

FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA

# Diagnostic Review of Financial Consumer Protection

APRIL 2017

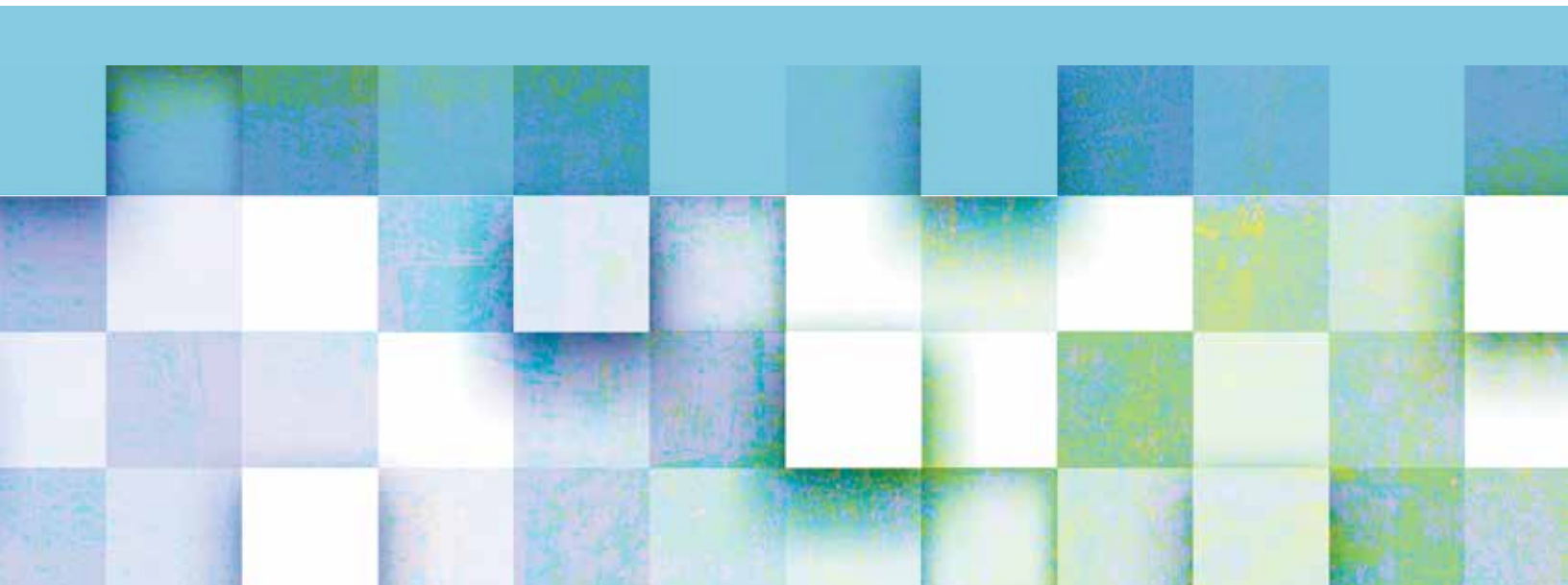


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# Diagnostic Review of Financial Consumer Protection

Key Findings and Recommendations

APRIL 2017



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## ABBREVIATIONS AND ACRONYMS

ATM	Automated Teller Machine
CBE	Commercial Bank of Ethiopia
EACC	Ethiopian Arbitration and Conciliation Center
EDR	External Dispute Resolution
FISF	Financial Inclusion Support Framework
FCA	Federal Cooperative Agency
GDP	Gross Domestic Product
IDR	Internal Dispute Resolution
IFC	International Finance Corporation
INFO Network	International Network of Financial Services Ombudsman Schemes
KFS	Key Facts Statement
MFI	Microfinance Institution
MoU	Memorandum of Understanding
MoF	Ministry of Finance
MoT	Ministry of Trade
MSME	Micro, Small, and Medium Enterprise
NBE	National Bank of Ethiopia
NBFI	Non-bank Financial Institution
NFIS	National Financial Inclusion Strategy
NPS	National Payment System
PIN	Personal Identification Number
PSP	Payment Service Provider

Ru-SACCO	Rural Saving and Credit Cooperative
SACCO	Savings and Credit Cooperative
SMS	Short Message Service
TCCPA	Trade Competition and Consumers' Protection Authority
TPCPP	Trade Practice and Consumer Protection Proclamation

**Currency Equivalents**

(Exchange Rate effective February 25, 2017)

US\$1 = ETB22.86





## ACKNOWLEDGMENTS

A World Bank Mission visited Ethiopia from October 24 to November 4, 2016 to undertake a Diagnostic Review of Financial Consumer Protection.<sup>1</sup>

This Diagnostic Review was undertaken by a World Bank Finance and Markets Global Practice (now the Finance, Competitiveness and Innovation Global Practice) team led by Andrej Popovic (Senior Financial Sector Specialist and Task Team Leader) and including Gian Boeddu (Senior Financial Sector Specialist), Craig Thorburn (Lead Financial Sector Specialist), Marco Traversa (Financial Sector Analyst) with remote support from Alice Zanza (Senior Financial Sector Specialist). Operational support was provided by Mengistu Bessir Achew (Operations Officer) and Yemsrach Kinfe Edey (Team Assistant) from the World Bank Country Office in Ethiopia. Francesco Strobbe (Senior Financial Sector Economist) provided valuable advice. Oversight of the project was provided by James Seward (Practice Manager). The team is thankful to Carolyn Turk (Country Director for Ethiopia) for her advice and support.

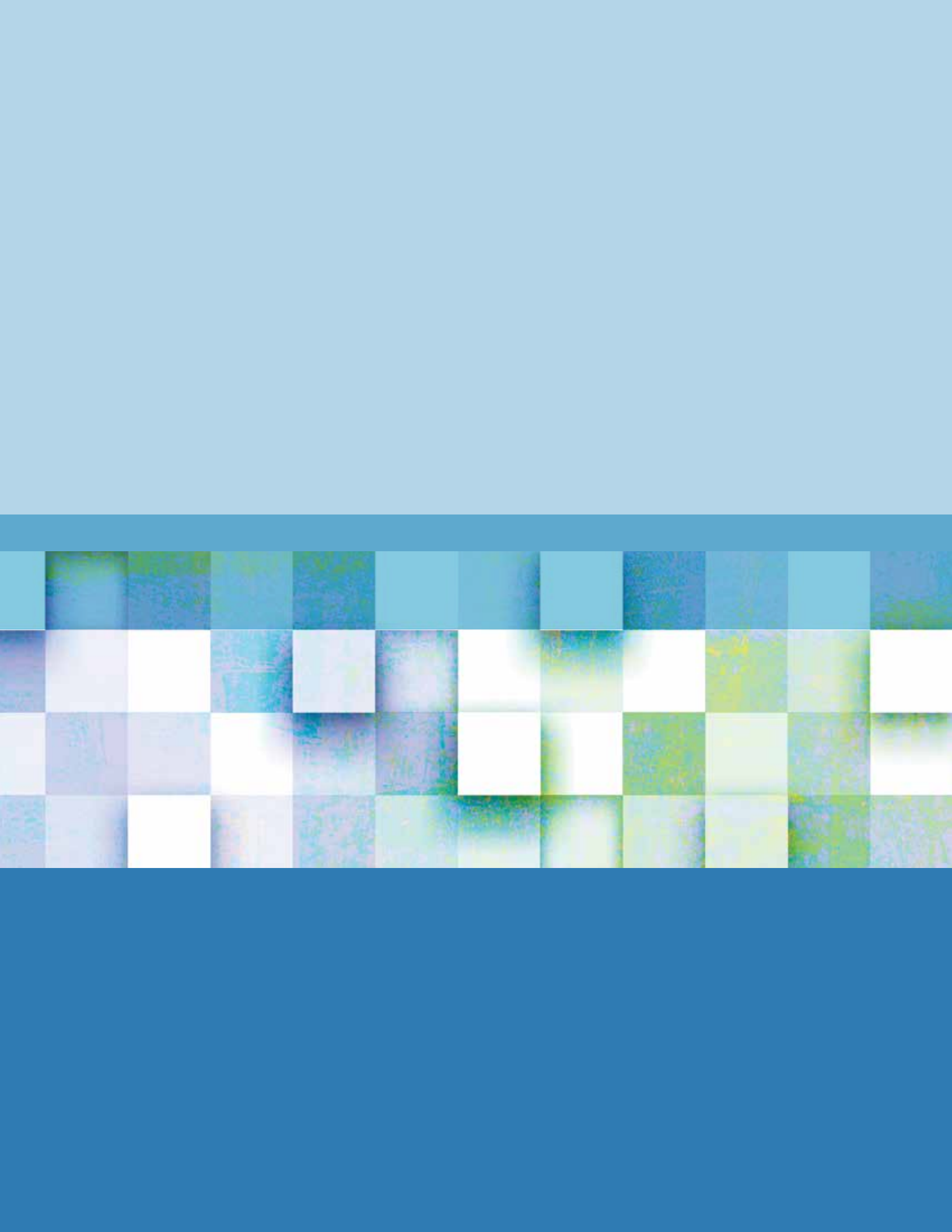
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1. The Review is part of the World Bank Program on Consumer Protection and Financial Literacy, which seeks to identify key measures in strengthening financial consumer protection to help build consumer trust in the financial sector and expand the confidence of households to wisely use financial services. Such Reviews are conducted against international good practices identified by the World Bank and have been prepared by the World Bank in both middle as well as low income countries. For more details and country reports please refer to the following link: <http://responsiblefinance.worldbank.org/diagnostic-reviews>





## EXECUTIVE SUMMARY

**The objective of the Diagnostic Review of Financial Consumer Protection in Ethiopia is to assess the legal, regulatory, and institutional framework for financial consumer protection (FCP) and develop prioritized and tailored recommendations aimed at supporting the National Bank of Ethiopia (NBE) in developing and operationalizing improvements to that framework.** The assessment is conducted under the Ethiopia Financial Inclusion Support Framework (FISF) Program, and based on the revised and enhanced 2017 Edition of the World Bank Good Practices for Financial Consumer Protection with focus on retail products and services in four sectors: i) banks and non-bank financial institutions (NBFIs); ii) payments; and iii) insurance. Further, the review covers five topics in each of the above-mentioned sectors: i) legal, regulatory, and supervisory framework; ii) disclosure and sales practices; iii) fair treatment and business conduct; iv) data privacy; and v) dispute resolution mechanisms. The report reflects the existing legal, regulatory, and institutional framework in Ethiopia, with references to planned reforms that were presented to or discussed with the World Bank team. It also features industry practices identified through interviews with financial services providers, financial regulators, and consumer and industry associations.

**The Ethiopian authorities, in particular the NBE, have demonstrated strong interest in financial consumer protection.** Recognizing its importance for promotion of responsible financial inclusion, financial consumer protection was included as one of the components of the National Financial Inclusion Strategy. In practice, the NBE has already made an effort to address some consumer protection issues through existing legal provisions and has made substantial efforts in handling certain consumer complaints, such as in relation to insurance. Finally, the NBE has requested this diagnostic review along with implementation support for the development and implementation of a more comprehensive financial consumer protection framework based on the findings of this assessment.

**While institutional responsibility for financial consumer protection in practice appropriately rests with NBE, which is responsible for supervising financial sector-specific legislation that includes some financial consumer protection measures, its legal mandate needs**

**to be more explicit so as to avoid potential overlaps with Ethiopia’s general competition and consumer authority—the Trade Competition and Consumers’ Protection Authority (TCCPA).** The TCCPA operates under the Trade Practice and Consumer Protection Proclamation (TPCPP) that covers all goods and services (including financial products and services) and while the TCCPA is currently neither supervising nor regulating issues pertaining to financial services and products, there is a general understanding that its legal mandate may be broad enough to cover financial products and services. This results in potential overlap with NBE’s mandate. It also means that NBE does not have formal power to enforce consumer protections (limited though they are) found in the general proclamation in relation to financial products and services. The regulator responsible for Savings and Credit Cooperatives (SACCOs), the Federal Cooperatives Agency (FCA), is in a similar position with regard to the TCCPA in relation to SACCOs.

**There is no dedicated market conduct/consumer protection unit within NBE, though in practice the relevant Directorates cover consumer protection issues to a limited extent, including handling of consumer complaints.** The existing Directorates, originally established to deal with prudential and market integrity matters, also deal with some financial consumer protection issues. When undertaking supervisory activities the Directorates will, to varying extents and using varying approaches, also focus on selected financial consumer protection issues. They do not currently have a comprehensive consumer protection supervision strategy nor comprise supervisors specializing in financial consumer protection. The Directorates also deal with consumer complaints but each appears to have developed its own approach for doing so. The Microfinance Institutions (MFI) and Banking Directorates appear to apply an *ad hoc* approach to complaints handling, while the Insurance Directorate has focused on complaints handling more extensively. For SACCOs, while the FCA has a dedicated unit dealing with SACCO supervision, there are no staff dedicated to financial consumer protection.

**Consumer disclosure requirements and standard practices vary substantially across sectors and show material gaps.** While payment services providers (PSPs) are required to provide a copy of their terms and conditions, as well as receipts for transactional and store of value products, there are no equivalent pre-contractual or contractual requirements for consumer credit, savings and insurance products, impairing product transparency and comparability for consumers. Even where institutions do provide contractual documentation to consumers (voluntarily or mandatorily) the format and contents of such documentation varies significantly, and is often inadequate. Further, the wording of contracts provided to consumers may not only be complex but also be in a language that customers may not understand (e.g. insurance policies are typically provided only in English and not in Amharic or another main local language).

**There are only limited consumer protection provisions dealing with fair treatment issues, such as how financial products are sold or how debt collection is undertaken, and some unfair practices exist in the market.** Key fair treatment issues that require attention due to existing practices include unfair or harsh debt collection practices by some credit providers, potentially inappropriate bundling/tying of certain financial products, such as credit with insurance, and insurance claims management practices that generate significant complaints.

There are also other aspects of fair treatment that need to be addressed to prevent emergence of new issues in this area in the future. These include the lack of a regime to deal with mistaken and unauthorized payment transactions, the lack of restrictions on certain potentially unfair contractual terms (such as broad rights to make changes to a consumer's contract) and the lack of obligations on financial institutions to ensure the suitability of products offered to consumers (e.g. loan affordability and suitability).

**Ethiopia currently does not have a comprehensive regime dealing with privacy and data protection.** While some sectorial regulations cover certain aspects of data protection there is no comprehensive regime regulating the collection, retention, use and sharing of consumers' data. The current provisions also do not seem to address issues likely to be relevant both to existing practices and future uses of data as the sector further develops. It appears that such data is frequently shared informally amongst financial institutions, and also shared between some financial institutions and third parties, without the consent or awareness of consumers.

**Only PSPs are subject to formal requirements to have in place internal dispute resolution processes, and those requirements lack detailed, comprehensive instructions regarding the manner in which consumer complaints must be handled.** Complaints-handling practices of other financial institutions that are not subject to any formal requirements vary significantly. Some institutions offer consumers relatively effective complaints handling processes while others offer only limited options and/or the complaints handling processes lack clarity.

**There is currently no separate external dispute resolution (EDR) mechanism dedicated to financial services and while NBE has been dealing with some of these complaints, it lacks the powers or arrangements to do so effectively.** For example, NBE lacks the power to award compensation. In addition, its Directorates lack a clear mandate or uniform, dedicated processes for complaints handling, and they have been relying on informal dealings and communications with institutions to resolve some complaints. If consumers are not able to resolve their complaints through NBE, they are left only with recourse to courts. Other dispute resolution bodies, such as the TCCPA Tribunal, currently do not have the expertise or streamlined processes to provide effective and accessible dispute resolution for financial sector consumer complaints, and despite the possibility to adopt its own procedures, the Tribunal currently follows the Code of Civil Procedure and functions as a formal Court.

**Implementation of new legal provisions recommended in this report, and of supervision and enforcement of such provisions, should include appropriate transitional arrangements for industry as well as flexibility to foster future innovation.** The report recommends the implementation of various new consumer protection legal provisions and of supporting supervision and enforcement measures. Such implementation should balance the need for industry transitional periods/staggered commencement periods and other transitional arrangements to give industry sufficient lead time to be able to comply, and the regulators to be able to supervise, with the need for consumers to benefit from recommended protections as soon as practicable. The drafting of such new legal provisions, and development of related supervision strategies, should also ensure that they will apply appropriately to both existing and new financial products and services, and to new market entrants, including by allowing regulators sufficient flexibility to make adjustments as new developments arise.

TABLE 1: List of Key Recommendations

KEY RECOMMENDATIONS	RESPONSIBLE PARTY	PRIORITY	TIMEFRAME
<b>A. Legal, Regulatory and Supervisory Framework</b>			
<i>Legal and Regulatory Framework</i>			
Taking advantage of the fact that the TPCPP is currently undergoing revision, it is recommended that it be amended to allocate responsibility to NBE and FCA respectively for supervising compliance with its consumer protection provisions as they apply to financial services and products	NBE—All Directorates, FCA and TCCPA	High	Short Term
NBE and FCA respectively should issue new directives to provide for key general financial consumer protection principles (as discussed in more detailed below) to be complied with by financial institutions.	NBE Banking and MFI Supervision Directorates, FCA	High	Short Term
NBE and FCA should subsequently consider consolidating all existing financial consumer protection provisions, and new provisions developed as recommended in this report, into one Directive (or into one single comprehensive Proclamation if feasible) and ensuring that there is a consistent approach across all financial institutions on each consumer protection issue except when differences are appropriate.	NBE Banking, MFI and Insurance Supervision and Payment and Settlement System Directorates, FCA	Medium	Medium Term
NBE should start to address the consumer protection gaps in the current framework, as far as payment services are concerned, by extending consumer protection requirements currently in the Agent and Mobile Banking Directives to all payment services to consumers.	NBE Payment and Settlement System Directorate	High	Short Term
NBE should also consider developing more detailed financial consumer protection provisions relevant to payment instruments where relevant.	NBE Payment and Settlement System Directorate	High	Short Term
In line with the Insurance Proclamation, NBE should develop and issue a directive introducing basic financial consumer protection principles for insurance.	NBE Insurance Supervision Directorate	High	Short Term
<i>Supervisory Framework</i>			
At the same time as the TPCPP is amended, as recommended above, a memorandum of understanding (MoU) should be signed between NBE, FCA and TCCPA to establish formal cooperation and coordination mechanisms with regard to financial consumer protection matters.	NBE—All Directorates, FCA, and TCCPA	High	Short Term
NBE should undertake consumer protection-specific capacity building within its directorates.	NBE—All Directorates	High	Short Term
NBE should review its current structure and consider implementing a separate financial consumer protection supervision unit/directorate, with dedicated expert staff for different types of products and services (e.g., insurance, banking). In the meantime, it should introduce appropriate interim measures—e.g. dedicated consumer protection staff in each directorate—to ensure that financial consumer protection issues are adequately supervised.	NBE—All Directorates	High	Medium Term
Once capacity is built and institutional arrangements are in place, NBE should design and gradually implement a comprehensive strategy for financial consumer protection supervision.	NBE—All Directorates	Medium	Medium Term
Staff within the Payment and Settlement System Directorate should commence systematically reviewing and enforcing compliance by relevant institutions with existing specific consumer protection requirements.	NBE Payment and Settlement System Directorate	High	Short Term

