



Making financial markets work for the poor

# Consumer protection in SADC

## Report

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## Executive summary

Worldwide, countries have been increasing their efforts to expand the financial services sector, particularly to low income consumers. However, increasing access to financial services also increases the risk of loss and exploitation on the part of the consumer. In order to minimise these risks and protect consumers, and to ensure that FSPs act in an appropriate manner towards their customers, most countries have developed and implemented consumer protection frameworks. These frameworks typically include a mix of:

1. Stand-alone consumer protection legislation, which applies to all transactions, irrespective of the sector, product, or provider and user;
2. Competition and contract legislation, which often includes elements of consumer protection; and
3. Sector specific legislation, such as credit legislation, which can also serve to provide for more targeted consumer protection.

Consumer protection legislation and institutional arrangements differ across countries and there is no single or superior arrangement. The appropriate institutional form depends on market circumstances, resource availability and the level of market sophistication. In the financial services sector, it is generally accepted that general consumer protection measures and consumer education are not sufficient, and that dedicated measures and regulatory institutions are required to address the complexity of the sector. A number of international guidelines and diagnostic tools have been developed to assist policy makers and regulators to design consumer protection frameworks that are appropriate for the financial services industry.

In most SADC Member States, the minimum legislative and institutional requirements for consumer protection are in place. Specifically, all countries have enacted some form of legislation to protect consumers in the financial services sector and ten of the fifteen SADC countries now have a stand-alone consumer protection law. Nine SADC countries have established some form of consumer protection agency, either on its own, or combined with the competition authority.

However, despite the wide coverage of consumer protection legislation in SADC, it is clear that in some countries, and especially in more developed countries, the existing framework is more developed than in less-developed markets. Moreover, in those countries where a dedicated consumer agency exists, enforcement appears to be strong; and where no stand-alone regulator is in place, enforcement is weaker (or not reported).

To enable countries, regulators and financial service providers to assess the adequacy of their existing consumer protection legislation and controls, an excel-based framework has been developed as an output of this study. The proposed framework is informed by the G20 high level principles on financial consumer protection and the CGAP Guidelines for Consumer Protection in Low Access Environments; however it has been specifically adapted to account for the findings of this study, and the structure of the financial sector in SADC member states.

This report summarises the main findings from the situational analysis and country consultation conducted as part of this study, and describes the basis and purpose of the proposed Consumer Protection Assessment Framework. The framework will be available from 1 April 2016 upon request from FinMark Trust.

## 1. Introduction and background

Financial inclusion is imperative both for the achievement of economic expansion, as well as to bring about improvements in the livelihoods of the poor. Access to financial services allows people to complete daily transactions, to save, to preserve wealth, and to insure against potential losses.<sup>1</sup>

Worldwide, many countries have been increasing their efforts to expand the financial services sector, particularly to low income consumers. However, increasing access to financial services also increases the risk of misuse of such products, and thus of loss and exploitation on the part of the consumer. A study by The Consultative Group to Assist the Poor (CGAP) in 2010<sup>2</sup> lists some of these risks:

- The provision of sub-par financial advice by financial service providers (FSPs);
- The charging of high fees, with no transparency in such pricing;
- A lack of product transparency, such that consumers do not understand the total product cost. This is a result of deceptive advertising, small print, and the attachment of complicated terms and conditions, many of which are not understood by the consumer;
- Aggressive sales practices by FSPs leading to over-indebtedness; and
- A lack of recourse, or limited knowledge on recourse practices.

While some of these concerns are general, others are more specific to a particular type of financial product. Most are impacted by information asymmetries that exist between financial service providers (FSPs) and the consumer, and particularly the low income consumer.

In order to minimise these risks and protect consumers, and to ensure that FSPs act in an appropriate manner towards their customers, most countries have developed and implemented consumer protection frameworks. These frameworks typically include a mix of:

1. Stand-alone consumer protection legislation, which applies to all transactions, irrespective of the sector, product, provider or user;
2. Competition and contract legislation, which often includes elements of consumer protection; and
3. Sector specific legislation, such as credit legislation, which can also serve to provide for more targeted consumer protection.

The usefulness and effectiveness of consumer protection frameworks depends largely on the design and enforcement of these different pieces of legislation, and how they work together in order to provide consumers of financial services with adequate information and fair and comprehensive protection.

The main purpose of this study is to develop a consumer protection framework, against which the Southern African Development Community (SADC) member countries will be able to measure and compare the effectiveness of their consumer protection policies and regulations.

