matter of urgency, especially given the significant funds under management held in these funds. There are also other exemptions from the STI Act, the LTI Act and the FAIS Act which need to be reconsidered (see Table 1). New CP Act / National Credit Act type consumer protection provisions should be considered: it is arguable consumers in the insurance sector should have the benefit of provisions in the CPA and the Credit Act which are not currently in insurance laws (such as those relating to credit life policies). The microinsurance initiative being pursued by the National Treasury is to be encouraged, especially if it provides a flexible regulatory regime which will deal with informal insurance services such as those being provided by burial societies. Detailed consideration should also be given as to whether the additional consumer protections to be provided under the new regime for microinsurance should also apply to other consumers (such as those relation to disclosures, grace periods, exclusions, pre-existing illnesses etc.) <p>The laws applying to the insurance sector should be consolidated under the jurisdiction of a single regulator. The regulator should probably be the FSB under the new Twin Peaks regulatory scheme which has been proposed. In order to achieve this outcome, it seems clear from the consultative process that the FSB will need extensive additional resources to supervise and enforce the new laws, especially for the purposes of those segments of the insurance sector that are currently unregulated from a CPFL perspective, microinsurance and the banking sector.</p> <p>The following specific gaps and overlaps should also be dealt with, whilst stressing that these are only the significant issues which have been identified to date and bearing in mind in the time available there has not been time to undertake an exhaustive analysis of all the relevant legislation:</p> <ul style="list-style-type: none"> LTI Act and STI Act: at a minimum, the substantive provisions of the STI Act should be combined with the LTI Act so that there is a single regime which applies to all relevant products. Ideally such an Act would also cover microinsurance; Intermediaries and the effectiveness of the FAIS Act: there needs to be a review of all provisions in the STI Act, the LTI Act, the MS Act and the FAIS Act and Code in relation to intermediaries and brokers to ensure consistency and minimize overlaps. In particular it is recommended that the intermediary provisions of the Policy Holder Protection Rules and the broker provisions in the MS Act should be integrated into the FAIS Act. <p>A bigger picture issue is whether the FAIS Act is effective. This may be queried given our understanding of widespread issues relating to ineffective and cumbersome disclosure, churning of policies, sales of unsuitable credit-life and funeral policies and given the limited resources, the FSB has to supervise around 140,000 intermediaries.</p>
Good Practice A.2	<p>Contracts</p> <p>There should be a specialized insurance contracts section in the general insurance or contracts law, or ideally a separate Insurance Contracts Act. This should specify the information exchange and disclosure requirements specific to the insurance sector, the basic rights and obligations of the insurer and the retail policyholder and allow for any asymmetries of negotiating power or access to information.</p>
Description	<p>There is no specialized insurance contracts law. However there are extensive information and disclosure requirements as well as rights and obligations for the insurer and the policyholder in the Short-Term Insurance Act, the Long-Term Insurance Act and the FAIS Act applying to regulated long-term insurance and short-term insurance contracts. There are also extensive disclosure requirements for insurance</p>

	<p>products which apply under the CPA in circumstances when neither the Short-Term Insurance Act, the Long-Term Insurance Act nor the FAIS Act applies. See also the requirements in the various Codes discussed in Good Practice A.3. The result is extensive, but confusing, coverage.</p> <p>Short-Term Industry Act</p> <p>The principal provisions relevant to Good Practice A. 2 are in the STI Rules made under section 55 of the STI Act. The objective of the STI Rules is to ensure that relevant policies are “<i>entered into, executed and enforced in accordance with sound insurance principles and practice in the interests of the parties and the public interest</i>” (rule 2).</p> <p>There are special rules which apply to an insurer “<i>who carries on business in the form of “direct marketing” but not as an authorized financial services provider</i>” (see definition of “<i>direct marketer</i>” in section 1, emphasis added). The term “<i>direct marketer</i>” is defined to mean “<i>the marketing of a policy, including the entering into thereof, by way of telephone, internet, media insert, direct or electronic mail, in a manner which includes the required transaction requirement pertaining thereto, but excluding any advertising</i>”. The Rules only apply for the benefit of natural persons (see the definition of “<i>policy</i>” in section 1 and section 2).</p> <p>It is understood that the STI Rules are intended to apply when an insurer engages in direct marketing without utilizing the services of an intermediary in the circumstances governed by the FAIS Act and the FAIS Code (see below). Any ambiguity between the STI Rules and the FAIS legislation is sought to be dealt with by rule 3.2 which provides that the no provision of the Rules is to be construed as affecting the obligation to comply with the FAIS Act. Further, rule 4.4 of the STI Rules is to the effect that if there is a compliance duty under another law in respect of a matter governed by the STI Rules, then that other law applies. Nevertheless, the interaction between the Short-Term Insurance Rules and the FAIS legislation (especially the FAIS Code), and the circumstances in which the FAIS Act or another Act will prevail, are not entirely clear.</p> <p>The STI Rules relevantly imposes requirements on insurers who are direct marketers in relation to:</p> <ul style="list-style-type: none"> • The standard of care to be followed: services must be rendered “<i>honestly, fairly and with due, care, skill and diligence</i>” (rule 4 (1)(a)); • The representations made and information provided to a policy holder: the requirements relate to matters such as the need for the information to be factually correct, in plain language, adequate and appropriate taking into account the level of knowledge of the policyholder, in a clear and readable print size, spacing and format (where written) and in specific monetary terms for monetary amounts unless it is not reasonable to do so, in which case the basis of calculation must be adequately described. There is also a requirement for notice of changes to be given “<i>without delay before a transaction is concluded</i>” (rule 4.1(c)); • Conflicts: there are obligations to disclose actual or potential conflicts of interest and an obligation to “<i>take all reasonable steps to ensure fair treatment of the policyholder</i>” (rule 4.1(d)); • Interests of the policy holder: there is a requirement to give the interests of the policy holder appropriate priority over those of the direct marketer (rule 4.1(e)); • Information not known to the policy holder: there are restrictions around acting on information not known to the policy holder which could affect the costs to the policy holder (rule 4.1(f)); • Record keeping: the requirement is to keep disclosure records for at least five years after termination of the policy (if known to the direct marketer) or completion of the direct marketing and these records must be made available on request to the policy holder (rule 4.2); • Disclosures: there are requirements to provide certain information to the policy holder about the insurer, amounts payable to the insurer, commissions, brokerage and similar amounts payable to the direct marketer, premiums, benefits and exclusions, how to institute claims and the services available from the Short-term Ombudsman. This information must be given “<i>at the earliest reasonable opportunity but prior to the entering into of the policy, provided that where provided orally, it must be provided in writing within 30 days</i>” (rule 4.3). <p>There are also rules which apply to all Short-Term Insurance insurers (not just direct marketers), including those relating to:</p> <ul style="list-style-type: none"> • Void provisions: they include those requiring the taking of a polygraph, resort to arbitration and the right to reject a claim if a premium was not paid within a grace period (rule 5) (note that these provisions do not appear in the LTI Rules);
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- **General format of policies:** the requirement is that the policy terms are recorded “*as regards layout, letter types and spacing, in an easily readable manner and [that]... the wording of every provision of the policy has a reasonably precise ascertainable meaning*” (rule 6.1);
- **Dispute resolution:** policyholders must be informed of internal dispute resolution procedures and the ST Ombudsman services (rule 6.2);
- **Notice of unilateral termination of policies:** the requirement is that at least 30 days prior notice be given (rule 7.3);
- **Blank documents:** there is a prohibition on insurers and intermediaries allowing a policyholder to sign a blank or incomplete form relating to the a policy (rule 7.6); and
- **Waivers:** there is a prohibition on requesting or inducing a policy holder to waive any right or benefit under the rules (rule 7.6).

The terms of s. 47 of the STI Act are also to be noted. An individual, who takes out or varies a short-term insurance policy, must be given a copy of the policy within 30 days after the relevant event. A policy holder is entitled to a further copy of the policy on payment of a fee, which may be prescribed by the Registrar. These obligations are to be compared with the requirements of the FAIS Act and FAIS General Code in relation to the information to be given to policyholders (see Good Practice B.1 ‘Sales Practice’).

Long -Term Industry Act

The principal provisions relevant to Good Practice A. 2 are in the LTI Rules made under section 62 of the LTI Act.

The LTI Rules imposing requirements on insurers who are direct marketers are virtually identical to those in the STI Rules except for the requirements relating to the provision of certain information to the policy holder about material investment and other risks with the policy, the past investment performance of the policy (if requested), cooling-off rights and guaranteed minimum benefits. As with the STI Act, this information must be given “*at the earliest reasonable opportunity but prior to the entering into of the policy, provided that where provided orally, it must be provided in writing within 30 days*” (rule 4.3).

The LTI Rules imposing requirements on all Long-Term Insurance insurers are also virtually identical to those in the STI Rules except for the requirements relating to:

- The 30 day cooling off period for the benefit of Long-Term Insurance policy holders (rule 6);
- Fund policies and the obligation to provide a copy (**within 6 months**) and for the policy to contain mandatory content (rule 7);
- “Assistance business group schemes” including provisions requiring written agreements, certain mandatory content and provisions relating to cancellation of policies and void provisions (rules 8 - 15); and
- Information which must be disclosed to a policy holder on taking out a loan against their policy, the obligation to provide quarterly statements and the information to be given on cessation of a loan (rule 18).

The terms of section 48 of the LTI Act are also to be noted. An individual who takes out or varies an long-term insurance policy, must be given a summary of the material representations made by or on behalf of that person to the insurer, of the premiums which are payable and of the benefits and exclusions. This summary must be provided as soon as possible but not later than 60 days after the parties enter into or agree to vary the policy. A policy holder is entitled to a copy of the policy on request (but there is no time limit). However, in contrast to the STI Act, there is no provision for payment of a fee for a copy of a policy. It is also to be noted that the STI Act does not require the provision of an equivalent summary. These obligations are also to be compared with the requirements of the FAIS Act and FAIS General Code in relation to the information to be given to policyholders (see Good Practice B.1 ‘Sales Practice’).

Financial Advice and Intermediary Services Act

The relevant rules are contained in the “*General code of conduct for authorised financial services providers and representatives*” made under s. 15 of the FAIS Act (FAIS Code). This Code is binding on authorised financial services providers and their representatives (s. 15(1) (b)). In summary, it regulates the conduct of financial services providers and their representatives who provide advice to clients and intermediary related services.

The insurance products for the purposes of the FAIS Code are:

- Short and long-term insurance products the subject of the STI and LTI Acts respectively;

- A benefit provided by a pension fund organization subject to the PF Act;
- A benefit provided by a friendly society subject to the FS Act;
- A health service provided by a medical scheme under the MS Act; and
- Any other financial product declared by the Registrar to be a financial product for the purposes of the Act (s.1(1)).

This definition means that the FAIS Code does not apply to various insurance products. They include those the subject of the Land Bank Act, certain agricultural co-operatives registered under the Co-operatives Act, an unemployment insurance fund established under the Unemployment Insurance Act or a collective bargaining agreement under the Labour Act. It also does not apply to the board of trustees of a medical scheme (s. (1)(3)(a)(iii)). These are potentially significant gaps.

To begin with, it is important to note the following definitions that are critical for an understanding of the Code:

“direct marketing” means the rendering of financial services by way of telephone, internet, media insert, direct mail, or electronic mail, excluding any such means which are advertisements not containing transaction requirements.

“provider” means an authorized financial services provider, and includes a representative;
(s. 1(1) of the FAIS Code).

Also relevant are the following definitions in s. 1(1) of the FAIS Act:

“financial services provider” means any person, other than a representative, who as a regular feature of the business of such person -

- (a) *furnishes advice; or*
- (b) *furnishes advice and renders any intermediary service; or*
- (c) *renders an intermediary service;”*

“advice” means, subject to subsection (3)(a), any recommendation, guidance or proposal of a financial nature furnished, by any means or medium, to any client or group of clients -

- (a) *in respect of the purchase of any financial product; or*
- (b) *in respect of the investment in any financial product; or*
- (c) *on the conclusion of any other transaction, including a loan or cession, aimed at the incurring of any liability or the acquisition of any right or benefit in respect of any financial product; or*
- (d) *on the variation of any term or condition applying to a financial product, on the replacement of any such product, or on the termination of any purchase of or investment in any such product, and irrespective of whether or not such advice -*
 - (i) *is furnished in the course of or incidental to financial planning in connection with the affairs of the client; or*
 - (ii) *results in any such purchase, investment, transaction, variation, replacement or termination, as the case may be, being effected;*

“intermediary service” means, subject to subsection (3)(b), any act other than the furnishing of advice, performed by a person for or on behalf of a client or product supplier -

- (a) *the result of which is that a client may enter into, offers to enter into or enters into any transaction in respect of a financial product with a product supplier; or*
- (b) *with a view to -*
 - (i) *buying, selling or otherwise dealing in (whether on a discretionary or non-discretionary basis), managing, administering, keeping in safe custody, maintaining or servicing a financial product purchased by a client from a product supplier or in which the client has invested;*
 - (ii) *collecting or accounting for premiums or other moneys payable by the client to a product supplier in respect of a financial product; or*
 - (iii) *receiving, submitting or processing the claims of a client against a product supplier;*

“representative” means any person, including a person employed or mandated by such first-mentioned person, who renders a financial service to a client for or on behalf of a financial services provider, in terms of conditions of employment or any other mandate, but excludes a person rendering clerical, technical, administrative, legal, accounting or other service in a subsidiary or subordinate capacity, which service -
(a) *does not require judgment on the part of the latter person; or*

	<p><i>(b) does not lead a client to any specific transaction in respect of a <u>financial product</u> in response to general enquiries ;</i></p> <p><i>“Product supplier” means any person who issues a financial product by virtue of an authority, approval or right granted to such person under any law, including the Companies Act, 1973 (Act No. 62 of 1973)</i></p> <p>The following is a simplified high level summary of relevant provisions of the FAIS Code which have potential to apply to the insurance sector in relation to the information, disclosure and contractual practices the subject of this Good Practice.</p> <p>The following is a list of obligations which apply to a provider other than a direct marketer:</p> <ul style="list-style-type: none"> • Representations: a provider must ensure that representations to a client meet certain standards. In particular, they must be factually correct, be in plain language, adequate and appropriate “taking into account the factually established or reasonably assumed level of knowledge of the client;”, express monetary obligations in monetary terms unless to do so is not reasonably determinable in which case a method of calculation must be given). Importantly, there is an obligation to ensure that representations must be “provided timeously so as to afford the client reasonably sufficient time to make an informed decision about the proposed transaction” (s. 3(1)(a)); • Conflicts: actual or potential conflicts of interest must be disclosed and there is an obligation to “take all reasonable steps to ensure fair treatment of the policyholder” (s. 3(1) (b) and (c)); • Interests of the policy holder: these interests take appropriate priority over those of the provider (s. 3.1(d)); • Transactions: they must be accounted for ((s. 3(1)(e)); • Information not known to the policy holder: the provider must not act on information not known to the policy holder which could affect the costs to the client (s. 3(1)(f)); • Record keeping: the requirement is to keep disclosure records for at least five years after termination of the financial service (if known to the provider) or completion of the service and these records must be made available on request to the client (s. 3(2)); • Privacy: there are confidentiality obligations imposed on the provider (s. 3(2)); • Information on product supplier: certain information must be given to the client “at the earliest reasonable opportunity,” about the product supplier, contractual relationships between the product supplier and the provider and an obligation on providers not to make, in effect, unfair comparisons between products (s. 4(1)); • Comparisons: there is an obligation on providers to make comparisons in the interests of the concerned client and not to make, in effect, unfair comparisons between products (s. 4(3) and (4)); • Information on provider: certain information must be given to the client “at the earliest reasonable opportunity,” about the provider (s. 5); • Information about the financial service: extensive information must be given to the client about the service “at the earliest reasonable opportunity,” including information about name, class or type of service, any investment component, monetary obligations to the provider and the product supplier, exclusions, waiting periods, minimum benefits, guarantees, tax considerations and cooling off rights (s. 7 (1)); • Blank forms: there is a prohibition on providers requesting a client to sign a blank or incomplete form (s. 7(2)); • Statements of account: they must be provided on request by a provider (s. 7(3)); and • Advice: there are extensive obligations on a provider to determine the suitability of advice which is provided before actually providing the advice, to take reasonable steps to ensure that the client understands the advice, to ensure that the client understands the implications of not providing full information and to make and maintain a record of the advice and give it to the client in writing (however there is no requirement to provide the record before the financial service is acquired) (ss. 3(2), 8 and 9). <p>The following obligations also apply to a provider:</p> <ul style="list-style-type: none"> • Advertising: there are obligations to ensure that advertising by any provider is not untrue, false or misleading, contains warnings about any forecasts, projections, references to past and future performances and prominently displays any reference to the risks with any product (s. 14(1));
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- Telephone records: advice provided by telephone must be recorded and provided to the client and the Registrar on request within 7 days of the request. Further, certain basic information must be given about the provider (s. 14(2)); and
- Radio: any radio advertisement must contain the business name of the provider (s. 14(3)).

The following obligations apply to a direct marketer (i.e. a provider who provides a financial service otherwise than on a face to face basis):

- Information on product supplier: certain information must be given to the client “at the earliest reasonable opportunity,” about the direct marketer (s.15(1));
- Advice by direct marketer: a direct marketer advising a client must make enquiries as to whether a financial service is appropriate and must provide the client with information about the product supplier, the nature, class or type of the financial product, the nature and extent of benefits and how they are calculated, monetary obligations, cooling off rights and material risks. This information must be provided “at the earliest reasonable opportunity,” (s. 15(2)). These obligations are less extensive than those that apply when advice is given directly to a client (i.e. not by direct marketing). For example, there is no requirement to take reasonable steps to ensure that the client understands the advice or the implications of not providing full information (ss. 7(1)) and 8 of the FAIS Code); and
- Further information from a direct marketer: additional information must be provided on the product supplier’s details, the extent to which a product is realisable, how benefits will be paid, early termination restrictions and charges, amounts payable to the direct marketer, on request past investment performance, consequences of non-compliance with contractual obligations, “abbreviated information” about premium increases, “concise details” of restrictions such as exclusions and penalties, guaranteed minimum benefits and advice about the recording of telephone calls (s. 15(3)).

CP Act

The CP Act contains extensive contract, disclosure and information requirements in Chapter II. These requirements apply to *“the undertaking, underwriting or assumption of any risk by one person on behalf of another”* (see definition of “service” in s. 1. However there are express exclusions for:

- services which constitute advice or intermediary services regulated by the FAIS Act;
- services regulated by the STI Act or the LTI Act (however this exclusion is *“subject to those sector laws being aligned with the consumer protection measures in this Act [the CPA] within a period of 18 months from the commencement of this Act, failing which the provisions of this Act will apply”* (Schedule 2, paragraph 10);
- transactions that constitute credit agreements under the National Credit Act, although any goods or services the subject of such a transaction are covered by the CP Act; and
- a transaction giving effect to a collective bargaining agreement under the s. 23 of the Constitution and the Labour Act.

The result so far as the insurance sector is concerned is that the CP Act applies in relation to insurance policies the subject of the MS Act, FS Act, PF Act, the Land Bank Act, certain agricultural co-operatives registered under the Co-operatives Act and an unemployment insurance fund established under the Unemployment Insurance Act. This of course, adds to the inevitable confusion and costs for both consumers and industry alike and the potential for regulatory arbitrage. It also highlights (again) the lack of regulation of Bargaining Council Funds established under the Labour Act.

The Banking Sector Section contains a detailed summary of the CP Act. Accordingly the following is only a simplified high level summary of provisions of the CPA which have potential to apply to the abovementioned segments of the insurance sector in relation to the information, disclosure and contractual practices the subject of this Good Practice. The relevant provisions apply to:

- Protection against discriminatory marketing (s.8);
- The right to receive information in plain and understandable language (s. 22);
- The obligation not to charge more than the displayed cost of a service (such as an advertised premium) (s. 23);
- The prohibition against false, misleading and deceptive representations and agreements (ss. 29, 41 and 51);
- The right to rescind an agreement in the specified cooling off period (ss. 16 and 29) (see also Good Practice A.4 ‘Other Institutional Arrangements’);
- Unconscionable conduct (s. 40);

	<ul style="list-style-type: none"> • Fraudulent schemes and offers (s. 42); • Pyramid and related schemes (s. 43); • Unfair, unreasonable and unjust contract terms (s. 48); and • The obligation to draw certain provisions to the attention of the consumer, such as limitations of liability and an assumption of risk by the consumer (s. 49). <p>Curiously, the CPA does not have specific mandatory content or disclosure requirements that might be applicable to insurance contracts that are covered by the Act.</p>
Recommendations	<p>As mentioned in Good Practice A.1, it is recommended that the substantive provisions of the STI Act should be combined with the LTI Act so that there is a single disclosure regime which applies to all relevant products (whether or not microinsurance products).</p> <p>It is also recommended that:</p> <ul style="list-style-type: none"> • There be amendments to the contractual, information and disclosure regimes currently applying under the STI Act, the LTI Act and the FAIS Act so they are made consistent as between each other and with applicable provisions of the CPA (see, for example, Table 5 “<i>Summary of Gaps and Overlaps</i>” in the “<i>Assessment of the implications of the Consumer Protection Act for the laws administered by the Financial Services Board</i>” by Astrid Ludin). • Holders of insurance policies which are not currently the subject of the STI Act, the LTI Act, the FAIS Act or FAIS Code have the benefit of the above mentioned rules. In particular members of a Bargaining Council Fund should have the benefit of these rules. • The obligations relating to the assessments which must be made as to the suitability of advice and the information which must be given to a client to whom advice is provided should be reconsidered so that there are greater consistencies between a situation when a direct marketer is involved and one where that is not the case. • There should be clear standardized pre- sale disclosure requirements which apply in relation to the information which must be given to a policy holder before the policy is taken up. A major concern is that the rules are not clear enough to ensure that policy holders get sufficient information before committing to a policy to ensure that they can make an informed choice. In particular, there is no requirement to provide a “Key Facts” statement before a policy is taken out (see Good Practice B.5 ‘Key Facts Statement’).
Good Practice A.3	<p><i>Codes of Conduct for Insurers</i></p> <ol style="list-style-type: none"> 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. If a principles-based code of conduct exists, insurers should publicize and disseminate it to the general public through appropriate means. The principles-based code should be augmented by voluntary codes for insurers on such matters specific to insurance products or channels. Every such voluntary code should likewise be publicized and disseminated.
Description	<p>There is a complex web of mandatory and voluntary Codes applying in the insurance industry in South Africa which apply in the insurance context as summarized below.</p> <p>The principal relevant Codes are the following:</p> <ul style="list-style-type: none"> • The binding FAIS Code (see the description of this Code in Good Practice A.2); • The binding Codes of Conduct for Administrative and Discretionary FSP's which are made under s. 15 of the FAIS Act; • The voluntary SAIA Code of Conduct for Short-Term insurers; • Numerous voluntary Codes of Conduct prepared by the former Life Officers Association (which has now been amalgamated into ASISA). <p>FAIS Code</p> <p>This Code is binding on authorised financial services providers and their representatives (s. 15(1)(b)). In summary, it regulates the conduct of financial services providers and their representatives who provide advice to clients and intermediary related services.</p> <p>See the description of this Code in Good Practice A.2. The Code contains extensive provisions which are relevant in the CPFL context for regulated providers and their representatives. However it does not apply to insurers who provide services directly to clients. Such insurers are instead subject to the market conduct</p>

	<p>provisions in the Short-Term Insurance Act and the Long-Term Insurance Act, as well as the Short-Term Insurance Rules and the Long-Term Insurance Rules which are described in detail in Good Practice A.1. The two sets of requirements are different.</p> <p>Codes of Conduct for Administrative and Discretionary FSPs</p> <p>These Codes (ADFSP Codes) are made under s. 15 of the FAIS Act and have the force of law. They apply to financial service providers who carry out specialised functions in relation to long-term insurance and other types of financial services which are not relevant to this report. Both have a similar objective <i>“to ensure that clients to whom financial services are rendered, subject to the provisions of this Code will be able to make informed decisions, that their financial needs regarding financial products are appropriately and suitably satisfied and that for those purposes, administrative FSP’s and their representatives are obliged to comply with the provisions of this Code.”</i></p> <p>The following definitions are relevant for the purposes of the Codes:</p> <p><i>“administrative FSP” means a FSP, other than a discretionary FSP–</i> <i>that renders intermediary services in respect of financial products referred to in paragraphs (a), (b), (c) (excluding any short-term insurance contract or policy referred to therein), (d) and (e), read with paragraphs (h), (i) and (f) of the definition of “financial product” in section 1(1) of the Act, on the instructions of a client or another FSP and through the method of bulking; and</i> <i>acting for that purpose specifically in accordance with the provisions of this Code, read with the Act, the General Code (where applicable), and any other applicable law;</i></p> <p><i>“bulking” means the aggregation by an administrative FSP of–</i> <i>a) clients’ funds when buying or investing in financial products on behalf of clients, and the subsequent allocation of such financial products to each client separately in the records of the FSP;</i> <i>b) the financial products belonging to clients when selling such financial products on their behalf, and the subsequent allocation of the proceeds of such sale to each client separately in the records of the FSP;</i></p> <p><i>“discretionary FSP” means a FSP–</i> <i>a) that renders intermediary services of a discretionary nature as regards the choice of a particular financial product referred to in the definition of “administrative FSP” in this subsection, but without implementing any bulking; and</i> <i>b) acting for that purpose specifically in accordance with the provisions of the Code set out in Chapter II of this Schedule, read with the Act, the General Code (where applicable) and any other applicable law;</i></p> <p>In summary, the Code of Conduct for Administrative FSPs has the following rules:</p> <ul style="list-style-type: none"> • Prohibitions: there are prohibitions on disclosing client data to third parties, on netting of transactions, and on exercising certain votes on behalf of a client and providing certain information to the client (s. 3); • Dealing with authorized persons: an FSP must ensure, if they deal with a person who is providing intermediary services on behalf of another person, that the latter person is authorized as required (s. 4); • Agreement and mandate: there must be a signed written agreement with a client containing certain matters, including information about the client’s mandate, who is authorized to operate the account, costs, fees and benefits, the giving of instructions and the name in which products will be held. This agreement must be in a standard form approved by the Registrar (s. 5); • Termination of client mandate: there are obligations to return cash, provide a statement and to ensure that the independent nominee returns relevant financial products and documents of title (s. 6); • Record keeping: there are requirements to maintain records in relation to a client’s financial products (s. 7); • Insurance: the FSP must maintain suitable guarantees or professional indemnity or fidelity insurance cover (s.8); • Nominee agreements: an administrative FSP must maintain an agreement with a custodian to hold clients’ financial products as a nominee (s. 9); and • Reporting to clients: the rules are that clients must be given information on request and at 3 monthly intervals such as to enable financial records to be kept and the determination of the composition and market value of the investment and any changes over the period (s. 10).
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Code of Conduct for Discretionary FSPs

Many of the provisions in this Code are similar to those in the Code of Conduct for Administrative FSPs. Highlighted below are the more significant differences:

- **Information for client:** a client must be given, on request and in a comprehensible and timely manner, any reasonable information regarding the financial products of the client, market practices and the risks inherent in the different markets and products (s. 4(a));
- **Product suitability:** before an agreement is made with a client, the FSP must obtain information about the client's financial circumstances, needs and objectives and other relevant information and identify the financial products that best suit the client (s. 4(b));
- **Agreement and mandate:** there must be a signed written agreement with a client containing certain matters (including those mentioned above in relation to an administrative FSP and details of investment objectives and a statement about risks) (s. 5);
- **Reporting to clients:** the rules about reporting to clients are similar to those mentioned above in relation to an administrative FSP. However additional information must be provided in relation to financial products bought and sold, cash receipts and payments, non-cash transactions, profits and losses and there must be detailed information about foreign financial products (s. 6); and
- **Hedge Funds FSPs:** there are also requirements for additional information which must be given about hedge fund FSPs.