TABLE 1, *continued*

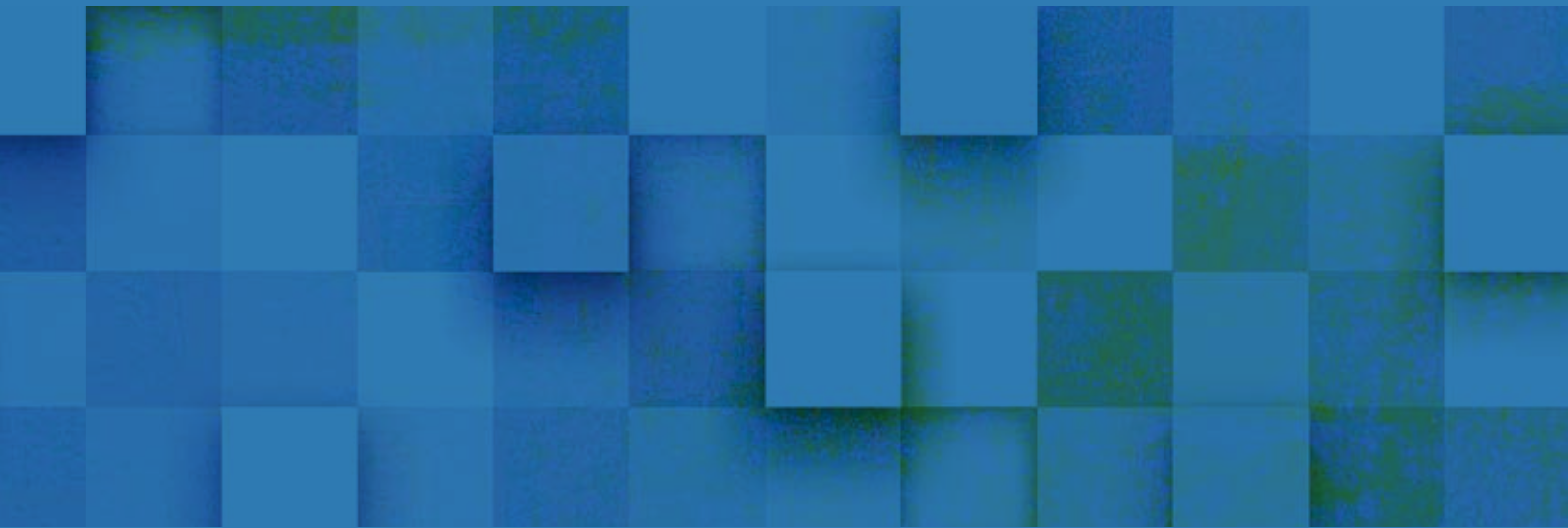
KEY RECOMMENDATIONS	RESPONSIBLE PARTY	PRIORITY	TIMEFRAME
<b>A. Legal, Regulatory and Supervisory Framework, <i>continued</i></b>			
<i>Supervisory Framework, continued</i>			
Given the clear consumer protection mandate already specified in the Insurance Proclamation, regardless of the longer organizational decisions noted above, the Insurance Directorate should begin supervising existing consumer protection requirements more extensively as soon as possible, and undertake internal capacity building for staff to support this.	NBE Insurance Supervision Directorate	High	Short Term
<b>B. Disclosure and Sales Practices</b>			
NBE and FCA should liaise with relevant authorities to amend the Advertising Proclamation and clarify their mandates for its supervision in relation to financial institutions.	NBE All Directorates, FCA, Ethiopian Broadcasting Authority	Medium	Short Term
Basic standard disclosure and transparency requirements, including providing documents in a local language that customers understand, and ensuring clarity in key documents such as terms and conditions, should be introduced through the recommended new NBE directives on consumer protection discussed above (and FCA's equivalent).	NBE Banking and MFI Supervision Directorates, FCA	High	Short Term
NBE should issue more rigorous standardized pre-contractual disclosure requirements for credit products.	NBE Banking and MFI Supervision Directorates	Medium	Medium Term
While monitoring compliance with existing requirements under the NPS directive, NBE should specify more detailed requirements regarding content, terminology, local languages, format and manner of disclosure for terms and conditions.	NBE Payment and Settlement System Directorate	High	Short Term
NBE should consider requiring PSPs to provide a standardized disclosure form for basic payment products covering costs and other relevant key aspects as well as introducing stricter requirements on the pre-disclosure of costs relating to specific transactions.	NBE Payment and Settlement System Directorate	Medium	Medium Term
NBE should begin monitoring advertising materials and establish whether existing requirements under the Advertising Proclamation (including before it is amended as recommended above) are being complied with and if they are sufficient to prevent misleading advertising relating to financial products and services.	NBE Banking, MFI, Payments, and Insurance Directorates	High	Short Term
NBE should initially encourage, assist, and ultimately mandate, the provision of loan agreements, insurance policies, and other relevant documentation in Amharic and/or other main local languages (as appropriate) as well as implement provisions requiring that all documents given to consumers should be drafted in a way that is easy to understand by the average consumer.	NBE Banking, MFI, Payments, Insurance Supervision Directorates	High	Medium Term
NBE should work with industry to develop a standardized key facts statement-KFS (information sheet) to provide consumers with adequate information about the most common retail insurance products.	NBE Insurance Supervision Directorate	High	Medium Term
In the long term NBE, in consultation with FCA, should introduce a standardized summary sheet or similar for the most common transaction and savings products.	NBE Insurance Supervision Directorate	Medium	Medium Term
<b>C. Fair Treatment and Business Conduct</b>			
The new NBE consumer protection directive(s) and FCA equivalent recommended above should be relied on to address existing unfair treatment of consumers, such as in relation to unfair or excessively harsh debt collection practices, until more detailed standards as recommended below are developed.	NBE Banking and MFI Supervision Directorates, FCA	High	Short Term

TABLE 1, *continued*

KEY RECOMMENDATIONS	RESPONSIBLE PARTY	PRIORITY	TIMEFRAME
<b>C. Fair Treatment and Business Conduct, <i>continued</i></b>			
NBE should develop and implement specific and detailed regulatory requirements to address key unfair treatment concerns, including ensuring product suitability, prohibiting unfair terms in consumer contracts and restricting inappropriate debt recovery practices.	NBE Banking and MFI Supervision Directorates	High	Medium Term
In the above mentioned directive covering payment services and products, NBE should introduce requirements prohibiting unfair clauses and practices. NBE should also begin monitoring compliance with existing fair treatment provisions.	NBE Payment and Settlement System Directorate	High	Short Term
NBE should develop rules to deal with mistaken and unauthorized transactions and fraud.	NBE Payment and Settlement System Directorate	Medium	Medium Term
Within the above mentioned new directive, NBE should issue more specific requirements and guidance on claims insurance management and also include explicit obligations on management for ensuring fair business conduct.	NBE Insurance Supervision Directorate	High	Short Term
<b>D. Data Protection and Privacy</b>			
More robust privacy and data protection provisions should be included either in sectorial directives or ultimately in the general financial consumer protection directive recommended above. The introduction of these new requirements should also ensure that issues relating to potential future uses of data in the sector are addressed, striking a balance between not stifling innovation unnecessarily and ensuring adequate protection.	Government of Ethiopia, NBE, TCCPA, FCA	High	Short Term
The Government of Ethiopia should consider adopting a general data protection proclamation (i.e. not necessarily limited to the financial sector), the content of which would be consistent with the suggestions above, and consider the most appropriate institutional arrangements for its supervision.	Government of Ethiopia	Medium	Medium Term
<b>E. Dispute Resolution Mechanisms</b>			
NBE should consider, jointly with other stakeholders such as the TCCPA and the FCA, and implement, an appropriate institutional arrangement to provide adequate, efficient, and effective external complaints handling for financial consumers (alternatives, are discussed in the report below, including what seems the most practical way forward).	NBE—All Directorates, FCA, and TCCPA	High	Medium Term
NBE should initially extend the existing IDR requirements for agent and mobile banking to all banks, MFIs and PSPs, before implementing more extensive regulatory requirements in relation to this issue (as well as monitoring the application of such requirements).	NBE Banking and MFI Supervision and Payment and Settlement System Directorates	High	Short Term
NBE in consultation with FCA, should introduce more specific requirements, not only obliging institutions to have internal IDR procedures, but also establishing minimum standards for such procedures.	NBE Banking and MFI Supervision and Payment and Settlement System Directorates, FCA	Medium	Medium Term
NBE should introduce a formal requirement for insurers to have an adequate IDR process.	NBE Insurance Supervision Directorate	High	Short Term



# DIAGNOSTIC REVIEW OF FINANCIAL CONSUMER PROTECTION





# 1

## CONTEXT FOR FINANCIAL CONSUMER PROTECTION IN ETHIOPIA

**Internationally, there is an increased focus on consumer protection in the financial sector.**

As shown by the World Bank's 2013 Global Survey on Financial Consumer Protection<sup>2</sup> a legal framework for financial consumer protection exists in 112 out of the 114 countries surveyed. The most common approach is to have a financial sector—specific consumer protection regulatory framework (as exists in 103 countries). The Global Survey also showed that the number of regulatory agencies with specific responsibility for financial consumer protection increased from 74 in 2010 to 97 in 2013.<sup>3</sup> Additionally, the overall trend shows that more and more economies, developed and developing, are moving towards having either a separate financial consumer protection regulator<sup>4</sup> or having a separate financial consumer protection unit within the financial sector regulator(s).<sup>5</sup>

**Financial consumer protection also contributes to overall financial stability.** A sound financial consumer protection framework and overall macroeconomic and financial stability are both necessary preconditions for protecting consumer interests. Prudential requirements are intended to ensure that the financial system remains sound and stable, while the financial promises made by financial institutions are met. Effective financial consumer protection measures also contribute to financial stability by ensuring that consumers are offered products which respond to their needs and are sound, promoting continued uptake and sector confidence, and products (e.g. loans) that they can afford, reducing the risk of default (and thus loss to financial institutions) as a result of over-indebtedness.

**Moreover, the need for an appropriate and effective legal and regulatory consumer protection framework is more urgent when countries have specific financial inclusion targets aimed at bringing more people into the formal financial sector.** An important element in promoting financial inclusion is having rules to safeguard the interests of more vulnerable low-income, low-literacy consumers which are often not familiar with formal financial services. Consumer protection also contributes directly in helping increasing access to and usage of

financial services, and the quality of those financial services, by promoting trust in the regulated financial sector and thus encouraging participation. Box 1 below provides a general overview of the financial sector in Ethiopia and current consumer participation in the sector.

**Ethiopia has recently launched a national financial inclusion strategy (NFIS), with ambitious financial inclusion targets.** The stated overall vision of the NFIS is to ensure “*access and use of a range of suitable (quality and affordable) products and services . . .*”.<sup>6</sup> Consistent with this vision is the need for effective financial consumer protection measures to ensure that products and services offered are suitable in terms of both quality and affordability.

**Financial consumer protection is also important where rapid innovation in financial services and their delivery channels is occurring.** While the use of new delivery channels for financial services can help fulfil important financial inclusion objectives, it can result in additional complexity and risks for consumers with low levels of financial literacy who may lack understanding of the features and risks associated with such channels—for example, where payment services are bundled with air-time/telecommunications products. In Ethiopia, while electronic delivery of financial services is not yet as developed as in other countries in the region, it is expanding rapidly (for example, there has been significant expansion of mobile banking / payment services). There is therefore a need to ensure that appropriate financial consumer protection measures are in place that take into consideration issues raised by such new developments and are sufficiently flexible to address potential future developments. For example, disclosure requirements should be adaptable to digital sale and usage of retail financial products (such as ensuring that, where a requirement to provide a paper contract is not feasible, requirements allow for this to be done electronically, while still ensuring that consumers receive the necessary information).

#### BOX 1

##### Overview of the Ethiopian Financial Sector

**Ethiopia’s financial sector is relatively small, comprising 2 percent of GDP, and main regulated financial institutions operating in the country include banks, MFIs, and insurance companies.** Currently there are 18 banks (of which 15 are private and 3 are state-owned with one development bank), 17 insurance companies, 35 microfinance institutions (MFI), and 5 capital goods finance companies operated in Ethiopia. In line with international trends, there is a growing though still nascent mobile money industry. According to the Federal Cooperative Agency there are approximately 19,000 Savings and Credit Cooperatives (SACCOs) spread throughout the country (mostly in rural settings). Capital markets are at a nascent stage mainly transacting treasury bills and government bonds. Leasing is beginning to develop and receiving significant support from the Government of Ethiopia. Although the share of privately owned institutions has grown, the majority of access points to the financial sector remain concentrated with state owned Commercial Bank of Ethiopia.

**This report reflects a diagnostic review conducted against the latest draft of the 2017 Edition World Bank’s Good Practices for Financial Consumer Protection (Good Practices).**<sup>7</sup> In various instances the report includes a high level summary of international good practices to give some background to the analysis and recommendations that it contains. However, for more detail, it is advised to consult the latest published version of the Good Practices.

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## NOTES

2. Available at <http://responsiblefinance.worldbank.org/~media/GIAWB/FL/Documents/Publications/CPFL-Global-Survey-114econ-Oversight-2014.pdf>. An update to the survey was published after this report was prepared.
3. Note that this number takes into consideration all possible institutional arrangements: general consumer protection agency, specialized financial consumer protection agency, joint prudential and consumer protection agency (with or without a separate department).
4. Such as the United States, Australia, South Africa, etc.
5. Such as Armenia, Peru, Mozambique, Malaysia, Morocco, etc.
6. Ethiopia, *National Financial Inclusion Strategy*, 2016, at 17.
7. Available at <http://hdl.handle.net/10986/28996>



# KEY CROSS SECTORAL ISSUES AND RECOMMENDATIONS

## A) LEGAL, REGULATORY AND SUPERVISORY FRAMEWORK

### Context

**Good practice suggests that either a standalone legal framework for financial consumer protection, or financial consumer protection-specific provisions in the general legal framework, are necessary to effectively address consumer protection issues specific to the financial sector.** Although there is no one-size-fits-all approach, and some countries continue to adopt only a general consumer protection law, a standalone financial consumer protection legal framework or specific financial consumer protection provisions in broader laws allow greater flexibility to address issues that are unique to, or affected differently in, the financial sector. This approach also facilitates complementarity with other regulatory measures that typically apply to the financial sector, such as prudential regulation.

**Additionally, institutional arrangements should facilitate the enforcement of financial consumer protection laws and regulations across all financial institutions in a consistent, efficient and effective manner.** Although in some countries the responsibility for financial consumer protection rests with a general consumer protection agency, this is not a recommended approach. Such agencies, with responsibility for supervising compliance with general legal requirements applying to all types of goods and services, tend to lack the necessary resources, skills and expertise to be able to focus effectively on the financial sector.

**The mandate of the relevant authority should be clear and there should not be any overlaps or inconsistencies between institutional mandates.** Regardless of the institutional arrangements, it is crucial that a financial consumer protection supervisory authority has a legally clear mandate to supervise financial consumer protection without conflict or overlap with the mandates of other authorities. A legally clear mandate is essential to ensure, for example, that the relevant regulator has power to undertake supervisory and enforcement action, and issue

relevant legal instruments, effectively (e.g. without being subject to legal challenge for lack of authority). Avoiding overlaps of authority with other agencies also ensures that it is clear to industry, consumers and government agencies themselves which agency has not only power, but also responsibility, to address financial consumer protection actions. It also avoids potential resource-consuming conflict between agencies.

**Good practice suggests that it is important to have either a specialized agency for financial consumer protection or a specialized unit within the overall financial industry supervisor.**

Regardless of the model chosen, it is important that such unit/agency is independent from the relevant prudential supervision unit/agency, while at the same time ensuring coordination of consumer protection and prudential activities. The need for independence is driven by concerns related to a potential conflict of interests between prudential and market conduct/financial consumer protection oversight. Such a conflict may arise, for example, where measures to protect financial consumers may be detrimental to the profit of a financial institution or could potentially indirectly affect its soundness.

## Key findings

**In Ethiopia there is no single standalone law that deals with financial consumer protection.**

Some key consumer protection provisions have been included in a general consumer protection proclamation and others can be found in various financial sector-specific proclamations and regulations (the latter are discussed in sector-specific sections of the report).

**The Civil Code of Ethiopia,<sup>8</sup> by incorporating basic civil law principles, includes some provisions that can have a consumer protection effect.** These rules range from basic protections such as prohibitions against fraud,<sup>9</sup> and false statements<sup>10</sup> to more specific protections aimed at addressing certain legal imbalances of general application, like article 1710 which invalidates a contract where one party took advantage of the manifest business inexperience of the other.<sup>11</sup> However, the Code does not appear to have been updated recently to reflect enhancements to equivalent provisions in other civil law systems, its provisions are worded very generally (rather than being tailored in any way to the financial sector) and there does not appear to be significant awareness of, or reliance on, it for the purposes of financial consumer protection.

**In addition to the general provisions included in the Civil Code, Ethiopia also has a general financial consumer protection proclamation, the TPCPP,<sup>12</sup> which appears to apply to financial services and products.** The TPCPP contains a number of consumer protection provisions that do not refer specifically to financial products and services but the proclamation is specified to *"apply to all persons carrying on commercial activities and to any transaction in goods and services . . ."*<sup>13</sup> The TCCPA, the institution established to supervise and enforce compliance with the TPCPP, confirmed that in its view the proclamation does apply to financial services and products and noted that, at least from a competition perspective, there have previously been actions taken under it affecting the financial sector.

**While some of the provisions included in the TPCPP, given their focus or wording, are unlikely to be applicable or relevant to financial services and products, others could potentially provide some protections for financial consumers.** The proclamation specifies a list of "Right[s] of

Consumer[s]”<sup>14</sup> which include rights to receive sufficient and accurate information in relation to goods and services they purchase, to not be subjected to pressure selling or misleading and abusive practices, and to be able to submit complaints to the TCCPA. The proclamation also prohibits any person from committing misleading and unfair acts in the course of trade (it refers to these as acts of ‘unfair competition’) as well as prohibiting a range of specific acts that are deemed to be misleading or unfair (although several of these are focused on practices that are unlikely to be relevant to financial services or products).<sup>15</sup> It further imposes an obligation on businesses to display conspicuously at their premises or on relevant items the price of their goods and services.<sup>16</sup> The proclamation also renders void any clause that seeks to waive obligations imposed on a business by the proclamation or limit other legal rights the consumer may have.<sup>17</sup>

**From a supervisory perspective, the jurisdiction of the general consumer protection agency, the TCCPA, potentially covers financial services providers given the general application of the TPCPP (as noted above). The TCCPA acknowledged this but indicated that it has not engaged in financial sector consumer protection.** The TPCPP contemplates that the TCCPA would both supervise compliance with the TPCPP and establish a tribunal to hear cases relating to alleged breaches of the TPCPP. Within these mandates the TCCPA has broad powers<sup>18</sup> which include: taking any appropriate measures to increase market transparency, ban advertisements which are inconsistent with the proclamation, protect consumers from unfair activities, undertake investigations, impose administrative and civil sanctions (including fines and remedial action) or order payment of compensation to deal with violations, etc. It can also receive and deal with complaints through its tribunal function.<sup>19</sup> The proclamation does not currently give the TCCPA authority to issue more detailed consumer protection regulations or other types of rules. Importantly, while the TCCPA has power to inspect any institution’s, including any financial institution’s, activities to ascertain whether they comply with consumer protection requirements under the TPCPP, the agency has not undertaken such supervision and internally does not have any financial sector-specific expertise, or dedicated resources, to do so.

**Financial institutions are neither licensed/registered nor supervised by the TCCPA regarding consumer protection issues, but they require licensing by their respective financial sector regulator.** At present all financial institutions (banks, micro-finance institutions, leasing companies, insurance companies, foreign exchange dealers), with the exception of SACCOs, need to be licensed by NBE. Federal SACCOs need to be licensed by the FCA and local SACCOs are authorized by their respective local authorities (for specific mandates and relevant licensing requirements see sections III, IV, and V of the report).