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<sup>1</sup> (National Treasury , 2011)

<sup>2</sup> (CGAP, 2010)

## 1.1. Objectives

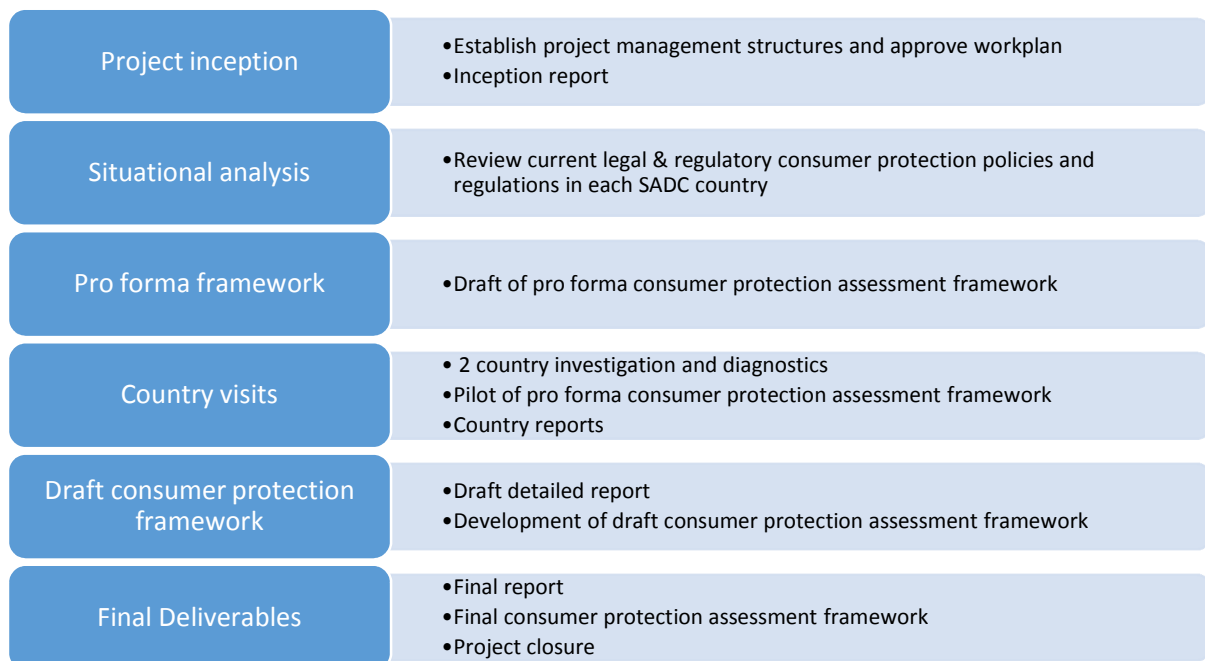
The objectives of this project are twofold:

- First, to review the current consumer protection landscape in SADC as it pertains to financial services in order to describe and understand the progress made thus far, and the challenges which still face the region; and
- Second, to develop a framework of minimum standards, which will assist SADC countries to assess the depth and strength of existing consumer protection policies and regulations; and to identify priority areas for improvement.

## 1.2. Methodology

To address these objectives, the team developed a 6-stage-methodology, with each stage consisting of multiple tasks and activities as shown below.

**Figure 1: Project methodology**



### 1.2.1. Project inception

At the outset of the project, an inception meeting was held at Finmark Trust between DNA Economics and the project team at FMT, the purpose of which was to discuss the methodology and answer questions posed by the project team. Based on these discussions, the project team developed and submitted an inception report and implementation plan which guided the remainder of the project.

### 1.2.2. Situational analysis

In the second stage, the team undertook a situational assessment of the SADC region to inform the development of a pro forma framework. This was done by collecting, synthesising and analysing the available evidence on

consumer protection internationally and in the region. The situational report submitted to the FMT comprised three sections.

1. A review of the main international and regional literature, guidelines and principles pertaining to consumer protection in the financial services industry. A summary of this discussion is provided in section 2 of this report.
2. A description of the current consumer protection landscape in SADC as it pertains to financial services. This was done to describe and understand the progress made thus far, and the challenges which still face the region. A summary of this discussion is provided in section 3 of this report.
3. A review of the consumer protection landscapes in each of the 15 SADC countries. These detailed country reviews can be found in the report entitled “Situational analysis – Final”.

### 1.2.3. [Pro forma consumer protection assessment framework](#)

Following the desktop review in stage 2, a pro forma consumer protection assessment framework was developed to measure the status and progress in consumer protection. This pro-forma framework also served as the evaluation guide for the analysis and consultations in the two case studies in stage 4.

### 1.2.4. [Country visits](#)

The pro forma consumer protection assessment was piloted, and engagements held with relevant stakeholders in the two selected countries. The findings from these visits were compiled into country reports, which are summarised in section 4 of this report.

### 1.2.5. [Draft report and draft consumer protection assessment framework](#)

This report serves as the draft report for stage 5 of the project.

- Section 2 provides a brief overview of consumer protection, its importance in the financial sector, and the minimum standards for financial consumer protection in SADC countries;
- Section 3 provides a brief summary of the current situation in SADC, as informed by the situational analysis;
- Section 4 provides a summary of the 2 country visits undertaken; and
- Section 5 summarises the purpose and use of consumer protection assessment framework.

## 2. Consumer protection

### 2.1. Importance (rationale) of consumer protection

The modern consumer rights and consumer protection movement has its origins in the 1960s, when the number and diversity of goods and services available to consumers, across most markets, expanded dramatically. As the range of products and marketing efforts of producers increased, concerns about product safety, information provided about products and the conduct of rogue traders arose. Consumer activists began advocating for the recognition of consumer rights and their entrenchment as legal rights. Internationally the main guiding document for consumer protection legislation is the United Nations (UN) Guidelines for Consumer Protection (1985).