SAIA Code of Conduct for Short-Term insurers

This extensive Code has been in force for approximately one year, after the SAIA Board approved a SAIA Image and Reputation Strategy with self-regulation as a key element of the strategy, and a new SAIA Code of Conduct as the mechanism through which self-regulation could effectively be implemented.¹⁴⁴ It covers all short-term business of all members and contains provisions relating to:

- **Objectives:** The objectives of the Code place particular emphasis on the TCF initiative in the United Kingdom (para. 1.5);
- **Binding Code:** the Code binds all members of the SAIA and they have to confirm their compliance with the Code annually and create public awareness of the Code (paras. 4 and 5);
- **Code Complaints Committee:** this committee consists of a senior representative of the STI Ombudsman and a nominee of their Board and a senior representative of the FSB and a nominee of the SAIA Board. It must notify the CEO of the SAIA of its decision on a complaint within 60 days of receiving it (para. 5.4);
- **Binding decisions:** decisions are binding on the insurer and appeals can be made to a person nominated by the CEO of SAIA (para. 5.4);
- **Sanctions:** they can include a fine, a requirement for advertising, corrective measures, expulsion and referral to the FSB (para. 5.5);
- **Professional standards and training** (para. 6);
- **Disclosures:** they must contain certain information, be done at the "appropriate time", be in plain language and contain details of the insurer and the STI Ombudsman (para. 9);
- **Claims:** this must be dealt with within specified time lines, must only be declined for specified reasons and reasons must be given for a rejection (para. 10)
- **Double insurance:** the relevant insurer must pay the claim and then seek a contribution from the other insurer (para. 10.3);
- **Consumer education:** members must spend the required portion of the amount they contribute to consumer education in accordance with the SAIA Consumer Education Strategy and otherwise in accordance with SAIA guidelines. They are also required to participate fully with the National Consumer Education Strategy as facilitated by the FSB (para. 14);
- **Complaints:** insurers are required to deal with complaints in accordance with specified time lines and procedures and to refer disputes to the STI Ombudsman and other relevant ombudsmen (para. 16); and
- **Review:** the Code is to be reviewed every 3 years (para. 17).

Voluntary Codes of Conduct prepared by the former Life Officers Association (LOA)

The LOA prepared various Codes, Standards and Guidelines during the course of its existence. However, the LOA has now been merged into ASISA and these Codes are now being reviewed and combined.

¹⁴⁴ <http://www.sainsurance.co.za/code-of-conduct.html>

	<p>It is understood that the intention in the future is to have a Code of Ethics and Conduct and specific Standards which will be compulsory for members and will go beyond the legislative and regulatory framework. Compliance with ASISA Guidelines will be voluntary but strongly encouraged; they will provide a guide to what is considered to be industry best practice in certain areas. The only compulsory Standard at present is the Standard on Disclosures for Critical Illness Products.¹⁴⁵</p>
Recommendation	<p>There should be an extensive review of the abovementioned Codes to determine which aspects of these should be incorporated into the single insurance law which has been proposed. In particular:</p> <ul style="list-style-type: none"> • The provisions of the FAIS Code should apply to the insurance sector as a whole, with appropriate amendments to deal with the differences in coverage between direct marketers and providers. • The principles reflected in the rules in the Codes of Conduct for Administrative and Discretionary FSP's are laudable and should apply more broadly. In particular, all holders of investment type products should have the benefit of the rules in the Code relating to the provision of information to clients (this recommendation also applies in relation to pension funds). • There are also a number of aspects of the SAIA Code which should be incorporated into law – for example, the rules on double insurance and the timing requirements for dealing with claims and complaints.
Good Practice A.4	<p>Other Institutional Arrangements</p> <ol style="list-style-type: none"> 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. The judicial system should provide credibility to the enforcement of the rules on financial consumer protection. The media and consumer associations should play an active role in promoting consumer protection in the area of insurance.
Description	<p>Various stakeholders have suggested that the FSB's resources for consumer protection are not sufficient and that this issue will be exacerbated when they obtain responsibility for market conduct of retail banks and microinsurance. Other regulators of insurance services only have very limited consumer protection responsibilities and it is not known at this stage whether they have sufficient resources.</p> <p>Prudential supervision and consumer protection of the insurance industry is allocated as follows for the different insurance sectors:</p> <ul style="list-style-type: none"> • short and long-term insurance and friendly societies is within the mandate of the FSB; • medical schemes are the responsibility of the CMS; • the Registrar of Labor Relations has responsibility for the the Labor Act; • the Unemployment Insurance Commissioner has responsibility for the Unemployment insurance Act; • the Minister of Agriculture has responsibility for the Land Bank Act; and • the Registrar of Co-operatives has responsibility for the the Co-operatives Act; <p>There has been no suggestion that the judicial system does not provide credibility to the enforcement of the rules on financial consumer protection. However, this system is rarely used for consumer protection matters given the costs of doing so and the extensive network of Ombudsman and other alternative dispute resolution schemes which are available (see Good Practice E.2 'Formal Dispute Settlement Mechanisms').</p> <p>Media seems to play an active role in promoting consumer protection in the area of insurance. There are committed consumer protection groups but they have very limited resources and very little interaction with, or support from, Government.</p> <p>The two main consumer protection groups are the:</p> <ul style="list-style-type: none"> • National Consumer Forum: this is an "individual membership, non-profit and autonomous organization that is dedicated to the protection and promotion of consumer rights and interests in South Africa"¹⁴⁶. It is funded by donations and revenue from its bi-monthly publication "Consumer Fair". The Forum's other activities focus on its two Knowledge Centers (which provide advice to small businesses, financial literacy and research services), acting as a referral service for consumer enquiries

¹⁴⁵ <http://www.asisa.co.za/index.php/members/codes.html>

¹⁴⁶ <http://www.ncf.org.za/main.php?include=about/history.html&menu=menus/about.html>

	<p>(they receive around 3,000 a month), education about the Financial Services Charter and representing consumer interests on Boards and Committees (such as the STI Ombudsman).</p> <ul style="list-style-type: none"> • SA National Consumer Union: this is a voluntary non-governmental, non – profit organization with a 16 member Executive Committee and one part time salaried staff member. The SANCU functions as an umbrella organization for 24 affiliated NGO members, 30 associate members and two honorary members.¹⁴⁷ It engages in various financial education programs, including the publication of guides for consumers and also actively helps resolve the many consumer enquiries and complaints they receive each year. An estimated 70% of the approximately 2,000 complaints received from consumers each year are successfully resolved, mainly due in part to the very good relations they have with industry. Committee members are also very active in representing consumer interests on Boards and Committees (such as the STI Ombudsman). <p>It is also understood that:</p> <ul style="list-style-type: none"> • There is no requirement for consumer representatives on the governing bodies of the voluntary or statutory Ombudsman schemes under the Ombud Schemes Act. The LTI Ombudsman, for example, does not have any consumer representatives whereas the STI Ombudsman, the FAIS Ombudsman and the Credit Ombudsman all have consumer representatives. However it is understood that consumer representatives are few in number, have very limited resources, high turnover and often find it difficult to attend meetings of the relevant Ombudsman schemes; • No Accredited Consumer Groups have been appointed under s. 78 of the CP Act; and • There is very little interaction between Government and consumer groups.
Recommendation	<p>There should be extensive consultation with consumer representative groups, as well as other stakeholders, in relation to financial services legislation. In particular, this should be done in the course of designing and implementing any regulatory changes as a result of implementing the proposed TCF principles and any recommendations in this report.</p> <p>We also suggest that the FSB and other regulators proactively engage with consumer groups on a regular basis to better understand issues of concern to consumers.</p> <p>Consideration should also be given to:</p> <ul style="list-style-type: none"> • Supporting consumer groups through some form of Government funding; • Making it a requirement of both statutory and voluntary Ombudsman schemes (and any new Scheme) that at least half of the members of the governing body represent the interests of consumers or, at a minimum, are independent directors; • Accrediting consumer protection groups under the CP Act. If financial services are totally exempted from the CP Act, then any new legislation for the purposes of TCF should make similar provision for accrediting consumer protection groups.
Good Practice A.5	<p><i>Bundling and Tying Clauses</i></p> <p>Whenever an insurer contracts with a merchant or credit grantor (including banks and leasing companies) as a distribution channel for its contracts, no bundling (including enforcing adherence to what is legally a single contract), tying or other exclusionary dealings should take place without the consumer being advised and able to opt out</p>
Description	<p>Consumers have only restricted rights to opt out of a requirement to take out insurance. This is a significant concern given our understanding of the bad practices that occur in South Africa in relation to the selling of credit –life insurance.</p> <p>The relevant legislative requirements are summarized below.</p> <p><i>STI Act and LTI Act</i></p> <p>There are currently “free choice” provisions in the STI Act and the LTI Act requiring that a party to a contract be given written notice of a “free choice” as to the insurance policy to be used for the purposes of meeting a requirement for an insurance policy to be provided by way of security under a loan or lease (s. 43 of the STI Act and s. 44 of the LTI Act). In summary, these provisions provide that such a notice must be given prior to the obligation to provide the policy becomes effective and must set out:</p> <ul style="list-style-type: none"> • If a new policy is to be entered into: the insurer who is to provide the policy and the relevant intermediary, as to whether policy benefits are to be provided for an event other than the death or disability, and as to whether the value of any mandatory policies will exceed the value of the debt or obligation;

¹⁴⁷ <http://www.sancu.co.za/?Task=system&CategoryID=31249&HeadingText=Chairman%27s+Report+2010>

- **If an existing policy is to be made available:** the relevant intermediary and whether any variation to the policy which is required will cause the value of the policy benefits under all required policies to exceed the value of the debt or obligation. (Ss. 43(1) and 44(1) of the STI and LTI Acts respectively).

There are further requirements in the Acts to the effect that there will be deemed to be non-compliance with the above requirements unless the policy holder has confirmed in writing, before any policy is provided as security, that he or she was given prior notice as required, exercised their freedom of choice and was not subject to any coercion or inducement (ss. 43(2) and 44(2) of the STI and LTI Acts respectively).

If the above requirements are not met, then the security requirement relating to the policy is void and the benefits of the policy must be provided to the person who made the policy available.

Although the above provisions provide some protection to a consumer, they have significant limitations because they do not:

- apply in relation to a short-term policy, where the requirement relates to security over immovable property or where the premiums are reasonable as compared to those generally charged for similar policies (s. 43 (5)); or
- apply if the long-term policy is made available for the purposes of a credit agreement to which the Credit Act applies (s. 44(4)); or
- deal with the practice which has arisen of some banks requiring insurance to be taken out which includes a redundancy benefit, which benefit may not be provided under the terms of many life policies which might be held by the consumer; or
- deal with the point as to whether a credit or lease provider can in fact require insurance be taken out, in contrast to the limited protection provided by section 106 of the Credit Act.

We also understand from our consultations that the major banks all require credit –life insurance to be taken out and offer a policy issued by a related insurer. Although they are given a “free choice”, at least 80% of customers take up the policy offered by the bank. It was suggested to us that this may be because, even though the customer may have their own policy, it may not provide the full cover required by the bank (for example, in relation to redundancy insurance). Further, there has been a huge increase over the last year in unsecured lending where the bank requires that the customer provide a credit – life policy (covering life, disability and redundancy). These loans may go up to 250,000 R and are usually for a term of around 72 months. The (unofficial) figure was that there had been an increase of 59.78 % in 2010 in unsecured lending.

Credit Act

In this Act, “*credit insurance*” is broadly defined to mean:

- “*an agreement between an insurer, on one hand, and a credit provider or a consumer or both, on the other hand, in terms of which the insurer agrees to pay a benefit upon the occurrence of a specified contingency, primarily for the purpose of satisfying all or part of the consumer’s liability to the credit provider under a credit agreement as at the time that the specified contingency occurs, and includes-*
 (a) *a credit life insurance agreement;*
 (b) *an agreement covering loss of or damage to property; or*
- *(c) an agreement covering-*
 (d) *loss or theft of an access card, personal information number or similar device; or*
 (e) *any loss or theft of credit consequential to a loss or theft contemplated in sub-paragraph (i);”*

Section 106 of the Credit Act sets out the circumstances in which “*credit insurance*” can be required. In summary, s. 106 provides that insurance can be required in the following circumstances:

- Credit-life insurance can be required provided that it does not exceed at any time the total of the consumer’s outstanding obligations under the relevant credit agreement;
- Insurance over mortgaged immovable property can be required up to the full asset value of the property; and
- Insurance against damage or loss of other property provided that it does not exceed at any time the total of the consumer’s outstanding obligations under the relevant credit agreement.

However a credit provider cannot require a consumer to take out unreasonable insurance or insurance at an unreasonable cost. There are also provisions providing, in summary, that the consumer must be given a “free choice” to use their own policy and that certain disclosures must be made to the consumer about

	<p>the policy. The credit provider is also prohibited from adding any surcharge, fee or additional premium to the actual cost of insurance they have arranged.</p> <p>Competition Act</p> <p>The Competition Act relevantly prohibits a “dominant firm” selling services (which could be credit) on condition that the buyer purchases separate services (such as insurance) (s. 8(d) (iii)). However there are a number of limitations on this protection:</p> <ul style="list-style-type: none"> • The firm has to be a “dominant firm” ; • The prohibition only applies if the second service is “unrelated to the object of the contract” and arguably credit – life insurance would not be unrelated to the object of a loan contract; and • The prohibition does not apply if the firm can show ‘pro-competitive’ gains (however that is probably unlikely).
Recommendation	<p>There should be early changes to the the current regime applying to a requirement to take out insurance. For this purpose,the following is proposed:</p> <ul style="list-style-type: none"> • Mandatory property insurance should be permissible in relation to secured property, subject to a requirement that the policy be subject to renewal every 12 months so that the insured can consider if they want to use a different insurer. The policy holder should be given adequate advance notice of the expiry of any such policy and it should be automatically renewed if the policy holder does not take any action. • Compulsory insurance required by law (such as compulsory third party personal injury insurance required in relation to motor vehicles) should also be permitted to be a condition for taking out a loan in relation to a motor vehicle. • There should be a choice of insurer in all cases where insurance is required. Consideration should be given to requiring the credit provider concerned to provide a list of insurers providing equivalent policies. • Insurance should not be able to be required in any other case. • If a loan is repaid early, then any insurance policy entered into for the purposes of the loan should be required to be terminated. There should then be a refund of premiums for the unexpired period of the loan. • The disclosures currently provided for in section 106 (3) to (5) of the Credit Act should be retained in relation to insurance which may be required. In addition, if insurance is to be financed under a loan then there should be a requirement for clear and express consent to the insurance, disclosure of the name of the insurer, the amount of the premiums and of the commissions which are payable. • If a credit provider becomes aware that a claim may be made under an insurance policy, then they should inform the consumer of that fact. • There should continue to be caps on consumer credit life insurance products and also on any insurance policy which is “embedded” with a credit product regardless of whether there is a life insurance component (such as an insurance policy providing cover in the event of unemployment or sickness). This recommendation is made in light of the exploitative fees and sales practices noted in the Microinsurance Paper in relation to insurance products which are a “secondary [and relatively marginal] purchase to the product being insured” (page 47). It is further considered that the caps should apply to all such policies that are provided to consumers i.e. not just microinsurance products. As noted above the existing caps apply to long term insurance policies are contained in in the Regulations passed under Section 72 of the Long-term Insurance Act, 52 of 1998 and as amended in Government Notice R952 in Government Gazette 31395 of 2008. <p>Review of credit –life provisions</p> <p>We understand that there is currently a review being undertaken of the abovementioned STI Act, LTI Act and Credit Act provisions by representatives of the NCR and the FSB. The work of this committee should be expedited.</p>
SECTION B	DISCLOSURE & SALES PRACTICES
Good Practice B.1	<p>Sales Practices</p> <ol style="list-style-type: none"> Insurers should be held responsible for product-related information provided to consumers by their agents (i.e. those intermediaries acting for the insurer). 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).

	<p>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.</p> <p>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).</p> <p>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.</p> <p>f. Sanctions, including meaningful fines and, in the case of intermediaries, loss of license, should apply for breach of any of the above provisions.</p>
Description	<p>These issues are largely dealt with in the FAIS Act or Code and the STI and LTI Acts and Rules, apart from the Good Practices referred to in paragraphs (d) and (e) above.</p> <p>It is, however, important to remember that the FAIS Code does not apply to all insurance intermediaries. This is because it only applies to advice and intermediary services in respect of specified insurance products (such as those subject to the STI Act and the LTI Act). The insurance products which are excluded include those the subject of the Land Bank Act, certain agricultural co-operatives registered under the Co-operatives Act, an unemployment insurance fund established under the Unemployment Insurance Act or a collective bargaining agreement under the Labour Act. It also does not apply to the board of trustees of a medical scheme (s. (1)(3)(a)(iii)). See Good Practice A.2 'Contracts'.</p> <p>Paragraph (a): responsibility of insurers for their agents</p> <p>The FAIS Act provides to a limited extent that a financial services provider is responsible for their representatives (which would include their agents) in that it provides that the provider must be satisfied that their representatives (and key individuals) are competent to act when rendering a financial service on behalf of the provider, and comply with the requirements of the Act, other Acts and any applicable Code (such as the FAIS Code) (s. 13 (2)). Further, an insurer would be responsible for their agents at common law.</p> <p>Paragraph (b): Advice as to who the intermediary is acting for</p> <p>Detailed information must be given under the FAIS Code on the contractual relationship between the provider (who could be an intermediary) and a product supplier. This includes details of the relevant product supplier (s. 4(1)).</p> <p>Paragraph (c): Commissions</p> <p>A provider (other than a direct marketer) must “at the earliest reasonable opportunity” provide a client with “full and appropriate information” about “the nature, extent and frequency of any incentive, remuneration, consideration, commission, fee or brokerages (‘valuable consideration’), which will or may become payable to the provider, directly or indirectly, by any product supplier or any person other than the client, or for which the provider may become eligible, as a result of rendering of the financial service, as well as the identity of the product supplier or other person providing or offering the valuable consideration” (s. 7 (1) (c) (vi)).</p> <p>A direct marketer subject to the FAIS Code must disclose “information” about “commission, consideration, fees, charges or brokerages payable to the direct marketer by the client, or by the product supplier or by any other person”. This information must be provided “prior to the conclusion of any transaction and where a contract is concluded provide the client with the following information, provided where such information is provided orally, it must be confirmed in writing within 30 days” (my emphasis) (s. 15(3)). These obligations are obviously less rigorous than for providers who provide advice or intermediary services otherwise than by direct marketing, both as to substance and as to timing.</p> <p>For direct marketers who do not provide advice or intermediary services, the STI Rules and the LTI Rules provide that the following information must be furnished to the policy holder must “at the earliest reasonable opportunity” but prior to concluding the transaction: information about any “commission, consideration, fees, charges or brokerages payable to the direct marketer (if any) by the policyholder or by any other person” (my emphasis) (s. 4.3(g) of the LTI Rules and s. 4.3(f) of the STI Rules).</p>

	<p>The Micro insurance Paper also proposes that commission rates be disclosed to the Registrar as part of the proposed product filing process (page 41).</p> <p>Paragraph (d): Prohibition on brokering and agency roles</p> <p>There is no express prohibition in this regard in the relevant legislation. In practice, it is not common for a person to act in both capacities in respect of a given class of business.</p> <p>Paragraph (e): Understanding products are not bank guaranteed</p> <p>There is no express prohibition in this regard in the relevant legislation.</p> <p>Paragraph (f): Sanctions</p> <p>The FAIS Act gives the Registrar the potential to debar a representative for failure to comply with the Act (including the FAIS Code) and to seek civil and criminal sanctions (ss. 14A, 32, 34 and 36).</p>
Recommendation	<p>It is recommended that the FAIS Act and FAIS Code be amended so that:</p> <ul style="list-style-type: none"> • There is an express provision to the effect that a financial services provider is responsible for their agents; • The disclosures about commissions are made at the time of initial contact with the intermediary and so that the substance of the disclosures are consistent as between providers who are direct marketers and those that are not, and insurers who undertake direct marketing; and • New provisions are introduced to give effect to the Good Practices referred to in paragraphs (d) and (e) above.
Good Practice B.2	<p>Advertising and Sales Materials</p> <p>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.</p> <p>b. Insurers should be legally responsible for all statements made in marketing and sales materials they produce related to their products.</p> <p>c. All marketing and sales materials should be easily readable and understandable by the general public.</p>
Description	<p>There is general compliance with paragraphs (a) and (b) of this Good Practice so far as the FAIS Code is concerned. However there are no equivalent provisions which apply to insurers who engage in direct marketing without providing advice or intermediary services, except in relation to the limited insurers who are currently covered by the CP Act (see Good Practice A.2 'Contracts').</p> <p>Paragraph (a): Advertisements</p> <p>The FAIS Code expressly states that advertisements "<i>must not contain any statement, promise or forecast which is fraudulent, untrue or misleading</i>" (s. 14(1) (a)). There are also extensive provisions requiring warnings about projected returns and other matters (s. 14(1) (b)).</p> <p>The CP Act contains provisions:</p> <ul style="list-style-type: none"> • Providing protection against discriminatory marketing (s.8); • Prohibiting charging more than the displayed cost of a service (such as an advertised premium) (s. 23); and • Prohibiting false, misleading and deceptive representations and agreements (ss. 29, 41 and 51). <p>Paragraph (b): Responsibility for marketing</p> <p>The FAIS Act gives the Registrar the potential to debar a representative for failure to comply with the Act (including the FAIS Code) and to seek civil and criminal sanctions (ss. 14A, 32, 34 and 36). This should have the effect of making an insurer liable for a failure to comply with the above provisions.</p> <p>Paragraph (c): Readable advertisements</p> <p>There is no such requirement.</p>
Recommendation	<p>All marketers of insurance products should be required to comply with the equivalent of section 14 of the FAIS Code i.e. regardless of whether they are providing advice or intermediary services.</p>
Good Practice B.3	<p>Understanding Customers' Needs</p> <p>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.</p>
Description	<p>There are various requirements relating to ascertaining product suitability in the FAIS Code and requirements for retention of the record of advice. However these requirements do not apply consistently as between products which are direct marketed and those which are sold through intermediaries.</p>

	<p>FAIS Code</p> <p>The FAIS Code requires, in summary, that:</p> <ul style="list-style-type: none"> • Advice by a provider: there are extensive obligations on a provider (i.e. an authorized financial services provider or their representative who provides advice or intermediary services) to determine the suitability of advice which is provided before actually providing the advice, to take reasonable steps to ensure that the client understands the advice, to ensure that the client understands the implications of not providing full information and to make and maintain a record of the advice and give to give it to the client in writing (however there is no requirement to provide the record before the financial service is acquired) (ss. 3(2), 8 and 9). • Advice by direct marketer: a direct marketer (i.e. a provider who provides a financial service otherwise than on a face to face basis) advising a client must make enquiries as to whether a financial service is appropriate and must provide the client with information about the product supplier, the nature, class or type of the financial product, the nature and extent of benefits and how they are calculated, monetary obligations, cooling off rights and material risks. This information must be provided <i>“at the earliest reasonable opportunity,”</i> (S. 15(2)). These obligations are less extensive than those that apply when advice is given directly to a client (i.e. not by direct marketing). For example, there is no requirement to take reasonable steps to ensure that the client understands the advice or the implications of not providing full information (s. 7(1)) and 8 of the FAIS Code). • Record of advice: there is an obligation on all providers (including direct marketers) to <i>“record such verbal and written communications relating to a financial service rendered to a client as are contemplated in the Act”</i> (which would include the abovementioned advice). These records must be kept for 5 years after the five years after termination of the product concerned (to the provider’s knowledge) or in other cases after the rendering of the financial service (s. 3(2)). In addition to these obligations, a provider must maintain a record of the advice given to a client, the basis on which it was given, a brief summary of the relevant information and material, the financial products considered and recommended and why they were recommended. A provider must then give a copy of the advice to the client. However, surprisingly, this does not have to be done if the provider is a direct marketer (s.9).
Recommendation	<p>The above requirements should be made consistent so that the same obligations in relation to assessing suitability of advice, and record keeping, apply regardless of whether the advice is given face to face or through direct marketing.</p> <p>A copy of a record of advice should also be required to be given to, and signed by, the client in all cases with another copy maintained for at least 5 years. This record should be required to be expressed in clear language and at least in 10 point font.</p>
Good Practice B.4	<p>Cooling-off Period</p> <p>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.</p>
Description	<p>There is such a requirement in respect of policies covered by the Long-Term Insurance Act and for sales covered by the CP Act. However there are gaps in the coverage.</p> <p>The LTI Rules provide for a 30 day cooling off period for long-term insurance policies regulated by the Long-Term Insurance Act (rule 6.1). However, this would not, of course, apply to those long-term policies currently exempt from the LTI Act. This includes those policies the subject of the Land Bank Act, certain agricultural co-operatives registered under the Co-operatives Act, an unemployment insurance fund established under the Unemployment Insurance Act or a collective bargaining agreement under the Labour Act. These are potentially significant gaps.</p> <p>The CP Act further provides for a 5 day cooling off period for a transaction resulting from direct marketing (s. 16(1)). The CP Act does not currently apply to policies regulated by the Long-Term Insurance Act but does apply, for example, to funds regulated by the PF Act. Such funds could provide for the maintenance of accounts of the type described in this Good Practice.</p>
Recommendation	<p>A cooling-off period should apply to all long-term products of the type described i.e. including those provided pursuant to insurance and retirement schemes which are presently unregulated by the LTI Act and those which are provided by a pension fund organization as described in the PF Act. It is suggested that the length of the relevant period be 30 days, as is provided for by the LTI Act. This is considered appropriate given the complexity of the products in question.</p>
Good Practice B.5	<p>Key Facts Statement</p>

	A Key Facts Statement should be attached to all sales and contractual documents, disclosing the key factors of the insurance product or service in large print.
Description	There is no such requirement in South Africa, although there are various disclosure requirements which must be met at different times (see Good Practice A.2 'Contracts')
Recommendation	<p>There should be a requirement for a clear, plain language, brief "Key-Facts" statement in at least 10 point font to be given to a prospective policy holder before the policy is entered into. Such a statement should be required to be in a prescribed format so as to enable comparability of products and should be signed by the policy holder with a copy of the signed statement kept on file. In this regard, the proposal for a simplified one page policy statement that is contained in the Microinsurance Paper is a positive move, however consideration should apply to insurance products i.e. not just those in the microinsurance market.</p> <p>If it is not practical to provide a Key Facts Statement in writing before an insurance policy is acquired (such as where a policy is sold over the phone and immediate cover is required) then the statement should be read to the policy holder in a recorded phone call and a copy should be provided in writing within a specified period (and if it is not so provided within a short period the policy holder should be able to cancel the policy).</p>
Good Practice B.6	Professional Competence <ol style="list-style-type: none"> Sales personnel and intermediaries selling and advising on insurance contracts should have sufficient qualifications, depending on the complexities of the products they sell. Educational requirements for intermediaries selling long-term savings and investment insurance products should be specified, or at least approved, by the regulator or supervisor.
Description	<p>There are extensive requirements in the FAIS Act and the related Codes relating to the issues the subject of this Good Practice. However these requirements do not apply to all providers of all insurance services. In particular, financial services providers subject to the FAIS Act must meet extensive competency and operational ability requirements under the <i>Determination of Fit and Proper Requirements for Financial Services Providers, 2008</i>, made pursuant to section 8(1) of the FAIS Act. There are around 170,000 advisers who must comply.</p> <p>These requirements relate to the following matters for a financial services provider, a representative and a key individual:</p> <ul style="list-style-type: none"> • Personal character qualities of honesty and integrity (Part II); • Competency Requirements: in summary, an applicant for registration as a financial services provider must meet minimum experience and applicable qualification requirements and must have completed the relevant regulatory examinations before the Registrar will approve the appointment. The exams are required to relate to the rendering of financial services applicable to specific categories or subcategories to clients and factual knowledge of the law (Parts III to V); • Continuous professional development (CPD): the Registrar may also prescribe CPD requirements (Part VII); • Operational ability: there are detailed requirements for operational matters, including requirements for basic operational resources, detailed service level agreements with outsourced service providers, extensive internal controls, system controls and compliance measures, record keeping and key individuals (Part VIII); and • Financial soundness: these requirements relate to certain asset ratios and other financial matters (Part IX). <p>We understand that the examination requirements are particularly controversial because of their complexity (the standard for the different categories of product and service is not considered by some to be appropriate for all activities in the relevant category), cost and concerns about the fact that the exams can only be taken in English and Afrikaans (South Africa has, of course, 11 official languages). A number of stakeholders expressed concerns about the high failure rate and the need to pass the exam by the deadline of 31 December, 2011.</p> <p>Notwithstanding these comments, strong support was expressed for the need for financial advisers to be properly trained and competent.</p> <p>Insurance products for the purposes of the FAIS Act definition of a "financial product" are:</p> <ul style="list-style-type: none"> • Short and long term insurance products the subject of the STI and LTI Acts respectively; • A benefit provided by a pension fund organization subject to the PF Act; • A benefit provided by a friendly society subject to the FS Act; • A health service provided by a medical scheme under the MS Act; and