**NBE’s mandate under its establishing legislation arguably provides an implicit financial consumer protection supervision mandate (although it would be important to make it more explicit) and specific sectorial legislation may to some extent also have this effect.** While the proclamation does not expressly refer to consumer protection, it refers to NBE’s role and responsibilities as including fostering a healthy financial system, licensing and supervising banks, insurers, and other financial institutions, and, importantly, creating favorable conditions for the expansion of banking, insurance and other financial services.<sup>20</sup> Financial consumer protection is arguably an integral part of this role, and thus implicit in NBE’s generally worded mandate (for example, the implementation of effective financial consumer protection rules is necessary to build confidence and trust in the system and support sound growth and stability). The Banking

Business Proclamation also contemplates NBE supervising relevant financial institutions in ways that could potentially also take into account consumer protection issues<sup>21</sup> (although this is not expressly stated in that proclamation). NBE indicated that it does view its mandate as comprising consumer protection issues and (as discussed in sector-specific sections of this report) has already been dealing with issues relating to financial consumer protection both in terms of supervision and rule-making. However, especially if NBE or the Government of Ethiopia have any doubts in this regard, it is recommended that NBE's mandate to supervise and regulate financial consumer protection be clarified further as soon as practical to ensure that the basis for its supervision and rule-making is not open to any challenge. The FCA considers that its overall legal supervisory powers over cooperatives would encompass it supervising SACCOs with regard to financial consumer protection matters, though without reference to specific provisions it was relying on for this purpose. Therefore, if there are any doubts in this regard, it is also recommended that the FCA's mandate to supervise and regulate financial consumer protection be clarified as soon as practical.

**Currently there is no dedicated financial consumer protection supervision and regulation team within NBE.** There are separate directorates dedicated to supervising the various categories of financial institutions for which it is responsible (see sections III, IV, and V of the report). When undertaking supervisory inspections and visits these directorates will, to various extents, also focus on selected financial consumer protection issues. However, the directorates currently do not comprise supervisors that specialize in or focus primarily on financial consumer protection matters, nor have a consistent approach to consumer protection supervision.

## Recommendations

**In the short term, taking advantage of the fact that the TPCPP is currently undergoing revision, it is recommended that the proclamation be amended to allocate responsibility to NBE, rather than the TCCPA, for supervising compliance with its consumer protection provisions when applying to financial services and products.** This would ensure that, as the regulator already responsible for the financial sector and with sector-specific expertise, NBE can cover compliance by financial institutions with the various general consumer protection obligations noted above as part of its supervision activities. A similar approach should be taken for the FCA with regard to SACCOs. The amendments should make it clear that the TCCPA will no longer have supervisory responsibilities (i.e. a mandate) in this regard. However, TCCPA should retain responsibility for competition matters as also applicable to the financial sector.

**Alternatively, the TPCPP could be amended to exclude financial services and products from its application, and consumer protections currently provided under that proclamation could be replicated (with appropriate adjustment for financial sector issues) in financial sector-specific legislation, such as a Directive issued by NBE (see the recommendation later in this report for a new Directive in this regard to also address existing consumer protection gaps).** In the long term this approach may be clearer from a legislative drafting perspective as well as avoiding potential confusion with regard to the TCCPA's and NBE's roles. However, if this approach is taken it will be important to avoid a timing gap between excluding financial institutions from the application of the general consumer protection requirements under the TPCPP and the introduction of equivalent requirements specific to the financial sector under the financial sector-specific legislation.



**It is also recommended that an MoU be implemented between NBE, the FCA and the TCCPA to establish formal cooperation and coordination arrangements with regard to financial consumer protection matters. To the extent necessary, it should also ensure clarity with regard to financial consumer protection responsibility as between their respective operations, explicitly recognizing the scope and nature of the mandate of each authority in this regard.** Arrangements under the MoU should facilitate cooperation in the event that there are matters affecting both the consumer protection and competition mandates of the respective regulators (e.g. joint investigations by NBE and TCCPA), as well as coordination in order to ensure consistency in consumer protection approaches in the financial sector as a whole (e.g. where NBE and the FCA develop regulations for their respective institutions that relate to the same subject matter or issues, such as disclosure). There should also be arrangements for each regulator to alert the other regulators to matters relevant to their purview (e.g. investigations, re-directing complaints etc.).

**In the short term NBE should undertake consumer protection-specific capacity building within its directorates.** While some supervisory teams within NBE indicated they have greater familiarity and comfort than others in dealing with financial consumer protection issues, it is important that all teams/directorates have sufficient levels of capacity to adequately supervise and enforce compliance with financial consumer protection obligations. It is therefore recommended that each supervision directorate designate selected new or existing staff members to have more extensive or exclusive responsibility for consumer protection supervision and enforcement. NBE should ensure that these staff members undertake appropriate training and other capacity building activities so that they have sufficient familiarity with key consumer protection issues and industry practices for which they are responsible. NBE's internal methodologies (e.g. for offsite and onsite supervision) should also be enhanced to ensure that they cover financial consumer protection issues adequately and systematically, requirements recommended for introduction in the sector-specific sections of the report.

**In the medium to long term, NBE should review its current structure and consider implementing a separate financial consumer protection supervision unit/directorate (or consider as an interim measure a dedicated financial consumer protection unit within each directorate, with appropriate internal coordination).** NBE should begin considering the most appropriate medium to long term institutional arrangements to ensure that financial consumer protection issues are adequately supervised (e.g., decide whether a separate team responsible for consumer protection supervision should be created within each of the current directorates or whether a separate consumer protection directorate should be established to supervise all financial consumer protection issues across the financial sector). Regardless of the initial approach undertaken, it is recommended that in the long term a separate department is created to avoid potential conflicts of interests (e.g. with the existing prudential focus of the existing directorates) and also to assist with internal coordination. The FCA should also assess carefully what additional resources (in terms of specialized staff and other infrastructure) it will need to ensure that it is able to undertake adequate supervision of SACCOs in relation to financial consumer protection measures.

**Lastly, in the medium to long term, once capacity is built and institutional arrangements are in place, NBE should design and gradually implement a comprehensive strategy for**

**financial consumer protection supervision.** Once issues affecting adequacy of institutional arrangements are settled, NBE should develop a more comprehensive strategy (i.e. supervision program with supporting tools) for financial consumer protection supervision and enhance enforcement of existing and forthcoming requirements. The strategy should, for example:

- a) provide for a transition period from current supervision activities (to the extent they overlap) during which existing supervision activities should not be delayed until implementation of a new approach;
- b) set out the supervisory approach, which as far as practicable should be risk-based (i.e. to place greater focus on institutions and areas of greater risk) in order to efficiently allocate supervisory resources and focus the supervision process. This can be evaluated regularly and adjusted appropriately;
- c) establish a supervision action plan that comprises the financial institutions that should be supervised within a certain period, considering risk factors and resources available;
- d) detail supervisory tools that will be used, such as market monitoring, thematic reviews, institution-based assessments, onsite activities, etc.;
- e) detail consumer protection supervision-related guides, manuals and worksheets to be developed or enhanced for relevant supervisors, so that they can act in a standardized and consistent way;
- f) describe how communication and cooperation between relevant teams in NBE, as well as with any other relevant entities (e.g. the FCA, and any relevant dispute resolution body) would work to assist supervision and enforcement;
- g) include a training plan for supervisors in consumer protection/market conduct supervision, including with regard to the content of regulations and the tools and methods to be used.

## B) DISCLOSURE AND TRANSPARENCY

### Context

**Disclosure requirements can help foster a more informed consumer marketplace, enable product comparisons, and encourage competition.** Disclosure requirements should focus both on individual provision of appropriate information at the pre-contractual, contractual and post-contractual stages of a financial institution's dealings with a consumer and also on a financial institution's provision of information to the public, such as through general advertising. Good practices relating to the former are addressed in more detail in the sector-specific sections of this report. It is also important that disclosure requirements are proportionate to the relevant policy aims and reflect the risks of the relevant activity, the literacy/capability level of the relevant consumers, and do not impose compliance costs that outweigh their intended benefits.

**One of the key objectives of disclosure and transparency requirements is to address information asymmetry.** Without consumer protection rules addressing the provision and distribution of adequate information to consumers, information asymmetries will tend to exist between consumers and financial services providers, driven by factors such as the differences in the

expertise and skill levels, and understanding of financial products and services, between providers and consumers. Such imbalances can be particularly pronounced in the case of low-resource or low-literacy consumers.

**The lack of such requirements can make consumers particularly vulnerable at the pre-contractual stage.** While consumers may receive information about financial products and services at several stages in their dealings with financial institutions, access to and understanding of information (including through advertising) at the comparison shopping and pre-contractual stages is crucial in informing their decision-making process when first selecting a product or service.

**Adequate pre-contractual disclosure rules, including in relation to advertising, can also have a positive impact on competition.** If all participants are required to be accurate in their advertising and other disclosure, and financial products and services can be compared effectively by consumers, financial institutions can be more confident of competing on the actual merits of their offerings.

## Key Findings

**While sectorial proclamations and other instruments contain various provisions relating to individual disclosure and transparency issues (discussed in the sector-specific sections of this report) advertising for all products and services is currently subject to separate standalone regulation.**<sup>22</sup> The Advertisement Proclamation regulates advertising both through provisions on the licensing and regulation<sup>23</sup> of advertisement businesses and provisions regulating advertising more generally. It applies to any form of commercial advertisement for goods or services<sup>24</sup> and imposes obligations such as prohibiting advertising from containing misleading or unfair statements<sup>25</sup> (the proclamation also deems a range of content as being misleading)<sup>26</sup> and requiring advertising to be truthful with regard to the nature, use and quality of products and services. Beyond financial consumer protection issues, the proclamation also regulates other aspects of advertising—for example, it limits the amount of advertising content in magazines, newspapers, and on TV and it requires government approval for certain types of advertisements. In addition to the proclamation, there are some specific sectorial requirements such as for pre-approval of advertising material relating to new products (for more details see sections III, IV, and V).

**Despite the existence of the Advertisement Proclamation industry advertising practices may be lacking.** While it was not possible to undertake an extensive review of advertising, discussions with institutions suggested that providers are tending to emphasize the benefits of products while not necessarily balancing this with disclosures of costs and risks (more details on disclosures are provided in each of the sections that follow).

## Recommendations

**In the short term it is recommended that NBE and the FCA liaise with relevant authorities to amend the Advertising Proclamation and clarify their mandates.** The Advertising Proclamation should be amended to remove its application to financial products and services particularly with regard to matters such as prohibitions on misleading advertising and similar consumer

protection issues, with these matters being addressed by NBE and FCA in the Directives they supervise. This would also allow for requirements to be tailored to financial sector advertising, addressing additional sector-specific requirements such as obligations on all providers to disclose their regulatory status (e.g. type of license/authorization, name of regulator) in advertising and make other relevant market-facing statements. An alternative would be to amend the Advertising Proclamation to give responsibility for financial product advertising to NBE and FCA, although this may lead to greater legislative complexity and, importantly, the current requirements are not tailored to financial sector advertising.

*(See specific sectorial sections of the report further below for additional recommendations on product disclosure).*

### C) FAIR TREATMENT AND BUSINESS CONDUCT

*(See specific sectorial sections of the report further below for key findings and recommendations on fair treatment and business conduct).*

### D) PRIVACY AND DATA PROTECTION

**Financial institutions are major collectors and users of personal information that should be appropriately protected.** Financial institutions collect a variety of personal information about consumers and related parties, such as contact details, dates of birth and other identifiers, transaction details etc., which can be of particularly sensitivity. It is critical that such information be safeguarded and used and disclosed for purposes, and in circumstances, about which the consumer is aware and, where relevant, to which they have agreed or which are otherwise appropriately permitted by law. Financial institutions should therefore be subject to restrictions and requirements in this regard and have policies and procedures in place to protect personal information, with internal accountability for compliance.

#### Key findings

**Ethiopia does not currently have any proclamations dedicated specifically to privacy and data protection.** While some sectorial regulations cover aspects of privacy and data protection (discussed in the sector-specific sections of the report), there is currently no comprehensive regime regulating the collection, retention, use and sharing of customers' data. There is also no dedicated privacy/data protection regulator. To the extent that data privacy issues are included in sectorial regulations supervised by NBE, the relevant directorate is responsible for monitoring their application to covered institutions.

**Financial services providers collect a significant amount of personal data which is frequently shared without users' consent.** Financial services providers currently collect substantial amounts of data about consumers in the context of, for example, credit applications or ongoing administration of financial services and products. It appears that such data is frequently shared informally (e.g. between banks for credit assessment purposes, or between micro-finance institutions and local authorities for debt collection purposes) without the consent or awareness of consumers.

## Recommendations

**In the short term it is recommended that more robust financial sector-specific privacy and data protection provisions be implemented.** These could be included in either sectorial directives or a general financial consumer protection directive (see section III of the report) and would include, for example, requiring consumer consent and/or notification in circumstances involving data sharing for commercial purposes.

**In the medium to long term, the Government of Ethiopia should consider the feasibility of adopting a general data protection proclamation (i.e. not necessarily limited to the financial sector).** Financial services providers already collect a range of sensitive consumer information and this range is likely to grow as the market expands and industry's data-centric activities become more sophisticated. It is therefore critical that such data is collected, used and disclosed appropriately and, with some exceptions, for purposes disclosed to the consumer at the time the information was provided by the consumer, and that it is kept safe and unaltered. However, other sectors are also likely to involve significant collection, use and disclosure of consumer information. The proclamation should cover matters such as: (i) obligations and limitations relating to providers' (and other relevant data controllers') collection, use and disclosure of personal data; (ii) requirements for policies and procedures to protect personal data; (iii) rules on sharing data of with other entities. The introduction of such new requirements should also take the opportunity to ensure that issues relating to potential future uses of data are addressed, striking a balance between not stifling innovation unnecessarily and ensuring adequate protection.

**Ethiopian authorities should also decide on the most adequate institutional arrangements for the supervision and enforcement of such a proclamation.** It will need to be decided whether a standalone data privacy authority should be created or whether this responsibility could rest with any existing authorities.

## E) DISPUTE RESOLUTION MECHANISMS

### Context

**Effective consumer redress through internal dispute resolution (IDR) and external dispute resolution (EDR) is an essential element of an effective financial consumer protection framework.** Effective redress assists in ensuring that substantive consumer protection measures are effective in practice (such as by resulting in appropriate mitigation, including compensation, to address individual consumer harm as well as bringing about changes in provider behaviour and industry practice). Once financial institutions' IDR processes mature, and with the positive effects of a well-functioning mandatory EDR scheme, ideally most financial consumer complaints should be successfully resolved through the internal complaint handling processes of financial services providers and not require external intervention. However, effective engagement by financial services providers with complainants should also comprise ensuring that any complaints that are not resolved by IDR processes are escalated to an appropriate EDR scheme. Hence, it is important to address both IDR and EDR as interrelated elements of an effective end-to-end dispute resolution framework for financial consumer complaints (in this report IDR processes are addressed in sector-specific sections given that existing IDR requirements vary from sector to sector).

## Key Findings

**While there is no formal EDR mechanism in Ethiopia that is dedicated to financial services consumer complaints, there are some potential alternatives to taking court action. However, they seem unlikely to provide a financial consumer with practical, speedy and easily accessible dispute resolution.** The Civil Code permits parties to resolve disputes by compromise, conciliation or arbitration, and parties can agree to solve a dispute through alternative means either before such a dispute arises (e.g., at the signing of the contract) or through mutual agreement after the dispute has arisen.<sup>27</sup> However, to avail themselves of these alternatives the parties to a dispute would need to agree, on a voluntary basis, on the framework within which their dispute will be resolved and on the alternative dispute resolution entity that will act as the conciliator/mediator or arbitrator, which is not necessarily feasible in a financial consumer context. The TPCPP provides for the TCCPA to be able to solve disputes between consumers and commercial businesses and it is possible that it could do so in the context of a financial consumer dispute but the TCCPA has so far not offered such a specialized conciliation or mediation service. While, in accordance with the TPCPP, the TCCPA has created a tribunal to hear cases relating to the application of the TPCPP, at present the Tribunal primarily deals with competition-related issues, rather than consumer protection disputes under the TPCPP (although it also has jurisdiction to deal with the latter). Importantly, to date the Tribunal has not dealt with any financial consumer protection-related cases.

**In addition to the TCCPA, at least two other general ADR bodies exist in Ethiopia; however financial consumers' disputes have not previously been dealt with by either of these bodies.** At present, two bodies in Ethiopia offer ADR services: the Ethiopian Arbitration and Conciliation Center (EACC) and the Addis Ababa Chamber of Commerce and Sectoral Associations. However, neither of these bodies has dealt with financial consumer protection disputes in the past, nor seems to be equipped to do so in terms of resources, specialized knowledge and accessibility to ordinary financial consumers. In Ethiopia there are also small claims courts (*Kebele*) with varying levels of jurisdiction. For example, in Addis Ababa they can solve civil disputes involving up to 400 USD in value while in the Amhara regional state the jurisdictional cap is lower (up to 120 USD).<sup>28</sup> While financial consumers could institute proceedings against financial institutions through such courts, the courts do not specialize in financial sector issues and would generally adhere to formal court processes and approaches.

**The TCCPA Tribunal could potentially offer a specialized EDR scheme for financial services consumer complaints, but this would require significant changes to its current structure and procedures.** The TCCPA Tribunal has powers to adopt its own customized procedures (e.g. legally it could adopt less formal procedures consistent with international good practice for EDR schemes) but currently it follows the standard judicial procedures specified in the Code of Civil Procedure and thus operates akin to a court, albeit with some streamlining of timeframes. However, financial consumer complaints will frequently involve small sums and, importantly, consumers are often likely to lack the resources and sophistication necessary to enforce their rights against financial institutions effectively in the context of formal, often lengthy, judicial processes. Therefore, the cost of legal representation and the time and complexity involved in court-like process are likely to mean that the TCCPA Tribunal is currently unsuited to offering easily accessible and effective resolution of most financial

consumer complaints. In addition, the TCCPA Tribunal does not currently comprise Tribunal members that specialize in financial sector-related issues (although the relevant Minister would have authority to implement a specialized unit/division for this purpose). An important aspect of an effective EDR mechanism dedicated to financial sector-related complaints is that the relevant “adjudicators” have specialized knowledge of often unique or complex issues pertaining to financial services and products, which assists with optimal and efficient resolution of such complaints.

**Different departments within NBE also deal with consumer complaints, using somewhat different approaches. However, NBE does not currently have specific complaint handling powers, such as to compel financial services providers to pay compensation or undertake other remedial conduct.** NBE’s directorates receive financial consumer complaints but there is currently no internally uniform approach to how they should be dealt with. For example, the Insurance Supervision Directorate proactively attempts to solve complaints by “mediating” between the consumer and the insurance company; on the other hand, the directorates dealing with banking and credit institutions appear to take a more *ad hoc* approach and will frequently direct consumers to the court system. NBE’s directorates will frequently use moral suasion, or leverage NBE’s general authority over the financial institution’s affairs as its regulator, as a means of persuading a financial institution to address an individual complaint. Regardless of the approach currently taken by each directorate, and despite their best efforts, NBE currently lacks the processes, and clear and specific legal powers, such as the specific power to compel an institution to pay compensation or take other corrective action, necessary to be able to provide a fully effective EDR mechanism (although, for example, in the case of PSPs it could possibly rely on its general powers to ‘supervise’ and ‘regulate’ the payment system to order a PSP to take remedial action). In addition, leveraging of informal mechanisms to resolve complaints in the absence of binding authority could potentially leave the regulator vulnerable to judicial review and may not always be effective.