#### Box 1: UN Guidelines for consumer protection

Consumer rights outlined in the UN Guidelines for Consumer Protection:

- The right to safety
- The right to be informed
- The right to choice
- The right to be heard
- The right to satisfaction of basic needs
- The right to redress
- The right to consumer education
- The right to a healthy environment

*Source: (United Nations, 2003)*

While the initial approach to consumer protection was rights-based, a more nuanced market-development approach has since emerged, which recognizes that effective consumer protection is fundamentally about enabling consumers to transact with confidence in the marketplace.

### 2.2. Consumer protection in financial services

With the growth of financial markets and rapidly expanding financial inclusion, concerns over consumer education, protection and recourse in financial services have received increased attention. Specifically, it is believed that general consumer protection measures and consumer education do not offer sufficient consumer protection in financial services and that dedicated measures and regulatory institutions are required. This is for a number of reasons.

Firstly, the complexity of some financial products make it difficult for consumers to understand and choose between products. This is compounded by complex pricing practices that make it difficult for consumers to assess the true cost of the product. Secondly, the terms and conditions for financial services tend to be lengthy, with multiple exclusions. As a result, consumers may not appreciate the limitations and the risks associated with a product. Finally, the marketing and sales practices of intermediaries and service providers may cause vulnerable consumers to purchase products they do not need, which may have a negative impact on consumers' financial health. Box 2 below details some of the consumer related risks and concerns highlighted in a study by CGAP in 2010.



## Box 2: CGAP consumer protection risk and concerns

### Cross-cutting consumer protection concerns

- A lack of product transparency such that consumers do not understand the total product cost. This may be the result of deceptive advertising, small print, and the attachment of complicated terms and conditions, many of which are not understood by the consumer;
- Advice: The provision of sub-par financial advice by FSPs;
- Fees: The charging of high fees, with no transparency in such pricing;
- Sales practices: Aggressive sales practices by FSPs leading to over-indebtedness; and
- Recourse: A lack of recourse, or limited knowledge on recourse practices.

### Product-specific consumer protection concerns

- Deposit products: Consumers' savings are eroded by the high fees charged on such products;
- Credit products: Consumers do not fully understand the complicated terms and conditions around delinquency, default, and collections; and
- Insurance products: Consumers often do not fully understand the policy, such that they fail to receive the full benefits of their insurance.

Source: (CGAP, 2010)

### 2.2.1. Consumer protection legislation

Consumer protection seeks to correct the information imbalances described above, by enabling and empowering consumers to make informed choices and providing them with avenues of recourse. This is usually achieved through legislation, which establishes a broad set of rules<sup>3</sup>, as well as compliance monitoring and enforcement, consumer education, complaints handling and consumer redress mechanisms.

Consumer protection institutional arrangements differ across countries and, as with legislation, there is no single or superior arrangement. The appropriate institutional form depends on market circumstances, resource availability and the level of market sophistication. Regulation can be consolidated in a single agency, partially integrated in a number of agencies or can be fragmented in individual, stand-alone regulators. Depending on the mandate provided by legislation, regulators require a range of capacity and resources, including the ability to assess and issue licenses, monitor compliance, investigate and enforce sanctions for non-compliance, and undertake consumer education activities.

### 2.2.2. Enforcing consumer protection legislation

A measure of the effectiveness of a regulatory regime is the ability of the regulator to effectively detect non-compliance, investigate, decide on the level of non-compliance, and impose sanctions. The sanctions imposed should be significant enough to deter or change inappropriate behavior by financial service providers. Penalties may include fines, license suspension and in cases of the most serious contraventions, imprisonment.

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<sup>3</sup> In this regard, legislation refers to prudential regulation (the first level of financial consumer protection), product regulation and market conduct regulation to looks at how service providers interact with consumers and other business.

**Table 1: Authority imposing penalties**

	Regulator	Independent Tribunal/Board of the Regulator	Court
Fine	✓	✓	✓
Suspension of License	✓	✓	
Naming and shaming	✓		
Refund	✓	✓	
Compensation order	✓	✓	✓
Rescindment of contract		✓	✓
Civil case			✓
Criminal prosecution			✓
Imprisonment			✓

Source: Adapted from (Consumers International, 2013)

### 2.2.3. Recourse

Whilst enforcement action is important as a deterrent and as a mechanism for correcting conduct, in general it does not offer consumers recourse, and instead focuses on ensuring that problematic conduct does not continue going forward. In order to include meaningful recourse, consumer complaints must typically be addressed in a quick and effective manner. In practice, regulators and courts are unlikely to be able to resolve a complaint expeditiously, due to the underlying procedures and processes required. Alternative forms of redress such as an ombudsman scheme are often better suited to providing redress to consumers.

## 2.3. International principles for consumer protection

A number of international institutions have developed guidelines and principles as diagnostic tools and to guide policy makers and regulators to design a financial consumer protection framework appropriate for their particular context. These are summarised below.