	<ul style="list-style-type: none"> Any other financial product declared by the Registrar to be a financial product for the purposes of the Act (s.1(1)). <p>This definition means that the professional competence requirements of the FAIS Act do not apply in respect of various insurance products. They include those the subject of the Land Bank Act, certain agricultural co-operatives registered under the Co-operatives Act, an unemployment insurance fund established under the Unemployment Insurance Act or a collective bargaining agreement under the Labour Act. These are potentially significant gaps.</p>
Recommendation	<p>Consideration should be given to making the professional competence requirements of the FAIS Act apply in respect of all the insurance products mentioned above i.e. including those which are currently unregulated. These requirements apply under the extensive competency and operational ability rules in the <i>Determination of Fit and Proper Requirements for Financial Services Providers, 2008</i>.</p> <p>The failure to apply these requirements to all sales personnel and intermediaries is a significant gap in the consumer protection regime applying to insurance in South Africa.</p> <p>Examinations: consideration should be given to extending the time to comply with the regulatory examination requirements for providers and intermediaries covered by the FAIS Act.</p>
Good Practice B.7	<p>Regulatory Status Disclosure</p> <ol style="list-style-type: none"> In all of its advertising, whether by print, television, radio or otherwise, an insurer should disclose: <ol style="list-style-type: none"> that it is regulated, and the name and address of the regulator. All insurance intermediaries should be licensed and proof of licensing should be readily available to the general public, including through the internet.
Description	<p>Paragraph (a): insurance and regulator details</p> <p>The name of a short-term or long-term insurer is required to be displayed. However there is no requirement to display the name of the regulator.</p> <p>The FAIS Act requires a licensee to:</p> <ol style="list-style-type: none"> display a certified copy of the licence in a prominent and durable manner within every business premises of the licensee; ensure that a reference to the fact that such a licence is held is contained in all business documentation, advertisements and other promotional material; ensure that the licence is at all times immediately or within a reasonable time available for production to any person requesting proof of licensed status under authority of a law or for the purpose of entering into a business relationship with the licensee (s.8(8)) <p>Paragraph (b): licensing</p> <p>All intermediaries should be required to be licensed under s. 7 of the FAIS Act. Although the FSB does not seem to maintain a list of licensed intermediaries on its website, it is possible to search for a licensed or debarred provider by inputting name details.</p>
Recommendation	<p>The FSB's name and contact details should be required to be put on all advertisements and there should be requirement that all advertisements not be misleading or deceptive in any way.</p>
Good Practice B.8	<p>Disclosure of Financial Situation</p> <ol style="list-style-type: none"> 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. 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. If credible claims paying ability ratings are not available, the regulator or supervisor should periodically publish sufficient information on each insurer for an informed commentator or intermediary to form a view of the insurer's relative financial strength.
Description	<p>Paragraph (a): annual public reports</p> <p>The Registrar must publish an annual report on his or her activities under the LTI Act and the STI Act (s. 5 in each Act). For example, the FSB 2010 annual report contains information about:</p> <ul style="list-style-type: none"> Aggregated assets in different categories over the previous 3 years; Surplus assets to capital adequacy requirements over the previous 3 years; Regulatory developments; Enforcement action; and Unregistered insurance businesses. <p>Paragraph (b): financial information on insurers</p> <p>Insurers are mostly public companies which are required under the Companies Act to publish their financial statements each year.</p>

	<p>Paragraph (c): insurer specific information</p> <p>This information is not published, other than when the FSB becomes aware of an unregistered insurance business they will publish in relevant newspapers the name of the business.</p>
Recommendation	No recommendations.
SECTION C	CUSTOMER ACCOUNT HANDLING AND MAINTENANCE
Good Practice C.1	<p>Customer Account Handling</p> <ol style="list-style-type: none"> 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. Customers should have a means to dispute the accuracy of the transactions recorded in the statement within a stipulated period. 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. 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. 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. 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	<p>These Good Practices are provided for to a very limited extent. However there is no provision for such requirements to apply in relation to insurers who do not have to comply with the relevant Code or legislation.</p> <p>Paragraph (a): Periodic statements</p> <p>The FAIS General Code provides that a provider must “A provider must, where applicable, at the request of a client, provide the client with a statement of account in connection with any financial service rendered to the client.” (s. 7 (3)). It is to be noted that there is no requirement to provide such statements at regular intervals and no requirement for particular information to be provided to the client.</p> <p>The Code of Conduct for Administrative FSPs provides, in summary, that clients must be given information on request and at 3 monthly intervals such as to enable financial records to be kept and the determination of the composition and market value of investments and any changes over the period (s. 10).</p> <p>The Code of Conduct for Discretionary FSPs provides, in summary, that:</p> <ul style="list-style-type: none"> Information for client: a client must be given, on request and in a comprehensible and timely manner, any reasonable information regarding the financial products of the client, market practices and the risks inherent in the different markets and products (s. 4(a)); and Reporting to clients: the rules about reporting to clients are similar to those mentioned above in relation to an administrative FSP. However additional information must be provided in relation to financial products bought and sold, cash receipts and payments, non-cash transactions, profits and losses and there must be detailed information about foreign financial products (s. 6). <p>Paragraph (b): Disputes</p> <p>See Good Practice E.1 ‘Internal Dispute Settlement’. However there is not an express provision for a client to raise disputes about the accuracy of a statement which may be provided.</p> <p>Paragraph (c): Cash values</p> <p>See paragraph (a) re the provisions in the ADFSP Codes requiring information to be provided on request. There is not a specific requirement for a client to be given a table showing projected cash values.</p> <p>Paragraph (d): Renewal notices</p> <p>The only relevant requirements are in the STI Rules and they only apply on unilateral termination of the policy. The Short-Term Insurance Rules provide that an insurer shall not unilaterally terminate any policy without giving notice either direct to the policyholder 30 days prior to the cancellation date by satisfying itself that notice has been given in accordance with subparagraph (i) to the policyholder by the independent intermediary. However, if these requirements cannot be met then notice can be given by</p>

	<p>publication of the required notice in two editions of a newspaper circulating in all areas in which it is reasonably believed that relevant policyholders reside, and by forwarding a copy of the notice to the Registrar prior to publication (s. 7.3(b)).</p> <p>Paragraphs (e) and (f): non-disclosure</p> <p>The STI Act provides that a policy will not be invalidated, and the obligations of the insurer will not be reduced, by a misrepresentation or non-disclosure “unless that representation or non-disclosure is such as to be likely to have materially affected the assessment of the <u>risk</u> under the policy concerned at the time of its issue or at the time of any renewal or variation thereof.” (s. 53 (1) – emphasis added) Further, if an age is incorrectly stated in an accident or health policy then the benefits will be adjusted to reflect the true age unless the Registrar determines otherwise (s. 53). Similar provisions are in s. 59 of the LTI Act.</p> <p>However neither the STI Act nor the LTI Act contains a precise provision to the effect that a non-disclosure can only be relied on when a claim is made to the extent that is material to the cause of the claim (Good Practice paragraph (f)). However, in a paper published on the STO website, the STO expressed the opinion that :” <i>The office of the Ombudsman considers that it is a requirement of the South African Common Law that a causal link exist between a breach of an insurance contract and any loss suffered by the insured, before the insurer may escape liability. In other words, the insurer must establish that there was such a causal link before it is entitled to rely upon a breach. The onus is on the insurer to prove the existence of a link.</i>” (emphasis added) Nevertheless the STO went on to say “<i>that it would be preferable for the matter to be addressed through legislation</i>”.¹⁴⁸</p> <p>The SAIA Code provides in this context that one of the permitted grounds for rejecting a claim is that there has been a material misrepresentation or non-disclosure (para. 10.2). Under the Code policy holders must also have the consequences of non-disclosure explained to them (para. 9.1).</p>
Recommendation	<p>All of these Good Practices should be reflected in the new insurance legislation which is recommended in Good Practice A.1 ‘Consumer Protection Regime’. It is considered especially important that there be included provisions which:</p> <ul style="list-style-type: none"> • Require periodic statements for savings and investment products to be regularly provided; • Require renewal notices to be provided for non-life policies; and • Make it clear that if an insurer wishes to rely on a breach of a term in an insurance contract to deny a claim in whole or in part, then the insurer must prove that there was a causal link between the event which gave rise to the claim and the breach of the insurance contract. Such a provision should apply to any breach (including, without limitation, non- disclosure and a breach of warranty).
SECTION D	PRIVACY & DATA PROTECTION
Good Practice D.1	<i>Confidentiality and Security of Customers’ Information</i> Customers have a right to expect that their financial transactions are kept confidential. 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	See Annex 1.
Recommendation	See Annex 1.
SECTION E	DISPUTE RESOLUTION MECHANISMS
Good Practice E.1	<i>Internal Dispute Settlement</i> <ol style="list-style-type: none"> Insurers should provide an internal avenue for claim and dispute resolution to policyholders. Insurers should designate employees to handle retail policyholder complaints. Insurers should inform their customers of the internal procedures on dispute resolution. The regulator or supervisor should investigate whether insurers comply with their internal procedures regarding consumer protection.
Description	<p>The provisions contemplated by this Good Practice are largely provided for by the FAIS Code and the STI Rules and the Long-Term Insurance Rules, except of course in so far as these rules do not apply to particular insurance sectors (see Good Practice A.1 ‘Consumer Protection Regime’). There are also provisions in the voluntary SAIA Code which reflect this Good Practice.</p> <p>Paragraphs (a) to (c): internal complaint resolution schemes FAIS Code</p>

¹⁴⁸Page 10 of “Law and Equity as applied by the Office of the Ombudsman for Short Term Insurance” - available at <http://www.osti.co.za/index.php?page=terms-of-reference-equity>¹⁴⁸ Source: <http://www.medicalschemes.com/consumer/FAQ.aspx#Q26>

	<p>Section 17 of the FAIS Code relevantly provides as follows (the emphasis related to the abovementioned Good Practices):</p> <p><i>A provider, excluding a representative must maintain an internal complaint resolution system and procedures based on the following:</i></p> <p><i>a) Maintenance of a comprehensive complaints policy outlining the provider's commitment to, and system and procedures for, internal resolution of complaints;</i></p> <p><i>b) transparency and visibility: ensuring that clients have full knowledge of the procedures for resolution of their complaints;</i></p> <p><i>c) accessibility of facilities: ensuring the existence of easy access to such procedures at any office or branch of the provider open to clients, or through ancillary postal, fax, telephone or electronic helpdesk support; and</i></p> <p><i>d) fairness; ensuring that a resolution of a complaint can during and by means of the resolution process be effected which is fair to both clients and the provider and its staff.</i></p> <p>Section 18 of the FAIS Code also relevantly provides that a provider (other than a representative) must ensure that they have adequate resources for complaint resolution, adequate training of all relevant staff, that responsibilities and mandates are delegated to facilitate complaints resolution of a routine nature with escalation procedures for other complaints and that there are follow-up procedures to avoid occurrence and to improve procedures.</p> <p>There are also obligations to put complaints procedures in writing which must require, amongst other things that complaints are <i>"as soon as practically possible ...forwarded to the relevant staff"</i>. There must also be included in the procedures a clear summary of the provisions of the Act and the relevant Ombudsman's details (s. 19).</p> <p><i>STI Rules and the Long-Term Insurance Rules</i></p> <p>The STI Rules and the LTI Rules both require that <i>"An insurer must within a reasonable period in writing inform a policyholder of a policy issued by the insurer on or after the commencement date, of details of any available internal complaint resolution systems and procedures, as well as full particulars relating to the [relevant] Insurance Ombudsman"</i> (ss. 4.3 (k) and 19 (b)) of the STI Rules and the LTI Rules).</p> <p><i>SAIA Code</i></p> <p>The voluntary SAIA Code requires insurers to deal with complaints in accordance with specified time lines and procedures and to refer disputes to the STI Ombudsman and other relevant ombudsmen (para. 16). Importantly, complaints must be dealt with within 15 days after all relevant information has been received and the complainant must be kept regularly informed of progress and at least every 10 days</p> <p>Paragraph (d): Supervision</p> <p>We understand that the FSB investigates whether the requirements of the FAIS Code etc. are provided for in an insurer's procedures but it is not clear whether there is an investigation of the extent to which the procedures are actually followed (for example, through surveying complainants).</p>
Recommendation	<p>All insurers, including those currently exempt from compliance with the relevant legislation and regardless of whether or not insurance is direct marketed, should be required to have internal complaint resolution systems similar to the current provisions in the FAIS Code.</p> <p>The relevant provisions should also be amended to be more precise about the time within which complaints must be dealt with internally (as has been done in the SAIA Code) and to also require that the Boards of insurers are given reports on complaints, and especially systemic issues, on a regular basis.</p> <p>The FSB should investigate whether the required internal dispute resolution procedures are actually followed by insurers.</p>
Good Practice E.2	<p>Formal Dispute Settlement Mechanisms</p> <p>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.</p> <p>b. The role of an ombudsman or equivalent institution <i>vis-à-vis</i> consumer disputes should be made known to the public.</p> <p>c. The ombudsman or equivalent institution should be impartial and act independently from the appointing authority and the industry.</p>

	d. The decisions of the ombudsman or equivalent institution should be binding upon the insurers. The mechanisms to ensure the enforcement of these decisions should be established and publicized.
Description	<p>Broadly speaking there is provision for formal dispute resolution schemes as contemplated by this Act. However there are gaps in relation to complaints about those parts of the insurance sector which are not currently regulated by the STI Act, the LTI Act or the MS Act.</p> <p>There is a voluntary Short-Term insurance Ombudsman (STO) and a Long-Term Insurance Ombudsman, both of which provide services which are free to consumers and seem reasonably efficient although one industry stakeholder complained about delays with the LTO. There is also an external dispute resolution scheme provided for by the MS Act.</p> <p>The MS Act provides in Chapter 10 of the Act a comprehensive complaints and appeals process for the benefit of members. In summary, this process provides for the complaints to go first to the MS Registrar and then the MS Council and then the Appeals Board established by the Act. Complaints may also be submitted to the MS Council directly. The Appeals Board has the powers of the High Court to summon and examine witnesses and to require an oath or affirmation and to call for the production of books, documents and objects. Matters before the Appeals Board are heard in public and the parties may have legal representatives (ss. 47-50).</p>
Recommendation	See Volume I on recommendations for ombuds schemes.
SECTION F	GUARANTEE SCHEMES AND INSOLVENCY
Good Practice F.1	<p><i>Guarantee Schemes and Insolvency</i></p> <ol style="list-style-type: none"> 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. 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. Assets covering life insurance mathematical reserves and investment contract policy liabilities should be segregated or at the very least earmarked, and long-term policyholders should have preferential access to such assets in the event of a winding-up.
Description	<p><i>Paragraph (a): insurance guarantee schemes</i> There is no insurance guarantee scheme in South Africa.</p> <p><i>Paragraph (b): nominal defendant scheme</i> Neither is there a nominal defendant scheme of the type contemplated as there is no mandatory motor vehicle insurance for either personal claims or property damage (although there are reports that one is being considered). There is, however, a statutory Road Accident Fund established under the Road Accident Fund Act, 1996. The object of the Fund is “the payment of compensation in accordance with this Act for loss or damage wrongfully caused by the driving of motor vehicles.” (s. 3). The Fund provides cover for drivers and passengers for any bodily injuries, or death, sustained as a result of a road accident caused by a negligent driver or the owner of the motor vehicle or their employee (s. 17). The negligent driver is not allowed to claim from the Fund, only the third parties. The Fund is paid for through a levy on gasoline. The maximum that can be claimed is a maximum limit of R160 000 per year for income loss or loss of support, irrespective of the number of dependents. Certain common law claims are excluded (s. 21).</p> <p><i>Paragraph (c): insurance reserves and preferential access</i> There is not an express requirement in terms of this Good Practice. However there are requirements that a long term insurer have assets, provide for its liabilities and capital adequacy requirements and generally conduct its business so as to be able to meet its liabilities and capital adequacy requirements (ss. 29 and 30 of Long-Term Insurance Act). There are also prohibitions against encumbering assets (s. 34 (1)).</p> <p>There is no provision for policy holders to have preferential access in a winding up.</p>
Recommendation	It is recommended that consideration of a compulsory motor vehicle insurance scheme be accelerated, given our understanding that around 35% of cars in South Africa are uninsured and there is a very high accident rate. Such a scheme should make provision for suits against a nominal defendant. Consideration should also be given to introducing express provisions of the type contemplated in paragraph (c) of this Good Practice.
SECTION G	CONSUMER EMPOWERMENT

Good Practice G.1	<i>Broadly based Financial Capability Program</i> <ul style="list-style-type: none"> 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	See Annex 2.
Recommendation	See Annex 2.
Good Practice G.2	<i>Unbiased Information for Consumers</i> <ul style="list-style-type: none"> 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	See Annex 2.
Recommendation	See Annex 2.
Good Practice G.3	<i>Measuring the Impact of Financial Capability Initiatives</i> <ul style="list-style-type: none"> a. Policymakers, industry and advocates should understand the financial capability of various market segments, particularly those most vulnerable to abuse. b. The financial capability of consumers should be measured through a broad-based household survey that is repeated from time to time. c. The effectiveness of key financial capability initiatives should be evaluated.
Description	See Annex 2.
Recommendation	See Annex 2.

Consumer Protection in the Private Pensions Sector

The pension sector in South Africa broadly comprises government run public pension programs and employer-offered occupation pension program. The governance and regulation of the sector is based on the guidelines of the Retirement Act and the registrar supervising the sector is governed by the Financial Securities Board. The old-age grant program run by the government under pillar 1 is the main source of income for 75% of the senior citizens. However, since government schemes do not adequately provide pension benefits to a large market and therefore employer-based retirement plans are also an established market, covering between 66% and 84% employees in the formal sector. Given the long history of occupational retirement plans, the pensions market in South Africa is advanced and offers a variety of products. In 2008, the approximately 11 million members were registered as following: 31% under underwriting, 1.6% under transnet/Telkom/PO, 13.6% under GEPPF, 54% under privately administered funds and 0.2% under foreign or BCF.

Table 12: Benefits by type of retirement fund scheme (in R'm)

Benefits (in R'm)	2008	2007	2006
Privately Administered Funds	86,128	66,379	55,982
Underwritten Funds	24,273	15,985	13,454
GEPPF	22,398	20,218	16,400
Transnet Funds	8,664	5,681	4,590
Telkom Pension Fund	4	3	45
Postoffice Retirement Fund	450	465	372
Bargaining Council Funds	360	43	202
Foreign Funds	16	55,982	5
TOTAL	142,293	164,756	91,050

Source: FSB Registrar of Pension Funds Annual Report 2007/2008

Despite a long history of public and private pension schemes, the sector suffers from limitations of access, affordability and transparency. Therefore, the large segment of the population working in the informal sector is not a part of any pension program; only 54% of all the pre-retirement age South African population and only 41% of individuals working in formal sectors in metropolitan cities were part of any pension scheme. Further, the South African economy suffers from a high rate of unemployment which was approximately 25% in 2010, and from the volatility of an emerging economy, especially through the recent financial crisis; these factors have further hindered the expansion of the pensions market.

However, with more efficient service systems, technological advancements and a focus on financial inclusion, many private pension sector players are looking to tap on to the new markets in informal and rural sectors. As the market for retirement schemes has expanded, South African retirement industry is experiencing overall growth, reaching the high growth rate of 28% during 2010¹⁴⁹ with 256 billion USD in year ending 2010; according to ten-year CAGR figures, the sector witnessed a 13% growth, one of the highest among the emerging markets¹⁵⁰.

Table 13: Trends in the Pension Sector

RETIREMENT FUNDS ¹⁵¹	2008	2007	2006
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¹⁴⁹ TowersWatson, "Global Pension Asset Study 2011" <http://www.towerswatson.com/assets/pdf/3761/Global-Pensions-Asset-Study-2011.pdf>

¹⁵⁰ <http://www.towerswatson.com/assets/pdf/3761/Global-Pensions-Asset-Study-2011.pdf>

¹⁵¹ Source: FSB 2010 Annual Report, page 63 (the 2008 information is the latest available from the report).

Number of funds	11 271	12 758	13 143
Members ('000)	10 497	10 991	11 192
Contributions ((R'm)	98 991	91 157	81 156
Benefits paid ((R'm)	142 344	108 784	91 045
Assets (R' (R'm)	1 924 984	1 938 569	1 620 923
Assets as a % of GDP	87%	96%	92%

Source: FSB Registrar of Pension Funds Annual Report 2007/2008

FRIENDLY SOCIETIES ¹⁵²			
	2008	2007	2006
Number of funds ¹⁵³	91	91	83
Members ('000)	104	396	454
Contributions (R'000)	58 262	72 357	52 423
Benefits paid (R'000)	41 871	63 351	43 502
Assets (R'000)	449 799	589 966	462 804
Assets as a % of GDP	0.02%	0.03%	0.03%

Source: FSB Registrar of Pension Funds Annual Report 2007/2008

The South African retirement sector is rapidly expanding with smaller funds consolidating to adapt to the demands for sophisticated products. In 2006, there were 5,882 active retirement funds but the numbers have shrunk to less than 4,000 by 2010, with many funds converting into umbrella fund structures. In a 2009 Sanlam Employee Benefits Benchmark Survey, 43% retirement funds had considered moving into umbrella funds, most of which had fewer than 100 members. In the government sector as well, plans are underway to introduce a more sophisticated and transparent social security system to improve the currently running government pension program.

Legal and Institutional Framework

Friendly Societies Act, 1956 provides for the registration and supervision of a “friendly society” which is defined to mean, in summary, an association of persons established for the specified purposes and a related business (s. 1(1)). The definition of a “*pension fund organisation*” in s. 1 of the PF Act makes it clear that the PF Act applies to a body which carries on business in connection with objects for which a friendly society may be established.

Financial Advisory and Intermediary Services Act, 2002 regulates the conduct of financial services providers and their representatives who provide advice and client or provider related services. It applies in relation to services covered by the STI Act, the LTI Act, the PF Act and the MS Act.

In addition, Consumer Protection Act, 2009 applies to interests in pension funds and related services (other than services the subject of the FAIS Act). Government Employees Pension Fund Act, 1996 to the Government Employees Pension Fund; Pension Funds Act, 1956 applies to the pensions sector in general; Labour Relations Act, 1995 involves with interests in pension funds may be provided through a fund established pursuant to a collective agreement referred to in section 23 of the Act. Such an agreement may be negotiated by trade union Bargaining Councils established under s. 28 of the Act.

The Financial Services Board (FSB) is a unique and independent institution that was established to oversee the regulation of non-banking financial services industry; this includes supervision of insurers, fund managers and broking operations, particularly the regulation of Johannesburg Stock Exchange, the country's biggest stock exchange. FSB is mandated to supervise the capital markets, Collective Investment Schemes (CIS), financial service providers, insurers and reinsurers, other credit agents, nominee companies, retirement funds and friendly societies. FSB also performs the duties of the Registrar of Pension Funds as

¹⁵² Source: FSB 2010 Annual Report, page 63 (the 2008 information is the latest available from the report).

¹⁵³ Some 107 (2007: 106) friendly societies were exempt from submitting returns in 2008 in terms of Section 3 of the Friendly Societies Act (as amended) where annual income does not exceed R100 000.

prescribed by Financial Advisory and Intermediary Services Act (2002). By imposing stringent rules, monitoring compliance by these laws and taking regulatory action whenever necessary, the department also participates in investor protection and promotes a transparent and efficient financial system. FSB regulates the pensions industry according to the regulations set by Pension Funds Act (1956), Friendly Societies Act (1956) and Financial Advisory and Intermediary Services Act (2002).

The Office of the Ombud for Financial Services Providers (FAIS) undertakes disputes pertaining to any financial matter between financial services providers and their clients. Although no fee is charged to the consumer and its service is accessible to all, only cases of up to 800,000 rand monetary cap can be considered through the system. FAIS is an independent authority which was established in 2002 and receives funding from FSB.

National Consumer Commission (NCC) was established with broad powers to enforce the wide-ranging rights this statute provides consumers. These include the right to equality in the consumer market, privacy, the exercise of freedom of choice, disclosure and information, fair and responsible marketing, fair and honest dealing, fair value and fair, just and reasonable terms and conditions. With this mandate, NCC under consumer protection issues in the pensions sector and exercises regulatory rights as assigned to it under the Consumer Protection Act (2009).

National Credit Regulator (NCR) is the regulatory body for the credit industry in South Africa. NCR is mandated to promote education, research and policy development in the credit industry, while also executing the functions of registering industry participants, investigating any complaints and ensuring enforcement of the regulations as prescribed by the National Credit Act, 2005; NCR also focuses on expanding access of credit market.

Registrar of Labour Relations maintains records of trade unions, employers' organizations, federations of trade unions, federations of employers' organizations, and councils. The Registrar maintains these records and additional responsibilities assigned to it, according to the Registrar by the Labour Relations Acts (1995).

Association for Savings and Investments South Africa (ASISA), formed in 2008, represents the majority of the savings and investments industry in the country. The association was formed by members of the Association of Collective Investments (ACI), the Investment Management Association of South Africa (IMASA), the Linked Investment Service Providers Association (LISPA) and the Life Offices' Association (LOA); since the formation of ASISA, these associations have closed down and all key retirement funds companies are now members of ASISA. As a representative of pensions industry, ASISA works towards a healthy, transparent and sustainable financial environment to promote growth and equal opportunity. ASISA aims to not only represent its members but to also provide investors and regulators a platform for market updates, latest research and statistics on the industry.

Institute of Retirement Funds (IRS) is an independent organization representing the retirement industry in South Africa. IRS negotiates on government policies, organizes conferences on pertinent issues and disseminates latest information regarding the retirement benefit provision industry.

National Consumer Forum is an independent not-for-profit organization dedicated to upholding the rights and interests of consumers in South Africa. It is affiliated with Consumers International (CI) and is active in organizing campaigns for establishing a fair market place and a consumer friendly South Africa.