**Lastly, NBE lacks the capacity and resources to effectively handle the intake, mediation, investigation, analysis, and stakeholder outreach functions typical of an effective EDR scheme as well as the attendant administrative load.** There is currently no funding within NBE allocated to each of its directorates for handling financial consumer complaints, and this is done on an *ad hoc* basis by individual supervisors, posing resource constraint issues. Similarly, complaints handling requires a set of skills which current supervisors may not always have (and which is not necessarily required for their usual functions).

**For completeness, the FCA currently does not offer EDR services relating to financial consumer complaints against SACCOs.** There is currently no formal, independent non-judicial mechanism for dealing with any individual consumer protection complaints by members/customers of financial co-operatives. This is likely to become more essential as new consumer protection obligations are imposed on such co-operatives.

*(For findings on issues relating to internal dispute resolution see the sector-specific sections of the report further below).*

## Recommendations

**NBE should consider, jointly with other key stakeholders such as the TCCPA and the FCA, the most appropriate institutional arrangement to provide adequate, efficient, and effective external financial consumer complaints handling.** Good practice highlights the importance of having a mechanism with adequate resources, personnel skilled in financial consumer complaint issues, and appropriate streamlined procedures, as well as the required legal powers, to be able to provide speedy and suitable outcomes to consumers. It is also important to avoid overlapping mandates between different mechanisms with regard to complaints handling and ensure that consumers have clarity on which mechanism they should access.

**Based on the findings of the diagnostic review, possible institutional arrangements for EDR in the financial sector in Ethiopia could include the following:**

- a) A separate complaints-handling unit within NBE:** If NBE is minded to continue to deal with financial consumer complaints at least in the short to medium term, the following changes and enhancements are recommended:
- i. *Firstly, the NBE Proclamation and individual sectorial proclamations should be reviewed and revised to give NBE clear powers to deal with financial consumer complaints*, including to undertake individual complaint investigations and to compel institutions to pay compensation and take other remedial action. Terms of reference and procedures should be adopted to ensure that NBE's complaints handling processes are in line with international principles and guidance on EDR, including with regard to accessibility, efficiency, effectiveness, fairness, transparency and accountability.
  - ii. *A unit/directorate that is separate from the existing directorates should be established to deal with complaints.* This will assist in avoiding potential conflicts between the prudential focus of existing directorates, as well as assisting to some extent with the resource allocation concerns discussed above with regard to having an EDR mechanism separate from NBE. This unit/directorate should co-ordinate effectively with other parts of NBE (including for the purposes of sharing complaints data and assisting to focus supervisory activities).
  - iii. *Additionally, to support effective complaints handling, it is important that NBE ensure that relevant staff have appropriate customer care, mediation and investigation skills.* Therefore, dedicated adequately trained and qualified staff should be assigned to this new unit and capacity building exercises should be undertaken to address any capacity gaps.
  - iv. *In the long term, consideration may be given to exploring options for the establishment of an external body that is legally separate from NBE (although it could be hosted by NBE), dedicated to dealing with financial consumer protection complaints.* This would assist in ensuring there is adequate resourcing dedicated to this function, while freeing up NBE's resources for supervisory activities, and also assist with a clear delineation between the regulator/supervisor and the complaint handling mechanism.
- b) Separate unit/division within the TCCPA Tribunal:** For the reasons discussed above, the Tribunal currently is not able to offer an effective external dispute resolution mechanism to deal with financial consumer complaints. Key changes that would be necessary if the intention is for the Tribunal to provide such a mechanism in the future, in line with international standards,<sup>29</sup> include the following:



- i. *The Ministry of Commerce, the TCCPA and NBE should then develop adequate rules of procedures/terms of reference for financial consumer complaints handling.* The TPCPP allows the TCCPA to adopt customized procedures through an order of the Ministry of Commerce. These should be in line with international principles and guidance on EDR, including with regard to accessibility, efficiency, effectiveness, fairness, transparency and accountability, and should take into consideration the nature of complaints to be resolved (including relevant financial sector issues).
- ii. *It would also be important that a separate specialized unit/division within the TCCPA Tribunal be created for this purpose with responsibility for financial sector consumer complaints.* Such a unit/division would need to be adequately resourced and staffed by Tribunal members, and support staff, that have a sufficiently strong understanding of the

## BOX 2

### Models of Alternative Dispute Resolution Schemes

**The following are three key examples of alternative dispute resolution schemes that have been implemented in other jurisdictions:**

- *Financial ombudsman established by financial services association:* Decisions by such an ombudsman may or may not be made binding under legislation but, if they are not, to be effective their findings will be followed by financial institutions as a part of a self-regulation model, such as by financial institutions committing contractually to be bound. In countries such as Germany an industry-based ombudsman structure for each part of the financial sector has proven effective. If taking this approach, where the ombudsman structure is established by the industry, attention should be paid to ensuring that potential conflicts of interest are addressed, as well as providing the scheme with effective powers. Also, risks of consumer mistrust or skepticism regarding impartiality and fairness need to be addressed (in substance, as well as through appropriate information dissemination).
- *Statutory independent financial ombudsman:* Such an ombudsman would have functions and powers, such as to make binding decisions, established under laws and its membership would be appointed by a relevant government authority. For example, the UK enacted legislation establishing an independent ombudsman institution, while Armenia legally requires financial institutions to join a central bank-approved ombudsman scheme with binding rules for all member institutions. A single statutory ombudsman would make it easier for consumers to identify to which agency they should submit their inquiries and complaints. While this model could have the advantage of allowing clearly defined objectives and legal mandate, it would require the investment of sufficient public resources.
- *Complaints handling structures established within the regulatory/supervisory agency:* A third model is the establishment of a complaints handling structure within a regulatory and supervisory agency. For example in the case of Spain there are complaints departments in the three financial sector regulators. While this model has the advantage of leveraging existing institutional arrangements, the challenge is to ensure independence of the function within such a structure, avoid conflicts of interest and allocate sufficient resources (without taking resources away from other supervisory functions, including with regard to consumer protection) and ensuring that the function has sufficient and appropriate powers to deal with individual complaints effectively.

practical and technical issues relevant to financial sector complaints and financial services and products. They should of course also have a good understanding of conciliation, mediation, and arbitration principles.

iii. *The Tribunal's powers should be reviewed to ensure that the relevant unit/division is able to make not only a range of remedial orders but also inquiries that may be necessary to bring about the resolution of complaints.*

**c) Third party mechanism:** If the Ethiopian authorities are minded to instead establish a completely new third party mechanism to handle financial consumer complaints (i.e. separately from NBE or the TCCPA Tribunal), various options could be explored, such as having a new statutory body (i.e., established directly through a proclamation) or an industry-based mechanism developed in line with requirements and guidelines issued by, for example, NBE. Regardless of its institutional set-up such a mechanism should also be established in line with the international principles and guidance on EDR referred to above.

Based on discussions with NBE, and given that it is already undertaking ad hoc complaints handling function and that other alternatives may require greater effort, the most practical initial way forward seems to be alternative a) above (i.e. establishing a separate complaints handling unit / function within NBE).

**Regardless of the EDR arrangements that are ultimately implemented, their functions should also comprise appropriate capture, analysis and publication of complaints data.** This is to both inform NBE's supervision activities and also to alert industry to key complaints-related issues and outcomes.

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## NOTES

8. Ethiopian Civil Code, 1960.
9. Ethiopian Civil Code, 1960, Art. 1704.
10. Ethiopian Civil Code, 1960, Art. 1705.
11. Ethiopian Civil Code, 1960, Art. 1710.
12. Proclamation No. 685/2010, *Trade Practice and Consumer Protection Proclamation*.
13. Proclamation No. 685/2010, *Trade Practice and Consumer Protection Proclamation*, Art. 4.
14. Proclamation No. 685/2010, *Trade Practice and Consumer Protection Proclamation*, Art. 22.
15. Proclamation No. 685/2010, *Trade Practice and Consumer Protection Proclamation*, Art. 21.
16. Proclamation No. 685/2010, *Trade Practice and Consumer Protection Proclamation*, Art. 23.
17. Proclamation No. 685/2010, *Trade Practice and Consumer Protection Proclamation*, Art. 29.
18. Proclamation No. 685/2010, *Trade Practice and Consumer Protection Proclamation*, Art. 34.
19. Proclamation No. 685/2010, *Trade Practice and Consumer Protection Proclamation*, Art. 35 and 42.
20. Proclamation No. 591/2008, *A Proclamation to Amend the National Bank of Ethiopia Establishment Proclamation*, Art. 5.
21. Proclamation No. 592/2008, *Banking Business Proclamation*, see, e.g., Art. 3, 4 and 6.
22. Proclamation No. 759/2012, *Advertisement Proclamation*.
23. Proclamation No. 759/2012, *Advertisement Proclamation*, Part 2.
24. Proclamation No. 759/2012, *Advertisement Proclamation*, Art. 2.
25. Proclamation No. 759/2012, *Advertisement Proclamation*, Art. 6.
26. Proclamation No. 759/2012, *Advertisement Proclamation*, Art. 8.
27. *Ethiopian Civil Code*, 1960, Art. 3328.
28. For more details see, World Bank, *Ethiopia Legal and Judicial Sector Assessment, 2004*, available at <http://documents.worldbank.org/curated/en/931471468771097227/pdf/313850Ethiopia1L1JSA1Final.pdf>
29. See for example, INFO Network, *Effective Approaches*; see also World Bank, *Good Practices for Financial Consumer Protection*; see also, World Bank, D. Thomas and F. Frizon, *Resolving Disputes between Consumers and Financial Businesses: Fundamentals for a Financial Ombudsman*.

## KEY ISSUES AND RECOMMENDATIONS— BANKING AND NBFIS

### A) LEGAL, REGULATORY AND SUPERVISORY FRAMEWORK

#### Context

**Regardless of the legal framework, institutions offering consumer banking products and services should be required to meet certain minimum common consumer protection standards.** All financial services providers (banks, NBFIs, as well as non-financial firms) providing banking products and services (e.g., credit, current accounts, and deposit services including savings) should be subject to legal requirements that establish appropriate minimum standards of protection for consumers (specific standards are discussed in more detail further below). Where protections for consumers of banking products and services are found in multiple laws (e.g. covering different sub-sectors) regulators should ensure they are comprehensive enough to cover all relevant consumer protection issues (as discussed in this section) and harmonize their provisions to the greatest extent possible so that consumers using different types of financial services providers are protected on the basis of similar consumer protection principles as far as appropriate.

**It is also important for screening and supervisory purposes that all relevant institutions are adequately licensed or authorized.** While in most jurisdictions banks must now obtain a license from a prudential regulatory authority prior to commencing operations, in some jurisdictions NBFIs (and non-financial firms) providing retail banking products and services are not required to obtain a license or authorization from any authority. Where this is the case, good practice indicates that they should still at least be required to register with the financial consumer protection authority (which may be the same authority). Depending on the risk profile, the NBFIs may need to be required to go through licensing procedures that permit a fuller analysis compared to a mere registration. Such procedures (whether for banks or NBFIs) should allow for appropriate screening of prospective entrants into the financial sector, as well as information gathering to assisting ongoing supervision, as appropriate.

## Key Findings

**As discussed in the previous section of the report, in Ethiopia there is no single standalone financial consumer protection proclamation but some consumer protection provisions have been included in its general consumer protection proclamation and others can be found in various financial sector-specific proclamations and regulations.** The Banking<sup>30</sup> and Microfinance Proclamations,<sup>31</sup> which regulate the provision of financial services and products (including deposits, credit, funds transfer services etc. and, in the case of micro-financing business, also micro-insurance) by the respective types of institutions, contain some limited requirements pertaining to financial consumer protection. In addition, the Directive issued by NBE with regard to mobile and agent banking<sup>32</sup> (discussed in more detail in section IV), contains some more extensive financial consumer protection requirements. However, it applies only when relevant products and services are delivered either via mobile device or via an agent. As a result, existing proclamations currently lack provisions specifying over-arching consumer protection rights/obligations covering banks' and NBFIs' activities comprehensively.

**The Banking and Microfinance Proclamations require any bank or microfinance institution to obtain a license from the regulator, NBE, to undertake, respectively, banking business and micro-finance business.** The proclamations make it a criminal offence for any person to transact banking business or to engage in microfinance business without having previously obtained a license.<sup>33</sup> While the licensing conditions imposed by NBE do not contain any financial consumer specific requirements, there is a requirement for senior management to meet general fit and proper requirements to be further specified by NBE.<sup>34</sup> Such requirements have not yet been implemented, but the draft Corporate Governance Directive would, if implemented as currently drafted, specify that the responsibilities of a financial institution's Board include ensuring there is a comprehensive risk-management framework and setting up adequate policies to avoid conflicts of interests.<sup>35</sup> This could also address some consumer protection-centric issues (such as operational risks of causing consumer harm, risks of non-compliance with consumer protection requirements, and allowing conflicts of interest that may have an adverse impact on consumers). A similar responsibility to avoid conflicts of interests would also apply to senior management. The two proclamations also specify circumstances in which NBE can revoke a license to undertake banking or microfinancing business. Although these circumstances do not make specific reference to consumer protection, they include non-compliance with applicable proclamations and directives (thus including consumer protection-related legislation), engaging in practices detrimental to the interests of depositors or having serious weaknesses in its corporate governance. Ideally, going forward both licensing conditions and the grounds for revoking (or suspending) licenses should be amended to recognize more explicitly engaging in conduct that is detrimental to consumers, and not just depositors, of a financial institution.

**Leasing activities are regulated by a separate proclamation in Ethiopia, but it contains only a few specific consumer protection measures.**<sup>36</sup> This proclamation governs the provision of operating and finance leases and hire purchase agreements for capital goods (being goods acquired for the purposes of production of goods or provision of services) in Ethiopia. It requires providers of finance leases and hire purchase agreements to be licensed by NBE (although licensed micro-finance institutions do not require a separate license to do so). The proclamation

also specifies certain clauses which must be included in all leasing contracts (discussed in more detail below).

**There is no separate proclamation specific to SACCOs and these are currently regulated only by the general proclamation on cooperatives.**<sup>37</sup> This proclamation requires cooperatives operating in more than one region to be registered with FCA and cooperatives operating at the local level to be registered with the competent local authority. Additionally, all cooperatives are subject to an annual audit to be conducted by the relevant competent authority. The FCA has developed standard by-laws for use by cooperatives and has the implicit power to issue regulations for cooperatives within its jurisdiction. Further, the FCA is currently in the process of drafting a revised Cooperatives Proclamation and subsequent regulations which are expected to explicitly mention that the FCA has the power to issue directives.<sup>38</sup>

**NBE supervises banks, including state-owned, private and development banks, as well as MFIs and finance leasing companies. However, SACCOs fall within the remit of the FCA and NBE does not have responsibility for their activities.** NBE has a Directorate with responsibility for supervising all banks and another with responsibility for supervising MFIs and leasing companies. Within FCA there is a Financial Cooperative Development Directorate responsible at the federal level for SACCOs but, in terms of supervision of locally authorized cooperatives, FCA has to rely on arrangements with the respective regional cooperative agencies, which are affected by varying levels of human and financial resources and numbers of cooperatives (financial and non-financial) that may be supervised by each authority. Audits of cooperatives are undertaken by a separate Cooperative Audit Directorate within FCA as well as the auditors of the respective regional cooperative agencies.

**There is no dedicated financial consumer protection directorate within NBE but some selected consumer protection issues are reviewed during supervisory inspections by the Directorates responsible for banks and MFIs/leasing companies.** NBE does not currently have a Directorate (or teams/units within existing Directorates) dedicated to supervision of compliance with financial consumer protection obligations. Both the Banking and the MFI Directorates indicated that under their operational risks supervision they review compliance with selected financial consumer protection issues, such as whether institutions have undertaken loan affordability assessments, and consider issues such as evidenced by individual loan files, consumer complaints as registered by each institution, potential fraud against consumers and compliance with requirements to protect customer data (the latter reviewed by supervisors specializing in IT security). However, there are currently no internal standard policies and procedures regarding how compliance with financial consumer protection issues should be supervised and therefore practices vary between the Directorates and potentially between individual supervisors and supervisory visit teams.

**The FCA and regional cooperative agencies supervising SACCOs review matters that have relevance to consumer protection to a very limited extent.** All SACCOs are subject to a mandatory annual audit which includes reviewing whether they have complied with their by-laws and have correctly completed pass-books for their credit and savings products. Due to the limited capacity of many SACCOs, during such audits the FCA and regional agencies may also assist them in calculating in a batch interest accrued for each member on their savings accounts.

**At present neither NBE nor FCA appear to publish any substantial information targeted at assisting consumers.** NBE regularly sets compulsory minimum interest rate requirements on savings products, which are gazetted and published. However, neither NBE nor FCA appear to collect or publish information on product pricing by individual institutions, or other information which could assist consumers in comparison shopping, or in understanding key aspects of financial services and products and their core rights in relation to these.

## Recommendations

**In the short term, NBE should issue a new Directive to provide for key general financial consumer protection principles applying to banks and NBFIs.** The new Directive should specify key principles of financial consumer protection that would provide for basic standards of conduct, reflecting international good practices, when financial institutions deal with consumers. These principles would allow NBE to enforce such standards sooner, at least in dealings between institutions and consumers of most concern, while over time it also develops more detailed conduct requirements addressing specific issues as discussed later in this section. They would also allow financial services providers to familiarize themselves with such basic requirements before more prescriptive obligations, reflecting these standards in more detail, are put into place. Such general obligations should cover:

- a) Disclosure and transparency (addressing the need for financial services providers and their representatives to be transparent in the way they communicate with financial consumers about their products and services);
- b) Fair treatment of customers and product suitability (addressing the need for financial services providers and their representatives to treat financial consumers fairly and respectfully at all stages of their engagement, and to recommend financial products and services only when suitable for the financial consumer);
- c) Data protection (addressing the need for all financial services providers to protect, and handle appropriately, financial consumer personal information); and
- d) Internal complaints handling (addressing, until more detailed requirements are developed, the need for all financial services providers to have in place internal dispute resolution processes that are readily available and accessible, easily initiated etc.—see the more detailed discussion below in this regard).

The Directive should provide further definition and detail in relation to each conduct principle consistent with international good practices. Such standards could of course also be included in the several existing sectoral proclamations by amendment, but as this would require a longer and more complex process, to introduce such standards as quickly as possible it is recommended that this be done by NBE using its Directive-making powers. As discussed further below, the new Directive would also be a vehicle for addressing, at least in the short term until a further consolidation exercise is undertaken, more specific consumer protection issues and gaps.

**A similar instrument should be issued by the FCA for SACCOs.** A high level financial consumer protection regulation, with similar high level principles, should be issued for SACCOs. In developing such a regulation FCA should take into consideration the more limited capacity of many, if not most, such cooperatives but also balance the need to foster appropriate standards of conduct in the sector, particularly as it continues to grow, as does the size of individual cooperatives. FCA and NBE should coordinate to ensure that the approaches taken in their respective rules are consistent as far as appropriate. This is to ensure that consumers, as far as practicable, have equivalent levels of protection regardless of the type of institution that they deal with.

**In the medium to long term NBE should consider consolidating all existing financial consumer protection provisions, and new provisions developed as recommended in this report, into one Directive (or into one single comprehensive proclamation if feasible) and ensuring that there is a consistent approach across all financial institutions except when differences are appropriate. The FCA should consider an equivalent approach for SACCOs.** As already discussed, currently various obligations relating to financial consumer protection issues are found in a number of proclamations and directives. There are also differing levels of protections depending on the sector and also on when the provisions were developed. Including all financial consumer protection provisions in a single piece of legislation for all institutions supervised by NBE would avoid fragmentation, lack of clarity, potential inconsistencies and would assist efficiency of supervision, industry compliance and consumer awareness by ensuring that relevant requirements can be found more easily and, as far as practicable, as consistent across the industry. The FCA should also seek to include consumer protection obligations applying to SACCOs in due course in one set of regulations for similar reasons. In the long term, NBE and the FCA should also consider the feasibility of developing a single consumer protection proclamation that would apply to institutions supervised by each (while taking into account practical differences).