### 2.3.1. World Bank's Good Practices for Financial Consumer Protection

The World Bank Good Practices document outlines a set of 39 general principles for a well-functioning financial consumer protection regime, and then provides a further set of more detailed sectoral sub-recommendations (for example, almost 160 good practice recommendations for the banking sector alone).<sup>4</sup> The 39 general principles are grouped into eight theme areas. The main recommendations under each theme area are highlighted in the box below.

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<sup>4</sup> (Truen, 2011)

### Box 3: Summary of the World Bank principles

#### 1. Consumer protection institutions

- The World Bank recommends that there should be:
  - Clear statutory consumer protection rules for financial services,
  - Sector-specific codes of conduct,
  - A licensing (or registration) regime for all financial service providers,
  - Market conduct regulatory oversight, and
  - Dispute resolution should be accessible and affordable.

#### 2. Disclosure and sales practices

- The financial institutions must ensure that the product they sell to the consumer is in fact suitable for their needs:
  - Customers should be provided with the key facts of each product,
  - The facts should be short (one page) and easy to understand,
  - High risk products should have a cooling-off period,
  - Service providers should be precluded from bundling services, and
  - Staff training must be mandated.

#### 3. Customer account handling and maintenance

- Customers should:
  - Receive regular written statements on their accounts, and
  - Should be notified as soon as possible of changes in contract or pricing terms.
- Financial institutions must:
  - Maintain up-to-date customer records'
  - Allow customers access to them for free or at a reasonable fee, and
  - Abstain from abusive debt recovery practices (which should be prohibited by law).

#### 4. Privacy and data protection

- Legislation should:
  - Provide rules for the use, maintenance and disclosure of personal information
  - Govern a credit bureau
- Financial service providers should:
  - Safeguard the confidentiality of their customer data, and
  - Inform their customers of their data policies and data-sharing practices.
- Credit bureaus should be subject to some form of oversight.

#### 5. Dispute resolution mechanisms

- Financial institutions must:
  - Provide clear contact points for complaints
  - Have documented and implemented complaints handling procedures
  - Keep thorough records of complaint.
- Consumers must have access to an affordable, independent dispute resolution mechanism, such as an ombud.
- Complaint statistics must be published by regulators and ombuds.

#### 6. Guarantee and compensation scheme

- Regulators must be empowered to secure the interests of consumers when institutions are in financial distress
- Priority must be given to depositors, life insurance policyholders and pension fund members in the liquidation process.

#### 7. Financial literacy and consumer empowerment

- A consumer financial education strategy must be put in place,
- It should be led by an organ of the state
- Education initiatives must be tested against consumers’ actual needs, and
- Progress in meeting educational goals must be measured regularly.

## 8. Competition

The World Bank recommends that:

- Consumer welfare should be a key consideration in the regulatory decisions of competition authorities with respect to financial services’
- Regulators should consult each other before making decisions, and
- Competition regulators assess competition between retail financial institutions and make recommendations on how to optimize competition and consumer choice.

### 2.3.2. CGAP’s Consumer Protection Regulation in Low-Access Environments

While the World Bank’s Good Practices are designed for a sophisticated financial regulation environment, CGAP, with its focus on microfinance and financial inclusion, uses an incremental approach to consumer protection. The approach distinguishes between an “entry-level” package for low-inclusion countries with little existing consumer protection and an additional set of measures for more advanced economies.

#### Box 4: CGAP basic package

##### 1. Basic registration and coverage by regulation of all providers of a particular product or service, to the extent feasible:

- Registration would be triggered by activity rather than institutional type,
- Consumer protection rules would be extended to as many providers as possible, and
- While some FSPs might be exempted, serious thought should be given before completely exempting informal providers as they should be required to comply with basic conduct rules.

##### 2. Basic information

- Written, easily understood information should be provided to consumers before they purchase financial service,
- Written contract agreements should be provided to consumers’ and
- Mandating standardized disclosure enables better comparison shopping.

##### 3. Basic standards of conduct:

- Practices such as fraud, deception, misuse of personal information should be prohibited

##### 4. Basic consequences:

- Depending on the severity of the infraction, penalties should be imposed.

##### 5. Basic recourse:

- There should be a designated unit in each FSP to receive and respond to consumers’ queries and complaints.

##### 6. Basic consumer awareness initiatives:

- To make consumers aware of the rules, and
- Inform them of their rights and redress options.

##### 7. Basic market monitoring by regulators of complaints data.

## Box 5: CGAP expanded package

### 1. Expanded prohibitions on unfair provisions and suitability/appropriateness standards:

- Rules that mitigate emerging risks, such as over-indebtedness, aggressive sales, deceptive marketing, or abusive product features.

### 2. Attention to new technology, distribution, and delivery channels:

- Agents and outsourcing, third-party advice.

### 3. Guidance, facilitation, or delivery of extensive recourse, dispute resolution, and debt management measures:

- Third-party mediators or ombudsmen, tribunals, counselling and debt management programs.

### 4. Expanded market monitoring:

- Surveys, media monitoring, mystery shopping, focus groups.

### 5. More extensive financial capability initiatives:

- Coordinated financial education and literacy initiatives that support consumer protection standards and risks.