Good Practices: Private Pensions Sector

SECTION A	CONSUMER PROTECTION INSTITUTIONS
Good Practice A.1	<p>Consumer Protection Regime</p> <p>The law should recognize and provide for clear rules on consumer protection in the area of private pensions and there should be adequate supporting institutional arrangements:</p> <ol style="list-style-type: none"> There should be specific provisions in the law, which create an effective regime for the protection of consumers who deal directly with pension management companies and members/ affiliates of occupational plans. There should be a general consumer protection agency or a specialized agency, responsible for the implementation, oversight and enforcement of pension consumer protection, as well as data collection and analysis (including inquiries, complaints and disputes). The law should provide, or at least not prohibit, a role for the private sector, including voluntary consumer organizations and self-regulatory organizations, in respect of consumer protection regarding private pensions.
Description	<p>The law applicable to private pensions in South Africa does not have any specific provisions for the protection of consumers of the type contemplated in paragraph (a) and (b), although it makes provision for a statutory complaints resolution regime through the establishment of the Pensions Fund Adjudicator (Pension Funds Adjudicator). Further, there is only a very limited role given to the private sector under this regime.</p> <p><i>Paragraph (a)</i></p> <p>There are very few provisions in the law for the specific protection of consumers who deal directly with pension management companies and members/ affiliates of occupational plans. Those that exist are in the PF Act and the FAIS act.</p> <p>Pension Funds Act</p> <p>Application of Act. In summary, as mentioned above, the PF Act provides for the regulation of “<i>pension funds</i>” and related matters.</p> <p>The provisions likely to have most relevance from a broad consumer protection perspective those relating to:</p> <ul style="list-style-type: none"> • Registration: The registration of regulated pension funds, including of pension funds to which the State contributes financially (ss. 4 - 4C); • The effect of registration of a pension fund: The fund becomes an incorporated body holding all the relevant assets, rights, liabilities and obligations and has an obligation to keep the relevant money and assets and to maintain related books of account and records)(s. 5); • Administration: The administration requirements for a registered fund, including in relation to Board members (ss. 7 – 7D), the principal officer (including the need to meet “fit and proper” requirements – s. 8), the duties of the Board (which include to “<i>ensure that adequate and appropriate information is communicated to the members of the fund informing them of their rights, benefits and duties in terms of the rules of the fund</i>” – s. 7D (c)) and the appointment of an auditor (s. 9) and a valuator (s. 10). • The business which may be carried on by a fund: Essentially the rule is that only the business of a fund may be carried on, except to the extent the Registrar approves otherwise (s. 10); • Rules of the fund: They must be approved by the Registrar (ss. 11 and 12) and are binding on the fund, members, shareholders and officers (s.13); • Payment of contributions: There are rules for their transmission to the fund’s bank account and the payment of interest on late contributions (s. 13A); • Member benefits: They must be determined by reference to defined benefits, defined contributions or a pension entitlement (ss. 14A and 14B); • Accounts: every registered fund must lodge with the Registrar annual statements relating to revenue, expenditure and financial position (s. 15). This must be done within 6 months of the end of the financial year; • Rights to a surplus in a fund: The provisions include rules for the calculation of stakeholder entitlements, including those of members and employers (ss 15A to 15K);

	<ul style="list-style-type: none"> • Valuator: A valuator must assess a fund every 3 years (s. 16 and 17); • Fund schemes of arrangement: There is provision for schemes to be followed by funds which are determined not to be in a sound financial condition (s. 18); • Investments: There are limitations on the investments which may be made by a fund (s. 19); • Registrar's powers: The Registrar has broad powers to require additional information and to inspect certain documents (ss. 20 and 21) with further powers to make enquiries, inspect and investigate a fund and cancel or suspend the registration of a fund (ss 24- 27); • Winding-up of funds: The voluntary dissolution of a fund and a winding up by a court (ss 28 to 30); and • Disputes: Importantly, there are provisions for the establishment of a statutory scheme for the adjudication of disputes through the Office of the Pension Funds Adjudicator(ss 30A to 30Y) (see Good Practice E.2 'Formal Dispute Settlement Mechanisms); • Undesirable business practices: The Registrar can declare that certain practices are undesirable (s. 32A). However no such declarations have been made at this stage. • Entitlements to benefits: There are limitations on the transfer etc. of entitlements to benefits (s. 37A) and rules as to the disposition of pension benefits on death of a member (s. 37C) and as to permissible deductions from benefits (s. 37D) <p>The Registrar also has power to issue binding Directives under s. 33A, which take effect as subordinate legislation and are binding. The only current Determinations are:</p> <ul style="list-style-type: none"> • Directive PF No. 1: Section 2 – Funds established or continued in terms of a collective agreement concluded in a council in terms of the Labour Relations Act, 1995. • Directive PF No. 2: Section 14 – Amalgamations and transfers • Directive PF No. 3: Surplus apportionment schemes and nil returns • Directive PF No. 4: Section 28 - Voluntary Dissolution or Partial Dissolution of a Fund • Directive PF No. 5: Section 8 - The appointment and termination of appointments of principal officers of pension funds. <p>Further, the Registrar has issued a series of non-binding Circulars regulating pension funds. They are:</p> <ul style="list-style-type: none"> • PF 86 “Disclosure Requirements to be Observed by Funds” (1996): The most significant requirement of PF86 is for an explanatory statement to be given to a member 3 months after they join the fund and for the member to be given an annual statement as to benefit entitlements. However, many complaints have been raised about the lack of usefulness of these documents and it may be noted that there is no provision for information to be provided before a member joins a fund. • PF 90 “Minimum Information to be Disclosed to Pensioners, Deferred Pensioners and Dependents of Deceased Members” (1997): This circular supplements PF 86 in that it provides for information to be provided to the categories of beneficiaries mentioned in the title. There is provision for disclosure to be made on a pensioner, deferred pensioner or dependent becoming entitled to benefits and for an annual disclosure. In contrast to PF 86, there is a requirement for “<i>clear, unambiguous and ... plain language</i>” and there is a statement to the effect that the disclosures can be made in any of the official languages. Regular meetings with beneficiaries are also encouraged. • PF 130 “Good Governance of Retirement Funds”: This circular contains detailed provisions on the obligations of the Board and the Principal Officer, and especially on the obligations of trustees as fiduciaries. Every fund is required to have a code of conduct, an investment policy, a communication policy and a performance assessment for trustees “<i>which should inform their education and training policy</i>” (para. 10). <p>We understand that when the FSB does its annual surveillance checks on funds, they check for compliance with these rules. They are, however, non-binding. Further PFs 86 and 90 do not require that provision of information to a prospective member <i>before</i> they join a fund or, in the case of PF 86, for information to be in plain language and in relevant languages and in a comparable form (the latter point is to cover those cases where there is a choice of fund).</p> <p>The above provisions are discussed in more detail in the relevant Good Practices below. That said, as a general comment it is to be noted that the most significant omission from the PF Act is that it does not apply to the GEPF (as discussed in the Introduction). A further concern is the limited provisions for disclosure of information to members and prospective members, which apply as a matter of law.</p>
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	<p>Financial Advice and Intermediary Services Act</p> <p>The FAIS Act contains a number of consumer protection provisions which are relevant in this context. The relevant rules are contained in the “<i>General code of conduct for authorised financial services providers and representatives</i>” made under s. 15 of the FAIS Act (FAIS General Code). This Code is binding on authorised financial services providers and their representatives (s. 15(1) (b)). In summary, it regulates the conduct of financial services providers and their representatives who provide advice to clients and intermediary related services in relation to “<i>financial products</i>”. The FAIS General Code applies to services the subject of the PF Act as a “financial product” is defined to include:</p> <p>“(d) a benefit provided by –</p> <ul style="list-style-type: none"> (i) a pension fund organisation as defined in section 1(1) of the Pension Funds Act, 1956 (Act No. 24 of 1956), to the members of the organisation by virtue of membership; or (ii) a friendly society referred to in the Friendly Societies Act, 1956 (Act No. 25 of 1956), to the members of the society by virtue of membership;” <p>The following definitions that are critical for an understanding of the Code:</p> <p>“direct marketing” means the rendering of financial services by way of telephone, internet, media insert, direct mail, or electronic mail, excluding any such means which are advertisements not containing transaction requirements.</p> <p>“provider” means an authorized financial services provider, and includes a representative; (S. 1(1) of the FAIS General Code).</p> <p>Also relevant are the following definitions in s. 1(1) of the FAIS Act:</p> <p>“financial services provider” means any <u>person</u>, other than a <u>representative</u>, who as a regular feature of the business of such person -</p> <ul style="list-style-type: none"> (a) furnishes <u>advice</u>; or (b) furnishes advice and renders any <u>intermediary service</u>; or (c) renders an intermediary service;” <p>“advice” means, subject to subsection (3)(a), any recommendation, guidance or proposal of a financial nature furnished, by any means or medium, to any <u>client</u> or group of clients-</p> <ul style="list-style-type: none"> (a) in respect of the purchase of any financial product; or (b) in respect of the investment in any financial product; or (c) on the conclusion of any other transaction, including a loan or cession, aimed at the incurring of any liability or the acquisition of any right or benefit in respect of any financial product; or (d) on the variation of any term or condition applying to a financial product, on the replacement of any such product, or on the termination of any purchase of or investment in any such product, and irrespective of whether or not such advice – <ul style="list-style-type: none"> (i) is furnished in the course of or incidental to financial planning in connection with the affairs of the client; or (ii) results in any such purchase, investment, transaction, variation, replacement or termination, as the case may be, being effected; <p>“intermediary service” means, subject to subsection (3)(b), any act other than the furnishing of <u>advice</u>, performed by a <u>person</u> for or on behalf of a <u>client</u> or <u>product supplier</u> –</p> <ul style="list-style-type: none"> (a) the result of which is that a client may enter into, offers to enter into or enters into any transaction in respect of a <u>financial product</u> with a product supplier; or (b) with a view to - <ul style="list-style-type: none"> (i) buying, selling or otherwise dealing in (whether on a discretionary or non-discretionary basis), managing, administering, keeping in safe custody, maintaining or servicing a <u>financial product</u> purchased by a client from a product supplier or in which the client has invested; (ii) collecting or accounting for premiums or other moneys payable by the client to a product supplier in respect of a financial product; or (iii) receiving, submitting or processing the claims of a client against a product supplier; <p>“representative” means any <u>person</u>, including a person employed or mandated by such first-mentioned person, who renders a <u>financial service</u> to a <u>client</u> for or on behalf of a <u>financial services provider</u>, in terms of conditions of employment or any other mandate, but excludes a person rendering clerical, technical, administrative, legal, accounting or other service in a subsidiary or subordinate capacity, which service -</p>
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	<p>(a) <i>does not require judgment on the part of the latter person; or</i></p> <p>(b) <i>does not lead a client to any specific transaction in respect of a financial product in response to general enquiries ;</i></p> <p><i>“Product supplier” means any person who issues a financial product by virtue of an authority, approval or right granted to such person under any law, including the Companies Act, 1973 (Act No. 62 of 1973)</i></p> <p>The following is a simplified high level summary of relevant provisions of the FAIS General Code which have potential to apply to the pensions sector in relation to the information, disclosure and contractual practices the subject of this Good Practice.</p> <p>The following is a list of obligations which apply to a provider other than a direct marketer:</p> <ul style="list-style-type: none"> • Representations: A provider must ensure that representations to a client meet certain standards. In particular, they must be factually correct, be in plain language, adequate and appropriate “taking into account the factually established or reasonably assumed level of knowledge of the client;”, express monetary obligations in monetary terms unless to do so is not reasonably determinable in which case a method of calculation must be given). Importantly, there is an obligation to ensure that representations must be “<i>provided timeously so as to afford the client reasonably sufficient time to make an informed decision about the proposed transaction</i>” (s. 3(1)(a)); • Actual or potential conflicts of interest must be disclosed and there is an obligation to “<i>take all reasonable steps to ensure fair treatment of the policyholder</i>” (s. 3(1) (b) and (c)); • Client has priority: The interests of the client appropriate priority over those of the provider (s. 3.1(d)); • Transactions must be accounted for ((s. 3(1)(e)); • Inside information: The provider must not act on information not known to the client which could affect the costs to the client (s. 3(1)(f)); • Record keeping: the requirement is to keep disclosure records at least five years after termination of the financial service (if known to the provider) or completion of the service and these records must be made available on request to the client (s. 3(2)); • Privacy: there are confidentiality obligations imposed on the provider (s. 3(2)); • Information on product supplier; certain information must be given to the client “<i>at the earliest reasonable opportunity,</i>” about the product supplier, contractual relationships between the product supplier and the provider and an obligation on providers not to make, in effect, unfair comparisons between products (s. 4(1)); • Comparisons: there is an obligation on providers to make comparisons in the interests of the concerned client and not to make, in effect, unfair comparisons between products (s. 4(3) and (4)); • Information on provider: certain information must be given to the client “<i>at the earliest reasonable opportunity,</i>” about the provider (s. 5); • Information about the financial service: extensive information must be given to the client about the service “<i>at the earliest reasonable opportunity,</i>”, including information about name, class or type of service, any investment component, monetary obligations to the provider and the product supplier, exclusions, waiting periods, minimum benefits, guarantees, tax considerations and cooling off rights (s. 7 (1)); • Blank forms: there is a prohibition on providers requesting a client to sign a blank or incomplete form (s. 7(2)); • Statements of account: they must be provided on request by a provider (s. 7(3)) • Advice: there are extensive obligations on a provider to determine the suitability of advice which is provided before actually providing the advice, to take reasonable steps to ensure that the client understands the advice, to ensure that the client understands the implications of not providing full information and to make and maintain a record of the advice and give to give it to the client in writing (however there is no requirement to provide the record before the financial service is acquired) (ss. 3(2), 8 and 9). <p>The following obligations also apply to a provider:</p>
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	<ul style="list-style-type: none"> • Advertising: there are obligations to ensure that advertising by any provider is not untrue, false or misleading, contains warnings about any forecasts, projections, references to past and future performances and prominently displays any reference to the risks with any product (s. 14(1)); • Telephone records: advice provided by telephone must be recorded and provided to the client and the Registrar on request within 7 days of the request. Further, certain basic information must be given about the provides (s. 14(2)); and • Radio: any radio advertisement must contain the business name of the provider (s. 14(3)). <p>The following obligations apply to a direct marketer (i.e. a provider who provides a financial service otherwise than on a face to face basis):</p> <ul style="list-style-type: none"> • Information on product supplier: certain information must be given to the client “<i>at the earliest reasonable opportunity,</i>” about the direct marketer (s.15(1)). • Advice by direct marketer: a direct marketer (i.e. a provider who provides a financial service otherwise than on a face to face basis) advising a client must make enquiries as to whether a financial service is appropriate and must provide the client with information about the product supplier, the nature, class or type of the financial product, the nature and extent of benefits and how they are calculated, monetary obligations, cooling off rights and material risks. This information must be provided “<i>at the earliest reasonable opportunity,</i>” (s. 15(2)). These obligations are less extensive than those that apply when advice is given directly to a client (i.e. not by direct marketing). For example, there is no requirement to take reasonable steps to ensure that the client understands the advice or the implications of not providing full information (s. 7(1)) and 8 of the FAIS General Code). (See s. 7(1)) and 8). • Further information from a direct marketer: additional information must be provided on the product supplier’s details, the extent to which a product is realisable, how benefits will be paid, early termination restrictions and charges, amounts payable to the direct marketer, on request past investment performance, consequences of non-compliance with contractual obligations, “abbreviated information” about premium increases, “concise details” of restrictions such as exclusions and penalties, guaranteed minimum benefits and advice about the recording of telephone calls (s. 15(3)). <p>Government Employees Pension Fund Act</p> <p>For completeness, the provisions of the GEPA Act and the related mandatory rules which are relevant to consumer protection issues are also pertinent. They are, however, much more limited than those in the PF Act and the FAIS act. In summary, they relate to:</p> <ul style="list-style-type: none"> • Object of Fund: The object is to “<i>provide the pensions and certain other related benefits as determined in this Law to members and pensioners and their beneficiaries</i>” (s. 3); • Management of Fund: The Fund is managed by a Board of Trustees who report to the Minister of Finance who may, amongst other things, approve the benefit structures and investment plans for the Fund where they might affect the Government’s financial obligations to the Fund (ss. 6 and 31). There is not a separate regulator for any purpose, including for prudential reasons or consumer protection. • Trustees: There are 16 trustees in total, 8 of whom are “employer nominees” designated by the Members and 8 of whom are elected by specified groups representing members and pensioners. Significantly, the only qualification requirement for the trustees designated by the Minister is that one of them has, in the opinion of the Minister, expertise in management and investments and/or the management of pension funds in general (rule 4.1.2). However the trustees do have statutory duties, including to “<i>take all reasonable steps to ensure that the interests of members in terms of the rules of the Fund are protected at all times</i>” , to “<i>act at all times with due care and diligence and in good faith</i>” and “<i>to avoid conflicts of interest</i>” (rules 4.1.19(a) – (c)); • General Obligation of Board: The Board has a general obligation to take the steps required for the “<i>efficient and effective administration of the Fund</i>” . They may also formulate rules as to the manner, nature, form and manner within which and the time- limit within which employers perform certain acts including the paying over of contributions to the Fund and the payment of benefits to pensioners (s. 7); • Specific obligations of Board: The Board also has various specific obligations including to keep financial records, to prepare annual financial statements, give the Minister an annual report on the state of affairs, business and financial position of the Fund, appoint and auditor (ss. 8-11);
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	<ul style="list-style-type: none"> • Fund in difficulty: There are provisions for the Board to implement a scheme of arrangement for the Fund if it is in financial difficulty (s. 19); • Benefits: there are extensive provisions for the calculation of member and pensioner benefits, which must be done in accordance with an Act of Parliament (s. 20 and rule 14); • Entitlements to benefits: There are limitations on the transfer, attachment and assignment etc. of entitlements to benefits (ss. 20 – 26). Importantly , there is a provision to the effect that benefits must be paid to the relevant person within 60 days of the Board receiving the relevant documentation, after which interest starts to accrue (s. 26); and • Rules: the Board has wide power to make rules which are binding on the Government, the Fund and its members and beneficiaries and any person who has a claim against the Fund (s. 29). <p>Paragraph (b): consumer protection agency</p> <p>The general terms of the Consumer Protection Act 2009 (CP Act) apply to services provided through funds subject to the PF Act. However there is not a specialized consumer protection agency applicable to pensions.</p> <p>The Banking Sector Report contains a detailed summary of the CP Act. Accordingly the following is only a simplified high level summary of provisions of the CPA which have potential to apply to the abovementioned segments of the pension funds sub - sector in relation to the information, disclosure and contractual practices the subject of this Good Practice. The relevant provisions apply to:</p> <ul style="list-style-type: none"> • Protection against discriminatory marketing (s.8); • The right to receive information in plain and understandable language (s. 22); • The obligation not to charge more than the displayed cost of a service (such as an advertised premium) (s. 23); • The prohibition against false, misleading and deceptive representations and agreements (ss. 29, 41 and 51); • The right to rescind an agreement in the specified cooling off period (ss. 16 and 29) (see also Good Practice A.4 'Other Institutional Arrangements'); • Unconscionable conduct (s. 40); • Fraudulent schemes and offers (s. 42); • Pyramid and related schemes (s. 43); • Unfair, unreasonable and unjust contract terms (s. 48); • The obligation to draw certain provisions to the attention of the consumer, such as limitations of liability and an assumption of risk by the consumer (s. 49). <p>However, the CPA does not have specific mandatory content or disclosure requirements that might be applicable to pension scheme contracts.</p> <p>See also Annex 1: Retail Payments, Remittances and Data Protection Issues for details on privacy and data protection laws in South Africa. There are not any specific laws which apply in the pension context.</p> <p>Paragraph (c) – the private sector</p> <p>The abovementioned legislation makes very little provision for involvement of the private sector in the administration of pension fund laws.</p> <p>The principal exception is in the provision for an Advisory Committee to be appointed by the Minister (s. 3B of the PF Act). This Committee can investigate and report on any matters relating to pension funds.</p> <p>Another exception is in the provision for consumer groups to be accredited under s. 78 of the CP Act. Such a group may then initiate actions in the interests of consumers and intervene in any forum contemplated by the Act. However at this stage no such groups have been accredited.</p> <p>There are three industry associations in the pensions context:</p> <ul style="list-style-type: none"> • The Institute of Retirement Funds (IRF), which is a nonpolitical body representing the interests of the retirement industry in Southern Africa. The most important function of the IRF is to represent the retirement industry in negotiations with government authorities and the FSB, which would include commenting on legislation and tax matters affecting retirement funds/pensioners and all stakeholders.¹⁵⁴ However it does not focus on imposing standards on its members' behavior.
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¹⁵⁴ Source: <http://www.irf.org.za/>

	<ul style="list-style-type: none"> • The Financial Intermediaries Association of Southern Africa (FIA), which represents more than 15, 000 licensed financial services advisers throughout Southern Africa.¹⁵⁵ This would include advisers on private pension funds. • The Association for Savings and Investment SA (ASISA) which represents the majority of South Africa's life insurance companies as well as collective investment schemes management companies, asset managers, linked investment service providers and multi-managers. It was formed in October 2008, as a result of a merger of 4 different industry associations. As at the end of December 2010, its 160 member companies managed R3.2 trillion in assets.¹⁵⁶ This figure represents approximately 90% of the assets managed by the various sectors. It is relevant in this context as it covers investments and long-term insurance.
Recommendations	<p>The Government Employees Pension Fund should be bought within the ambit of the PF Act and the FAIS Act. It is considered that this should be done as a matter of urgency.</p> <p>The consumer protection provisions in the laws, subordinate legislation (including regulations and directives) and policy circulars applying to the pensions sector should be consolidated. This is especially the case in relation to the PF Act and the GEPP Act and the related instruments. The CPA should not apply to consumer issues concerning pension funds. Ideally the new rules would be part of the proposed new single Financial Consumer Protection Act. This would also be a good opportunity to update the PF Act, which is somewhat confusing to read because of the numerous amendments which have been made to it since it was first enacted in 1956.</p> <p>There should be a single regulator for consumer protection matters in the pensions sector. This should probably be the FSB under the new Twin Peaks regulatory scheme which has been proposed. In order to achieve this outcome, it seems clear from the consultative process that the FSB will need extensive additional resources to supervise and enforce the new laws, especially for the purposes of the GEPP.</p> <p>Disclosure documents. It is recommended that there be introduced a "Key-Facts" statement, a description of fund membership benefits, fees and charges etc. on joining and an annual member benefits statement containing details of accumulated benefits and relevant investments and returns, fees, charges etc. All these documents should be required to be in clear, plain language and in the relevant local language. The translation of the relevant documents will need to be undertaken with some care as some of the terminology used in pension related disclosures does not exist in local languages.</p> <p>The lack of a mandatory requirement for these documents is considered to be a critical gap. The PF Adjudicator should have sole statutory responsibility to resolve complaints relating to pension funds. To put it another way the National Consumer Commission (NCC) should not have jurisdiction over these highly technical issues.</p> <p>The recommendations in Volume 1 relating to regulation of financial advisors should also be made. See also Good Practice A.2 in the Insurance Sector Report.</p>
Good Practice A.2	<p>Other Institutional Arrangements</p> <ol style="list-style-type: none"> The judicial system should provide credibility to the enforcement of the rules on pension consumer protection. The media and consumer associations should play an active role in promoting pension consumer protection.
Description	<p>There have been no suggestions that the judicial system does not provide credibility to the enforcement of the rules on financial consumer protection. However, this system is rarely used for consumer protection matters given the costs of doing so and the extensive network of Ombudsman and other alternative dispute resolution schemes which are available (see Good Practice E.2 'Formal Dispute Settlement Mechanisms').</p> <p>As in the insurance sector, media plays an active role in promoting consumer protection while the few committed consumer protection groups have limited resources and support from Government; the two prominent consumer protection groups in the pensions sector, as in the insurance sector, are National Consumer Forum and SA National Consumer Union.</p>

¹⁵⁵ Source: <http://www.fiaweb.biz/about/>

¹⁵⁶ Source: ASISA Annual Report 2010, page 1

	<p>It is also understood that:</p> <ul style="list-style-type: none"> • There is no requirement for consumer organisations to be consulted by the Pension Funds' Adjudicator or any other relevant Ombudsman scheme. It may not be practicable to do so in any event as it is understood that consumer representatives are few in number, have very limited resources, high turnover and often find it difficult to attend meetings of the relevant Ombudsman schemes; • No Accredited Consumer Groups have been appointed under s. 78 of the CP Act; and • There is very little interaction between Government and consumer groups.
Recommendations	<p>There should be extensive consultation with consumer representative groups, as well as other stakeholders, in relation to financial services legislation. In particular, this should be done in the course of designing and implementing any regulatory changes as a result of implementing the proposed TCF principles and any recommendations in this report.</p> <p>We also suggest that the FSB (and any other relevant regulator) proactively engage with consumer groups on a regular basis to better understand issues of concern to consumers.</p> <p>Consideration should also be given to:</p> <ul style="list-style-type: none"> • Supporting consumer groups through some form of Government funding; • Making provision for the PF Act to consult regularly with consumer groups (see also Good Practice E.2 'Formal Dispute Settlement Mechanisms'); and • Accrediting consumer protection groups under the CP Act. If financial services are totally exempt from the CP Act, then the proposed new Financial Consumer Protection Act should make similar provision for accrediting consumer protection groups.
SECTION B	DISCLOSURE AND SALES PRACTICES
Good Practice B.1	<p>General Practices</p> <ol style="list-style-type: none"> a. The judicial system should provide credibility to the enforcement of the rules on pension consumer protection. b. The media and consumer associations should play an active role in promoting pension consumer protection. c. The information available and provided to the consumer should clearly inform the consumer of the choice of accounts, products and services, as well as the risks associated with each of the options or choices. d. Employers should be responsible for ensuring that new plan members are made fully aware of their rights and obligations under any occupational pension arrangements. e. Employers should be required to vest benefits with employees relatively quickly so as to avoid undesirable personnel practices (such as terminating employment just as employer contributions are about to vest). f. Employers should be obliged to ensure that contributions are properly collected, accounted for and passed on to the pension fund's managers.
Description	<p>The first two paragraphs are dealt with in Good Practice A.2. The FAIS Act provides to some extent for the information the subject of paragraph (c)). However the other elements of this Good Practice are only dealt with to a very limited extent in South Africa.</p> <p><i>Paragraphs (a) and (b): judicial system, media and consumer associations</i></p> <p>See Good Practice A.2. 'Other Institutional Arrangements'</p> <p>Paragraph (c): comparisons</p> <p>Under the binding FAIS General Code, there is an obligation on providers to make comparisons in the interests of the concerned client and not to make, in effect, unfair comparisons between products (s. 4(3) and (4)). There are also general obligations which are relevant in this context, including to "at all times render financial services honestly, fairly, with due skill, care and diligence, and in the interests of clients and the integrity of the financial services industry" (s. 2). There is also an obligation to ensure that representations to a client meet certain standards. In particular, they must be factually correct, be in plain language, adequate and appropriate "taking into account the factually established or reasonably assumed level of knowledge of the client;" (s. 3(1)(a)). However there is not a specific obligation to ensure that clients are informed of the account, product and service choices which are available.</p> <p>Paragraph (d): new plan members</p>

	<p>There is no provision for information to be provided before a member joins a fund, although PF 86 makes provision for information to be provided within 3 months after a member joins a fund. However PF 86 is not binding and in any event the obligation is on the fund, rather than the employer.</p> <p>The only other provision of possible relevance in this context is the obligation under the GEPF Rules on trustees to ensure that to “<i>ensure that adequate and appropriate information is communicated to the members of the fund informing them of their rights, benefits and duties in terms of the rules of the fund</i>” (s. 7D (c)). Again, however, there is no obligation to ensure that information is provided to a person before they join a fund.</p> <p>Paragraph (e): vesting of benefits</p> <p>There is no such obligation which applies to employers. However, the PF Act provides in effect that the amount of any surplus which is due to a stakeholder (which might be a member or an employer) is to be increased by the “<i>fund return</i>” until the date the surplus is awarded, paid or allocated (s. 15B(5)(f)). There is also a general obligation to use the credit balance in a member surplus account for the benefit of members (s. 15D). However, although there are extensive provisions which apply to schemes for the distribution of a surplus, there is not a provision of the type contemplated.</p> <p>Paragraph (f): payment of contributions</p> <p>The PF Act requires contributions to be paid by an employer to a bank not later than 7 days after the end of the month in which it is payable, after which interest accrues at a prescribed rate (s. 13A(3)(a) and rule 8.1.13).</p>
Recommendations	<p>There should be a requirement to inform clients of the account, product and service choices which are available, at least from the relevant product provider.</p> <p>It is also recommended that there be introduced a “Key-Facts” statement and a description of fund membership benefits, fees and charges etc. on joining a fund. This document should be required to be in clear, plain language and in the relevant local language for the member (see Good Practice A.1 ‘Other Institutional Arrangements’).</p> <p>Consideration should be given to including in relevant laws, a provision of the type contemplated in paragraph (e).</p>
Good Practice B.2	<p>Advertising and Sales Materials</p> <ol style="list-style-type: none"> Pension management companies should ensure their advertising and sales materials and procedures do not mislead the customers. All marketing and sales materials of pension management companies should be easily readable and understandable by the average public. The pension management company should be legally responsible for all statements made in marketing and sales materials related to its products, and for all statements made by any person acting as an agent for the company.
Description	<p>With the exception of paragraph (c), these Good Practices are provided for by the CPA, the FAIS General Code and PF 130 (although the latter is not binding). The Good Practice contemplated under paragraph (c) would seem to apply at common law to the extent that a principal is responsible for the conduct of its agents.</p> <p>Paragraph (a): misleading advertising and sales materials</p> <p>The CPA contains extensive provisions dealing with the marketing of goods and services (which would include those provided by a pension fund under the PF Act). Of particular relevance are the prohibitions on the marketing of services “<i>in a manner that is reasonably likely to imply a false or misleading representation, as contemplated in section 41</i>” (s. 29 (1)(a)). Section 41 in turn contains broad prohibitions on false, misleading or deceptive representations. Section 40 also has prohibitions on unconscionable conduct.</p> <p>Further, the FAIS General Code contains obligations to ensure that advertising by any provider is not untrue, false or misleading, contains warnings about any forecasts, projections, references to past and future performances and prominently displays any reference to the risks with any product (s. 14(1)).</p> <p>Paragraph (b): plain language</p>