**From a supervisory perspective, NBE's and the FCA's responsibility for consumer protection supervision with regard to banks and SACCOs should be clarified and each should develop an adequate supervisory strategy.** The report discussed in section II the need for clarification of, and a suggested approach for, supervisory responsibilities, and for capacity building and internal organization of consumer protection supervision within NBE and FCA. This obviously includes supervision of banks, MFIs and SACCOs respectively for this purpose. Complementary to this is the need for NBE and the FCA to develop an appropriate internal supervisory strategy focusing on higher impact consumer protection issues of the kinds discussed in this section. Following implementation of the consumer protection provisions discussed in this section, NBE and the FCA should undertake monitoring of industry practices to initially establish what its priorities should be and what issues require more immediate attention. They should also aim to make public statistics on, and summaries of, supervisory findings and, in due course, enforcement actions relating to consumer protection (e.g. of emerging consumer protection issues in the financial sector or of systemic concerns). Such information should be tailored to be of practical use to consumers, as well as industry. This would help NBE and the FCA to increase awareness of such issues among financial institutions, as well as consumers, and pose a deterrent effect for institutions.

**BOX 3****Supervisory Publication of Information by a Financial Consumer Protection Authority**

**Dissemination should be undertaken at least through the authority's institutional website but other channels should also be used as appropriate (e.g., newspapers).**

The range, depth, and complexity of information to be published, and the channels and materials used, will depend on the resources available to the authority. For the sake of accountability, the financial consumer protection authority should publish annual reports with a summary of its regulatory, supervisory, and enforcement work. The Banking Conduct Supervision Department of the Bank of Portugal publishes bi-annual reports on conduct supervision, reports on market monitoring, and even has impact evaluation reports on some key regulatory measures. Annual reports may also highlight the performance of financial services providers in complying with the legal and regulatory framework for financial consumer protection.

**Resources and data availability permitting, the financial consumer protection authority should also consider publishing additional items that can assist consumers and industry,** such as statistics about consumer complaints against financial institutions; analytical sectoral reports; tips for choosing between different products and services; fees and charges calculators; warnings about recent scams against consumers; and comparative information on fees and prices on key products. Examples of tools to facilitate consumer choice and other general descriptions of consumer rights can be found in the web portals of Peru's Superintendence of Banks, Insurance and Pension Funds,<sup>39</sup> the Malta Financial Services Authority,<sup>40</sup> the Bank of Portugal,<sup>41</sup> and many other supervisory authorities.

**B) DISCLOSURE AND TRANSPARENCY****Key Findings**

**In addition to the proclamation on advertising discussed in section I, there are some limited obligations relating to consumer disclosure and transparency.** Sectoral proclamations (e.g. dealing with mobile payments and leasing) contain some disclosure requirements but these are limited, leaving significant gaps, and industry practices vary substantially among providers. In addition, some requirements, such as the requirement in the TPCPP to provide receipts for each transaction, to a large extent are currently not complied with.

**The content, format and manner of delivery of pre-contractual information can be crucial in assisting consumers to understand the financial services and products they are considering acquiring. However, pre-contractual information provided to financial consumers in Ethiopia frequently seems insufficient to achieve this goal.** Pre-contractual disclosure practices vary substantially, not only between sectors of the financial system, but also between institutions in the same sector. While some institutions make available relatively clear up-front information to consumers, in general, the information provided by banks, MFIs, and SACCOs seems to focus primarily on how to apply for a product, and sometimes also on some positive characteristics, rather than providing comprehensive coverage of all key costs, obligations and



risks, in addition to features and benefits. It is also not common to make available copies of product terms and conditions in advance (as discussed in section IV, an exception is terms and conditions for mobile payments). Further, many institutions are not providing documents in a local language which is understood by consumers (e.g. in addition to English and Amharic)

**There are no requirements to provide standardized pre-contractual information to consumers nor is there an industry practice to do so.** Some banks and MFIs (for example, as a result of choosing to adhere to international standards like the SmartCampaign) provide a general pre-information sheet or similar explaining the various conditions of the product being offered and containing total cost indicators and re-payment schedules for credit products. However, for credit products most banks and MFIs provide only a checklist containing information on which documents a borrower needs to provide and conditions they need to meet to apply finance. For transaction and savings products consumers tend to be provided information on fees and charges only orally (e.g. by referring them generally to the applicable of fees and charges and noting that information about them is available at branches or online).

**Practices relating to provision of written terms and conditions for credit vary substantially, with some institutions not providing a copy to the consumer even following the contract signing. There are generally no written terms and conditions for savings and transaction products.** Financial institutions generally have standard written contracts for credit products. However, it is not common practice to provide copies of these to a prospective consumer when they are inquiring about, or even applying for, a credit product. While most institutions indicated that they provide a copy of the completed written contract to the consumer following approval, there is no standard timeframe within which this is done, with some institutions only providing the copy at the time of signing and thus not necessarily allowing the consumer sufficient time to consider it. Some institutions indicated that they do not even provide a copy of the written contract for the consumer to keep after the signing. With regard to transaction and savings products, most institutions do not have standard written terms and conditions for such products (other than information relating to fees and charges). The exception is mobile payments products, discussed later in the report.

**There are currently few requirements regarding the content of product terms and conditions.** The proclamation that governs leasing specifies certain clauses which must be included in all leasing contracts, discussed in more detail below, such as the type of lease (e.g. finance lease or hire purchase), the full price of the goods and the total lease rent payable, various repayment details and a right to terminate the lease in the event that the goods are defective. However, the proclamation does not specify when and how the contract (or related information) should be provided to the prospective lessee, nor seek to limit or prohibit the inclusion of unfair clauses in such contracts.<sup>42</sup> It also mandates certain features for each lease type such as, for finance leases, that they are not cancelable and require a full pay-out (without contemplating exceptions other than as noted above) and, for hire purchase agreements, that ownership is transferred periodically in proportion to payments made and that the agreement should provide how ownership rights are settled in the case of an early termination. In addition, in the case of defaults by the lessee, the proclamation provides that the lessor must provide them with 30 days to remedy it and may then rescind the agreement, repossess the goods and claim related damages, comprising unpaid rent and interest. It does not appear to contemplate that the current value/recovered resale price of the goods should be taken into account in calculating such damages. Importantly,

there are no similar requirements for more mainstream consumer credit contracts or contracts relating to transactional or savings deposit products. In addition, while advertising and sales materials are usually in the local language(s) in each relevant region, only a few financial services providers confirmed that they provide contracts in all local languages. Most providers only give contracts either in Amharic or the main local language of the relevant region.

**The current lack of rules requiring clear upfront disclosure of all costs/fees and charges may make credit consumers more vulnerable to unfair competition practices and limit their ability to make effective choices in relation to financial products.** Some institutions charge interest on a flat basis rather than on a declining balance, without making clear to the consumer the method of calculation. This can mean that consumers do not necessarily understand the real cost of the credit (even if it has the same nominal rate) and may not be able to compare effectively offerings from different institutions and different product alternatives. Additionally, some institutions charge significant upfront fees (payable in advance or on loan disbursement) which may not be understood by consumers given that they do not appear to be clearly and prominently disclosed prior to entering into the contract with the provider. While most credit providers give a repayment schedule to borrowers, only some providers clearly indicate the principal, the interest charges, and other fees associated with each repayment, making it easier for the consumer to understand the total cost. Even fewer institutions provide additional details such as separate details on principal vs amount disbursed and on total cost of credit.

**There are no requirements to disclose standardized overall cost indicators.** Annual percentage rates/effective interest rates or equivalents are generally not disclosed to consumers. While credit products currently do not usually include ongoing fees, industry practice in this regard could change in the future. Further, some credit providers charge some upfront fees in relation to loan establishment or for bundled/compulsory insurance. In such instances, disclosure of nominal interest rate alone is not sufficient to indicate the real periodic cost of credit.

**Providing account statements seems to be a widespread practice.** Generally, all financial institutions provide statements either free of charge or subject to a small fee and this is done either automatically or upon request for all types of products. For savings and deposit accounts each transaction is recorded in the consumer's passbook and statements are provided only upon request, with some institutions charging a fee for this service. This means that fees which are not transaction related (e.g. chargeable as a result of balances being below certain level, or on dormant accounts) will not be known to the consumer until they next attend a branch to update their passbook. For credit products, industry practices are more varied, with only a small number of institutions providing a statement indicating all relevant information in detail (e.g., remaining outstanding balance, principal repaid, interest paid, etc.). Although not a full statement, institutions seem to generally provide a receipt for a repayment, but only some include the outstanding balance in such a receipt.

**Some financial institutions include in their credit contracts unilateral rights to modify terms and conditions generally, or to modify certain aspects—e.g. the interest rate—but disclosure practices relating to changes made in reliance of such rights differ substantially.** Generally, institutions retain rights to change terms and conditions (some indicated that this was a right to make any changes while others that it was a right to make specified types of changes). Only a limited number of institutions communicate changes to affected consumers on an indi-

vidual basis. In the case of transaction and savings deposit products, as noted above, the practice is generally not to have written terms and conditions and thus no unilateral right to vary aspects of the terms and conditions is expressly reserved. However, when financial institutions do make changes—e.g. increasing the amount of a transaction fee or introducing a new fee—they also generally do not provide individual disclosure of such changes. Such a change may be indicated in branches or the consumer becomes aware of the change only once they undertake a transaction attracting the changed or new fee.

## Recommendations

**In the short term, basic standard disclosure and transparency requirements should be introduced, with the recommended new NBE Directive on consumer protection discussed above (and the FCA's equivalent regulations as also recommended above) being the most logical vehicle for this purpose.** To facilitate a speedy introduction and implementation by industry (while more detailed requirements for specific product types are developed) these requirements should be relatively high level while addressing some key internationally recognised goals for disclosure, including:

- a) a requirement to provide a clearly worded and legible written contract to all consumers for all financial products and services, including savings and transaction accounts as well as credit products (other key requirements, such as for provision in a suitable local language, should also be covered);
- b) a requirement to disclose clearly all upfront, ongoing and contingent fees and charges associated with a financial product or service;
- c) requiring not only that marketing material not be misleading but also that it refer to key aspects, such as costs or risks, particularly where these qualify more positive aspects referred to in the advertisement;
- d) disclosure of interest costs (e.g. principal vs total interest charges) in a way that allows consumers to understand the total cost and make relevant comparisons.

**In the short term NBE should begin monitoring advertising materials and establish whether existing requirements are being complied with and whether they suffice at least with regard to preventing misleading marketing.** Having adequate advertising and marketing material is important given the influence it can have on both provider and product choice by consumers. NBE should monitor whether advertising has potentially been misleading consumers and also what impact the lack of inclusion of information about risks and costs of a product or service may be having. While at present basic requirements exist in the general proclamation (and NBE's supervision Directorates request all marketing material for new products to be submitted to them) NBE should generally begin monitoring whether these are applied and whether they suffice in preventing consumers from being misled.

**In the medium term NBE should issue more sophisticated standardized pre-contractual disclosure requirements for credit products.** In the medium term NBE (in consultation with the FCA so as to ensure uniform approach) should also consider standardizing, for disclosure purposes, terminology for the most common fees and charges. Standardized disclosures (in the form of standalone 'key facts statements' or similar) would allow for greater comparability of

**BOX 4****Key Facts Statement**

A 'key facts statement' (KFS) refers to a standardized typically one to two-page document written in easy-to-read print and plain language, that describes key aspects of a financial product. A KFS does not replace the terms and conditions for a financial product or service, but rather is required to be given to a consumer prior to starting a contractual relationship with a financial institution (e.g. opening an account or signing a loan agreement). A KFS should aim to help consumers better understand the key features, terms and conditions of the product or service, and to provide them with useful information in the process of acquiring a financial product, and during the life of the financial product. The standardization of the KFS across providers allows for comparability of offers from different providers of the same type of financial product.

**The KFS should clearly indicate all, or at least key, fees and charges related to a financial product, and also inform consumers about their basic rights, including the resolution mechanisms available in the event of a complaint.** For example, for consumer term loans a KFS should include: (1) the total amount of the loan; (2) the amounts of monthly payments; (3) the final maturity of the loan; (4) the total amount of payments to be made; (5) fees, including prepayment and overdue penalty fees, possible taxes for remittances, and any other charges that could be incurred; (6) any required deposits or advance payments; (7) if the interest rate is variable, the basis on which the rate varies; (8) any additional insurance that is required (such as personal mortgage insurance); (9) any prepayment penalty; and (10) if the credit is used to finance a product, the cash price of the product without financing charges.

**In a jurisdiction lacking such disclosure, KFSs could first be established for basic retail financial products such as personal loans and basic savings accounts, and later for more complex ones like mortgage loans, life insurance policies, and collective investment funds.** Development of KFSs should include appropriate consultation and testing with industry and consumer stakeholders. It is also important that KFSs be available at least in the language(s) most spoken in the location where the financial product is offered. Finally, it is important that adequate supervisory mechanisms (e.g., targeted visits, ad-hoc or systematic reviews, mystery shopping) are established to ensure that providers give and explain KFS to their customers at required stages. Several countries have already implemented KFSs and equivalent documents, such as Ghana's "Pre-Agreement Truth in Lending Disclosure Statement" and Peru's "Hoja Resumen" (Summary Sheet) for consumer loans; South Africa's "Pre-Agreement Disclosure" for consumer credit products; Hong Kong's "Product Key Facts Statement" for unit trusts and mutual funds, investment-linked assurance schemes and unlisted structured investment products, and summary disclosure documents required within the European Union.

financial services and products and support better understanding by consumers. Such standardized disclosures could include standardized repayment schedules and standardized disclosures of key terms and conditions and fees and charges, as well as inclusion of information about issues such as dispute resolution mechanisms and important risks to the consumer. It would be prudent to first implement such requirements for products where a lack of consumer understanding could have the greatest impact or where potential issues of consumer harm have already been identified—in the case of Ethiopia this would mean focusing first on credit products. In addition, standard disclosure elements should be mandated for written contracts, such as standardized costs and repayment disclosures.

**In the longer term NBE, in consultation with FCA, should also consider introducing a standardized summary sheet or similar for the most common transaction and savings products.**

This will become particularly important for financial inclusion purposes and as such products become more complex, include additional features (institutions indicated that the pace of product development is increasing) and as fee structures correspondingly also gain in complexity.

## C) FAIR TREATMENT AND BUSINESS CONDUCT

### Key Findings

**Some potentially unfair industry practices have been identified during this diagnostic review but the lack of systematic supervision or reporting on consumer issues and complaints analysis means that others may remain undetected.** Examples of potentially unfair practices at the sales and product administration stages that have been identified include the following: some financial institutions require borrowers to automatically take up personal credit insurance with some loans, and bundle the charge for that insurance in the fees payable on entry into the loan; many institutions reserve potentially unfettered rights to make changes to the terms and conditions of a product generally, or to at least make changes to the interest or fees payable in connection with that product; some credit providers charge the full cost of a loan regardless of the extent of any early repayment; it seems that potentially some institutions charge the maximum default rate on not only overdue amounts but on the whole balance outstanding; potentially unfair or harsh debt collection approaches (discussed separately below) were also identified. However, the lack of systematic supervision of, or reporting on, consumer issues and analysis of consumer complaints, means that other unfair practices may already be prevalent but were not yet identifiable for the purposes of this report. Further, as the market continues to grow, new products are offered and potentially competition increases, new circumstances may arise that increase the propensity for unfair treatment by some institutions at the various stages of their dealings with consumers. Currently there are few legal restrictions on such unfair practices (other than, for example, general obligations under the generic consumer protection proclamation which is not supervised by NBE or the FCA).

**There are no formal requirements to ensure product suitability, although some financial institutions appear to conduct an affordability assessment before approving a loan.** Some credit providers, in particular some SACCOs and MFIs, indicated that they assess clients' needs as well financial capability when assessing an application for a loan (it should be noted, however, that for commercial and demand-related reasons currently MFIs, as well as most banks, provide

much or all of their lending for business/trade purposes rather than for personal/domestic purposes and so do not yet have extensive experience in considering suitability in the latter context). Some of these institutions also indicated that they provide training to their borrowers on over-indebtedness. It was also noted by some SACCOs and MFIs that they tend to have some informal awareness and understanding of a borrower's circumstances as a result of their local reach and contacts with the local community. However, there are currently no mandated minimum responsible lending requirements from a consumer protection perspective (e.g. mandating an individualized analysis of needs and objectives as well as affordability) rather than from a prudential portfolio-based perspective. In addition, MFIs and SACCOs are not currently part of the formal credit bureau arrangements administered by NBE (MFIs participate in an industry arrangement), which limits their ability to assess debtors' credit history and current position. It also does not seem to be the practice to undertake any kind of suitability analysis when offering non-credit products. This may be less of a concern for the relatively simple savings and transaction products that currently tend to be offered through financial institutions. However, this is likely to become a more significant issue as product ranges, and features associated with relevant products, expand (and several institutions indicated that their medium-to-long term strategies include such expansion).

**While customer mobility for savings and transaction products does not generally appear to be impaired, some institutions charge high early repayment penalties for loan products.**

Despite the lack of legal prohibition on anti-competitive fees and charges, account holders generally appear to be able to close accounts or switch among providers relatively easily. On the other hand, many institutions charge high early repayment fees for credit products, and some do not provide any reduction in interest charges if loans are repaid early, insisting on payment of interest calculated on the full term (thus potentially acting as significant discouragement to loan switching or re-financing).

**Lastly, beyond the proclamation regulating foreclosure of mortgages and pledge properties,<sup>43</sup> there are no general common standards on recovery processes and procedures, which results in substantially differing practices, ranging from ones that are relatively benign to others that seem unfair or harsh.** Other than a proclamation on enforcement of mortgages, and the Civil Code, there are currently no mandated minimum standards on recovery processes. The lack of more substantive protections means that some market providers engage in potentially unfair or harsh practices. Financial institutions indicated that they comply with the requirements to provide the demand notices mandated by Article 3 of the Proclamation on foreclosure. They also indicated that they will generally seek to engage constructively with borrowers in arrears. However, there appear to be varying practices with regard to follow up on-debts that remain outstanding, including visits to borrowers' premises, phone contact etc. Some financial institutions, particularly some MFIs (although it is not possible to conclude that such practices are limited to MFIs) engage in practices that are unfair or excessively harsh, including by relying on public authorities to exert pressure on borrowers in arrears (e.g. when they attend authorities' offices to request business licenses they will be pressured to repay their loan), public display of defaulting borrowers' names in branches, having representatives of the credit provider publicly shame a defaulting borrower when visiting their village/local community etc.

## Recommendations

**As an immediate next step, the NBE directive and FCA regulations recommended above to include key general financial consumer protection principles should be introduced and relied on by NBE and the FCA to improve dealing with consumers throughout the product life cycle.** Although initially these obligations will be principles-based and relatively general, NBE and the FCA should aim to draft them to promote fair treatment at all stages of the consumer relationship, from product sale through to default. Such general fair treatment principles should then be relied on by NBE and FCA, through supervision and industry guidance, to foster improvement with regard to practices adverse to consumers.