## 2.3.3. Fundamentals for Financial Ombudsmen

In 2012 the World Bank published a report outlining the fundamental principles underpinning the creation of an independent and effective financial ombudsman, to help increase consumer confidence in financial services. The report explains that in addition to its role in the resolving of disputes, an ombudsman should also provide feedback to government, the regulators, FSPs, and consumers on lessons learnt.

## Box 6: World Bank principles of an ombudsman

### 1. Independence

As the ombudsman is an alternative to the courts, they should be as independent and impartial as a judge.

- The ombudsman should not be appointed by industry;
- The ombudsman should not have worked in the financial industry, or a related association, within the last 3 years;
- The minimum term of office for the ombudsman should be 5 years;
- The industry should not be able to bring pressure on the ombudsman by influencing the ombudsman's salary; and
- The ombudsman's decision/recommendation on a case should be final.

### 2. Governance:

The ombudsman scheme should have an independent governance body, board or council; this may be the body that appoints the ombudsman, or a body that is equally independent of the financial industry.

- The governance body should not be involved in deciding cases nor in the day-to-day management of the ombudsman scheme. Its function is to:
  - Ensure and safeguard the independence of the ombudsman;
  - Ensure that the ombudsman scheme has adequate resources;
  - Oversee the efficiency and effectiveness of the ombudsman scheme; and
  - Advise the ombudsman on the strategic direction of the ombudsman scheme.

### 3. Funding:

The ombudsman can either be funded by the government or by the financial industry.

- How the cost is divided between the players in the industry is not important. What is important, is that there is

sufficient funding available for the ombudsman to operate effectively;

- Some of the ways in which funding can be shared are:
  - A levy payable by all the FSPs covered by the ombudsman scheme; apportioned according to market share;
  - Case fees payable by the FSPs about which consumers refer complaints to the ombudsman scheme; or
  - A combination of the two.
- The ombudsman scheme should consult publicly before fixing its yearly budget; and
- The European Recommendation 1998/257/EC requires that the ombudsman is free or of modest cost for consumers, but even a modest fee will be a barrier to more vulnerable consumers.

#### **4. Coverage and procedure:**

This relates to the number of ombudsmen, which FSPs are covered, and which consumers are eligible to complain. The ombudsman should also have a published procedure that is clear, fair, effective, prompt and economical. Key questions here include:

- One financial ombudsman or an ombudsman for each sector? Ombudsmen are sometimes created for each sector (banking, insurance), but given the overlapping products offered by FSPs, the trend towards a single financial ombudsman is growing.
- Which financial businesses and activities are covered?
  - It is easier to obtain comprehensive coverage where financial businesses are required by law (or by regulatory requirement) to be covered by a financial ombudsman; and
  - It is unhelpful if a financial ombudsman covers only the members of a particular industry association.
- Which complainants are covered?
  - Must the consumer be a customer of the FSP? Some financial ombudsmen cover prospective customers, and deal with complaints on wrongful refusal to provide a service.
- As the ombudsman is an apex complaints mechanism, FSPs should have effective complaints handling procedures, with clear processes and time limits; and
- The ombudsman should have good facilities to handle consumer enquiries.

#### **5. Accessibility:**

Consumers with a problem can only access the financial ombudsman if they know that the ombudsman exists; they know how to contact the ombudsman; and the means of contacting the ombudsman ensure that cost is not a barrier

- In addition to the ombudsman making information widely available, financial businesses should be required to tell dissatisfied consumers about the ombudsman;
- The ombudsman should have a website which explains to consumers how to make a complaint;
- Information should be readily available also to consumers who do not have access to the internet; and
- Consumers should be able to phone the ombudsman scheme free-of-charge, so that cost is not a barrier for the poor.

#### **6. Transparency:**

The rules and procedures of the financial ombudsman should be published and easily accessible, and should include a clear statement of:

- The types of dispute that the financial ombudsman can deal with;
- Anything the consumer must do before referring a dispute to the financial ombudsman;
- The process the financial ombudsman uses for the disputes that are referred to it;
- Any requirements of the parties as part of that process;
- Any costs that have to be paid, or which can be awarded at the end of the process;
- How and by whom cases are decided;
- The basis of decisions (fairness/equity or strict law);
- Whether or not the decision is published;

- Whether or not the names of both parties or the financial business are published;
- Whether the decision is binding on the financial business or not;
- Whether the decision is binding on the consumer or not; and
- The consequences of not complying with a decision.

#### 7. Accountability:

The ombudsman should pay due regard to the overall public interest in the forward-planning and day-to-day running of the ombudsman scheme.

- Ombudsmen should publish a report at least yearly, explaining the work that they have done;
- Ombudsmen should provide appropriate statistics about the disputes handled and the way in which they were handled; and
- Where financial ombudsmen identify systemic issues that financial regulators would be better placed to tackle, it is helpful if the financial ombudsman can draw those issues to the attention of the financial regulators.