	<p>The CPA contains express provisions to the effect that any material that is required to be disclosed under any Act must be in “plain language” (s. 22).</p> <p>The “plain language” test in s.22(2) is as follows:</p> <p><i>For the purposes of this Act, a notice, document or visual representation is in plain language if it is reasonable to conclude that an ordinary consumer of the class of persons for whom the notice, document or visual representation is intended, with average literacy skills and minimal experience as a consumer of the relevant goods or services, could be expected to understand the content, significance and import of the notice, document or visual representation without undue effort, having regard to—</i></p> <ul style="list-style-type: none"> <i>a) the context, comprehensiveness and consistency of the notice, document or visual representation;</i> <i>b) the organisation, form and style of the notice, document or visual representation;</i> <i>c) the vocabulary, usage and sentence structure of the notice, document or visual representation; and</i> <i>d) the use of any illustrations, examples, headings or other aids to reading and understanding.</i> <p>However it is not clear that the above provisions would apply to advertising on the understanding that advertising is not required under any Act.</p> <p>The only other provision of relevance in this context is in para. 50 of PF 130 which provides that “Communications to members and beneficiaries should be informative, transparent and fair and display accountability”. However PF 130 is not binding and in any event would only be relevant where marketing and sales materials are provided to members and beneficiaries.</p> <p>Paragraph (c): responsibility for advertising</p> <p>No provision of the type contemplated by this Good Practice is in place.</p>
Recommendations	<p>The laws relating to pension and other financial products should expressly require that all marketing and sales materials should be easily readable and understandable by the average public. The test for “plain language” provided for in s. 22(2) of the CPA should be considered for use in this context.</p> <p>The relevant financial services provider should be required to take responsibility for the advertising of their products where it can be shown that they directly or indirectly authorized the relevant material.</p>
Good Practice B.3	<p>Key Facts Statement</p> <p>A Key Facts Statement disclosing the key factors of the pension scheme and its services should be presented by the pension management company before the consumer signs a contract.</p>
Description	There is no such requirement in South Africa.
Recommendation	See the recommendations in Good Practice A.1.
Good Practice B.4	<p>Special Disclosures</p> <ul style="list-style-type: none"> a. Pension management companies should disclose information relating to the products they offer, including investment options, risk and benefits, fees and charges⁷⁹, any restrictions or penalties on transfer, fraud protection over accounts, and fee on closure of account. b. Customers should be notified of any planned change in fees or charges a reasonable period in advance of the effective date of the change. c. Pension management companies should inform consumers upfront of the nature of any guarantee arrangements covering their pension products. d. Customers should be informed upfront regarding the time, manner and process of disputing information on statements and in respect of transactions. e. Customers should be informed in writing, at the time of sale or when joining an occupational plan, of the options available to them if they decide to change employer, move or retire.
Description	<p>There are not any mandatory requirements covering any of these Good Practices, although there is a general obligation on the board of a fund to ensure that “adequate and appropriate information” is provided to members. PF 86 requires that members be given an explanatory statement within 3 months of joining a fund which to a limited extent covers this Good Practice (but there is no legal requirement to comply with PF 86).</p> <p>The board of a fund has a general obligation to “ensure that adequate and appropriate information is communicated to the members of the fund informing them of their rights, benefits and duties in terms of the rules of the fund;”(s.7D (c)). However there are no specific requirements in this regard and it is to be noted that the PF Act said in his 2009/2010 Annual Report that: “In the majority of cases determined by the OFPA, it is clear that funds fail to communicate effectively with their members”.¹⁵⁷ This issue was also raised in meetings with stakeholders during the mission.</p>

¹⁵⁷ 2009/2010 Annual Report, page 9

	<p>PF 86 requires, in particular, that the explanatory statement include information about:</p> <ul style="list-style-type: none"> • Contact details for the person who will answer queries (para.2); • Benefits (para. 9); • Limited information about market risk (paras. 10 (b) and (c)); • The procedures for internal dispute resolution schemes and access to the Pension Funds Adjudicator (para. 12). <p>Importantly, PF86 does not require any information to be provided in advance of joining a fund and does not require information to be provided about existing fees, changes to fees or charges, the nature of any guarantee that might apply, the timing requirements for dispute resolution schemes or the options if a member decides to change employer, move or retire.</p>
Recommendations	<p>The information the subject of this Good Practice should be made available by pension management companies in clear, plain language and preferably in all relevant local languages. At a minimum this information should be on the company's Internet site and widely advertised. It is also recommended that the information be provided in an explanatory booklet which is available on request (or for a small fee if a request is made more than once in a specified period).</p> <p>The above recommendations are in addition to those in Good Practice A.1 relating to disclosure documents.</p>
Good Practice B.5	<p>Professional Competence</p> <ol style="list-style-type: none"> Marketing personnel, officers selling and approving transactions, and agents, should have sufficient qualifications and competence, depending on the complexities of the products they sell. The law should require agents to be licensed, or at least be authorized to operate, by the regulator or supervisor. Personnel departments with responsibility for occupational arrangements should have at least one suitably qualified individual who can explain the plan to members and deal with third-party providers such as asset management companies.
Description	<p>There are extensive requirements in the FAIS Act and the related Codes relating to the issues the subject of Good Practices (a) and (b). These provisions would apply to intermediaries advising about pension products regulated under the PF Act (but not others such as the GEPP and not trustees of a pension fund). There is no provision of the type contemplated in Good Practice (c).</p> <p>Paragraph (a): qualifications and competence</p> <p>In particular, financial services providers subject to the FAIS Act must meet extensive competency and operational ability requirements under the <i>Determination of Fit and Proper Requirements for Financial Services Providers, 2008</i>, made pursuant to section 8(1) of the FAIS Act. There are around 170,000 advisers who must comply.</p> <p>These requirements relate to the following matters for a financial services provider, a representative and a key individual:</p> <ul style="list-style-type: none"> • Personal character qualities of honesty and integrity (Part II); • Competency requirements: in summary an applicant for registration as a financial services provider must meet minimum experience and applicable qualification requirements and must have completed the relevant regulatory examinations before the Registrar will approve the appointment, The exams are required to relate to the rendering of financial services applicable to specific categories or subcategories to clients and factual knowledge of the law (Parts III to V); • Continuous professional development (CPD): the Registrar may also prescribe CPD requirements (Part VII); • Operational ability: there are detailed requirements for operational matters, including requirements for basic operational resources, detailed service level agreements with outsourced service providers, extensive internal controls, system controls and compliance measures, record keeping and key individuals (Part VIII); and • Financial soundness: these requirements relate to certain asset ratios and other financial matters (Part IX). <p>We understand that the examination requirements are particularly controversial because of their complexity (the standard for the different categories of product and service is not considered by some to be appropriate for all activities in the relevant category), cost and concerns about the fact that the exams can only be taken in English and Afrikaans (South Africa has, of course, 11 official languages). A number of stakeholders expressed concerns about the high failure rate and the need to pass the exam by the deadline of 31 December, 2011.</p>

	<p>Notwithstanding these comments, strong support was expressed for the need for financial advisers to be properly trained and competent.</p> <p>Paragraph (b): Licensing A financial services provider who provides advice or intermediary services must be licensed under the FAIS Act (s. 7). This does not apply to representatives (such as an employee or an agent). However representatives must be able to show that they have a service contract with, or other mandate from, the relevant financial services provider and the provider must take responsibility for their activities (s. 13). Note that the above requirements do not apply to the board of management of a pension fund or a friendly society (s. 1(3(a)(iii)(aa) of the FAIS Act).</p>
Recommendations	<p>The FAIS Act requirements should apply to all intermediaries advising on all pension funds i.e. not just pension funds covered by the PF Act. This would mean, for example, that any intermediary that advised on the Government Employees Pension Fund would need to comply with the professional competence requirements in the <i>Determination of Fit and Proper Requirements for Financial Services Providers, 2008</i>. Examinations: consideration should be given to extending the time to comply with the regulatory examination requirements for providers and intermediaries covered by the FAIS Act. Consideration should also be given to introducing mandatory “fit and proper” requirements for trustees. For those trustees appointed by members there should, at a minimum, be significant initial and ongoing training requirements.</p>
Good Practice B.6	<p>Know Your Customer The sales officer should examine important characteristics of any potential customer, such as age, employment prospects and financial position, and be aware of the customer’s risk appetite and his or her long-term objectives for retirement, and recommend relevant financial products accordingly.</p>
Description	<p>There are various requirements relating to ascertaining product suitability in the FAIS Code and requirements for retention of the record of advice. However these requirements do not apply consistently as between products which are direct marketed and those which are sold through intermediaries.</p> <p>FAIS General Code The FAIS General Code requires, in summary, that:</p> <ul style="list-style-type: none"> • Advice by a provider: there are extensive obligations on a provider (i.e. an authorized financial services provider or their representative who provides advice or intermediary services) to determine the suitability of advice which is provided before actually providing the advice, to take reasonable steps to ensure that the client understands the advice, to ensure that the client understands the implications of not providing full information and to make and maintain a record of the advice and give to give it to the client in writing (however there is no requirement to provide the record before the financial service is acquired) (ss. 3(2), 8 and 9). • Advice by direct marketer: a direct marketer (i.e. a provider who provides a financial service otherwise than on a face to face basis) advising a client must make enquiries as to whether a financial service is appropriate and must provide the client with information about the product supplier, the nature, class or type of the financial product, the nature and extent of benefits and how they are calculated, monetary obligations, cooling off rights and material risks. This information must be provided “at the earliest reasonable opportunity,” (s. 15(2)). These obligations are less extensive than those that apply when advice is given directly to a client (i.e. not by direct marketing). For example, there is no requirement to take reasonable steps to ensure that the client understands the advice or the implications of not providing full information (s. 7(1)) and 8 of the FAIS Code). • Record of advice: there is an obligation on all providers (including direct marketers) to “record such verbal and written communications relating to a financial service rendered to a client as are contemplated in the Act” (which would include the abovementioned advice). These records must be kept for 5 years after the five years after termination of the product concerned (to the provider’s knowledge) or in other cases after the rendering of the financial service (s. 3(2)). In addition to these obligations, a provider must maintain a record of the advice given to a client, the basis on which it was given, a brief summary of the relevant information and material, the financial products considered and recommended and why they were recommended. A provider must then give a copy of the advice to the client. However, surprisingly, this does not have to be done if the provider is a direct marketer (s.9).
Recommendations	<p>The above requirements should be made consistent so that the same obligations in relation to assessing suitability of advice, and record keeping, apply regardless of whether the advice is given face to face or through direct marketing.</p>

	A copy of a record of advice should be required to be given to, and signed by, the client in all cases with another copy maintained for at least 5 years. This record should be required to be expressed in clear language and at least in 10 point font.
Good Practice B.7	<i>Disclosure of Financial Situation</i> <ol style="list-style-type: none"> The regulator or supervisor should publish annual public reports on the development, health and strength of the pensions industry either as a special report or as part of its disclosure and accountability requirements under the law that governs these. All pension management companies should disclose information regarding their financial position and profit performance. Actuarial reports on funding levels should be required annually for defined benefit plans and members and affiliates should be advised of the condition of the plan in a short and clear written report. Investment reports for defined contribution plans should at least match best practice mutual fund reporting.
Description	<p>The Good Practices in paragraphs (a), (b) and (c) seem to be met to a limited extent. However it is not clear whether the Good Practice in paragraph (d) is met.</p> <p><i>Paragraph (a): annual public reports</i></p> <p>The Registrar is required to provide the Minister with an annual report on his activities under the PF Act (s. 34). Although the 2010 Annual Report does have some information on regulatory and supervisory issues, there is no legislative requirement as to what must be in this report.</p> <p>The Board of Trustees of the GEPP is also required to publish an annual report as to the activities of the Fund, including its financial statements (which must include details of remuneration paid to trustees (rule 4.10)).</p> <p><i>Paragraph (b): information about pension management companies</i></p> <p>Every registered fund under the PF Act must lodge with the Registrar annual statements relating to revenue, expenditure and financial position (s. 15). This must be done within 6 months of the end of the financial year.</p> <p><i>Paragraph (c): defined benefit plans</i></p> <p>PF86 requires an annual statement to be given to a member as to benefit entitlements. However, many complaints have been raised about the lack of usefulness of these documents and note that, in any event, PF 86 does not require disclosure of the information the subject of this Good Practice.</p> <p>The GEPP requires a minimum funding level of at least 90% (rule 7.2.2) and provides that a member be given a copy of the rules of the Fund, its financial statements and the latest valuation report on request and payment of a fee related to the production of the documents (s. 19).</p> <p><i>Paragraph (d): investment reports for defined contribution plans</i></p> <p>Paragraph 9(a)(iii) simply requires that “<i>The investment risk should also be explained.</i>” in an annual benefit statement. However there is no requirement as to the detail that should be given in this regard. Further, as mentioned above, PF 86 is not binding.</p>
Recommendations	<p>The PF Act (or the relevant new legislation) should specify the information that must be in the Registrar’s annual report. In particular, there should be information on the on the development, health and strength of the pensions industry.</p> <p>There should be a mandatory requirement to provide an annual benefits statement containing details of accumulated benefits and relevant investments and returns, fees, charges etc. in clear, plain language (see Good Practice A.1 ‘Consumer Protection Regime’). This should include information on funding levels for defined benefit plans.</p> <p>The information the subject of the Good Practices described in paragraphs (c) and (d) should be required to be provided.</p>
Good Practice B.8	<i>Contracts</i> <p>There should be consistent contracts or membership forms for pension products and the contents of a contract should be read by the customer or explained to the customer before it is signed.</p>
Description	There are no requirements in this regard.
Recommendation	See our recommendations in Good Practice A.1.
Good Practice B.9	<i>Cooling-off Period</i> <p>There should be a reasonable cooling-off period associated with any individual pension product.</p>
Description	There are no requirements in this regard which specifically apply to pension funds.

	However the CP Act provides for a 5 day cooling off period for a transaction resulting from direct marketing (s. 16(1)).
Recommendation	A cooling-off period should apply to individual pension products i.e. those which are provided by a pension fund organization as described in the PF Act. The length of the relevant period should be 30 days, as is provided for by the Long-Term Insurance Act. This is considered appropriate given the complexity of the products in question.
SECTION C	CUSTOMER ACCOUNT HANDLING AND MAINTENANCE
Good Practice C.1	<p>Statements</p> <ul style="list-style-type: none"> a. Members and affiliates of a defined contribution pension plan should not be locked into a specified investment profile (and shares in their employer in particular) for more than a short period (e.g. one week) after providing notification of a desire to switch investment profiles. b. Customers or occupational plan members should receive a regular streamlined statement of their account that provides the complete details of account activity (including investment performance on a standardized basis) in an easy-to-read format, making reconciliation easy. c. Customers should have a means to dispute the accuracy of any transaction recorded in the statement within a reasonable, stipulated period. d. When customers sign up for paperless statements, such statements should be in an easy-to-read and readily understandable format.
Description	There are not any mandatory requirements reflecting this Good Practice, although PF 86 makes provision for annual statements to be provided and disputes about the accuracy of a statement could be raised with the PF Act. PF 86 is discussed in Good Practices A.1 and B.4. The PF Act is discussed in Good Practice E.2.
Recommendation	The Good Practices reflected in paragraphs (a) and (d) should be mandatory. See also the recommendations in Good Practices A.1, B.4 and E.2.
SECTION D	PRIVACY AND DATA PROTECTION
Good Practice D.1	<p>Confidentiality and Security of Customers' Information</p> <ul style="list-style-type: none"> a. The financial activities of any customer of a pension management company should be kept confidential and protected from unwarranted private and governmental scrutiny. b. The law should require pension management companies to ensure that they protect the confidentiality and security of personal information of their customers against any anticipated threats or hazards to the security or integrity of such information, and against unauthorized access to, or use of, customer information that could result in substantial harm or inconvenience to any customer.
Description	See Annex 1.
Recommendation	See Annex 1.
Good Practice D.2	<p>Sharing Customer's Information</p> <ul style="list-style-type: none"> a. Pension management companies should inform the consumer of third-party dealings for which the pension management company intends to share information regarding the consumer's account. b. Pension management companies should explain to customers how they use and share customers' personal information. c. Pension management companies should be prohibited from selling (or sharing) account or personal information to (or with) any outside company not affiliated with the pension management company for the purpose of telemarketing or direct mail marketing. d. The law should allow a customer to stop or —opt out of the sharing by the pension management company of certain information regarding the customer, and the pension management company should inform its customers of their opt-out right. e. The law should prohibit the disclosure of information of customers by third parties.
Description	There are no binding requirements in this regard under the current law applying to pension funds. However para. 21 of PF 130 stresses the need for a Board to preserve the confidentiality of information relating to a fund. See also Annex 1.
Recommendation	See Annex 1.
Good Practice D.3	<p>Permitted Disclosures</p> <ul style="list-style-type: none"> a. The law should state specific procedures and exceptions concerning the release of customer financial records to government authorities. b. The law should provide for penalties for breach of confidentiality laws.

Description	See Annex 1. Note too that a trustee of the GEPF has an obligation to adhere to duties of confidentiality (rule 4.1.19). A breach of this duty will not attract personal liability other than in the case of negligence, dishonesty or fraud (rule 4.5).
Recommendation	See Annex 1.
SECTION E	DISPUTE RESOLUTION MECHANISMS
Good Practice E.1	<p><i>Internal Dispute Settlement</i></p> <ul style="list-style-type: none"> a. An internal avenue for claim and dispute resolution practices within the pension management company should be required by the supervisory agency. b. Pension management companies should provide designated employees available to consumers for inquiries and complaints. c. The pension management company should inform its customers of the internal procedures on dispute resolution. d. The regulator or supervisor should investigate whether pension management companies comply with their internal procedures regarding dispute resolution.
Description	<p>The provisions contemplated by this Good Practice are largely provided for by 30A of the PF Act, the FAIS Code and PF 86, except of course in so far as these rules do not apply to particular pension funds (such as the GEPF and Bargaining Councils). The FSB checks for compliance with the FAIS General Code and with PF 86 (as well as other Policy Circulars) as part of its annual surveillance check.</p> <p><i>Paragraphs (a) to (c): internal complaint resolution schemes</i></p> <p><i>Pensions Fund Act</i></p> <p>Section 30A of the PF Act provides that a complainant may lodge a written complaint with the board of a fund, which must consider it properly and respond in 30 days. A dissatisfied complainant may refer the matter to the Pension Funds Adjudicator, which may extend the period or condone any non-compliance by the fund (s. 30A).</p> <p>The effectiveness of these provisions is a concern given the issues raised by industry and the comments of the PF Act in the 2009/2010 Annual Report that “Another factor [contributing to the backlog] is the lack of a dedicated internal complaints handling process within funds and administrators, which often results in simple enquiries to the fund being referred to the OFPA as complaints”.¹⁵⁸</p> <p><i>FAIS Code</i></p> <p>Section 17 of the FAIS Code relevantly provides as follows (the emphasis related to the abovementioned Good Practices):</p> <p><i>A provider, excluding a representative must maintain an internal complaint resolution system and procedures based on the following:</i></p> <ul style="list-style-type: none"> a) <i>Maintenance of a comprehensive complaints policy outlining the provider's commitment to, and system and procedures for, internal resolution of complaints;</i> b) <i>transparency and visibility: ensuring that clients have full knowledge of the procedures for resolution of their complaints;</i> c) <i>accessibility of facilities: ensuring the existence of easy access to such procedures at any office or branch of the provider open to clients, or through ancillary postal, fax, telephone or electronic helpdesk support; and</i> d) <i>fairness; ensuring that a resolution of a complaint can during and by means of the resolution process be effected which is fair to both clients and the provider and its staff.</i> <p>Section 18 of the FAIS Code also relevantly provides that a provider (other than a representative) must ensure that they have adequate resources for complaint resolution, adequate training of all relevant staff, ensure that responsibilities and mandates are delegated to facilitate complaints resolution of a routine nature with escalation procedures for other complaints and that there is follow-up procedures to avoid occurrence and to improve procedures.</p> <p>There are also obligations to put complaints procedures in writing which must require, amongst other things, that complaints are “as soon as practically possible ...forwarded to the relevant staff”. There must also be included in the procedures a clear summary of the provisions of the Act and the relevant Ombudsman’s details (s. 19).</p>

¹⁵⁸ 2009/2010 Annual Report, page 10

	<p>PF 86</p> <p>PF 86 requires, in particular, that the initial and annual explanatory statement to members should include information about :</p> <ul style="list-style-type: none"> • Contact details for the person who will answer queries (para.2); and • The procedures for the relevant internal dispute resolution scheme and access to the Pension Funds Adjudicator (para. 12). <p>Paragraph (d): Supervision</p> <p>We understand that the FSB investigates whether the requirements of the FAIS Code and the Policy Statements. are provided for in a pension fund's procedures but it is not clear whether there is an investigation of the extent to which the procedures are actually followed (for example, through surveying complainants).</p>
Recommendations	<p>The abovementioned requirements in PF 86 should be made mandatory. Further, there should be specific requirements for an internal dispute resolution scheme.</p> <p>All pension funds, including those currently exempt from compliance with the relevant legislation and regardless of whether or not there is direct marketing, should be required to have internal complaint resolution systems similar to the current provisions in the FAIS Code.</p> <p>The relevant provisions should also be amended to be precise about the time within which complaints must be dealt with internally. For example, under the voluntary Short-Term Insurance Code there is a requirement that complaints be dealt with within 15 days after all relevant information has been received and the complainant must be kept regularly informed of progress (at least every 10 days).</p> <p>There should also be a requirement that the Boards of pension funds be given reports on complaints, and especially systemic issues, on a regular basis. The FSB should investigate whether the required internal dispute resolution procedures are actually followed by pension funds.</p>
Good Practice E.2	<p>Formal Dispute Settlement Mechanisms</p> <p>A system should be in place that allows consumers to seek third-party recourse in the event they cannot resolve a pensions-related issue with their employer or a pension management company.</p>
Description	<p>Such a scheme is principally provided for through the statutory PF Act and the NCC. However there appear to be significant backlogs and other issues with the Pension Funds Adjudicator, as well as overlaps with the NCC's jurisdiction.</p> <p><i>Pension Funds Act</i></p> <p>The PF Act provides for the establishment of an office to be known as the "Pensions Fund Adjudicator" to administer complaints which are not satisfied by a fund. In summary, key features of the scheme are:</p> <ul style="list-style-type: none"> • The main object of the Pension Funds Adjudicator is to "<i>dispose of complaints...in a procedurally fair, economical and expeditious manner</i>" (s. 30D); • The Pension Funds Adjudicator may make any order "<i>which any court of law may make</i>" and a decision has the effect of a civil judgment in a court of law (ss. 30E(1)(a) and 30O); • The Pension Funds Adjudicator cannot investigate a complaint which is the subject of civil court proceedings (s.30H); • Appeals may be made to the High Court within 6 weeks of a determination (s. 30P); and • There does not appear to be a monetary limit for complaints; and • A conciliation process applies where a complaint seems capable of settlement. These cases are dealt with by an independent panel. 3,996 cases were conciliated in the 2009/2010 financial year.¹⁵⁹ <p>The meetings with stakeholders and a review of the 2009/ 2010 Annual Report of the Pension Funds Adjudicator highlight the following concerns about the scheme:</p> <ul style="list-style-type: none"> • Backlogs: the 2009/ 2010 Annual Report states that, at the end of the financial year, there were around 8,000 open cases (although doubts were expressed as to the accuracy of this figure in light of shortcomings in the office's case management system). It was also noted in the Report that an attempt had been made to close 2005 and 2006 open cases by 31 March 2010 but unfortunately this had not been achieved, although good progress had been made.¹⁶⁰; and • Overlaps of jurisdiction: there are apparent overlaps of jurisdiction with the Long-Term Insurance Ombudsman and the statutory NCC. Although it is understood that these issues have been settled by court rulings, it would be preferable if there were only one external dispute resolution system that dealt with the complexities of pension fund matters. However, where the complaint involves a life policy

¹⁵⁹ 2009/2010 Annual Report, page 10

¹⁶⁰ 2009/2010 Annual Report, page 10

	<p>provided under a pension plan, the Long-Term Insurance Ombudsman could also be considered for hearing the matter.</p> <p>Consumer Protection Act</p> <p>The CPA provides for a complainant to initiate a complaint with the NCC (s. 71). This would apply in relation to pension fund services, as the CPA applies to such services. This view has been confirmed in a High Court ruling. This suggests an overlap in jurisdiction between the Pension Funds Adjudicator and the NCC.</p>
Recommendations	<p>The PF Adjudicator should have sole statutory responsibility to resolve complaints relating to pension funds. To put it another way the NCC should not have jurisdiction over these highly technical issues. The PF Adjudicator should be provided with additional resources to assist with clearing the backlog of cases.</p> <p>See also volume I on the dispute resolution / ombudsman schemes.</p>
SECTION F	GUARANTEE SCHEMES AND SAFETY PROVISIONS
Good Practice F.1	<p>Guarantee Schemes and Safety Provisions</p> <p>Guarantee and compensation schemes are less common in the pensions sector than in banking and insurance. There are more likely to be fiduciary duties and custodian arrangements to ensure the safety of assets.</p> <p>a. There needs to be a basic requirement in the law to the effect that pension management companies should seek to safeguard pension fund assets.</p> <p>b. There should also be adequate depository or custodian arrangements in place to ensure that assets are safeguarded.</p>
Description	<p>The PF Act seems to have adequate requirements in this regard.</p> <p>The PF Act provides, for example, that:</p> <ul style="list-style-type: none"> • All money and assets of a fund must be kept for the purposes of the fund (s. 5(2)); • A fund may not carry out any business other than that of a fund, except with the approval of the Registrar and subject to transitional arrangements being approved (ss. 6 and 10).
Recommendation	No recommendations at this stage.
SECTION G	CONSUMER EMPOWERMENT
Good Practice G.1	<p>Using a Range of Initiatives and Channels, including the Mass Media</p> <p>a. A range of initiatives should be undertaken to improve people's financial capability.</p> <p>b. The mass media should be encouraged by the relevant authority to provide financial education, information and guidance to the public, including on the private pensions sector.</p> <p>c. The government should provide appropriate incentives and encourage collaboration between governmental agencies, the supervisory authority for private pensions, the private pension industry and consumer associations in the provision of financial education, information and guidance to consumers, particularly on the private pensions sector.</p>
Description	See Annex 2.
Recommendation	See Annex 2.
Good Practice G.2	<p>Unbiased Information for Consumers</p> <p>a. Financial regulators and consumer associations should provide, via the internet and printed publications, independent information on the key features, benefits and risks –and where practicable the costs- of the main types of financial products and services, including private pensions.</p> <p>b. The relevant authority should adopt policies that encourage non-government organizations to provide consumer awareness programs to the public in the area of pensions.</p>
Description	See Annex 2.
Recommendation	See Annex 2.
Good Practice G.3	<p>Consulting Consumers and the Financial Services Industry</p> <p>a. The relevant authority should consult consumer associations and the private pension industry to help the authority develop financial capability programs that meet the needs and expectations of financial consumers, especially pension fund members and affiliates.</p>
Description	See Annex 2.
Recommendation	See Annex 2.