**In the medium term, NBE should introduce specific and detailed regulatory requirements to address major unfair treatment concerns.** NBE should develop more detailed regulatory provisions (and supporting industry guidance) targeting inappropriate conduct at pre-sales and post-sale stages, including requiring appropriate product suitability assessments and prohibiting terms or conditions that are unfair (e.g. by being excessively unbalanced, inappropriately excluding or restricting legal requirements or liability applicable to a financial institution, allowing a financial institution an unreasonable right to make changes to contracts etc.).

**NBE should also develop more stringent standards on recovery practices.** NBE should prohibit inappropriate debt collection practices and provide for minimum conduct standards when dealing with borrowers in default (going beyond merely mandating the provision of default notices). Such legal requirements are likely to need to be complemented by practical industry guidance. Such standards would include, but not necessarily be limited to: a prohibition on public shaming (e.g., no public display/publication of debtors' identities photos in local newspapers or at the points of sale) and a prohibition on undue intervention by public authorities (e.g., without a court order, without the required authority to do so).

## D) PRIVACY AND DATA PROTECTION

### Key Findings

**While it was indicated by NBE that banks are subject to a legal confidentiality duty in relation to their customers' information and banks generally have systems in place to comply with this, some institutions share information informally outside of bureau arrangements administered by NBE.** It appears financial institutions generally have systems and processes in place intended to protect their customers' information. However, anecdotal evidence suggests that banks share information among each other informally, potentially inconsistently with existing obligations.

**MFIs have developed an industry-based bureau arrangement because they currently do not have access to the credit reporting arrangements administered by NBE but they also share data with public authorities without any apparent legal basis.** MFIs currently do not have access to a regulated credit bureau and no specific confidentiality requirement; hence, institutions in certain regions have developed informal bureaus. The MFI Proclamation also does not seem to impose an equivalent confidentiality obligation to that imposed on the banks. Fur-

ther, some MFIs share data with regional public authorities on delinquent borrowers without any apparent legal basis for doing so, in order to support some of the potentially unfair or excessive recovery practices noted above.

## Recommendations

**Implementing (and supervising effectively) data protection requirements recommended in Section II d) of this report could address these concerns.** While at present inappropriate data sharing appears sporadic, as the market develops this could increase and such protections, if properly supervised, should reduce that risk.

## E) DISPUTE RESOLUTION MECHANISMS

### Key Findings

**With the exception of institutions authorized by NBE to engage in mobile and agent-banking activities, at present there is no requirement for banks or MFIs to have in place a formal internal dispute resolution mechanism, resulting in significant variations and potential deficiencies in how complaints are handled.** At present, there is no requirement for financial institutions to have in place a formal mechanism to handle consumer complaints, except for complaints in connection with mobile payments and agent banking (as explained in section IV e) of the report, internal dispute resolution requirements for this purpose are in a dedicated directive, although this has not resulted in a uniformly effective approach to dealing with complaints). A number of institutions indicated a genuine concern with dealing with consumer concerns effectively, including by allowing them to escalate their matter up to the managing director of the organization. However, the lack of legal requirements regarding internal complaints handling seems to have contributed to significant variations in how consumers can make complaints. These range from making available 'suggestion boxes' in branches and offices (not necessarily in a visible or prominent location) to providing customers with the availability to speak directly to a branch manager or dedicated branch staff and providing written complaint forms and dedicated contact numbers. Institutions also provide a range of internal escalation processes and procedures if a complaint is not dealt with to a consumer's satisfaction at first instance. However, these processes sometimes appear to lack clear internal standards (including in terms of timeframes, required acknowledgments and final responses). They could potentially also be overwhelming for an ordinary consumer, given that they sometimes require them to pursue their complaint with very senior management at head office.

**Given their nature and structure, SACCOs appear to have more formal mechanisms for members to raise their grievances.** In the model by-laws developed by the FCA the cooperative structure includes a committee for members to bring grievances. While these mechanisms are not entirely formal and are not necessarily in line with international standards on financial consumer complaints handling, they seem to be more developed and sophisticated than those offered by some banks and MFIs.

**Overall, regardless of the mechanisms in place, it does not appear that consumers are encouraged to raise their grievances.** Despite the fact that many banks and MFIs have in place



some form of dispute resolution process, financial institutions generally do not seem to encourage consumers to raise complaints. In discussions with industry comments were repeatedly made along the lines that in Ethiopia there is no ‘complaints culture’. However, a lack of complaints may in fact result at least in part from a lack of awareness by consumers regarding their rights in connection with financial products and services, as well as how to seek redress when those rights are infringed. This not only poses a problem for consumers, but also can mean that financial institutions are not aware of problems their consumers face when dealing with them and thus do not have an opportunity to address them and improve their practices. In the long term, this could also have an impact on financial inclusion, by undermining trust in the formal financial sector and limiting consumers’ propensity to take up financial products and services.

## Recommendations

**While existing IDR requirements in connection with banking agent and mobile banking activities are fairly general, as a first step (given that some institutions are already familiar with them) NBE should extend equivalent requirements to all banks and MFIs, before implementing more extensive regulatory requirements in relation to this issue.** NBE should include a provision in the new general consumer protection directive recommended above that extends equivalent requirements to all banks and MFIs. This would begin to ensure that mechanisms for consumers to bring complaints directly to institutions are mandated consistently across the industry. FCA should consider, to the extent feasible, imposing similar requirements on cooperatives where the usual approach to dealing with member grievances may not be as effective.

**In the medium term, NBE should introduce more specific requirements, not only obliging institutions to have internal IDR procedures, but also establishing more detailed minimum standards for such procedures.** In the medium term, NBE should issue minimum requirements regarding processes and procedures for IDR schemes. These requirements should follow international best practices on key aspects of IDR processes, while taking into consideration capacity constraints and the fact that they should be applicable to all institutions offering retail banking products and services. NBE and FCA should consult on adapting these requirements to SACCOs.

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## NOTES

30. Proclamation No. 592/2008, *A proclamation to Provide for Banking Business*.
31. Proclamation No. 626/2009, *Micro Financing Business Proclamation*.
32. Directives No. FIS/01/2012, *Regulation of Mobile and Agent Banking Services*.
33. Proclamation No. 592/2008, *A proclamation to Provide for Banking Business*, Art. 3; Proclamation No. 626/2009, *Micro Financing Business Proclamation*, Art 4.
34. Proclamation No. 592/2008, *A proclamation to Provide for Banking Business*, Art. 4; Proclamation No. 626/2009, *Micro Financing Business Proclamation*, Art 5.
35. Draft Corporate Governance Directives No.../.../2014, Art. 6.6.
36. Proclamation No. 103/1998, *Proclamation No. 103/1998 Capital Goods Leasing Business Proclamation as amended by the Capital Goods Leasing Business (Amendment) Proclamation No. 807/2013*.
37. Proclamation No 147/1998, *A Proclamation to Provide for the Establishment of Cooperative Societies*.
38. See draft Proclamation on Cooperative Societies, Paragraph 59.
39. [www.sbs.gob.pe/usuarios](http://www.sbs.gob.pe/usuarios)
40. [mymoneybox.mfsa.com.mt/](http://mymoneybox.mfsa.com.mt/)
41. [clientebancario.bportugal.pt/pt-PT/Paginas/inicio.aspx](http://clientebancario.bportugal.pt/pt-PT/Paginas/inicio.aspx)
42. Proclamation No. 103/1998, *Proclamation No. 103/1998 Capital Goods Leasing Business Proclamation*, Art. 4.
43. Proclamation No. 97/98 and Amendment Proclamation No. 216/2000.



# 4

## KEY ISSUES AND RECOMMENDATIONS—PAYMENTS

### A) LEGAL, REGULATORY AND SUPERVISORY FRAMEWORK

#### Context

A well-founded legal framework that is clear, transparent and enforceable is an important element in ensuring a sound and efficient payments system. Apart from including explicit provisions for the central bank’s involvement in the payments system and in implementation of laws supporting the payment system’s operation, the legal framework should also include measures to ensure that consumers using payment services are adequately protected. Financial consumer protection aspects with regard to payment instruments include, for example: transparency of terms and conditions, effective disclosures of relevant aspects of payment instruments, protection of users’ data and appropriate liability allocation for consumer loss due to fraud and unauthorized transactions.

#### Key Findings

**Consistent with international good practice, Ethiopia has a specific law that governs the national payments system, the NPS Proclamation.**<sup>44</sup> The proclamation sets out the role of NBE as the overseer of the NPS and authority responsible for authorizing persons to operate payment systems and issue relevant payment instruments. The proclamation makes specific reference to “interests of consumers and terms and conditions governing their relationship with operators” as one of the conditions taken into account when issuing authorization for a system. However, financial consumer protection measures to ensure that users of payment instruments are protected from inappropriate conduct by PSP are limited and clear legal provisions in support of the use of such instruments are yet to be adopted by NBE.<sup>45</sup>

**The NPS Proclamation empowers NBE to authorize PSPs,<sup>46</sup> as well as specify conditions for their participation in the payments system.** This mandate is further reinforced in the NBE Proclamation, which specifies NBE’s statutory authority to authorize and oversee all interbank systems and retail payment instruments.<sup>47</sup> Further the NBE Proclamation also gives NBE general powers to establish, regulate, and supervise the payment system, as well as to prohibit PSPs from undertaking certain detrimental conduct.<sup>48</sup>

**Authorization applications also deal with some issues relating to financial consumer protection.** An entity applying to be a payment system operator must meet various conditions, some of which have relevance to financial consumer protection, such as adequate systems to manage risks, protect users’ data, etc. When considering whether or not to grant approval, NBE needs to consider, among other things, the *“interests of consumers, including the terms and conditions governing their relationship with operators”*.<sup>49</sup> The NPS Proclamation also gives NBE power to suspend<sup>50</sup> or revoke<sup>51</sup> an authorization for various reasons, including violation of laws, regulations and participation conditions or failure to commence operations or where a PSP is declared insolvent. Further implementing these requirements, NBE has issued a directive requiring banks, which are the main payment service providers, to *“adopt policies and procedures to detect, mitigate, and report fraud and fraud attempts”*,<sup>52</sup> providing some measure of protection to consumers against loss resulting from such circumstances.

**NBE has not issued financial consumer protection provisions of general application to payments products and services under the NPS Proclamation but it has issued a directive implementing a regulatory regime for agent and mobile banking services that in part seeks to address some consumer protection issues.**<sup>53</sup> The directive provides that only financial institutions that are licensed by NBE are permitted to provide agent and mobile banking services.<sup>54</sup> Applications for licenses contemplate the need for risk-management procedures,<sup>55</sup> which should cover some of the issues noted above. The directive also sets out several requirements seeking to address some consumer protection issues, ranging from mandatory disclosure of terms and conditions to complaints handling mechanism.<sup>56</sup> However, these are merely listed as minimum requirements that should be addressed in the provision of agent and mobile banking services and are not as detailed as they should be to ensure effective consumer protection. In addition, the wording of some of the provisions is unclear and could result in significantly different levels of consumer protection between different providers depending on their interpretation. Specific provisions are discussed further below.

**Turning to institutional and supervisory arrangements, the NPS Proclamation gives NBE a clear mandate to supervise payment systems within Ethiopia.** As noted above, NBE has a mandate as the overseer of the NPS and the regulator responsible for authorizing payment instrument issuers and system operators. The NPS Proclamation also gives NBE a specific mandate to issue rules on financial consumer protection issues (it also establishes that the Government of Ethiopia may create a National Payment Council which shall have an advisory role to NBE with regard to the NPS).<sup>57</sup> Such a Council could facilitate dialogue on relevant cross-cutting and cross-institutional issues regarding the NPS and payments instruments, including consumer

protection issues, as well as facilitate cooperation on such issues amongst various stakeholders and regulators such as the TCCPA and the telecommunications regulator. However, such a Council has not yet been established.

**Despite its specific mandate with regard to financial consumer protection for payment instruments, NBE at present does not appear to be undertaking any significant supervision of consumer protection requirements in connection with payments.** As discussed in sections II and III a) of this report, NBE does not have a dedicated financial consumer protection supervision department or similar unit. Additionally, it seems that NBE's Payment and Settlement System Directorate does not currently review, in any systematic manner, financial consumer protection issues, including ensuring compliance with existing (albeit limited) consumer protection requirements noted above. Further, NBE lacks adequate oversight capacity both in terms of staffing, technical, and financial resources.

## Recommendations

**In the short term NBE should aim at addressing the consumer protection gaps in the current framework by extending consumer protection requirements currently in the Agent and Mobile Banking Directives to all payment services to consumers.** It should also ensure that the key general financial consumer protection principles recommended in section III a) of this report apply to payment services. This could be done by including relevant provisions either through a new standalone directive covering all PSPs or within the suggested general consumer protection directive discussed in sub-section III a) (which from a legislative clarity and consistency perspective may be the better option). This directive should apply to institutions offering any kind of payment functionality or services, whether standalone or in connection with any transaction accounts and store-value products.

**In the medium term NBE should also consider developing more detailed financial consumer protection provisions, including with regard to specific payment instruments where relevant.** While NBE further develops the regime pertaining to payment instruments, it should consider including within the relevant regulatory instruments specific consumer protection provisions applicable to the regulated payment instrument. It should also be specified and clarified that NBE has responsibility to ensure that the rights of payment systems users are protected.

**Additionally, as mentioned in sub-section III a), in the medium to long term NBE should consider consolidating all existing financial consumer protection provisions into one directive which should also cover payments and ensuring that there is a consistent approach across all financial institutions and other service providers except when differences are appropriate.** Currently, as already discussed, various obligations relating to financial consumer protection issues are found in the NPS Proclamation and in the Agent and Mobile Banking Directives.

**From a supervisory perspective, the policy and organizational approaches recommended in sub-section III a) of this report would extend to payments-related consumer protection.** With regard to PSPs and payment instruments, NBE already possesses a clear mandate to super-

vice financial consumer protection issues. For example, as with supervision relating to other financial products and services, NBE needs to decide whether its financial consumer protection function in connection with payments should be addressed through a standalone unit or within each Directorate, including the Payment and Settlement System Directorate.

**In the immediate term it is recommended that the oversight staff within the Payment and Settlement System Directorate commence reviewing and enforcing compliance by relevant institutions with existing specific consumer protection requirements.** While, as noted above, it is recommended that NBE take various additional regulatory and organizational steps to strengthen consumer protection in the payments space, in the meantime it should not delay enforcement of existing requirements. Further, NBE's capacity should be enhanced (e.g. through additional resourcing, training etc.) as needed to support effective supervision for this purpose.

*(For recommendations relating to coordination with the TCCPA, the application of the TPCPP to all consumer financial products and services, including payments, and NBE's overall financial consumer protection supervision, see the discussion in sections II a) and III a). The same considerations apply with regard to payment products and services).*

## B) DISCLOSURE AND SALES PRACTICES

### Context

**The principles regarding effective consumer disclosure discussed in section III b) of this report with regard to banking and NBE products and services also apply to the provision of payment products and services to consumers.** Some of the issues faced by consumers when selecting or using a payment product or service will differ from other products (e.g. because of their features, or in some instances one-off nature). Nevertheless it remains important for consumers to, for example, be well informed regarding the costs and risks, as well benefits, associated with a particular payment product or service, both to assist choice and effective use. Such information needs to be provided in a clear, comparable and easy to understand manner.

**Although the same principles should apply, potential differences in the nature and method of delivery of payment products and services from some other financial products should also be taken into account in developing disclosure requirements.** For example, there should be flexibility within the regulatory requirements regarding provision of disclosure to avoid inflexible requirements impacting on the feasibility of delivering a given product or service electronically (although, given the move towards delivery of all financial products and services electronically, this should ultimately be a universal concern. For example, requiring physical interaction and a physically signed acknowledgement of terms and conditions to take up a relevant product or service could be unnecessarily onerous and impair adoption. Disclosure requirements should allow for delivery through a variety of potential face-to-face and non-face-to-face channels (whether by PSPs using mobile communications, their website, call centres, ATMs) while also ensuring that necessary information is still made available to consumers effectively.

## Key Findings

**Unlike for most other consumer banking products and services, some basic disclosure requirements exist for retail payments, although they contain limited details regarding the content, format and manner of disclosure.** There is a general obligation in the NPS Proclamation on all authorized PSPs to prepare a standard document containing terms and conditions for transfers services and stored value products. Such a document should be made available to consumers for their review prior to entry into their contract with the provider and NBE can prescribe a standardized format and content.<sup>58</sup> However, NBE has not yet prescribed any such requirements. Similarly, agent and mobile financial services providers have an obligation to disclose terms and conditions, display a list of the products and services they offer and a list of their agents, and be transparent in terms of pricing of products and services.<sup>59</sup> The lack of more specific obligations has meant, for example, that certain PSPs provide contracts and other documents, like receipts or personal identification number (PIN) guidelines, only in English (not even in Amharic) while other institutions provide them only in Amharic (and not also in other languages more prevalent in certain regions). Additionally, the format of disclosures varies significantly with certain contracts appearing to be long and likely to be difficult for consumers to understand.

**The NPS Proclamation addresses electronic disclosures to some extent.** The proclamation allows for electronic disclosure, permitted by law or regulation, to replace written documents. It also specifies that such disclosure should be provided or made available in an electronic form accessible so as to be usable for subsequent reference.<sup>60</sup> The law also allows a PSP to opt for electronic disclosures even if this is inconsistent with existing legal requirements, but only with prior consent from the user and if various other requirements regarding the delivery of such disclosure are met.<sup>61</sup>

**PSPs, in line with these requirements, seem to have generally prepared standard terms and conditions but practices regarding their form, content and delivery vary substantially.** For example, some PSPs are not providing a copy of these to individual consumers prior to or on entry into the relevant contract. Others, for example, may make them available only on the internet and not at their points of sale. Additionally, the lack of form and content requirements, and lack of uniform industry practice relating to such issues, means there could be limited comparability of different providers' terms and conditions. For example, there are no standardized fee and key conditions disclosure requirements and the industry does not seem to have adopted any practice of providing information about these in a summarized manner. Secondly, terms and conditions tend to be long and to use language that seems difficult for ordinary consumers to understand. Lastly, terms and conditions can vary substantially among providers. In fact, even where a technology provider for mobile wallets issued by multiple financial institutions developed a set of standard terms and conditions for the product, financial institutions offering such a service remained free to, and have made, changes to those terms to some extent limiting comparability as between them.

**In line with legal requirements, PSPs disclose costs at their points of sale but no other information regarding costs seems to be provided before a transaction is authorized.** Additionally, consumers are not prompted with the costs of a specific transaction (even if those costs have increased since they acquired the product) before such a transaction is confirmed. For

example, before effecting a transfer via their mobile phone, or before withdrawing at an ATM, consumers are not advised of the cost of the relevant transaction. This is only done after authorization through the transaction receipt/confirmation. Therefore, although transaction costs may increase from time to time, consumers would become aware of such increases only after a relevant transaction has been approved.

**The Agent and Mobile Banking Directives apply some more stringent requirements but variability in compliance exists.** While there is a requirement to issue a standardized paper receipt for each transaction,<sup>62</sup> providers appear to have adopted different receipt formats and contents depending on whether the transaction is an over-the-counter transaction or not. Further, for example, some receipts are only provided in English and in others the telephone number for the relevant complaint services is not clearly visible.

**PSP advertisements and sales materials do not appear to clearly refer to fees and charges even where these may be a key aspect of what is being advertised.** While the requirements under the Advertisement Proclamation discussed in section II b) of this report would apply, there are no specific requirements with regard to advertisements relating to payment products and services. PSPs, in particular those providing mobile financial services, seem to rely heavily on advertisements and sales material but these do not appear to mention fees and charges while emphasizing the benefits of the relevant product or service.