*Source: (The World Bank, 2012)*

#### 2.3.4. The G20 and the OECD

In 2011, the G20 Finance Ministers and Central Bank Governors called on the OECD and the Financial Stability Board (FSB) and other relevant international institutions to develop a set of guiding principles for consumer protection in financial services.

#### Box 7: The G20 principles of financial consumer protection

1. Financial consumer protection should be an integral part of the legal, regulatory and supervisory framework, and should reflect the diversity of national circumstances and global market and regulatory developments within the financial sector.
2. Oversight bodies must be established with the necessary authority, and sufficiently capacitated to fulfil their mandates.
3. All financial consumers should be treated equitably, honestly and fairly at all stages of their relationship with financial service providers.
4. FSPs should disclose to consumers all key information pertaining to the fundamental benefits, risks and terms of a product.
5. Financial education and awareness should be promoted by all relevant stakeholders and clear information on consumer protection, rights and responsibilities should be easily accessible to consumers.
6. FSPs should have the objective to work in the best interest of their customers and be responsible for upholding financial consumer protection.
7. Consumer Assets should be protected against fraud and misuse.
8. Consumers' financial and personal information should be protected through appropriate control and protection mechanisms.
9. Jurisdictions should ensure that consumers have access to adequate complaints and redress mechanisms that are accessible, affordable, independent, fair, accountable, timely and efficient.
10. Competition should be promoted to provide consumers with greater choice amongst financial services and to create competitive pressure on FSPs to offer competitive products.

*Source: (OECD, 2011)*

### 2.3.5. Alliance for Financial Inclusion

In 2014, the Alliance for Financial Inclusion (AFI) Mobile Financial Services Working Group (MFSWG) published a guideline - Consumer Protection in Mobile Financial Services (MFS) - to identify consumer protection issues in mobile financial services and to discuss the options available to regulators in addressing them.

#### **Box 8: THE AFI responsibilities of a Mobile Financial Services FSP**

The responsibilities of the FSP should be clearly stated in the regulations and at minimum should require that the FSP:

- Demonstrate that they understand the market and have conducted appropriate market research analysis to design products that satisfy the needs of the market, reduce potential threats and mitigate the risks they might face;
- Have appropriate processes to educate consumers about their rights, duties and responsibilities in the use of MFS;
- Comply with the regulation that aims to ensure services are provided in a safe, reliable and transparent way;
- Ensure adequate management of operational risks by having appropriate operational manuals, internal control procedures and contingency plans in place that can be reviewed by regulators;
- Ensure they have appropriate contracting manuals and an operational manual that explains how to carefully screen, train and monitor agents and/or outsourced agent network operators; and
- Have a fair and effective internal complaints/redress system.

*Source: (Alliance for Financial Inclusion, 2014)*

In addition, AFI also provides guidelines on the responsibilities of the regulator, as they play a critical role in consumer protection by defining policy and appropriate regulations for the MFS industry.

#### **Box 9: AFI MFSP regulatory responsibilities guidelines**

Regulators should, at a minimum, ensure that:

- A regulatory framework for consumer protection that takes a proportionate risk-based approach to prudential standards is in place, but which also allows for innovation and aims to achieve the objective of financial inclusion;
- FSPs are all licensed to operate under clear rules to protect consumer funds from misappropriation by the MFSP, insolvency, fraud or any operational risk;
- FSPs operate on a level playing field that promotes competition to boost efficiency and increase consumer choice.
- There are appropriate and accurate standards for disclosure of information;
- There are simplified consumer protection rules for low-value transactions under the guiding principle of proportionate risk-based policies;
- FSPs are required to be responsible for all their services whether provided directly to the consumer through a mobile network carrier or through agents;
- Clear data privacy and confidentiality rules are in place and properly enforced by the regulator;
- There are appropriate channels for handling complaints, both internally by MFSPs and relevant external complaint resolution services via the regulator or appropriate government agency; and
- Relevant data has been collected, both quantitative and qualitative, to assist the regulator in fine-tuning the consumer protection regulation based on evidence.

*Source: (Alliance for Financial Inclusion, 2014)*



## 2.4. Minimum principles/ guidelines for SADC

For the purpose of this study and the development of the associated framework, it is important to develop a set of guidelines and questions which can be used to assess the state of consumer protection in SADC countries. Specifically, this framework needs to reflect the different levels of formal financial inclusion across SADC countries and the range of financial service providers, formal and informal, that operate in this environment. Table 2 highlights the number of countries in SADC where levels of financial inclusion are low; but also reveals the large variance in financial inclusion between SADC member states.

**Table 2: Countries by levels of formal financial inclusion**

Level of financial inclusion	Low	Intermediate	High
Range of formal financial inclusion	0% - 39%	40%-79%	80% - 100%
Countries	Zambia, DRC, Malawi, Angola, Mozambique and Madagascar	Namibia, Zimbabwe, Botswana, Swaziland, Lesotho, Tanzania	Seychelles, Mauritius, South Africa

Source: World Bank, FinScope

Despite these differences, the situational analysis and the country visits revealed that most SADC countries already have substantial consumer protection legislation and supervision structures in place. The main challenge in these countries is to ensure that the legislation and institutional arrangements are sufficiently broad to address all necessary financial services, especially as levels of financial inclusion and product sophistication increase. For example, in many countries, mobile operators and retailers are important providers of financial services, but are currently excluded from the regulatory framework. Whereas it is important that the proposed framework is able to absorb emerging and informal financial products, it is equally important that this is done on an incremental basis, so that the regulatory burden does not hamper the growth and development of the sector.