Annex 1: Retail Payments, Remittances and Data Protection Issues

RETAIL PAYMENTS¹⁶¹

Introduction and context

A retail payment is defined as a payment that meets at least any one of the following characteristics; (i) the payment is not directly related to a financial market transaction; (ii) the payment is not time-critical; (iii) the payer or payee or both are individual entities or commercial non-banking enterprises; and, (iv) either the payer or payee or both are not participants in the system that is processing the payment¹⁶². It needs to be noted that “not time-critical” should not be interpreted to mean not real-time. There are many retail payment transactions that are processed on a near real-time basis, such as a person to person transfer. This definition of retail payment includes person-to-person; person-to-business; business-to-person; business-to-business; person/business-to-Government; and, Government-to-person/business payments.

A retail payment instrument is defined as an instrument that facilitates the transfer of funds, for example a cheque, debit card, credit transfer or cash. Paper based payment instruments such as cheques are giving way to electronic means of payment such as debit and credit cards and innovative payment products¹⁶³. Electronic money (e-money) instruments, which are essentially access mechanisms to pre-funded accounts, can be used through the internet, payment cards or mobile phones. Unlike cash, most retail payment instruments require transfer of value between various financial institutions using the relevant payments infrastructure.

“A retail payments system is defined as a system comprising of the technical infrastructure, participants, instruments, arrangements for clearing and settlement, business relationship arrangements such as bank-customer relationships, rules, procedures, legal framework, and governance arrangements that put together provide the overall environment within which retail payments are provided, authorized, processed, cleared and settled.” Main retail payment participants include not only banks but also non-bank financial institutions, merchants, credit card issuers and credit card acquirers among others that need access the payment system enabling end users the transfer funds or other related services.

The main role of central banks is to ensure financial stability. In executing this responsibility, central banks have focused mainly on critical elements of the financial infrastructure, compliance with carefully crafted standards, the mitigation of risks and other vulnerabilities that can arise throughout the financial sector. The financial system should provide a means of making payments which is practical for its users and efficient for the economy¹⁶⁴. For a system to be practical to its users it needs to take into consideration specific features of the local market, such as history, availability of skilled labor, technological challenges, consumer demand and any other facts which determine the practicality and usefulness of the system. Appropriate decisions regarding cost efficiency are not only relevant for participants in the system but also to users throughout the economy. Therefore a comprehensive oversight function would also involve achieving appropriate balance between consumer protection, competition, financial inclusion and innovation while preserving financial stability.

¹⁶¹ For the preparation of this note, critical meetings and relevant information from key players in the retail payments arena were not possible during the meeting including Wizzit, Western Union and Postbank.

¹⁶² Glossary of Retail Payments, The World Bank,

¹⁶³ Innovative payment products refer to all instruments other than cheques, electronic funds transfers and payment cards. Innovative instruments are typically pre-funded – mobile payment services and other non-cash schemes that typically use a network of agents or business correspondents. For further details please see “Developing a Comprehensive Retail Payments Strategy” PSDG, World Bank, forthcoming.

¹⁶⁴ “Core Principles for Systemically Important Payment Systems”; Core Principle VIII, Committee on Payments and Settlement Systems, Basel, 2001.

The complexity of products offered to consumers in modern financial systems, the large number of institutions involved in financial products and services, the rapid development of new technologies and the lack of sufficient understanding by consumers leads to a natural asymmetry between financial institutions and consumers placing the latter in a disadvantage situation. For this reason, a consumer protection framework ensuring fair practices, enabling access to information and providing consumers adequate tools to settle their disputes with service providers is necessary.

Some of the specific issues related to consumer protection in the retail payments space include: (i) cost of transaction, (ii) access, (iii) safety and reliability, (iv) convenience, (v) acceptance by a broad number of service providers and (vi) confirmation. In addition, transparency is at the core of the consumers' needs.

Usage of payment instruments have a variety of costs- some direct and some indirect; given the complexity of the instrument, it is often difficult for consumers to make an informed choice. One instance of addressing these complexities is the rules and standardized procedures for handling transaction flows developed by international card associations. Other consumer protection related actions taken at an international level include the establishment of dispute resolution procedures including arbitration mechanisms to handle disputes between consumers and merchants¹⁶⁵.

A broad access to the National Payment Systems will enable consumers a broader choices regarding payment means. The existence of barriers of access to the low value payment systems for certain participants has a direct negative impact in consumers. Most frequently consumers of banks and other financial institutions not participating in the system will not be able to impeding these latter transactions through the national payment system.

While credit cards, debit cards and other electronic payments are both secure and mitigate the risks of carrying cash, yet risks regarding data loss, destruction, corruption or unauthorized access continue to exist. Further, there is high incidence of fraud in retail payments, which are a critical concern for customers. Therefore adequate policies and procedures regarding data security need to be in place to ensure that all risks are properly addressed by and that participants at every step in the retail payments system contribute towards mitigating such risks.

To enable customers to reach out to a wider network of stakeholders, payment systems should be acceptable to a large number of participants, both individuals and businesses; the reach of the system will determine the size of the industry that consumers can access.

Transparency ensures convenience of payment systems; when sufficient information is provided to consumers on the necessary requirements to perform such transactions, consumers will have satisfactory experience¹⁶⁶. Transparency involves the following elements: data to be provided by the payer to the service provider, data elements to be remembered by the consumer (e.g. authentication process), timeline for the transaction to be executed among others.

Finally consumers may raise claims regarding non-performed contracts, disputed amounts with retailers or third parties. In this context clear rules and the existence of a mechanism to resolve these disputes will enable consumers to transact under a more reliable environment.

Status in the country

¹⁶⁵ For further details please see "Developing a Comprehensive Retail Payments Strategy" PSDG, World Bank, forthcoming.

¹⁶⁶ For further information please see the discussion included in the retail payments "Developing a Comprehensive Retail Payments Strategy" PSDG, World Bank, forthcoming

Retail payments are mostly provided by banks and other minor players through contractual arrangements between service providers and the banks. Even if South Africa presents a well developed payment systems and a sophisticated financial sector, not all services are available for the vast majority of the population. Retail payment systems market is dominated by four banks in South Africa (Standard, Nedbank, ABSA and FNB). This fact has an impact on the fees and access charges issued by banks.

Debit cards dominate the card payment market in South Africa. In 2008 there were 28 million debit cards active in the market while only 8 credit cards were active in South Africa. Moreover, the credit card market is concentrated within six providers (ABSA, Nedbank, FNB, Standards, Mercantile Bank and Investec). The big four claim 96% share of total credit market in the country, with Mercantile Bank and Investec, make up the remaining 4%. However, a number of companies are involved in credit cards through subsidiary, co-branded card programmes. Among others include Virgin Money (ABSA), Kulula (FNB), SAA Voyager (Nedbank), Edcon Credit Card (Standard Bank), Woolworths Credit Card (ABSA) and the Discovery Card (FNB).

An extended practice within the banking sector in South Africa is the cross-selling of different products, sometimes unsolicited by consumers. This practice needs further attention as it can generate unintended consequences on consumers. Recent laws have attempted to address this issue and have included some provisions regarding responsible marketing (e.g, Electronic Transaction and Communications Act, 2005 and Consumer Protection Act, 2008)

PASA has not developed specific standards regarding transparency in the industry. No Code of Conduct is present regarding the minimum fee elements to disclose to consumers regarding debit and credit cards. Charges and fees are very difficult to calculate by consumers. There is no comparative database on services, fees, charges from the different banks.

The ATM/EFTPOS market is dominated by large banks that build and maintain their own closed networks. This introduces inefficiencies into the market, reduces the use of the services because there are limits to where customers can access the services, creates barriers to entry for new service providers, and ultimately translates to increased cost to the consumers. Banks have to develop individual policies regarding disclosure procedures on charges and other fees pending harmonization across the industry in the benefit of consumers.

All of the large retail banks offer mobile phones based access channel for existing bank accounts (including Mzansi accounts) managed on traditional bank systems. In addition Wizzit (through a partnership agreement with South African Bank of Athens) and MTN (in partnership with Standard) offer banking services through mobile phones (e.g. airtime purchase, messaging, check balances, transfer funds, bill payment). These non-bank service providers target their services to unbanked population in South Africa. These two service providers have not grown as expected and one of the factors that caused this might be related to strict AML provisions in South Africa.

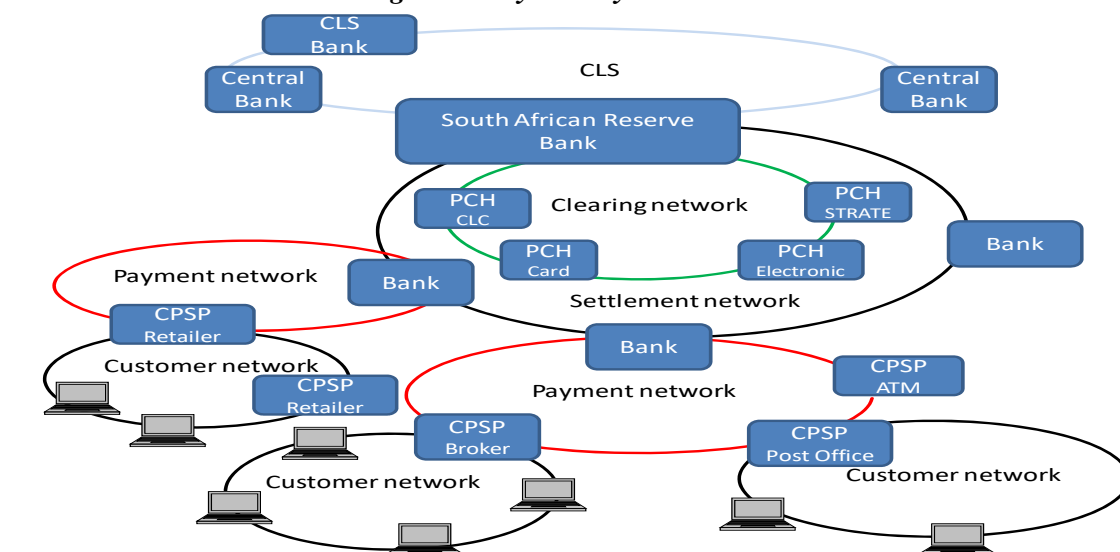
Although from a systemic risk stand point these services are regulated by the SARB, from a consumer protection perspective they are not covered by the Banking Ombuds and will fall under the general law on consumer protection, the Consumer Protection Act. The National Consumer Commission (NCC) would need to develop specific capacity to deal with disputes and claims in this area.

A non-bank – NET1 provides bill payment and social welfare payments. Net1 reaches 3.8 million consumers and operates under a closed network. There are also nonbank payment networks that have been operating for a number of years, using both POS terminals and smartcards that have facilitated third-party payments and the distribution of welfare payments. Retailers willing to offer payment services need to

partner with banks (e.g. pick'n'pay and Sophrite). A non-bank – NET1 provides bill payment and social welfare payments. Net1 reaches 3.8 million consumers and operates under a closed network.

Postbank is also a key player in the market contributing to financial inclusion providing more than a third of all Mzanzi accounts. Postbank can participate in the payment system due to a particular exemption in the NPS Act through a sponsorship arrangement with ABSA.

Figure 3: Payment Systems Network



Source: Financial Stability Review, Reserve Bank of South Africa, September 2008

(i) Legal and regulatory framework covering consumer protection aspects in retail payments

The National Payment System Act, 1998 (Act n0 78/1998)- NPS Act -covers all matters related to payment systems including the management, administration, operation, regulation and supervision of the payment, clearing and settlement systems. The Act is clear regarding the overseer of the payment system from a prudential perspective and also such mandate is included under the South African Reserve Bank Act, 1989 (Act N0 90 of 1989). Therefore, SSARB is the primary overseer of the National Payment System in South Africa. However the Act is silent regarding market conduct and consumer protection provisions.

The regulatory framework for the National Payment System is based on the BIS's "Core Principles for Systemically Important Payment Systems". In particular the SARB *Directive N0 2 on Conduct within the National Payment System in respect of system operators* was issued in 2007 and *SARB Directive for Conduct within the National Payment System in respect of payments to third persons*, covering all relevant participants in the payment systems based on the service they operate. SARB has also issued a position paper on Electronic Money and issued a circular on mobile phone operations. In addition, the Consumer Protection Act N0 68, 2008 acts as a residual resort for those issues related to consumer protection not covered by specific legal framework in the financial services including retail payments issues. Finally PASA as the self-regulatory body issues Code of Conducts directed to their members but it has not issued any code of conduct regarding transparency issues to their consumers.

Electronic transactions and Communications Act, N025, 2005 establishes the rules regarding transmission by electronic means which apply to retail payments. Rules regarding validity and legality of data messages, the recognition of digital signature and the identification of persons are critical for an efficient payment systems environment. However, Section 44 (cooling off period) of the law related to consumer protection does not apply to banking services. Section 45 establishes certain rules regarding unsolicited products. Finally Section 50 and Section 51 deal with the protection of personal information which is based primarily

in the data subjects' consent and purpose specification for any processing, collection and further use of data. A specific draft Bill on Data protection is currently being discussed (please see section on data protection)

The Consumer Protection Act, N0 68, 2008 (CPA), establishes rules regarding the participation of consumers in the supply of goods and services. The law is ample in scope and covers all areas where consumer might be engaged in acquiring goods and services. The law encourages the adoption of industry codes of conducts. In this sense PASA would play a role in coordination with the NCC in order to facilitate the elaboration and adoption of Codes of Conducts for the retail payment systems area. The CPA also establishes certain criteria for disclosing information (e.g. price).

(ii) Institutional arrangements

The overseer of the National Payment system in South Africa is the SARB through a dedicated unit NPSD. The main aim of a payment system management body (PSMB) is to organize, manage and regulate participation of its members in the clearing and settlement system. The PSMB that is currently recognized by the Reserve Bank is the Payment Association of South Africa (PASA). The PASA, created by some of its members, is in charge of managing the national payment system and acts as the managing body engaging, consulting and creating policy-framework for payment systems. All participants in the Payment Systems in SA should become a member of PASA. However there is the possibility of participating in the system through sponsorship of any of the members. Efforts have been made in this sense to extend the participation in the National Payment systems to non-banks. However these efforts –except the singular case of Postbank- are still under discussions as they face legal challenges and other barriers.

Other relevant institutions regulating certain aspects of payment systems include the Competition Commission and the National Consumer Commission recently created. The Competition Commission¹⁶⁷ deals with anti-competitive issues in all sectors of the economy including payment systems. The National Consumer Commission created under the Department of Trade and Industry is the CPA regulatory body entrusted with the implementation and enforcement of the consumer laws.

The Banking Ombudsman deals with consumer complaints against banks and regulated financial institutions. The banking Ombudsman is supported by the banks under the scheme of self regulation.

Banserv is the largest operator in the South African Payment and Clearing System. Bankserv's participants are the five larger banks operating in South Africa and they operate all major retail clearing systems in South Africa. In addition there are mini- ATMs networks operated by other service providers in partnership with specific banks.

(iii) Findings and recommendations

The role of the SARB in developing the infrastructure for retail payment instruments should be strengthened. Although the main responsible body for market conduct relies on a self regulatory body \PASA, the National Payment Systems Department within the SARB should work closer with PASA and participate in the decision making process of relevant aspects concerning the development of payment systems, the inclusion of new entrants (e.g. Postbank, EasyPay, Wizzit, bureau services, co-operatives and dedicated banks) into the National Payment Systems or new instruments (e.g. store cards, airtime). In particular the SARB should ensure that the system operates to maximum potential by promoting the participation of all banks and other major players (e.g. the government);

¹⁶⁷ In its position paper, *Vision 2010*, SARB noted that the competitive environment for the payment systems is a matter for the Competition Commission.

- 1) become involved in the design of certain areas of the system so as to ensure that effective standards (e.g. standardization of bank accounts) and infrastructure agreements are implemented;
- 2) become involved in the design of the system rules and procedures, including issues like guarantees, responsibilities, message structures, contingency arrangements, interchange commissions, resolution of conflicts, to name just a few;
- 3) review the overall legal and regulatory framework and assess whether it effectively supports the protection of consumers while balancing the need for prudential supervision and issue relevant Directives or other regulatory tools when appropriate.
- 4) take action regarding the entry requirements to smaller financial institutions into the National Payment Systems including membership fees and other fees associated with the participation on clearing houses.

The National Payment Systems legal and regulatory framework should be reviewed to better serve the current payment systems environment. Along the years, the National Payments System has experienced a series of changes due in great part to innovation and the increasing role that non-bank institutions play in the payments system. The National Payment Systems Act sets the floor for the payment systems to develop and entrusts the oversight function to PASA. However the Act was passed in 1995 and no longer reflects accurately the issues that payment systems in South Africa face. New instruments, participants and networks have been added over time and therefore risks need to be properly addressed.

Standardization of disclosure of information regarding products and services is necessary. Currently banks have their own policy regarding disclosure of information and consumers do not receive the same information from different banks regarding similar instruments. In order to enable consumers to make informed choices, a minimum level of information should be provided by all banks and non-banks offering retail payment products. At the minimum (i) cost of transactions including direct costs and hidden ones should be disclosed (ii) losses regarding unauthorized transactions and (iii) transparency regarding the participants involved in the transaction. The Bankers Association of South Africa (BASA), PASA and the Banking Ombudsman could collaborate on the establishment of a set of minimum information to be disclosed to consumers.

Rules regarding disclosure of charges for using Automated Teller Machines should be revised. Although significant efforts have been made by the industry regarding the adoption of secure and innovative authentication methods such as biometrics, disclosure of information on charges and fees are still pending particularly regarding the “off-us” charges. A display to consumers informing them that additional costs might apply during his interaction at the ATM would be very beneficial for consumers (e.g. SASSWITCH fees paid by the issuing bank to the acquiring bank). In many other countries, interchange fees apply to debit and credit cards but in South Africa these fees also apply to a broader range of transactions including EFTs, Mzanzi money transfer above certain threshold and Early Debit Orders.

Financial institutions should establish adequate physical safeguards at ATM locations. One of the risks that South African consumers face at ATMs is their personal safety due to a large number of robberies. Introducing cameras and access controls to the booths not only in urban areas and identifying proper locations for ATMs where consumers are able to perform their transactions in a safe manner- to the extent possible. In addition the role of data protection measures will be further developed in another section of this document.

Direct and telemarketing practices should be closely monitored by the adequate market conduct regulatory body. Financial services in South Africa rely heavily on direct marketing techniques offering consumers cross-selling of products complimentary to their primary financial service. When providing additional products and services through direct and telemarketing, financial institutions should be aware of the potential risks that they are posing to their customer relations. Unintended consequences such as

unsolicited credit products and services, unauthorized transactions, cloning of chips and increasing ACH debit entries could take place. In this context, the increasing use of internet and mobile phones as a vehicle of telemarketing should enable consumers to make informed and free choices regarding the providers of those complimentary services. These new modes, however, limit the content of the message and do not allow for extensive information to be displayed in the screen. In addition these vehicles are intended for making instant decisions which leave consumers to unintended choices.

Authorities should thoroughly review the current practices regarding payments originated through mobiles phones. This new origination model can become an alternative to traditional banking, contributing to reduce cost of transactions, increase access to financial services in remote areas and serve as an instrument for P2P payments. Nevertheless banks are currently not offering consumers all potential benefits of this model limiting their offerings to SMS messaging, (information on their account) cross selling of airtime and limited e-wallet services. Issues that authorities should consider include;

- 1) monitor the design or authorization of payments mechanisms ensuring safety and reliability;
- 2) protection from loss of funds and unauthorized transfers. (e.g. if phone is lost will account be retrievable);
- 3) bankruptcy or operational failure of systems of the entity offering the service;
- 4) statements/account information;
- 5) consumers should get clear simultaneous information about the cost of each transaction; and
- 6) dispute rights;

Institutional arrangements regarding the administration of dispute resolution and consumer protection for payment systems matters should be clarified. Consumers do not have clear guidelines on conflict resolution related to payment services. The Consumer Protection Agency may not necessarily have a complete understanding and/or mandate over payment systems conflicts. The Banking Ombudsman might lack the necessary independence as an industry sustained body. PASA has not issued clear guidelines regarding consumers and their recourse in case of conflicts. In addition introduction of payment systems originated through mobile phones and other innovative payment products introduce additional players to the system which might not be financial institutions or regulated service providers. Finally similar disputes are subject to resolution by different schemes. Therefore authorities should establish clear procedures regarding dispute resolution on payment systems matters and coordinate actions when appropriate. While implementing consumer protection measures authorities should seek for solutions that would not jeopardize the efficiency and viability of the system.

Financial education programs specifically adapted to the payment systems environment should be fostered. In cooperation with other authorities, the SARB, PASA, the Banking Ombuds and the CPC should work together for the development of a national financial literacy and education strategy explaining the payment systems to low-income segments of the population, children and current consumers of basic products not necessarily familiarized with payment systems instruments, transactions and origination schemes. In this sense the role of financial intermediaries regulated by FAIS play a crucial role when providing advice to consumers regarding the use of one payment instrument or another.

Note: Other issues related to payment systems are identical to those flagged for banking and financial services such as bundling, statements, mis-selling of services and cancellation periods therefore they have not been analyzed on detail in this section as they will be covered elsewhere in the document.

INTERNATIONAL REMITTANCES

Introduction and Context

Remittances can be defined as “A cross-border person-to-person payment of relatively low value”,¹⁶⁸ therefore remittances are part of the broader retail payment systems. The transfer process is basically the same as any other retail payment including; capturing (money collection or funds deposit), disbursement (money retrieval), messaging (information from the capturing Remittance Service Provider (RSP) to the disbursing RSP), Clearing and Settlement (exchange of funds or set off for payments made or received), and liquidity provision. Transfer mechanisms include cheques, bank drafts, postal money orders, account to account transfers, and person-to person online transfers. The most common origination and disbursement mechanism is a cash deposit/pick up at a physical branch or agent of an RSP.

According to the World Bank-CPSS General Principles for International Remittances, the flow of funds from migrant workers back to their families in their home country is an important source of income in many developing economies. The recipients often depend on remittances to cover day-to-day living expenses, to provide a cushion against emergencies or, in some cases, as funds for making small investments.

The total value of remittances has increased steadily through many years and has often shown to be anti-cyclical to crises in the receiving country although the recent crisis has shown that remittances are not resilient to severe crises in the origination country. According to the estimates for 2010 this has grown to USD 440 billion in 2010 in spite of the global financial crisis, of which USD325 billion went to developing countries and involving some 190 million migrants or 3.0 per cent of the world population.

However, the cost to send international remittances can be expensive relative to the often low incomes of migrant workers and to the rather small amounts sent (typically no more than a few hundred dollars or its equivalent at a time)¹⁶⁹. Also, it is often not easy for migrants to access formal remittance services if they do not speak the language of their host country or do not have the necessary documentation, while the relatively undeveloped financial infrastructure in some countries may make it difficult for recipients to collect the remittances. In some cases, the poor infrastructure or operation of RSPs make services unreliable. In some markets regulatory barriers or anti-competitive behavior of dominating providers make lead to a lack of competition.

As it happens in other areas of the financial sector, transparency enables consumers to make informed decisions regarding their choice of service. Transparency is particularly relevant in the remittance market because the price of remittance services to the consumer is often made up of two elements: the relatively transparent fee and an often hidden margin of the exchange rate used to convert the remittance from the currency of the origination to that of the receiving country. Information on the exchange rate margin is often not available and consumers often do not understand that they pay these two types of charges.

Remittance senders are typically migrants who work in low income manual labor and lack bank accounts. They might be forced to choose remittance service providers based on the proximity to them and their family and often rely on recommendations from friends and family. Transparency in remittance services, combined with adequate consumer protection, therefore helps to foster a competitive and fair market for remittances. Transparency of both the prices and the service features is crucial to the ability of consumers to make informed choices between different services and for the creation of a competitive market where lower cost providers will prevail. RSPs should therefore be encouraged to provide such information in easily accessible and understandable forms. As far as possible, such information should include the total price (i.e. fees at both ends, foreign exchange rates including the margins applied on them, and other costs to the user), the time it will take the funds to reach the receiver, and the specific locations of the RSP access points in both sending and receiving countries. It should also be clear to the sender if the price or other aspects of the service vary according to, for example, how the receiver is paid (e.g. in cash or by crediting

¹⁶⁸ General Principles for International Remittances, Bank for International Settlements-The World Bank, 2007.

¹⁶⁹ The World Bank Remittance Price Website serves illustrates prices from different corridors enabling comparison for remittances prices,

an account) or the ability of the sender to provide information about the sender (e.g. relevant account number and bank identifier.)

Appropriate consumer protection is also important. Senders should have adequate rights as consumers of remittance services, including error-resolution administrative procedures. Although many countries have working mechanisms to resolve domestic consumer disputes, the cross-border nature of remittances and cultural and language barriers can make such procedures complex. Where appropriate, authorities may therefore wish to evaluate the adequacy of existing error dispute resolution procedures and other consumer protection provisions in the context of remittance services.

Status in the Country

Researchers have estimated that 50% of remittance transactions in South Africa are executed outside the formal sector.¹⁷⁰ The two main reasons causing this situation are (i) legal and regulatory barriers, in particular foreign exchange regulation, that make it hard for RSPs to operate formally and (ii) barriers for RSPs to access the (formal) national payment systems.

In South Africa, international remittances involving foreign exchange can legally only be executed through Authorized Dealers in Foreign Exchange or under an exemption from the Treasury or another authority (i.e. Postbank). In addition, so-called Authorized Dealers in Foreign Exchange with Limited Authority (ADLAs) which include foreign *exchange bureaux*, are authorized by Treasury to deal in foreign exchange for the sole purpose of facilitating travel related transactions. Although initially SARB was only willing to grant unlimited dealer authorizations to banks, SARB has extended the services that ADLAs can provide to include the provision of cross-border remittance services, so that foreign exchange bureaux such as American Express and Travelex Africa are now able to provide domestic and international remittance services. MTOs such as Western Union and Moneygram are however still not entitled to any form of dealer authorization and therefore need to partner with a bank or a foreign exchange bureau. Western Union which had established such a partnership with a local bank ABSA, but due to violations of strict requirements regarding reporting cross-border foreign exchange transactions was forced to exit the market and is no longer providing remittance services in South Africa. The cost of sending remittances from South Africa to other African countries is generally higher, typically double (average 15 per cent) than sending money to South Africa from abroad (8 per cent)¹⁷¹.

There are no standardized guidelines or code of conduct for RSPs, regarding disclosure requirements to consumers, or facilitating them with adequate redress mechanisms. Consumers still are not aware of the relevant details to calculate the total price of a remittance transfer. Details such as exchange fee, amount received by the beneficiary are not commonly provided by the RSP. Since the remittance service is provided under the scheme of negotiated agreements between banks and RSPs, costs are inevitably affected by these arrangements.

In addition, the Banking Ombuds is a self-regulatory body supported by the banks which lacks the necessary independence to deal with matters involving one of its members and consumers from a neutral perspective. Finally the recently created National Consumer Protection Commission does not have sufficient knowledge on specific issues concerning remittance market.

(iv) Legal and regulatory framework

NPS Act, 2008 regulating the payment system and subsequent SARB regulations.

¹⁷⁰ Genesis Analytics “Supporting remittances in Southern Africa”.

¹⁷¹ Remittances Price Website, The World Bank.