## Recommendations

**In the short term NBE should specify more detailed requirements, addressing clarity, availability and minimum essential information, with regard to content, format and manner of disclosure of terms and conditions.** It should also specify more detailed requirements regarding pre-contractual disclosures of fees, risks and key conditions at least with regard to mobile banking pursuant to its existing directive in this regard. Such requirements should address the concerns noted in the findings above. In the short to medium term it should extend such requirements to all payments products and services (whether through the general consumer protection directive suggested in section III or a payments-specific directive in this regard).

**In addition to strengthening disclosure requirements, NBE should immediately begin monitoring and enforcing existing obligations.** This includes, for example, the obligation on PSPs under the NPS Proclamation to provide consumers with a copy of the terms and conditions prior to entry into their contract, to ensure this is being done effectively.

**In the medium term, NBE should consider requiring PSPs to provide a standardized disclosure for basic store of value products covering costs and other relevant key aspects.** For example, in the European Union at the pre-contractual stage payment service providers are now required to give to consumers a “fee information document” on paper or another durable medium containing standardized terms for the most representative services linked to a payment account. Such a document can be a means to provide short, clear, comparable information about such aspects of the product.

**In the medium to long term, NBE should consider introducing stricter requirements on pre-disclosure of costs relating to payment transactions more generally and on the format of receipts.** NBE should introduce requirements obliging PSPs to clearly disclose upfront information with regard to transaction costs before a transaction is conducted (including taking into account what other information a consumer may have previously received to ensure that they were aware of such costs and any increases). It is also important for consumers to have a clear record of their transaction; hence, pursuant to existing provisions, NBE should further specify content and format requirements for receipts including, for example, to clearly display the telephone number to call in relation to transaction error, any mistake or problem with the relevant transaction.

### C) FAIR TREATMENT AND BUSINESS CONDUCT

**Equivalent fair treatment and business conduct concerns to those discussed in section III b) of this report relevant to non-credit products should also be addressed with regard to the provision of payment products and services to consumers.** These include, for example, preventing PSPs from including unfair terms in their contracts, such as potentially unfettered rights to make changes to the terms and conditions of a payment product.

**With regard to payment services and products, competition and interoperability are also important and have clear direct impact on financial consumer protection.** Fostering interoperability is in general a key policy action of payment systems overseers. This stems from the positive impact interoperability has on efficiency for the overall national payments system and also for consumers. Achieving interoperability requires several different elements to be in place: an effective payment system infrastructure in which interested PSPs can participate; appropriate pricing and business rules to make it commercially viable for the participants to participate; and, effective oversight arrangements to ensure that the payment system infrastructure remains safe, reliable, and efficient.

**A crucial consumer protection issue for payment products and services is ensuring that there are fair rules for dealing with mistaken and unauthorized transactions.** Good practice in this context includes requiring PSPs to disclose effectively the circumstances of, and limitations on, a consumer's liability for losses resulting from unauthorized and mistaken transactions (e.g. a consumer's liability for losses from unauthorized transactions, if any, should generally be limited to an amount specified by law, except for instances of consumer fraud and gross negligence), as well as an appropriate allocation of risk and responsibility to providers, including their agents.

#### Key Findings

**Although there are provisions in the legal framework applying to payments that deal with some fair treatment and business conduct issues, as is the case with other financial products and services there are no provisions limiting or prohibiting unfair clauses and other potentially harmful practices.** For example, neither the NPS Proclamation nor the Agent and Mobile Banking Directives, contain provisions dealing with mis-selling. They also do not seem



to place any limitations on unfair contractual terms. As a result, while there is an obligation on a PSP to provide a copy of their standard consumer contract to NBE, NBE cannot review such contracts and take action to limit or prohibit unfair clauses.

**The Agent and Mobile Banking Directives contain specific provisions regarding authentication procedures and interoperability of systems.** Providers not only are obliged to address customer identification procedures<sup>63</sup> but they are also required to use a technology which ensures user awareness of information security, including how to secure PIN.<sup>64</sup> Mobile banking providers are also required to have an interoperable system.<sup>65</sup>

**The NPS Proclamation and the Agent and Mobile Banking Directives provide some direct and indirect protections to consumers dealing with agents.** All PSPs are required to meet various requirements intended to ensure agent integrity when engaging agents and must notify NBE when they begin using an agent. If NBE is not satisfied with aspects of the arrangement it can require that the agency relationship be discontinued.<sup>66</sup> Agents are also subject to fit and proper requirements.<sup>67</sup> The mobile banking directives specify the minimum conditions to be included in an agency contract which include, for example, a prohibition to charge customer fees.<sup>68</sup> An institution can also terminate a contract if the agent is found to charge customers a fee and/or violates any of the provisions of the directives (which would include consumer protection-related provisions).<sup>69</sup>

**However, there is currently no regime dealing with mistaken or unauthorised transactions (whether undertaken through an agent or directly with a PSP).** Potentially as a result of a lack of such provisions,<sup>70</sup> providers do not have clear and uniform processes, enforceable by a consumer, for dealing with mistaken or unauthorized transactions (including providing reimbursements or other remedies where appropriate), even when such transactions have resulted from the conduct of the agent or the provider. There are even material differences in approach even between providers of the same mobile wallet product. Policies regarding mistaken and unauthorized transactions vary among different financial institutions offering mobile banking products, even when offered through the same platform, under the same brand name, and supported by the same customer call centre and technology provider. In line with the powers granted by the NPS Proclamation, NBE's Payment and Settlement System Directorate indicated that it is in the process of issuing minimum criteria for the approval of systems rules that would require them to have certain minimum standards with regard to handling mistaken and unauthorized transactions. These requirements should be applied as soon as possible to existing mobile banking offerings, to address existing gaps, as noted above.

**Lastly, given the typical business model in the market, and the lack of any requirements to inform consumers on liability and responsibility issues, there is a risk that consumers may understand the nature of their relationship with the service provider.** At present, the Agent and Mobile Banking Directives provide that only licensed financial services providers in partnership with a telecommunication and technology provider can offer mobile banking services. This implies that while the consumer may receive the service through the telecommunications company and while the technology provider may offer additional services such as systems to protect clients' data, call centres, etc., the client-provider relationship is only between the relevant consumer and the licensed financial services provider. The fact that there are no rules on prop-

erly disclosing who is “the owner of the client” and with whom the client has such a relationship results in overall lack of awareness for consumers. Consumers may, for example, believe that instead of, or in addition, to, having a relationship with the relevant financial services provider (a bank for example) they have a relationship with the payment service provider that co-brands the service.

## Recommendations

**In the short term, NBE should introduce requirements imposing general fair treatment obligations as recommended in section III.** The new general consumer fair treatment obligations recommended in section III c) of this report should apply equally to the provision of payments products and services.

**In the short term, NBE should also actively supervise PSPs’ compliance with existing fair treatment provisions.** NBE should begin actively assessing current market practices against such provisions (e.g. on authentication procedures, providers taking effective responsibility for agents) and provide guidance and take enforcement action to address compliance gaps.

**In the medium term, NBE should introduce the requirements recommended in section III targeting unfair practices that are not yet addressed in current payments-specific requirements or general legal provisions.** This includes, for example, prohibitions on unfair clauses in terms and conditions.

**In the medium term NBE should also develop rules to deal with mistaken and unauthorized transactions and fraud.** Such rules should, in line with international good practices, set out a liability and responsibility regime (addressing the roles of providers, and their agents and service providers, as well as consumers) for each of these circumstances, including industry standards on procedures for dealing with affected transactions, limits on consumers’ liability except where they have contributed to losses, clear disclosure to consumers of these matters etc.

**Given the important role that agents play for agent and mobile banking services, in the medium to long term NBE should issue stricter rules on agent training and provider responsibility.** While the current regime specifies some minimal requirements on training agents in relation to applicable legal requirements, in the medium to long term it is advisable that NBE issues more rigorous requirements with regard to training of agents in relation to consumer protection matters as well as any qualifications that they must hold.

**Lastly, NBE in the medium term should consider whether the liability regime applying to PSPs (including their service providers that deal with consumers or that co-brand products) requires adjustment to ensure appropriate consumer redress, as well as requiring disclosures to the consumer that clarify relevant relationships.** Given the potential risk to consumers (e.g. with regard to funds held, or other contractual rights, in case of breakdown of joint-venture models offering mobile banking services) NBE should assess whether responsibility of different participants in payments arrangement has been allocated adequately or requires allocation of specific liability through additional provisions. Within the disclosure requirements discussed in section III of this report NBE should also impose clear disclosure requirements to

inform consumers of the legal relationship with providers vs other third parties that may be involved in providing a payment product.

## D) PRIVACY AND DATA PROTECTION

**Payments data can include a significant amount of personal information about consumers which can be open to misuse.** In addition to financial data on the underlying transaction, a payment transaction can also generate information on the location and time of the transaction, as well as indicate information about a consumer's relationships with various entities and, depending on the nature of the transaction (such as the type of product or service being paid for), about their personal circumstances more generally. Furthermore, with the increasing linkage of payment and data systems with other channels and systems (e.g. social networks), the type of data that can be juxtaposed with payment data in order to derive additional personal information about individuals continues to increase. It is therefore critical (as with other financial information discussed in section III) that such information is safeguarded and used and disclosed for purposes and in circumstances about which the consumer is aware and, as relevant, to which they have agreed, or as otherwise appropriately permitted by law. PSPs should therefore be required to have policies and procedures in place to protect personal information, with appropriate accountability for compliance within those institutions.

### Key Findings

**Only very limited requirements with regard to data protection are in place.** Agents and mobile banking providers are required to have in place systems dealing with various risks, such as user risks, infrastructure and software application risks, and communication media risks, that include matters relating to data handling and storage.<sup>71</sup> While providers reported that they have systems and measures in place to ensure consumers' data is protected, they are not subject to more specific legal obligations relating to appropriate collection, use, disclosure and handling of personal data. Interestingly, some providers noted that they would like to see more detailed regulatory rules and guidance on what is expected of them to protect such data.

### Recommendations

**In addition to the data protection-related recommendations in section II d), which should apply to payment products and services, NBE should issue further guidance on data protection requirements for PSPs.** While NBE has so far not detected misuses of, or data breaches involving, payments-related data, it is important that PSPs and their agents receive adequate guidance on practical ways in which the risk of such occurrences should be mitigated consistently with legal requirements. Such guidance should focus both on misuse-related issues, such as inappropriate uses of data on consumers' payment transactions and disclosure to third parties for extraneous purposes, and on ensuring data integrity and protection. Although PSPs in particular have indicated an interest in such practical guidance, NBE should assess whether it would ultimately be useful to provide such guidance to financial institutions more generally, rather than confining it to PSPs or to payments data.

## E) DISPUTE RESOLUTION MECHANISMS

### Key Findings

**PSPs and financial institutions offering agent and mobile banking services are subject to IDR requirements, although these obligations are relatively high level.** The NPS Proclamation specifies that a PSP must have internal complaints handling procedures which need to be communicated to consumers for electronic transfer services and store of value products and explicitly gives the power to NBE to issue more detailed requirements in relation to such procedures.<sup>72</sup> The Agent and Mobile Banking Directives require institutions to both operate a help desk and a customer care line as well as recording and registering complaints and establishing a reasonable timeframe to address them. Such a timeframe should not exceed 30 days.<sup>73</sup>

**Due to the lack of more prescriptive requirements, current IDR practices nevertheless differ significantly.** While all institutions offering mobile and agent banking services have call centres and processes and procedures in place to handle complaints, even complaints handling relating to the same product type, supported by the same technology provider, differs depending on the financial institution that ultimately provides the product to consumers. (See section III e) for a discussion of the general disparity in IDR approaches). This is the case even were financial institutions share one call centre managed by the same technology provider, which must then follow different processes for each institution when dealing with their consumers even if they are making the same complaint.

### Recommendations

**In the medium term, NBE should introduce more specific IDR requirements.** The more detailed requirements recommended in section III e) should apply to PSPs (supplementing and replacing existing more general payments-related requirements).

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## NOTES

44. Proclamation No. 718/2011, *A Proclamation to provide for National Payment System*.
45. Proclamation No. 718/2011, *A Proclamation to provide for National Payment System*, Art. 4.
46. Proclamation No. 718/2011, *A Proclamation to provide for National Payment System*, Art. 5.
47. Proclamation No. 591/2008, *A Proclamation to Amend the National Bank of Ethiopia Establishment Proclamation*, Art. 5.
48. Proclamation No. 591/2008, *A Proclamation to Amend the National Bank of Ethiopia Establishment Proclamation*, Art. 4-5.
49. Proclamation No. 718/2011, *A Proclamation to provide for National Payment System*, Art. 6.
50. Proclamation No. 718/2011, *A Proclamation to provide for National Payment System*, Art. 7.
51. Proclamation No. 718/2011, *A Proclamation to provide for National Payment System*, Art. 9.
52. Directive No. SSB/59/2014, *Licensing and Supervision of Banking Business Fraud Monitoring*.
53. Directives No. FIS/01/2012, *Regulation of Mobile and Agent Banking Services*.
54. Directives No. FIS/01/2012, *Regulation of Mobile and Agent Banking Services*, Art. 4.
55. Directives No. FIS/01/2012, *Regulation of Mobile and Agent Banking Services*, Art. 6.
56. Directives No. FIS/01/2012, *Regulation of Mobile and Agent Banking Services*, Art. 12.
57. Proclamation No. 718/2011, *A Proclamation to provide for National Payment System*, Art. 32.
58. Proclamation No. 718/2011, *A Proclamation to provide for National Payment System*, Art. 19.
59. Directives No. FIS/01/2012, *Regulation of Mobile and Agent Banking Services*, Art. 12.
60. Proclamation No. 718/2011, *A Proclamation to provide for National Payment System*, Art. 21.
61. Proclamation No. 718/2011, *A Proclamation to provide for National Payment System*, Art. 21.
62. Directives No. FIS/01/2012, *Regulation of Mobile and Agent Banking Services*, Art. 12.

63. Directives No. FIS/01/2012, *Regulation of Mobile and Agent Banking Services*, Art. 12.
64. Directives No. FIS/01/2012, *Regulation of Mobile and Agent Banking Services*, Art. 7.
65. Directives No. FIS/01/2012, *Regulation of Mobile and Agent Banking Services*, Art. 7.
66. Proclamation No. 718/2011, *A Proclamation to provide for National Payment System*, Art. 9.
67. Proclamation No. 718/2011, *A Proclamation to provide for National Payment System*, Art. 10.
68. Directives No. FIS/01/2012, *Regulation of Mobile and Agent Banking Services*, Art. 8 and Annex.
69. Directives No. FIS/01/2012, *Regulation of Mobile and Agent Banking Services*, Art. 9.
70. For example, Directive SBB/59/2014 on Fraud monitoring requires banks to put in place fraud monitoring and control mechanisms; report fraud incidence to NBE and share information with other financial institutions (within reason while observing anonymity and confidentiality) but does not itself provide a regime to address such transactions.
71. Directives No. FIS/01/2012, *Regulation of Mobile and Agent Banking Services*, Art. 7.
72. Proclamation No. 718/2011, *A Proclamation to provide for National Payment System*, Art. 20.
73. Directives No. FIS/01/2012, *Regulation of Mobile and Agent Banking Services*, Art. 12.

## KEY ISSUES AND RECOMMENDATIONS— INSURANCE

### A) LEGAL, REGULATORY AND SUPERVISORY FRAMEWORK

#### Key Findings

**There are some isolated provisions implemented pursuant to the Insurance Proclamation of relevance to consumer protection.** The provision of insurance products is regulated by the Insurance Proclamation.<sup>74</sup> A range of directives issued under this proclamation elaborate on some areas of potential relevance to consumer protection, although their intended application to consumer protection issues, as opposed to other supervisory objectives, is not always clear.

**The Insurance Proclamation gives NBE a clear mandate with regard to consumer protection in relation to insurance.** The Insurance Proclamation gives NBE both a regulatory and supervisory mandate, providing it with power to issue relevant directives and regulations, with an explicit mandate for such directives to cover market conduct-related issues, including specific reference to many consumer protection elements. Despite the clarity of the mandate, no single, consumer protection-focused directive has been issued so far,<sup>75</sup> and many consumer protection aspects relating to insurance products and services remain unregulated. Good practice tends to favour a dedicated consumer protection directive as it ensures that thought is given by policymakers to the full range of consumer protection issues, and that they are subsequently supervised comprehensively.

**Insurance contracts are subject to a dedicated regime.** Good practice suggests that the legal framework should include specific provisions relating to insurance contracts. Even though they are not covered in the specific framework regulating insurance business, in Ethiopia insurance contracts are covered by dedicated provisions in the Commercial Code.<sup>76</sup> The Commercial Code provides some minimum standards for general and life insurance contracts and addresses certain key consumer protection issues such as lapse, non-forfeiture and surrender.

The Commercial Code provisions are, however, many years old and are not in line with modern standards.<sup>77</sup>

**While the Commercial Code regulates insurance contracts separately, it does not contain many consumer protection measures.** Although the Code provides for minimum contract requirements<sup>78</sup> and regulates when insurance contracts enter into force,<sup>79</sup> as well as providing for some general obligations and basic responsibilities on insurers (as well as the insured)<sup>80</sup> it does not, for example, address consumer protection-issues relating to how disputes should be resolved, how a claim should be paid out etc.

**Risk is a key component of insurance contracts and disclosure of material facts relevant to risk should be properly regulated.** Given that risk is a key fundamental component of insurance contracts, legal provisions should address the consequences of material and non-material disclosures (or failures to disclose). The Commercial Code covers facts concealed and false statements,<sup>81</sup> without, however, addressing such issues in sufficient detail, and tends to be less severe on disclosures by insurers than non-disclosure by clients.

**The legal framework regulating insurance business includes specific rules on licensing and on directors and senior management selection and roles.** The Commercial Code specifically states that conditions for the carrying out of the insurance business should be set by law.<sup>82</sup> The Insurance Proclamation prohibits any unlicensed person or business from carrying out insurance business.<sup>83</sup> In line with good practice, the licensing process introduces minimum requirements for the directors, chief executive officer and senior executive officers of such a business.<sup>84</sup> These include an obligation to act with honesty, integrity, diligence and reputation to the satisfaction of NBE.<sup>85</sup> While the proclamation also specifies that NBE has the power to issue further requirements, most of the directives make only occasional references to relevant risks, without linking these effectively to consumer protection objectives. For example, a governance directive includes requirements on boards to develop policies on conflicts of interest but is not specific on treatment of consumers with regard to such conflicts and the requirement is merely one of a lengthy list of obligations on boards. Product information is needed to be provided for licensing purposes but it is not clear that the assessment should consider both prudential and consumer objectives. It would also be good practice for boards to be made ultimately responsible for the fair treatment of their customers and to develop and oversee policies and practices that deliver such outcomes to the extent practicable.

**Micro-insurance businesses are subject to similar requirements to full service insurance businesses and their own set of directives.** Persons wishing to undertake insurance business have the option of a dedicated micro-insurance license rather than a full service insurance license. MFIs are also permitted to conduct micro-insurance under their law but are transitioning to a requirement to hold an insurance-specific license.<sup>86</sup> There is a requirement for persons of significant interest connected with such business to act with integrity<sup>87</sup> and they are subject to ongoing fitness and propriety tests.<sup>88</sup>

**Consistently with international good practice NBE has also introduced requirements for insurance agents and brokers to be licensed.**<sup>89</sup> Insurance agents and brokers are subject to honesty, integrity and diligence requirements.<sup>90</sup> The directives regulating the licensing of

insurance agents and brokers also impose specific duties and responsibilities such as representing the client with reasonable professional skills, doing everything possible to satisfy the insurance requirements of the client, clearly explaining costs and the difference between insurances to the client and, in the case of brokers, to offer a particular risk to at least three insurers.<sup>91</sup> These directives also require ongoing training to NBE approved standards. Lastly, NBE has also issued a code of conduct for insurance brokers.<sup>92</sup> The purpose of such a code of conduct is to guide insurance brokers and to establish a recognized standard of professional conduct.