The resulting guidelines for financial consumer protection for SADC countries are therefore informed by the above-mentioned and internationally accepted principles for financial consumer protection, but have been adapted in response to the situational analysis and consultations to reflect SADC priorities and conditions. To demonstrate the relationship between these different sets of principles, the proposed Guidelines for Consumer Protection in SADC are organized below according to the G-20 principles for financial consumer protection.

### 2.4.1. Legal and Regulatory Framework

#### 1. General legal framework

##### **G20 HIGH LEVEL PRINCIPLE ON FINANCIAL CONSUMER PROTECTION.**

**PRINCIPLE 1:** Financial consumer protection should be an integral part of the legal, regulatory and supervisory framework, and should reflect the diversity of national circumstances and global market and regulatory developments within the financial sector

### SADC Guidelines

1. A proportional and incremental approach should be adopted to financial consumer protection, reflective of the level of market development, the size of the transaction and the sophistication of the FSP or MFSP;
2. At minimum, general consumer protection legislation with application to the financial sector should be in place, setting out general requirements for marketing and sales practices, information and disclosure, prohibited practices and with particular provisions for credit;
3. Ideally, the regulatory framework should be product-based, rather than institution-based, and should be as inclusive as possible, requiring as many FSPs or MFSPs to be registered as possible.

## 2. Protection of Consumer Assets

### **G20 HIGH LEVEL PRINCIPLE ON FINANCIAL CONSUMER PROTECTION.**

**PRINCIPLE 8:** Consumer assets should be protected against fraud and misuse.

### SADC Guidelines

1. Prudential supervision and oversight is required for deposit-taking, insurance, pension funds, investment schemes and payment providers (including mobile FSPs) when the level of penetration in a country justifies its regulation.
2. The regulatory framework should be designed to register or license as many FSPs and MFSPs as possible with possible exceptions for low-value, low-risk transactions.
3. FSPs and MFSPs should be required to meet capital adequacy and liquidity requirements, meet governance standards (including a fit and proper test) and have risk management processes in place that are appropriate for the types of products that they provide.

## 3. Fair Treatment of Consumers

**G20 HIGH LEVEL PRINCIPLES ON FINANCIAL CONSUMER PROTECTION. PRINCIPLE 3:** All financial consumers should be treated equitably, honestly and fairly at all stages of their relationship with financial service providers.

### SADC Guidelines

1. Legislation or regulations should be in place and applicable to all financial products, FSPs and intermediaries to prohibit false and deceptive statements, misleading advertising, unfair contract terms, and fraud;
2. Sector-specific legislation should set out specific provisions relating to FSPs, MFSPs and intermediaries or agents, setting out standards of conduct for selling and marketing practices for insurance and credit products, and prohibiting pressure selling;
3. Regulators should ensure that FSPs and MFSPs are responsible for the conduct of their agents.

#### 4. Responsible Conduct by FSPs

**G20 HIGH LEVEL PRINCIPLES ON FINANCIAL CONSUMER PROTECTION. PRINCIPLE 6:**

Financial services providers and authorized agents should have as an objective to work in the best interest of their customers and be responsible for upholding financial consumer protection . . . Depending on the nature of the transaction and based on information primarily provided by customers, financial services providers should assess the related financial capabilities, situation and needs of their customers before agreeing to provide them with a product, advice or service.

##### SADC Guidelines

1. Sector-specific or general financial consumer protection legislation or regulation should require FSPs and intermediaries to gather sufficient information from the consumer before making a recommendation regarding a specific financial product or service, to ensure that the product or service is likely to meet the needs and capacity of that consumer.
2. Countries may consider imposing requirements on FSPs limiting excessive credit extension or mis-selling of insurance products. Such requirements could be imposed through product-specific legislation – where the requirements form part of prudential supervision, regulators must ensure that non-bank credit providers are also caught.

#### 5. Information and Disclosure

**G20 HIGH LEVEL PRINCIPLES ON FINANCIAL CONSUMER PROTECTION. PRINCIPLE 4:**

Financial service providers and authorized agents should provide consumers with key information that informs the consumer of the fundamental benefits, risks and terms of the product . . . Appropriate information should be provided at all stages of the relationship with the customer . . . Standardized pre-contractual disclosure practices (e.g., forms) should be adopted where applicable and possible to allow comparisons between products and services of the same nature.

##### SADC Guidelines

1. Disclosures and information should be standardized as far as possible, in plain language and if possible in local languages, and focused on key information to ensure that consumers are provided with simple understandable information;
2. Legislation should require that consumers are provided with written, easily understood information before they purchase a product (a quote) and a written agreement that sets out the amount borrowed/deposited/paid, the respective obligations of consumers and (M)FSPs and any penalties for non-performance. These requirements should be found in both general consumer protection legislation and sector specific legislation;
3. Agreements should be verbally explained to consumers;

4. Legislation must provide for notification of consumers when prices or other conditions of financing change, and for consumers to receive periodic statements.
5. Intermediaries and agents must be bound by information and disclosure requirements.