Currency and Exchange Act and further Exchange control regulations, 1961 empowers the Treasury as the administrator of the exchange control and delegates some of the functions to the SARB. Different controls apply for Common Monetary Area (CMA)¹⁷² residents to non- CMA residents

South African AML and CFT laws primarily affect the formalization of remittances via the customer due diligence⁶¹¹ requirements that they place upon financial institutions. FICA requirements to RSPs mandate that they are able to verify the identity of their consumers. Details to provide in the case of citizens include; their full name, date of birth, identification number, residential address and tax registration number. In the case of foreigners the details are; In the case of foreigners; in addition to the ordinary information that a citizen must provide they a required to give details in regard to their nationality as well as passport number.

SARB regulations regarding reporting of ADLAs – *South African Cross-Border Foreign Exchange Transaction Reporting System* is in place for those RSPs on transactions regardless the amount outside the CMA. Details to be provided in each transaction include full name, address, value of the transaction and purpose of the transaction in the case of nonresidents and name, country code and address in the case of non-residents. Information should be submitted to the SARB (Financial Surveillance Department) within 24 hours after an international transfer is captured. This requirement has two implicit impacts on remittances; on one hand only legal aliens will be able to send remittances via formal RSPs and RSPs will face additional costs.

Immigration Act 13 of 2002⁴⁶⁶ and is administered by the Department of Home Affairs; provides the framework for legal migrants in South Africa enabling them access the labor market and the financial services as they will be able to issue identification documents.

The National Consumer Protection Act N0 68, 2008 (NCPA) covers a broad framework of consumer protection issues including remittances if these are not covered by any specific law or regulation. In this sense, RSPs will have to follow the general guidance on consumer protection regarding transparency (section 22-28 on disclosure of information) consumers' right to choose (sections 13-21) supplier's accountability (section 64), consumers' rights (sections 68-75) in particular. The National Consumer Protection Act establishes the National Consumer Commission as the regulatory body and the institutions to deal with consumer claims in relation to the NCPA.

(v) Institutional arrangements

Remittance services are not specifically recognized under the NPS Act, although as a retail payment system, the services do fall to some extent under such legal framework. While it is very unlikely that credit or liquidity failure by an RSP would cause systemic risk in the NPS, the SARB has stated that retail payment systems can collectively form systemically important payment system¹⁷³. In addition the Treasury has delegated the function of authorizing dealers in foreign currency to SARB (Financial Surveillance Department).

There is no specific regulator to remittance service providers and no specific Ombuds deals with claims originated from consumers when transferring remittances abroad. Therefore remittances consumers face a complex environment when facing disputes regarding errors in the service. The new National Consumer Protection Commission envisions taking the lead in this area.

(vi) Findings and recommendations

¹⁷² CMA comprises Lesotho, Swaziland, Namibia and South Africa.

¹⁷³ SARB, *"The National Payment System in South Africa 1995-2005"*. We refer to informal sector as those RSPs that do not use formal contracts to perform their services (e.g. taxi drivers, family and others including hawaladars)

Authorities should consider the development of a Code of Conduct for remittance service providers (RSPs) incorporating the relevant principles and governance arrangements underlined in the General Principles for International Remittance Services issued by the BIS-CPSS and the World Bank.¹⁷⁴ In particular the adoption of the General Principle 1 and underlying guidelines regarding transparency and consumer protection should be considered by the South African authorities. In addition, the World Bank model charter could serve as guidance in developing the code of conduct while taking into account specific domestic circumstances.

In particular, consumer protection rules regarding disclosure and transparency should be implemented for international remittance services. As part of the diagnostic review, visits were made to MTO branches and information was sought regarding the exchange rate, with the purpose to obtain at least an indicative quote, however the study found no requirement for international money transfers companies to display up-front information such as commissions and exchange rates, including Western Union and MoneyGram,. Visits to branches of international MTOs and banking agents revealed that no rate boards or leaflets were available at the offices for customers; however, minimal information on commissions was available upon request. Emanating from this need for readily available and comprehensible information, the recently issued Consumer Protection Act (CPA) recognizes the right to information in plain and understandable language and other rights regarding fair and reasonable terms and conditions. At the minimum the following information should be disclosed at the time of origination; (i) fee paid by the sender, (ii) indication of the exchange rate to be used and (iii) timing and location of pay-out. Ex-post information that should be made available includes: (i) actual exchange rate used, (ii) amount to be received by the beneficiary in local currency and (iii) information on how to file a complaint. The receiver should be provided with the following information: (i) written receipt showing the exact amount, (ii) information on the fees the receiver should be paying, (iii) exchange rate applied, (iv) in case of cash collection the documentation needed to collect the cash and finally (v) information on policies and procedures on how to file a complaint.

Currently remittance services in South Africa are considered one of the most expensive in the world. Efforts should therefore be made to bring down the cost of international remittance services. One possibility to do so could be a national price comparison website. Many governments, including Australia, Italy, and New Zealand have introduced or encouraged the development of such websites. The World Bank has developed a common methodology and maintains a site that shows trends in remittance costs in a large number of corridors. The World Bank has developed a common methodology for remittance price websites and maintains a global website that shows trends in remittance costs in a large number of corridors. The World Bank could provide advice on establishing a price comparison website for South Africa. While migrants will not have internet access, the availability of the information in a user friendly form would facilitate its dissemination to migrants through the media, consulates, faith groups, and migrant associations. Action by the South African government on remittance prices would indicate concern for the welfare of migrants and would help to maintain competitiveness in the market.

Institutional arrangements for remittance services regarding consumer protection are not clearly established. Since in South Africa all RSPs act as agents of banks, the international remittance services are partially regulated by the SARB regarding the efficiency, reliability and safety of the systems used to transfer the money and also by a self regulatory body of the banking industry, the PASA. However none of them have developed adequate codes of conduct, policies and procedures for the whole industry regarding transparency and consumer protection in the remittance services space. In practice consumers do not have a clear sense of their rights and how can they file a complaint in case of fraud or disagreement. PASA only issues fact sheets on the products and services offered across the financial sector.

¹⁷⁴ CPSS/WorldBank-General Principles for Remittances, 2007.

Financial literacy initiatives should be encouraged. Consumers of international remittances are not generally financially sophisticated and several aspects make it difficult for them to make adequate choices (e.g. complex pricing structures, two jurisdictions involved and different currencies). Authorities are encouraged to promote initiatives that will improve migrants' understanding of the terms and conditions for remittance services, perhaps by providing information migrant workers' meeting places and on initial entry to South Africa regarding their remittance payments. MTOs and Banks should also get involved in the financial education agenda of this particular payment means.

DATA PROTECTION AND PRIVACY IN FINANCIAL SERVICES

Introduction

Data Privacy has become a relevant area of interest in consumer protection due to technologic innovation which allows a broad rapid spread of personal data increasing therefore risks of unauthorized access to personal data by third parties. Responses to privacy protection might vary from country to country but the main objective is to establish a certain level of protection of consumers' data.

Financial services are characterized by the exchange of information often including personally identifiable data in order to enable transactions, open new accounts, credit, deposits and additional services such as insurance or investment products. However, even if transferring personal data between different parties benefits consumers it also entails certain risks which can potentially result in identity theft, fraud or unauthorized access to personal accounts and inadequate use of personal data. Therefore, an adequate balance between access to personal information and privacy protection is necessary.

There are currently two broad approaches to privacy: on one hand the protection of privacy as a human right and on the other hand the protection of privacy from a commercial perspective limiting harm from unauthorized access. Specific actions which contribute towards improving privacy protection in the financial space include (i) transparency by providing consumers sufficient information (ii) establishing adequate security measures, procedures and policies for all financial services participants (iii) defining clear purposes to access personal data by third parties (iv) enabling consumers' participation during the processing and further data distribution and (vi) establish adequate dispute resolution mechanisms.

Context

Information related to financial services including bank balances and account numbers is regularly used by banks, credit card companies, and other financial institutions in order to perform duties related to the contract between the consumer and the bank or financial institution. However diversification of services within the financial sector also include insurance, brokerage and other services which allow third parties access to personal information and the ability of consolidating different aspects of consumers' lives into a profile. Profiling is the recording and classification of behaviors and occurs when personal data from different sources is aggregated and creates a client profile which is later on used by third parties to sell products to consumers and to sell consumers dossiers. This profiling might pose additional risks to consumers which should be evaluated by the consumer before authorizing the processing of his/her personal data for such purposes.

One of the consequences on consumers is receiving unsolicited product offerings another yet more harmful is fraud or identity theft. Finally there are great chances that consumers suffer from incorrect allocation of funds or credits.

Frequent actions to prevent unlawful use of data or unsolicited use of personal data include (i) requiring banks, financial institutions and third parties to adopt security measures regarding the collection, processing, storage and further distribution of data, (ii) advise consumers on existing policies on sharing

personal information (iii) enable consumers challenge data and (iv) provide consumers the choice to object sharing their personal data for specific purposes.

Status in the Country

A privacy framework implementing the constitutional provision on privacy has been designed and will be implemented shortly. Currently there are certain aspects that are covered by specific legal provisions mostly directed towards credit histories. Within the banking sector the presence of foreign banks in South Africa allows for the natural implementation of privacy policies from the banks' home country. In sum, the concept of privacy is relatively new to consumers, service providers and regulators. .

(i) Legal and regulatory framework covering privacy and data protection in financial services

The Constitution of South Africa recognizes the right to privacy under section 14.. *“Everyone has the right to privacy, which includes the right not to have-(a) their person or home searched;(b) their property searched;(c) their possessions seized; or(d) the privacy of their communications infringed.”*

There is currently no dedicated legislation in South Africa on Data Protection. However, the Protection of Personal Information Bill, 2009 (POPIA) was approved by the South African Cabinet in 2009 and it is expected to be implemented during 2011. The Bill establishes the oversight function to the Information Protection Regulator. It is also based on eight principles: (i) accountability (ii) purpose specification, (iii) processing limitation, (iv) security measures against damage, loss and unlawful access, (v) data quality, (vi) openness (vii) limits to cross-border data flows and (viii) “data subject” participation. Key features of the law include the right of access and data challenge including payment of damages (patrimonial and non-patrimonial loss) for compensation, establishment of data retention periods and consent under certain circumstances and subject to exemptions. When the Bill comes into effect, credit histories and all related personal data previously covered under National Credit Act 34, 2005 will be covered by the POPIA. .

Other areas of financial services cover certain aspects of data protection such as The National Credit Act, 2005 in the context of credit and consumer including credit reporting and the Electronic Communications and Transactions Act, 2002. The recently issued Consumer Protection Act, 68, 2008 includes several provisions covering privacy aspects contained under sections 11 and 12 in relation to unsolicited direct marketing in particular.

(ii) Institutional arrangements

The creation of an Information Protection regulator is envisioned in the Bill to regulate collection, processing and distribution of personal data from a broad scope including all sectors not only the financial services area. It will also deal specifically with all consumers' claims regarding unlawful or inadequate use of data or challenge data. The National Consumer Protection Commission plays a residual role in protecting consumers' privacy.

Regarding banks, most of them have implemented their own policies regarding privacy and security measures. This trend responds to requirements imposed by their respective HQ and does not necessarily involve any type of standardization across the industry. Smaller financial institutions do not show comprehensive policies regarding privacy and data protection and have developed specific actions in response to the requirements imposed by the National Credit Act.

(iii) Findings and recommendations

Authorities should monitor closely the passing of the Protection of Personal Information Bill (POPIA) and Access to Information Bill. A new Bill covering the protection of personal information is currently being discussed and promoted by the DTI. During this process all relevant key players in the financial sector should participate actively in a consultation phase and provide sufficient inputs regarding the implications of adoption new rules on data protection to the financial sector. During the analysis, it is recommended that a balanced approach is adapted between the privacy rights of individuals and the need to access, collect process and further distribute relevant personal data.

Consumers' consent governs the disclosure of personal information from the banking sector. South Africa is ruled by bank secrecy provisions stemming from the common law¹⁷⁵. In that context, common law cases set out four areas where a bank can legally disclose information about its consumer: (i) where the bank is compelled by law to interests require disclosure ii) if the bank has a public duty to disclose the information (iii) if the bank's own and (iv) where a client has agreed to the information being disclosed. In addition King III principles regarding Corporate Governance also cover the relevance of IT policies to be elevated to the adequate members of the organizations ensuring its compliance. These background should be considered when discussing and implementing data protection regulation in the financial sector.

International Standards and Guidelines on the use of personal information could serve as guidance when finalizing the Protection of Information Bill. At the international level there are several existing standards covering data protection aspects.¹⁷⁶

Rules regarding the protection of consumers regarding their personal information should be clearly defined. At the minimum these rules should include: (i) the right to object to their information being collected for certain purposes and/or used for certain purposes, (ii) the right to be informed on the conditions of collection, processing and distribution of data held about them, (iii) the right to access data held about them periodically at little or no cost, and (iv) the right to challenge accuracy of information about them. The right to object is partially recognized under section 11 of the Consumer Protection Act, (CPA) however there is no clarity in the market whether this rule applies to the banking sector or not. In practice several jurisdictions create a national "do-not-call- registry" enabling all consumers to subscribe to such registry and this tool is also contemplated under the CPA (section 11 (3)) Further attention should be given to the other rights listed above as in practice these rights are only partially implemented as a result of the National Credit Act and the relation of banks and other financial institutions and credit bureaus.

All financial sector participants should protect data against any loss, corruption, destruction, misuse or unauthorized access. Personal data processed in the financial sector environment has proven to be significantly relevant for ensuring the safe and reliable performance of financial services. However, current dependence on new technologies and cyberspace contribute to additional risks (e.g. wider range of users accessing data, larger number of participants in the data processing chain, rapid data dissemination) which

¹⁷⁵ See the case of *Tournier V National Provincial and Union Bank of England* disclose information, 1924. As regards disclosure with the consumer's consent, in *Turner v Royal Bank of Scotland plc*, Sir Richard Scott V-C, commenting on the matter of implied consent, stated that clients/consumers cannot be deprived of their rights by bankers establishing a practice among themselves. These court decisions have informed since the common law regarding bank secrecy.

¹⁷⁶ **United Nations**, Resolution 45/95 "Guidelines concerning computerized personal data files", December 1990; **European Parliament** Directive 95/46/EC of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data, October 1995; (2) Directive 2003/98/EC of the European Parliament and of the Council on the re-use of public sector information, November 2003; (3) Convention of the Council of Europe for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS N° 108) and its Additional Protocol regarding Supervisory Authorities and Trans-border Data Flows (ETS N° 181).; **Organization for Economic Co-operation and Development**, (1) Guidelines on the Protection of Privacy and Trans-border Flows of Personal Data, September 1980; (2) Principles of Corporate Governance, 1999 (r. 2004); **Ibero-American Data Protection Network** Directives for Harmonisation of Data Protection in the Ibero-American Community, adopted by the, November 2007; **International Conference on Data Protection and Privacy Commissioners** Madrid Resolution, a joint proposal for international standards on data protection, Madrid 2009; The Payments Card Data Security Standards (PCI DDS), The Payments Card Industry Security Standards Council, 2004 and subsequent versions.

could cause unintended consequences to consumers. Among the most relevant challenges that South African face regarding data protection in the financial sector relates to credit cards.

Authorities should foster initiatives conducive to a better identification of consumers through the establishment of a financial identification number. One of the major challenges that all financial infrastructure system participants face regarding consumer is the proper identification. This is a major problem faced by both developed countries and emerging markets leading to a large number of inaccuracies regarding allocation of debit and credit to individuals. In coordination with authorities in charge of the national identification number, private sector specialized companies could work on verification and matching techniques which would enable a better unique identification of consumers reducing their exposure to misleading situations regarding their financial performance. Nevertheless this innovation should be closely monitored by the relevant authorities ensuring proper consumers' rights regarding the data held on their behalf as this mechanism will entail the processing of massive amounts of data.

Consistency with already existing statutory provisions regarding the use and processing of personal data is encouraged in order to provide for a clear and certain legal and regulatory framework in the data protection area. Privacy measures have been established in South Africa as a response to consumers' needs or complaints, therefore the National Credit Act 34, 2005 contains certain provisions regarding personal data processing in the credit market. In similar context the National Consumer Act, 2008 includes provisions regarding direct marketing.

Cooperation among regulators is an essential component of the oversight function and will need to be established in South Africa regarding Data Protection. All interested authorities (e.g. Ministry of Finance, Ministry of Commerce and Trade, other agencies responsible for relevant financial sector activities such as the SARB, FSB, National Treasury, FICA, Payment Systems Association, National Credit Regulator, National Consumer Commission and in the future the Data Protection Commission) should identify and implement procedure and process changes to address any weaknesses or inconsistencies in the regulatory arrangements and assure a high level of co-operation in the way that policies are implemented.

Annex 2: Financial Education

In the long-run, one of the most effective forms of consumer protection is ensuring high levels of financial literacy. A financially literate consumer is best able to understand own rights and responsibilities, financial disclosures, and weigh the risks and rewards of each type of available financial product and service. Strengthening financial literacy requires a long-term investment in financial education.

The level of financial literacy in South Africa is relatively low. Financial consumers have insufficient knowledge and understanding of basic financial matters, are not aware of their rights and responsibilities when entering into contractual agreements, do not know about various redress mechanisms in place, struggle with budgeting, and do not understand investments in general.

There is a fragmented approach to consumer financial education in South Africa. There are multiple financial education initiatives undertaken by Government bodies (National Treasury, Department of Trade and Industry, Ministry of Education), regulators (FSB, National Credit Regulator), industry associations (SAIS, BASA, ASISA), consumer organizations (National Consumer Forum, National Consumer Union), NGOs, Ombudsman schemes, and private sector entities. However, these initiatives are piece-meal and lead to duplication of programs, ineffective allocation of limited resources, and limited monitoring and impact evaluation.

The Financial Sector Charter of 2004 commits financial institutions to invest in consumer financial education. In 2002, the financial sector committed itself to the development of a Black Economic Empowerment (BEE) charter. The financial sector developed the Financial Sector Charter committing to “actively promote a transformed, vibrant, and globally competitive financial sector that reflects the demographics of South Africa, and contributes to the establishment of an equitable society by effectively providing accessible financial services to black people and by directing investment into targeted sectors of the economy”.¹⁷⁷ The Financial Sector Charter was voluntarily developed by the sector and was widely endorsed, but not legislated. The Charter commits financial institutions to invest annually a minimum of 0.2% of post tax operating profits in consumer education. The Charter is in the process of being transformed into a Financial Sector Code by end-2011, and it will be Gazetted. It is expected that the minimum percentage of post tax operating profits that financial institutions will need to invest in financial education will be increased. The Charter requirements for financial education programs are:

- **Physical accessibility:** Consumer education initiatives and programs must be offered and available to all consumers of Charter products and services at points of service or transaction.
- **Appropriateness:** Consumer education initiatives and programs must meet the identified needs of and be directed at consumers in the Charter target groups with the aim of achieving the Charter’s access goals. The outcomes of Charter consumer education programs must be measurable and able to contribute to the achievement of score points. Consumer education must enable consumers to make more informed decisions about their finances and lifestyles.
- **Affordability:** Consumer education must be offered free of charge to the consumer.
- **Simplicity:** Consumer education initiatives and programs must meet the identified needs of, and be directed at, consumers in the target groups with the aim of achieving the Charter’s access goals.

¹⁷⁷ The Charter came into effect in January 2004 as a result of the Financial Sector Summit hosted by the National Economic Development and Labour Council [Nedlac], the multilateral social dialogue forum on social, economic and labour policy. The Nedlac partners – government, business, labour and community constituencies – negotiated the Financial Sector Summit Agreements on transforming the financial sector and signed the Summit declaration on 20 August 2002. Financial institutions affected by the Charter include banks; long-term insurers, short-term insurers, re-insurers, collective investment schemes, investment managers, retirement funds, and licensed exchanges. Any other institution in the financial sector may opt to participate in the Charter. The Financial Sector Charter Council is responsible for overseeing implementation of the Charter between 2004 and 2014, and assess whether the Charter’s objectives have been achieved and the impact of the Charter on financial sector transformation. The targets in this charter are effective from January 1, 2004 until end-December 2014

All consumer education materials must meet Charter criteria for simplicity and understandability and disclosure.

- **Non-discrimination:** Consumer education materials must be freely available in all languages. Suppliers must meet the Charter's service provider accreditation and BEE procurement criteria.

The Treating Customers Fairly (TCF) initiative includes consumer education as a key element. The National Treasury (NT) has given the Financial Services Board (FSB) the mandate to introduce the TCF framework as a mechanism for ensuring consumer protection through strengthened market conduct regulation and supervision.¹⁷⁸ One of the main reasons for introducing a TCF framework in South Africa is the asymmetry of information between financial consumers and financial institutions, making consumers vulnerable to unfair treatment. Although effective market conduct regulation and supervision is necessary to reduce consumers' vulnerabilities, ultimately increasing financial literacy will reduce the asymmetries of information. The TCF framework will be more effective if customers are aware of their rights to fair treatment, the regulator's expectations of financial institutions with regards to fair treatment, and the recourse mechanisms available to them.

There is a strong case for public involvement in financial education for consumers. In order to assess the quality of financial education initiatives and differentiate between commercial and educational purposes, a strong case can easily be made for public involvement in financial education for consumers. While some financial institutions are proud to state they support and deliver financial education programs, too often these programs are also used for marketing programs. The mixing of marketing and educational messages should be prohibited.

Thus, the National Treasury should drive the development of the National Financial Education Strategy as a matter of priority. The National Treasury has taken responsibility to lead the formulation of a national financial education policy, which will be followed by a national financial education strategy. The policy calls for the establishment of a Central Coordinating Committee (CCC) consisting of all stakeholders, which will develop a national strategy for financial education. The role of the National Treasury in promoting multi-stakeholder coordination and exchange of lessons learned is crucial, as the 2001 financial education strategy developed by the FSB did not have complete buy-in from all stakeholders. Thus, it is important that the NT continues to drive this process, accelerate it, and send a clear message to stakeholders that it will take a leading role in the coordination and development of such a strategy. The financial education policy should be finalized promptly and endorsed by the Government and the CCC should be created.¹⁷⁹ Then, the NFES should be developed as a matter of priority, including an action plan with programs to be implemented. In terms of funding, consideration may be given to pooling funds towards major financial literacy programs agreed by the CCC. A central repository of all projects should be maintained and monitoring and evaluation should be part of every project.

Financial Literacy Surveys

The level of financial literacy in South Africa is relatively low. In 2010, 77% of South African adults were using a financial product, and 68 percent used the formal sector.¹⁸⁰ Financial consumers have insufficient knowledge and understanding of basic financial matters, are not aware of their rights and responsibilities when entering into contractual agreements, do not know about various redress mechanisms

¹⁷⁸ The TCF framework aims to ensure that fair treatment of customers is embedded in the culture of financial sector firms.

¹⁷⁹ The policy calls for the establishment of a Consumer Financial Education Central Coordinating Committee (CCC), which will develop a national strategy for financial education (first draft envisioned to be presented to MoF by end October 2011). The members of the Committee will be representatives from all stakeholders, Government departments, regulators, industry bodies and associations, consumer representatives, Ombuds offices, etc

¹⁸⁰ 23 percent of South Africans used neither the formal nor the informal sector, but instead saved money at home or borrowed from family and friends. 63 percent of adults are banked. The informal sector serves 15% of the population who are not served by the formal sector.

in place, struggle with budgeting, and do not understand investments in general. The Finscope survey and the OECD/INFE pilot study on financial literacy present interesting findings on the state of financial literacy of adults in South Africa.

- **Saving products.** Only 35 percent of South Africans have savings products, mostly used to manage day to day living expenses such as school fees, food, funeral costs, or emergencies. In 2010, 24 percent saved using formal saving products (10 percent have bank products), 18 percent saved using informal mechanisms such as stokvels and burial societies, 18 percent invested in retirement products, and seven percent saved at home.¹⁸¹ When asked how long they could manage if they lost their source of income, only 25 percent stated they could manage between 1-3 months and 11 percent could manage between 3-6 months. This suggests that a large majority of the population has small savings to draw upon when they lose their income.¹⁸²
- **Credit products.** 33 percent of South Africans have a credit or a loan, with 24 percent using formal credit products and 12 percent using the informal sector (such as stokvels, burial societies, and friends or family). Most consumers borrowing from the informal sector ask their friends and family (9 percent). An increasing number of consumers are borrowing from banks: 13 percent in 2010 compared to five percent in 2009.¹⁸³
- **Household budgets.** Only about half of the adult population prepares a household budget.¹⁸⁴
- **Awareness of key financial concepts and rights as financial consumers.** South Africans have insufficient knowledge and understanding of basic financial issues. Most (around 80%) were able to answer basic arithmetic questions. However, only 66 percent could answer correctly a question on interest on loans, 45 percent could answer correctly on issues of interest rates on savings, and 37 percent on compound interest.¹⁸⁵ Many South Africans are not aware of key financial terms. For example, the Finscope Survey of 2008 pointed out that only 43 percent of South Africans know what bad debt means, 16 percent understand what debt rescheduling means, and 31 percent know what retirement planning means.¹⁸⁶
- **Choosing financial products.** South African adults have a relatively low level of awareness of financial products. They are generally aware of a basic bank account (91%). However, 66% are aware of a credit card, 65 percent of a post office savings account, about half are aware of insurance, stokvels, and a private pension fund. In addition, only about a third are aware of microfinance loans, investment accounts, stocks and shares, or unsecured bank loans. South Africans also do some comparative shopping with nearly half considering several products from institutions before deciding.¹⁸⁷ Comparison shopping is especially common with regards to house bonds, investment accounts, and private pension funds.¹⁸⁸ With regards to credit, only 41 percent got at least three quotes from providers before deciding on a loan.¹⁸⁹
- **Sources of product information.** When choosing a bank account or credit card, consumers are mainly guided by product-specific information: 28 percent are informed from a branch of a bank, 22 percent from family and friends who are not in the financial services industry, 17 percent from television and radio programs, 16 percent from television advertisements, and 7 percent from newspaper articles. In terms of private pension funds, 26 percent of consumers rely on television ads, 26 percent on bank information, and 21 percent on television or radio programs. 14 percent of consumers are influenced by financial advisors or brokers.¹⁹⁰

¹⁸¹ Finscope

¹⁸² OECD/INFE pilot study

¹⁸³ Finscope

¹⁸⁴ OECD/INFE pilot study

¹⁸⁵ OECD/INFE pilot study

¹⁸⁶ Finscope 2010 survey did not ask questions on awareness of key financial terms.

¹⁸⁷ About 45 % of consumers shopped around for bank accounts, credit cards, and post office savings accounts; 61% for pension funds, 56% for insurance, 36% for stokvels, and 56% for a microfinance loan.

¹⁸⁸ OECD/INFE pilot study

¹⁸⁹ Finscope

¹⁹⁰ OECD/INFE pilot study

- **Insurance.** About half of adults in South Africa have some form of insurance. 45 percent have a funeral cover policy (16 percent from a burial society, 12 percent from a bank, and 12 percent from an insurance company), 15 percent hold short term insurance products (vehicle insurance, house contents, cell phone insurance, etc.) 23 percent have life assurance products (life cover, insurance that pays the loan when a person dies, and accidental death and disability cover), and 14 percent have health insurance.¹⁹¹

Role of Government Bodies and Regulators

Financial Services Board (FSB)

The FSB has a mandate to promote consumer financial education. The Financial Services Board Act of 1990 (as amended in 2000) provides the FSB with a mandate to promote financial education programs for consumers. The Act mandates the FSB “to promote programs and initiatives by financial services institutions and bodies representing the financial services industry to inform and educate users and potential users of financial products and services”. In line with this mandate, the FSB’s Consumer Education Department (CED) adopted a consumer education strategy in 2001. The long-term vision of the strategy was to enable South Africans to manage their financial matters, to advise consumers on financial services and products, on their rights and responsibilities, and on recourse mechanisms, and to ensure that unscrupulous financial institutions are reported. Results have been mixed since the development of the strategy, due to lack of complete buy-in from all stakeholders and due to limited capacity and resources.