**Despite these regulations regarding agents and brokers, the majority of insurance is sold through direct sales offices rather than these licensed intermediaries, which makes them less effective in safeguarding consumers.** Although the majority of insurance policies in Ethiopia are sold directly through sales offices, rather than via intermediaries, there are no corresponding rules for employed staff.

**There is also no regulatory framework specifically addressing distribution of insurance through mobile platforms.** Mobile networks and mobile money operators are in the early stages of providing an insurance product through their platforms but this can be expected to expand in future given, for example, the success it has had in other countries in Africa. Experience in these jurisdictions has highlighted that there is a need for specific attention to be given to the consumer protection needs whilst also recognising the benefits of expanding access to financial services including insurance through these channels. The International Association of Insurance Supervisors is currently developing further guidance in this important area.

**While the various directives identified above to some extent touch on consumer protection issues, it is not clear that NBE's current insurance-related supervision is focusing sufficiently on consumer protection rather than prudential aspects.** For example, product approval obligations require submission of written product information. These could be reviewed by NBE for clarity and to avoid unnecessarily penal clauses (an example of a consumer protection focus) and, in addition or alternatively, to ensure that the benefits as stated are consistent with those in premium calculations. Within NBE, different staff may well bring a different focus to such reviews and there is no consumer protection dedicated team nor dedicated staff members in charge of financial consumer protection. From discussions with insurers they are also not able to articulate the practical consumer protection purposes, as applicable to their activities, of some of these requirements.

## Recommendations

**In the short term NBE should develop and issue directives introducing basic financial consumer protection principles.** These could be combined with the Directive recommended in section III (covering other types of financial institutions), with appropriate adjustments for insurance where relevant, or be a separate instrument. Despite the Insurance Proclamation giving NBE a clear mandate to cover consumer protection matters, no such directive is in place. This could also immediately address, to the extent feasible, issues that are currently not given any specific attention such as, for example, mobile distribution, claims handling processes, or sales through an insurer's own staff.



**Taking advantage of the current revision of the Commercial Code, insurance contracts requirements should be reviewed and updated as appropriate.** Given that a revision of the Commercial Code is under way, it is recommended that such a revision include a modernisation of the insurance contract requirements. Examples of the issues to be considered include: establishing clear coverage expectations, minimum levels of protection and standard terms, coverages, procedures and conditions. The treatment of claim avoidance due to non-disclosures or due to suicide, and for the insurance of minor children, could also be updated to impose more modern standards.<sup>93</sup>

**In the medium to long term, from a supervisory perspective, NBE should take the relevant policy and organizational decisions mentioned in sub-section III above, and decide whether financial consumer protection should rest either in a standalone unit within NBE or within each Directorate.** With regard to insurance businesses, products, and services NBE possesses a clear and unquestionable mandate to cover financial consumer protection issues but it is a matter of deciding how the mandate will be discharged in terms of organizational structure and internal responsibilities and capacity.

**Lastly, in the immediate short term the Insurance Directorate should be provided with any necessary support and capacity building to focus more extensively on consumer protection concerns.** Regardless of organizational decisions undertaken in the longer term, NBE should ensure that the Insurance Directorate supervises compliance with existing consumer protection requirements more extensively, with supervisory activities systematically monitoring insurance businesses specifically from a market conduct/consumer protection perspective having regard to the matters discussed above. NBE should undertake, to the extent necessary to support this focus, capacity building as recommended in section II a) of this report.

*(For recommendations also applicable to insurance relating to coordination with the TCCPA and the application of the TPCPP to financial products and services generally, and relating to NBE's overall financial consumer protection supervision strategy and capacity building, see sub-section II a).*

## **B) DISCLOSURE AND SALES PRACTICES**

### **Key Findings**

**Insurance policy documents and insurance-related sales materials and other documentation are not subject to any detailed regulation in Ethiopia and relevant industry practices vary substantially between insurers. Insurance-related advertising is subject to the general Proclamation discussed in sub-section II- b) of this report.** Probably at least in part due to this regulatory gap, insurance companies acknowledge that the vast majority of consumer complaints arise from denied claims and that, in turn, this is as a consequence of misunderstanding contract terms. Some insurers are more advanced in their efforts to address such lack of understanding than others, having developed explanatory flyers and educational material for clients to receive at the pre-sale stage. Given that insurance contracts are in

English, and the difficulty in translating some concepts into local languages, it is a particular challenge to provide material that is understood by the mass market and which would require brochures in local languages. Those insurers that put more emphasis and effort into these disclosures do appear to be more successful in achieving better consumer outcomes. Documentation for micro-insurance provided by MFIs is similarly weak. The use of mobile phone distribution is not widespread as yet.

**The lack of requirements relating to content and form of insurance disclosures manifests itself, for example, in a standing market practice to provide policy documents for the vast majority of insurance products only in English. It has also resulted in some aspects of coverage being inconsistent with local legislation relevant to some risks.** Given that particular policy wording is reflective of a long history of common usage in English-speaking jurisdictions insurers are reluctant to move away from them, by translating them into other languages, for fear of the uncertainty that may be created by untested legal interpretations resulting from such translation. They also report that some insurance terms do not have local terms. In addition, some insurance product policy wordings are out of line with insurable risks in Ethiopia where local legislation may define obligations and liabilities but insurance products were developed inconsistently from the local legislation.

**Beyond some general requirements for distribution networks, there are no specific disclosure rules with regard to pre-contractual disclosures and the disclosure of terms and conditions.** There are no regulatory specifications with regard to insurance-related pre-contractual and contractual disclosures, other than narrowly focused requirements such as the requirement that, before doing any work which would involve a charge, brokers must disclose any amount they propose to charge in relation to such a work in addition to any premium payable to the insurer.

**Product-level approval, involving a review of policy documentation, is usually part of a licensing application, but there is little focus on consumer protection in this context.** Generally NBE conducts some kind of product-level review and approval as part of its assessment of a licensing application. Although this includes a review of policy wording and related material, policy documents tend to show very little innovation in the sector and little if any variation. When combined with the other supervisory objectives of the licensing assessment, there is limited focus on financial consumer protection issues in the consideration of such documentation.

**Sales processes are addressed to some extent through regulation of distributors but otherwise are largely unregulated and current practices suggest potential for concern.** As discussed above, sales practices are regulated to some extent when occurring through third party distributions channels, but the majority of sales are not conducted through such channels. There are therefore some potential areas of concern, such as with regard to bundling of insurance with microcredit or other services.

**Despite the lack of regulation, sales practices with regard to life insurance products do not currently appear to give rise to overtly inappropriate practices.** As life insurance products tend to be risk protection oriented and sold through “group plans”, the level of concern raised by typical sales practices seen in other unregulated jurisdictions has been less evident in Ethio-

pia. Both NBE and insurers interviewed confirmed that complaint levels regarding mis-selling were low at this point in the development of the sector.

## Recommendations

**In the short term, disclosure requirements should be enhanced as part of the proposed new consumer protection directive (see section V a) above).** In particular, basic disclosure-related consumer protection objectives at insurance pre-sale, sale and post-sale stages consistent with international good practice (as discussed in section III with regard to other financial products) should be addressed.

**Disclosure requirements should also address the lack of policy documentation in Amharic or other main local languages.** The development and provision of retail consumer insurance contracts in main local languages should initially be encouraged and assisted by NBE and ultimately mandated (perhaps first for retail consumer insurance products being introduced to the market for the first time and then for all insurance products), given its importance to supporting consumer understanding of their insurance products. Current typical clauses that cannot be readily translated from English, and technical insurance terminology, should be subject to particular review for this purpose. Further, NBE should mandate the usage of plain, simple phrasing and terminology which can be understood by average consumers. This is likely to require active coordination and cooperation between NBE and industry.

**In the medium term, NBE should work with industry to develop a standardized KFS (information sheet) to provide consumers with adequate information about common retail insurance products.** Such a KFS should provide consumers with summary and comparable key information on the most common retail insurance products and services. It should be developed in close consultation with the industry to establish which are the most commonly used products and their key features as well as be subject to consumer testing to ensure that consumers receive the information they need most and in a form they understand.

**Sales practices requirements should be elaborated as part of the proposed new consumer directive.** This directive should apply consistently to all current and potential future sales channels (with variation only where relevant to different channel characteristics) and not be limited to agents and brokers as is the case for current requirements. The directive should focus on key consumer issues such as inappropriate product bundling/forced selling. Further the directive should include a specific requirement for Boards to approve policies for ensuring appropriate internal oversight of sales practices by staff, brokers, agents and other intermediaries, as well as ensuring adequate training.

**In the medium term, NBE should build its capacity to ensure it supervises such disclosure requirements.** Targeted and risk-based supervisory efforts can be used to make the supervision of effective disclosure and sales practices more visible to insurers and others involved in insurance service delivery.

## C) FAIR TREATMENT AND BUSINESS CONDUCT

### Key Findings

**NBE has introduced some insurance-related requirements for the fair treatment of customers including, for example, a code of conduct for distribution; however the impact of such rules is limited.** As noted, these requirements do not apply to all distribution channels, in particular they do not apply to the most commonly used channels. Other conduct requirements are less focused on consumer protection aspects such as general obligations on the professionalism of directors and senior managers at insurance companies.

**There are no requirements or specific guidance issued for product administration and servicing processes that affect consumers.** The most critical of these processes in the current Ethiopian context is claims management. Claims handling and outcomes from this process are reported to be the most significant source of consumer complaints. Interviews with insurers indicated that processes did vary and that not all insurers had wholly robust procedures for the careful review and finalisation of claims that were to be denied or subject to material revision due to the application of exclusions, incomplete procedural requirements, or “average” clauses. In contrast, other insurers had developed better practices with better corresponding outcomes.

**There are some basic obligations with regard to product suitability and disclosure of conflicts of interests, but they apply only to brokers and agents, which are currently not the main means of insurance distribution.** There are obligations on brokers to act fairly, to be competent and to clearly explain to the client what in their opinion may best suit their needs. They are also required to disclose any conflicts of interests and any payment or commission they may receive to the arrangement of a contract of insurance.<sup>94</sup> However, no equivalent requirements apply to insurers when distributing insurance directly.

### Recommendations

**In the short term, NBE should issue more specific requirements on claims management within the above mentioned new consumer protection directive.** Considering that claims management problems are the source of most complaints, both at industry and NBE level, consumers and also industry are likely to benefit from more specific minimum requirements for processes and procedures and guidance on their implementation. This should also be an important supervisory priority as it will be directly targeting the main source of complaints and of potential adverse impact to general consumer trust the insurance sector.

**Explicit obligations on boards and managers regarding fair business conduct should be included as part of the new directive.** NBE should impose minimum requirements on boards and managers to ensure that consumers are treated fairly. Such requirements should include for example, overseeing implementation of policies to ensure appropriate disclosure and handling of conflicts of interests, claims management, product development etc.

## D) PRIVACY AND DATA PROTECTION

### Findings

**Insurance-related consumer information is likely to comprise very sensitive data, including health information, which is not currently subject to regulatory protection.** Good practice internationally has seen jurisdictions developing disclosure codes, standards or regulatory requirements (including to the extent general privacy laws were insufficient) on the proper handling of personal information associated with insurance, including health information. Such protections are also important to the level of trust in the insurance sector.

### Recommendations

**Implementing (and supervising effectively) data protection requirements recommended in Section II d) of this report could address this gap.** Such data protection requirements should include enhanced protections, including enhanced restrictions on use and disclosure, of information of particularly sensitivity, such as health information.

## E) DISPUTE RESOLUTION MECHANISMS

### Key Findings

**Complaints appeared to be given significant attention by both NBE and the insurance industry.** Complaints are perceived to be a principal issue of concern when discussing financial consumer protection with insurers and other stakeholders in the insurance sector in Ethiopia. Although only one facet of a properly functional financial consumer protection framework, effective complaints handling (particularly with regard to claims management and outcomes) is key to consumer trust in insurance more generally.

**The most significant source of complaints is claims management.** Complaints tend to be generated by claim denials but may in part be traced back to other root causes that gave rise to misunderstanding of policy terms and conditions, covered and excluded risks and perils, and treatment of obligations on insurers and insured parties.

**Thanks to this heightened attention being paid to complaints, most insurers have IDR mechanisms, with some having enhanced complaints management systems. However basic standardization of processes and procedures is still lacking.** Perhaps positively, as a result of the focus of attention, many insurers do have a complaint handling process and some have upgraded and enhanced it in recent years in an effort to align it with good practices. Experience in these improved practices is, however, limited given that they are relatively new. Additionally, practices vary amongst providers and there are no minimum standards applying to insurers in how they are obliged to deal with complaints.

**NBE also functions as an EDR mechanism, without however having formal processes nor powers to undertake such task effectively.** In recognition of the importance of public trust to

the viability of the insurance market, NBE currently actively handles a number of complaints within the Insurance Directorate as part of its operations. These complaints vary in their source from retail clients to more sophisticated commercial clients. For most cases, there is no other external dispute resolution system specific for insurance other than taking matters to courts. Despite this role, NBE does not have formal processes and procedures nor dedicated staff.

## Recommendations

In the short term, in the above-mentioned new consumer protection directive, NBE should introduce a formal requirement for insurers' to have in place adequate IDR processes. In particular, such processes should give particular attention to claims disputes, without limiting it more generally to other forms of complaints. Additionally the directive should introduce basic requirements on processes and procedures to be included in the approved policies (e.g., answers should always be in writing, maximum time to respond to a complaint).

*(For recommendations relating to EDR including coordination with the TCCPA see sub-section II e)).*

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## NOTES

74. Proclamation No.746/2012, *A proclamation to Provide for Insurance Business*.
75. Clause 44 states "Market Conduct: The manner of conduct of business by insurers, their responsibilities towards policyholders and insurance auxiliaries, their complaint handling procedures and such other similar matters shall be prescribed by directive."
76. Ethiopian Commercial Code, Art. 654 and following provisions.
77. For example, suicide is a deniable claim with no refund of premiums throughout a life insurance contract. There is no provision covering age mis-statement. Denial of claim due to misstatement entitles the insurer to retain all premiums paid. Insurable interest is not covered in modern terms. Minimum requirements regarding lapse and surrender protection for contracts with a savings component are quite penal to consumers compared to more modern norms. etc.
78. Ethiopian Commercial Code, Art. 658.
79. Ethiopian Commercial Code, Art. 659.
80. See *generally*, all Title and specifically Art. 665 and Art. 666.
81. Ethiopian Commercial Code, Art. 668.
82. Ethiopian Commercial Code, Art. 656.
83. Proclamation No.746/2012, *A proclamation to Provide for Insurance Business*, Art. 3.
84. Proclamation No.746/2012, *A proclamation to Provide for Insurance Business*, Art. 4.
85. Proclamation No.746/2012, *A proclamation to Provide for Insurance Business*, 15.
86. Directives No. SMIB/1/2015, *For Microinsurance Providers*, Art. 5.
87. Directives No. SMIB/1/2015, *For Microinsurance Providers*, Art. 5.
88. Directives No. SMIB/1/2015, *For Microinsurance Providers*, Art. 5.
89. Directive No. SIB/31/2010, *Licensing of Insurance Broker*.
90. Directive No. SIB/31/2010, *Licensing of Insurance Broker*, Art. 4.
91. Directive No. SIB/31/2010, *Licensing of Insurance Broker*, Art. 7.
92. Directive No. SIB/9/1995, *Insurance Brokers Code of Conduct*.
93. For example, the Commercial Code allows a life insurer to avoid a claim altogether in the event of suicide. Many jurisdictions restrict this avoidance to an initial duration in which taking out the contract might be premeditated regarding suicide (for example via a requirement that the claim is not avoided if the policy has had the second year's premium paid for renewal).
94. Directive No. SIB/9/1995, *Insurance Brokers Code of Conduct*.



# ANNEXES

## ANNEX I

**TABLE 2: Key Laws Relevant to Consumer Protection**

SECTOR	NAME OF THE LAW	RESPONSIBLE INSTITUTION
Banking and Microfinance	<ul style="list-style-type: none"> <li>• Proclamation No. 592/2008, A proclamation to Provide for Banking Business</li> <li>• Proclamation No. 626/2009, Micro Financing Business Proclamation</li> <li>• Proclamation No. 103/1998, Capital Goods Leasing Business Proclamation as amended by the Capital Goods Leasing Business (Amendment) Proclamation No. 807/2013</li> </ul>	NBE
	<ul style="list-style-type: none"> <li>• Proclamation No 147/1998, A Proclamation to Provide for the Establishment of Cooperative Societies.</li> </ul>	FCA
Insurance	<ul style="list-style-type: none"> <li>• Proclamation No.746/2012, A proclamation to Provide for Insurance Business</li> <li>• Directives No. SMIB/1/2015, For Microinsurance Providers</li> <li>• Directive No. SIB/31/2010, Licensing of Insurance Broker</li> <li>• Directive No. SIB/9/1995, Insurance Brokers Code of Conduct</li> </ul>	NBE
	<ul style="list-style-type: none"> <li>• Ethiopian Commercial Code</li> </ul>	N/A
Payments	<ul style="list-style-type: none"> <li>• Directives No. FIS/01/2012, Regulation of Mobile and Agent Banking Services</li> <li>• Proclamation No. 718/2011, A Proclamation to provide for National Payment System</li> </ul>	NBE
All	<ul style="list-style-type: none"> <li>• Ethiopian Civil Code</li> </ul>	N/A
	<ul style="list-style-type: none"> <li>• Proclamation No. 685/2010, Trade Practice and Consumers' Proclamation</li> </ul>	TCCPA
	<ul style="list-style-type: none"> <li>• Proclamation No. 759/2012, Proclamation on Advertisement</li> </ul>	N/A
	<ul style="list-style-type: none"> <li>• Proclamation No. 591/2008, A Proclamation to Amend the National Bank of Ethiopia Establishment Proclamation</li> <li>• Draft Corporate Governance Directives No.../.../2014</li> </ul>	NBE

## ANNEX II

**TABLE 3: List of Institutions Met**

<b>GOVERNMENT INSTITUTIONS</b>
Financial Cooperatives Authority
National Bank of Ethiopia—Banking Supervision Directorate
National Bank of Ethiopia—Insurance Supervision Directorate
National Bank of Ethiopia—Legal Directorate
National Bank of Ethiopia—Non-bank Financial Institutions Supervision Directorate
National Bank of Ethiopia—Payment System Directorate
Trade Competition and Consumer Protection Authority
Trade Competition and Consumer Protection Tribunal
<b>FINANCIAL SERVICES PROVIDERS</b>
Addis CGF
ADeCSI
AWACH Saving and Credit Cooperative
Awash International Bank
Commercial Bank of Ethiopia
Cooperative Bank of Oromia
Dashen Bank
Development Bank of Ethiopia
EIC
Ethio Life and General insurance
Lion Bank
Nyala Insurance
OCSSCO
OIC
Oromia leasing
<b>TECHNOLOGY PROVIDERS</b>
Kifya
MOSS/M-Birr
<b>INDUSTRY ASSOCIATIONS</b>
Ethiopia Insurer Association
Ethiopia Insurance Brokers Association
<b>OTHER INSTITUTIONS</b>
Addis Ababa Arbitration and Reconciliation Center
<b>DEVELOPMENT PARTNERS</b>
Embassy of the Kingdom of the Netherlands
UNCDF