In 2009, the FSB started to review its consumer education strategy, following a process of consultations with stakeholders. Three documents were produced, namely: the national consumer financial education strategy discussion paper, the national consumer financial education framework, and the national consumer financial education strategy. The development of the financial education Strategy will be led by the National Treasury, which will coordinate a broad-based group of members representing various constituencies in finance and other sectors.

The FSB’ CED has undertaken several initiatives to improve financial literacy in South Africa. The FSB promotes financial education through the formal education system and the community. The target audience for FSB’s consumer education programs is all people in South Africa. However, the focus for the past seven years has been on consumers falling within Living Standard Measures 1-5 (LSM), as these consumers are the most vulnerable. Its targeted financial education programs include: budgeting, saving, debt management, fraudulent schemes, insurance, retirement, investment, and financial advisory schemes, rights and responsibilities, and formal and community education. Some of the recent initiatives are described below:

- **Teacher development.** The CED, in partnership with the South African Insurance Association (SAIA), has been implementing programs for teachers’ development since 2005. The “Managing Your Money” project in particular has been the most successful. The project aims to provide grade 10, 11 and 12 Math teachers with readily-useable resources for the classroom. The resources, one booklet per grade, 2 posters and a CD-ROM, cover the financial education aspect of Mathematical Literacy, which is 25% of the full curriculum for the subject. The resources are shown to teachers in workshops. From April 2010 to March 2011, 90 workshops were held with over 4,000 teachers reached. This program will be handed over to the Department of Basic Education (DBE) together with the materials. The DBE played an important role in reviewing materials to ensure that they meet the Department’s curriculum requirements.

¹⁹¹ Finscope

- **Financial Guide for Youth.** The FSB developed the *Financial Guide for Youth*, which covers topics such as personal financial planning, banks and bank accounts, investments and insurance, further studies and the world of work, payroll deductions, starting a business and recourse. In 2009, 108 workshops were conducted across the provinces for over 3,000 youth aged 18- 22 years old, and 6,000 copies of the guide were distributed. This guide was also used as the main resource for workshops for students exiting Further Education and Training (FET) Colleges. In collaboration with the Department of Higher Education and Training (DHET), the FSB developed a program of financial management workshops. In 2010, 159 workshops were organized with 4,895 learners in most public FET colleges. Students were taught budgeting, types of savings, types of insurance, rights and responsibilities when dealing with financial services providers, and other areas. Evaluations showed an increase of 11 percent increase in learners' knowledge of financial products, an 8 percent increase in their awareness of financial regulators, a 5 percent increase in their knowledge about taxes.
- **Career fairs and exhibitions.** The CED has used exhibitions and careers fairs to provide learners and educators with information about the financial industries regulated by the FSB, to raise awareness of the importance of effective personal financial management, as many learners and students lack an understanding of the basic financial concepts, and to provide information on how to deal with intermediaries and the types of questions to ask when purchasing financial products. The CED has exhibited at career fairs, and universities, in partnerships with other stakeholders like the National Credit Regulator, the South African Savings Institute (SASI). and the Provincial consumer affairs offices. The CED and its partners reached over 26,000 learners, students, and teachers in 2010/11.
- **Community education presentations and workshops.** In 2011, CED staff participated in 34 workshops organized by partners reaching over 16,000 consumers. About half of the workshops were held in rural communities. The workshops were coordinated by a group of regulators and government departments working together to provide information based on specific requests from communities throughout South Africa. The workshops covered topics including the role of the FSB, personal money management, funeral assistance, the rights and responsibilities of consumers when buying financial products and complaints handling procedures and recourse mechanisms.
- **Foundation-funded planned workshops.** The Financial Services Consumer Education Foundation has funded a number of projects which were managed by CED staff. These include: a national workshop program reaching over 4,000 rural and urban consumers, a workshop program on financial literacy for youth, and a radio interview program in collaboration with the South African Broadcasting Corporation.
- **Commuter Education.** The FSB in partnership with SAIA has been undertaking commuter education projects since 2004 with campaigns conducted at key taxi ranks and covering topics in money management, the rights and responsibilities of consumers when buying insurance, Mzansi insurance, and consumer credit insurance. Financial education messages were delivered through television, radio broadcasts into taxis, radio broadcasts on train stations, CDs played in taxis and interactive presentations.
- **Brochure development and translation.** Brochures have been printed on the role of retirement fund trustees, collective investment schemes, short-term insurance on tips for consumers when buying funeral policies, and the role of the FSB. In addition, brochures will be prepared on the

rights and responsibilities of consumers under the Financial Advisory and Intermediary Services Act, Retirement Funds, and Long-term Insurance.

- **The media.** The CED has used the media frequently to deliver financial education messages. For example, in 2010 the CED agreed with the South African Broadcasting Corporation (SABC) to conduct 130 radio interviews on 10 different SABC radio stations in 10 of the 11 official languages. Similarly, the CED entered into an agreement with Radio Riverside, a community radio station in the Northern Cape (where the population is sparse and difficult to reach) to conduct 24 radio interviews in Afrikaans and English. The content of the interviews included money management, types of financial products and services, recourse mechanisms as well as the rights and responsibilities of consumers when purchasing financial products. The CED collaborated with other regulators and Ombuds offices to implement these initiatives.
- **Guide to monitoring and evaluating consumer education programs.** The FSB commissioned a study on guidelines for monitoring and evaluating consumer financial education programs in South Africa.

National Treasury

The National Treasury has taken responsibility to lead the formulation of a national financial education policy, which will be followed by the development of a national financial education strategy. A national policy for consumer education and financial literacy has been drafted, calling for the establishment of a Central Coordinating Committee (CCC) consisting of all stakeholders, which will develop a national strategy for financial education. The policy should be finalized promptly and endorsed by the Government. The national strategy should follow, including an action plan for program implementation and measurement. The role of the CCC is crucial to provide proper coordination of actions and ensure support for the most efficient and large-scale financial literacy initiatives. It is envisioned that a unit will be established in the “market conduct regulator” in the FSB with the responsibility for the implementation of the national strategy. In the meanwhile, the current unit of Consumer Education in the FSB will be responsible for the implementation of the strategy.¹⁹² The role of the National Treasury in promoting multi-stakeholder coordination and exchange of lessons learned is crucial. Thus, it is important that Treasury continues to drive this process, accelerate it, and send a clear message to stakeholders that it will take a leading role in the coordination and development of such a strategy. In terms of funding, consideration should be given to pooling funds for major financial literacy programs as sanctioned by the CCC. A central repository of all projects should be maintained and monitoring and evaluation should be made a part of every project.

National Credit Regulator (NCR)

The National Credit Regulator (NCR) was established as the regulator under the National Credit Act and is responsible for the regulation of the South African credit industry. It is tasked with carrying out education, research, policy development, investigation of complaints and ensuring compliance with the National Credit Act (NCA). The Act requires the NCR to promote the development of an accessible credit market, particularly to address the needs of historically disadvantaged persons, low income persons, and remote, isolated or low density communities. It is also tasked with registration of credit providers, credit bureaus and debt counselors. The NCR has adopted a communication strategy that has an awareness component and an education component.

¹⁹² The NT will chair the Committee for the first 2 years of operation. The Government will provide funding the CC to enable its administrative work. For programs, funds will be sources from foundations, foreign donors, and the financial industry.

The NCR has engaged in initiatives to educate and inform the public about the NCA, and its role and responsibilities as per its mandate from the NCA. It has a consumer awareness program, including capacity building workshops (with community groups, trade union representatives, workplace trainers and provincial government staff), consumer education workshops, radio talk shows, events at shopping malls, exhibitions, a consumer booklet, presentations at public events and awareness campaigns in newspapers and magazines. The NCR conducted 415 stakeholder workshops in 2010 and has conducted over 1,400 such workshops since it was established. The workshops covered issues such as how to deal with overindebtedness, consumer rights, responsibilities, and obligations. The NCR has had media exposure with an advertising value equivalent of R98.1million in 2010 (R211 million since its establishment). The NCR has partnered with several organizations and industry associations such as the National Consumer Forum, the FSB, trade unions, the Banking Association, and others. The following are the most relevant activities:

- **Education Programs.** Information sharing workshops with consumers focused on the NCA, NCR and budgeting. They are normally conducted in the form of workshops or presentations. They target NGOs, faith group organizations, employees and traditional authorities.
- **Capacity Building Workshops.** The main objective is to enhance the capacity of Employee Assistance Practitioners, Shop Stewards, Paralegal, Human Resource Practitioners and Provincial Consumer Directorates on the Act, using the NCR's Consumer Booklet and Resource File. They are then expected to educate their employees and clients on the Act.
- **Seminars and Presentations.** They have been organized for industry bodies and stakeholders to raise understanding of the NCA.

An impact assessment of evaluating the effectiveness of NCR's awareness and educational programs, and its performance in implementing the Act is conducted every year. The assessment measures understanding of the NCA (for example, on disclosure, interest, redress, reckless lending and overindebtedness, debt counseling, etc.), consumer awareness levels of the NCR, and stakeholders' perceptions of the NCA. The 2010 assessment indicates that the awareness levels of the NCR have improved. However, more effort is needed to raise awareness of low-income and rural consumers on the role of the regulator. More specifically, the assessment of 2010 indicates that:

- **66 percent of consumers are aware of the NCR.** Awareness levels amongst low income consumers are relatively low. In addition, 65 percent of consumers are aware of the NCA. Most consumers still do not know how the Act can protect them and where to complain when they have problems.
- **Knowledge of financial terms is low,** with many consumers only able to describe interest rates and monthly installments.
- **Consumers are still not aware of their rights to receive quotations/pre-agreement statements.** Creditors do not offer quotations except in cases of mortgage transactions. There is also an indication that consumers still enter into credit agreements that they do not understand.
- **Few consumers are aware of redress mechanisms,** although the role of the NCR was well understood in this regard. A large majority of consumers still had limited knowledge of where to complain and the role of other complaints entities was not well known.
- **Consumers have become more aware on the role of debt review for overindebted clients,** due to the large media coverage that debt review received in the past year. However, more work is needed to increase awareness on debt review amongst low-income and rural consumers.

Ministry of Education

Financial literacy is part of the school curriculum in South Africa, but the availability of teacher skills and materials varies widely amongst schools. The FSB, the Department of Basic Education (DBE), and the Department of Higher Education and Training (DHET) have collaborated closely to develop and implement programs for improving financial literacy through the formal education system. Work has been

done to develop financial literacy materials and train teachers to deliver financial literacy within the school curriculum. However, there is lack of teacher capacity, skills, and experience to implement the classroom-based programs. Thus, classroom-based programs should be standardized and accredited. The Government should ensure that the Department of Education has adequate resources to further support teacher development (including materials).

Council for Medical Schemes (CMS)

The Council for Medical Schemes (CMS) is a statutory body established by the Medical Schemes Act to provide regulatory supervision of private health financing through medical schemes. The Council provides training and education in order to increase understanding of medical schemes by consumers and promote good corporate governance from trustees.

- **Capacity building workshops.** The Council holds workshops about its role, member rights, complaints procedures, and prescribed minimum benefits. It distributes a capacity building manual, education brochures, and posters. The capacity building manual contains information on the regulatory framework, the functions of the CMS, and information that would assist educators and advisers to deal with medical schemes issues. The aim of the workshops is to empower NGOs, advice centers, and other stakeholders who are in contact with the public, to deal with medical schemes issues.
- **Public Awareness.** The CMS participates in radio talk shows, distributes educational material, provides advice on medical scheme issues, participates in road shows, and visits various centers with Provincial Consumer Officers. The CMS also conducts presentations upon invitation to various stakeholders, covering its role and functions, as well as the protection afforded to members of medical schemes by the Medical Schemes Act.

Role of Industry Associations

Industry associations and their members have undertaken several initiatives to improve financial literacy in South Africa. Initiatives by SAIA, BASA, and ASISA are described below.

South African Insurance Association (SAIA)

SAIA adopted a consumer education strategy in 2008 and has undertaken several initiatives in collaboration with other partners. SAIA's consumer education strategy consists of requiring all SAIA members to contribute a minimum of half of the 0.2% (i.e. 0.1%) of their after tax profits to the SAIA collaborative initiative, with the balance to spend on their own programs.¹⁹³ In this manner, SAIA has consolidated the funds collected into a collaborative pool and used them for selected projects, allowing for more synchronisation of programs. The funds in the SAIA pool are used by SAIA for generic consumer education, with an emphasis on short-term insurance. These funds will be spent according to the SAIA Consumer Education Guidelines¹⁹⁴ and the Financial Sector Charter standards. SAIA also publishes brochures on its website, such as "It's all about the promise" booklet, brochures with tips on motor, household contents, house owners, personal liability, personal accident and travel insurance, a consumer credit insurance pamphlet, and others.

¹⁹³ Members can also contribute the full 0.2% to the SAIA pool initiative.

¹⁹⁴ The Consumer Education Guidelines spell out principles for financial education (such as financial education should be provided in a fair and unbiased manner, and be non-discriminatory, financial education should be seen as a long-term commitment, etc.), good practices, and guidelines for financial education projects, such as accessibility (projects must be free of charge, delivered via multiple delivery mechanisms), appropriate (with clearly identified target audience, objective, simple and understandable content, without marketing and commercial information, etc.) quality (with accurate content and appropriate for the target audience, with quality service providers, etc.), monitoring and evaluation, promoting information sharing and collaboration with public/national bodies such as FSB, or the Ombuds amongst others.

Banking Association of South Africa (BASA)

BASA maintains a page on its website on consumer information, with the Code of Banking Practices and redress mechanisms for consumer complaints. In 2008 BASA launched an initiative “Teach Children to Save, South Africa” which is a national savings campaign aimed to teach children to save, to foster a culture of saving, and to promote volunteerism. After its launch and national interest generated, this initiative was adopted as an annual program of the South African banking industry and broader financial sector. The TCTS SA has empowered more than 200,000 learners in Grades 4 to 7 in over 1,000 schools nationwide with the participation of 15 banks and 27 financial sector institutions. Like SAIA, BASA could give consideration to pool member funds in a common pool for financing financial literacy initiatives.

Association for Savings and Investment (ASISA)

ASISA represents the majority of South Africa’s asset managers, collective investment scheme management companies, linked investment service providers, multi-managers, and life insurance companies. ASISA has a Consumer Education page, with information on collective investment schemes, and it maintains a jargon list designed to make definitions and explanations contained in life insurance contracts easier to understand. It also issues press releases on consumer education. ASISA should either coordinate member activities in financial education under the Financial Services Charter or establish a foundation that would receive at least a part of the member contributions and use the money to operate long-term financial literacy projects.

Role of Ombudsman Schemes

The Ombudsman Schemes also engage in consumer awareness activities, but more coordinated efforts are needed to increase consumer awareness about the availability of these schemes. A survey commissioned by the Ombudsman for Banking Services (Ipsos Markinor survey) at the end of 2009 indicated that one in ten South Africans in the lower income groups, knew about the scheme. This indicates that significant consumer outreach activities are needed to raise awareness about the various ombudsman schemes. A joint website about consumer rights and the ombuds system could be considered. The ombudsman schemes should coordinate their communication and media policy. They should provide the media with educational press releases. Examples of consumer education activities undertaken by the Credit Ombudsman and the Ombudsman for Banking Services are described below.

Credit Ombudsman

The Credit Ombud works through the media, with provincial consumer affairs offices, NGOs and other community-based organizations to create awareness of its existence and educate consumers on credit matters. In 2010, they participated in 75 consumer workshops covering seven provinces to provide financial education to consumers. They have used the media extensively. In 2010, they participated in 82 radio and/or television interviews on 15 different radio and television stations and featured 135 articles in the print media in 46 different newspapers and magazines. The Credit Ombud also issues educational press releases and sends them to the media.

Ombudsman for Banking Services (OBS)

In 2010, the Ombudsman for Banking Services (OBS) engaged in marketing and educational activities to raise consumer awareness of OBS activities. The OBS launched an educational radio programme called 'The banking dialogue' on a national radio station called Commuter Radio to create awareness of OBS activities, the types of complaints received, advice on how to avoid banking problems,

explanations of financial jargon, etc. The programme is estimated to have reached more than 2 million listeners in the country. The OBS also presented at several workshops, particularly in rural areas, which were identified by the Ipsos Markinor survey as priority areas. The OBS also joined the 'Teach children to save' initiative.

Role of Consumer Organizations

National Consumer Forum (NCF) and National Consumer Union (NCU)

The National Consumer Forum (NCF) is an individual membership, non-profit organization that is dedicated to the protection and promotion of consumer rights and interests in South Africa. The NCF is a coalition of several consumer-related organisations. It has established Access to Knowledge Centres (A2K) throughout South Africa, which make information available and facilitate workshops on personal financial management. The NCF also holds weekly radio programs on financial consumer education, covering topics such as credit, “you and your bank,” cost and fees, budgeting and insurance. The NCF representatives sit on the Board of certain associations (such as the Council for Debt Collectors and the Ombudsman for short-term insurance).

The National Consumer Union is an NGO, whose mission is to unite all consumers in South Africa and to further their interests. The NCU receives about 8,000 complaints a year, 25 percent of which are on insurance. The NCU tries to understand if the consumer has been treated unfairly, and if so, it directs the consumer to the appropriate complaints handling mechanisms. The NCU also produces two main brochures: “The Self-Help Approach to Consumer Problems: how and where to complain,” with a chapter on personal budgeting and money management; and “The Self-Help Guide for EEZI Financial Planning for South Africans.” The latter includes sections on consumers’ right to redress, consumer protection legislation in South Africa, budgeting, borrowing, repaying, remedies legal debt action, and credit bureaus. Both of these brochures are sponsored by a bank.

Both the NCF and the NCU have some level of involvement in consumer financial literacy, but they suffer from limited resources. Both consumer organisations are passionate about financial literacy. However, their level of involvement in financial education programs is limited due to their lack of financial resources. As consumer organizations, their interests are primarily rooted in consumer protection, dedicated towards resolutions of consumer complaints, unfair business practices and lobbying support for the protection of consumer interests. At least in the short term, the government should support consumer groups to help develop their capabilities to play a true role as advocates of financial consumers.

Designing Effective Financial Education Programs

Financial education programs should be based on life-cycle planning approach. Evidence from current international experience shows that rigid academic educational programs aimed at providing audiences with fundamental knowledge about financial products and services and institutions are less efficient in affecting actual behavior of consumers than programs designed in the context of the human life cycle. People are more responsive to education which directly addresses the issues they face in the moment, e.g. mortgages for young families, educational loans for young people planning educational and professional paths, etc. A concept of “teachable moment” has proven to work well in western countries.

Financial literacy programs should be differentiated between those that provide broad financial education and those that give targeted consumer information. Broadly-based financial education, delivered through the educational system gives individuals the essential life-skills to understand the need for personal long-term financial planning and risk-reward trade-offs. However, a different (and more

focused) approach is needed to provide consumers with the basic financial skills needed to understand the terms, conditions and obligations of the financial products and services that they buy. For the second approach, consumer information and disclosure—for example, providing a simple and easy-to-understand key facts statement and explaining to consumers how and where to present complaints (as described above)—are key to ensuring an adequate level of functional financial literacy of South African consumers.

Financial education programs should be designed and delivered by professional educators (e.g. university and school staff), as well as technical experts in financial markets. The latter can include representatives of government authorities and professionals from the private sector. The degree of involvement of professionals with different backgrounds and affiliations will necessarily vary depending on the type and topic of the educational program. A major role of educators would be to ensure appropriate design and quality of instruction, while financial sector experts would contribute their knowledge of recent legislation, financial products and services, general trends of the financial marketplace, and so on. Therefore, educators are likely to play a greater role in programs for audiences seeking to improve their general financial competences and for future consumers. At the same time, financial sector technical experts will likely be best at leading programs for individuals who seek advice regarding particular personal finance-related products or services.

Schools provide a natural entry point for financial education, but expectations of the actual impact of these programs should be modest. General schools should equip students with basic financial knowledge and skills to prepare them for future activities in the financial marketplace. Basic principles of course-of-life planning and financial literacy (such as personal budgeting, consumer credit as a form of debt, risk-return tradeoffs, etc.) along with understanding of basic financial services (such as current and savings accounts, credit cards and personal loans) should be taught in schools. The capacity of the education sector in the area of financial literacy development shall also be evaluated, and initiatives that identify efficient ways to provide financial education in schools should be supported.

Surveys and Evaluation

Evaluation of the effectiveness of financial education programs is needed. International experience in financial education demonstrates that increasing the number of financial education programs and initiatives does not automatically lead to increases in the level of financial literacy or positive change in the behavior of consumers who have participated in these programs. It is important to introduce the practice of evaluating the results of educational programs so as to identify the ones that are most beneficial. Controlled trials provide an effective means of determining the effectiveness of financial education programs, using controlled groups as a basis for comparison against the results of education programs provided to experimental groups. The programs which prove to be most beneficial should receive wide support and be widely publicized.

Testing and surveys are critical tools in the evaluation of financial education programs and consumer protection initiatives. It is important that a well designed broad-based nationwide household survey on financial literacy be undertaken every 3-5 years to measure the impact of financial literacy initiatives and evaluate whether financial education programs and consumer protection initiatives are working—or need to be revised further.

Table 14. FSB: Current and Recent Consumer Education Initiatives by FSB

Project title	Aims	Time frame	Status
Featuring FSB Consumer Financial Education Articles in <i>The Teacher</i> , a monthly publication for Teachers	The purpose was to provide teachers with financial information through 12 articles. Topics covered were consumer rights, needs and wants, budgeting, savings, insurance, accessing financial products, responsible borrowing, retirement and debt management.	12 months	12 Articles published 2010. Project completed
A Professional Development Programme for Trustees of Retirement Funds	Develop a trustees training programme to improve their knowledge and understanding of retirement funds, particularly on their role to administer these funds. The programme consist of guides and support material for face-to-face training at workshops and open access to the material through a FSB website.	6 months development work	Development completed. Live online testing to begin June 2011
Micro-insurance	The goals are to implement a pilot programme to determine what education and communication strategies could be used to inform consumers in LSM 2-4 & 5-7 about insurance and micro-insurance.	6 months development work	Will commence in May 2011
Conducting CEF Exhibitions	Exhibitions are used to increase consumers' financial awareness and knowledge, test alternative methods of educating consumers, assist consumers to make informed choices, and increase awareness of the avenues of recourse available	Ongoing until funds are depleted	Project initiated and 5-day exhibition/ workshops held in Sasolburg in August 2010. Approx. 700 learners attended 60-90 minute workshops. FSB won best exhibitor award.
CE workshops	The aim was to conduct financial education workshops for 5000 consumers in LSM 1-5 in 9 provinces. Goals were to improve knowledge and understanding of basic financial management. Content based on FSB Consumer Education Booklet 1	2nd round completed	Workshops started October 2010, completed by April 2011
Workshops for Learners in FET Colleges	Provide final year learners at FET Public Colleges with insight into the financial side of the world of work through 50 workshops at Colleges and determine their financial knowledge before and after workshops	6 months - completed by April 2011	Workshops completed
Stokvel TV	DVDs and print media used to convey financial information to LSM's1-5. I. DVDs distributed to 1800 church congregations through the SACC and then to Stokvels and other community groups. Information also published once a month in a daily newspaper	6 months. Completed in Oct 2010	Completed - November 2010
DEAFSA	Prepare deaf trainers to offer 30 financial education workshops to reach 750 deaf consumers country-wide.	4 months	Project still to be approved
Teacher development project	The project aims to provide teachers of mathematical literacy to Grades 10-12 with resource material and training to use the material	12 months	Project approved
Commuter Education	The aim is to reach commuters as they travel to and from work. ComutaNet broadcasts financial literacy messages over a radio station at taxi ranks and train stations. Kiosks were also set-up to engage with commuters. A CD and tape were also developed to be played in taxis.		

Annex 2: Financial Education

Digitisation Project	Digitising the FSB booklets onto CD-ROM. Development is in National Curriculum Statement format to accommodate Economic and Management Science (EMS) for Grades R – 9 and Mathematical Literacy and Life Orientation for Grades 10 -12. The resource is mediated to teachers through workshops.	Teacher workshops – August 2008 – May 2009	Resource and teacher workshops completed in May 2009. Awaiting new curriculum guidelines with respect to EMS from DoE before commissioning updates.
KAYA FM	The FSB has entered into a 6 month contract with KAYA FM to host interviews every Tuesday at 8:30 pm. Topics covered the regulatory and consumer education functions of the FSB. Two outside-broadcast (OB) were included a FSB staff was on hand to speak to consumers on various consumer issues.	6 May – 03/11/2008	Completed
Shopper Education	The aim is to reach shoppers in the relaxed atmosphere of a mall where the CED can engage with them on financial issues.	January – May 2008	Completed
Resource File Capacity Building Project	The FSB has developed a resource file on all its regulatory functions and activities. This is used to capacitate officials from provincial consumer affairs offices to be able to convey consumer messages on products and services rendered by FSB by using the file, in our absence.	Ongoing and as is needed.	Completed.
Social Grant/ Pension Pay Point Project	The aim is to reach out to vulnerable consumers at the point of payment. Field workers engage with pensioners on financial issues such as debt management while they are waiting in line. It is envisaged that volunteers will perform this function in future.	Ongoing	FSB invited to meetings and to participate in programmes run by the Department for the Aged
Brochure Development	The development and translation of brochures for specific areas such as the funeral assistance business, collective investments and trustee training forms a vital part of information dissemination to consumers. It also assists in providing information on the regulatory functions of the FSB. By translating the brochures FSB ensures that consumer can read the material in the language of their choice.	Ongoing and when required	
Booklet Development	Review, translation and reprint of FSB booklets 1, 2 and 3. The booklets, which were developed through consultation with the financial sector, are used as a basis for all consumer financial education programmes.		A total of 21,000 booklets printed and delivered to the FSB. Project successfully completed
Invitations to speak at various Forums around the country	The CED receives invitations to speak at various occasions e.g. savings month, consumer rights day, women's day etc. CED mostly use existing networks as a platform to arrange talks and workshops	Ongoing	Workshops have been conducted for churches, business people and interviews at Dr Mukhari Radio, Letlhabile Community Radio, SABC Phalaphala Radio & Lesedi FM have been conducted
Financial Guide for Youth	This Guide is aimed at youth between 18 and 22 and will address various financial issues such as opening a bank account, debt management, UIF, TAX, PAYE, savings, etc. Workshops will be held to mediate the booklet to the youth.	Development – August – January 2009.	Booklets designed, printed and delivered (April 2009)

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Research	Development of a framework to monitor and facilitate the effective delivery of financial literacy programmes.	July – February 2009	Research report received (March 2009). Toolkit to monitor and evaluate consumer education projects and programmes completed Feb 2010. Document about to be revised.
CISNA Familiarisation programme	The CISNA Familiarisation programme is the result of an invitation extended to SADC countries that attend the CISNA meetings. The invitation is an attempt from the FSB to act as a resource to regulators in other countries to develop their own CFE programmes and strategies by looking at South African models and adapting them to their own needs and situations.	May-09	Successfully implemented from 11 – 15 May 2009. Completed
Interactive Website	The CED at the FSB will develop an Interactive website that will provide information on financial issues such as savings, debt management, scams, pyramid schemes, consumer tips, various calculators etc. The website will also afford consumers the chance to communicate with relevant experts on their specific issues.	2009	FSB ICT Department will develop the website. Website manager's post approved and will be advertised shortly.
Government, and Company's Employee Assistance Programme	The aim is to reach all consumers and empower them on financial issues as well as what they need to look out for before they invest their monies in financial products regulated by FSB.	2009-Ongoing	Gauteng Department of Health workshops have been conducted and still continuing
Community education workshops	Capacitate various sections of the community on a specific and general financial issues regarding compliance and financial literacy. Constituents would include funeral parlours, people with disabilities, various churches, union members, tribal authorities, etc.		
Other areas for Research - Pilot with HSRC for OECD	Test 20 questions for OECD on financial literacy indicators that can used to make data universally comparable	2010 - 2011	Completed