## 6. Privacy and Data Protection

**G20 HIGH LEVEL PRINCIPLES ON FINANCIAL CONSUMER PROTECTION. PRINCIPLE 8:** Consumers' financial and personal information should be protected through appropriate control and protection mechanisms.

### SADC Guidelines

1. Legislation or regulation should be implemented as regards consumer rights with respect to the sharing of private information with other parties. The legislation or regulation should be applicable to all FSPs and MFSPs, irrespective of the financial product provided;
2. FSPs and MFSPs should be required to protect the confidentiality and technical security of customer data;
3. Specific legislation or regulation should be in place to regulate information sharing and storage among participants in credit reporting systems, and should require procedures to be put in place to give consumers access to their data and to correct incorrect or disputed entries.

## 7. Promotion of competition

**G20 HIGH LEVEL PRINCIPLES ON FINANCIAL CONSUMER PROTECTION. PRINCIPLE 10:** Competition should be promoted to provide consumers with greater choice amongst financial services and to create competitive pressure on FSPs to offer competitive products.

### SADC Guidelines

1. Competition in markets should be ensured through regulatory entry requirements that facilitate entry of new and alternative service providers, including, for example, MFSPs and other non-traditional FSPs as far as possible. This may be most important in smaller, low inclusion environments, with high levels of market concentration, for example in the banking sector;
2. Regulatory mechanisms such as deposit-insurance and the tiering of deposit requirements could be considered to promote greater competition between deposit-taking institutions;
3. Prohibitions against anti-competitive practices such as the abuse of market dominance and collusion should be in place, either in specific competition legislation or combined with consumer protection legislation;
4. Particular attention should be given to the levels of fees by competition regulators and they should prepare and publish periodic reports on competition in the financial sector and the impact on fees.

### 2.4.2. Effective regulators

**G20 HIGH LEVEL PRINCIPLES ON FINANCIAL CONSUMER PROTECTION. PRINCIPLE 2:**

There should be oversight bodies (dedicated or not) explicitly responsible for financial consumer protection, with the necessary authority to fulfil their mandates. They require clear and objectively defined responsibilities and appropriate governance; operational independence; accountability for their activities; adequate powers; resources and capabilities; defined and transparent enforcement frameworks; and clear and consistent regulatory processes.

#### SADC Guidelines

1. The regulatory structure adopted will depend on the history and financial sector development of each country. However, it is important that supervision and regulation should be focused on a product or functional basis, as far as possible, to prevent gaps in the supervisory or regulatory framework;
2. However, where prudential and market conduct regulation is combined in one institution, it is important that there is clear separation between areas responsible for financial consumer protection and prudential supervision and that the financial consumer protection unit is sufficiently resourced;
3. An authority independent from the prudential regulator should be charged with competition regulation;
4. Mechanisms should exist for regulators to consult with each other where their decisions impact on the same FSPs or MFSPs;
5. All regulators should be independent and self-funding to the extent that they issue licences, and should be entitled to retain fee income to fund operations and financial education activities;
6. Regulatory authorities must have sufficient resources and powers to effectively enforce legislation.

### 2.4.3. Financial education

**G20 HIGH LEVEL PRINCIPLES ON FINANCIAL CONSUMER PROTECTION. PRINCIPLE 5:**

Financial education and awareness should be promoted by all relevant stakeholders and clear information on consumer protection, rights and responsibilities should be easily accessible by consumers. Appropriate mechanisms should be developed to help existing and future consumers develop the knowledge, skills and confidence to appropriately understand risks, including financial risks and opportunities, make informed choices, know where to go for assistance and take effective action to improve their own financial well-being.

#### SADC Guidelines

1. As a licence condition, FSPs and MFSPs should be required to educate their clients about product features, risks involved in certain types of transactions, potential for fraud and misuse of confidential information, and to provide clients with information about recourse and redress mechanisms;
2. Regulators responsible for financial consumer protection should be responsible for making consumers aware of their rights and redress options and for conducting and coordinating broader financial literacy initiatives;
3. Regulators should also be responsible for making FSPs and MFSPs aware of their legal obligations and the rights of consumers by making legislation, regulations and guidelines readily available;
4. Financial education initiatives should be monitored and their impact should be measured periodically.

#### 2.4.4. Accessible Dispute Resolution and Redress

**G20 HIGH LEVEL PRINCIPLES ON FINANCIAL CONSUMER PROTECTION. PRINCIPLE 9:**

Jurisdictions should ensure that consumers have access to adequate complaints handling and redress mechanisms that are accessible, affordable, independent, fair, accountable, timely and efficient.

##### Guidelines

- As a condition of their licence, the bulk of FSPs and MFSPs (exemptions may be appropriate for smaller institutions) should be required to have a complaints-handling procedure and redress mechanism in place, which meet the standards set by the regulator. Minimum requirements should include that a designated contact to receive and respond to consumer queries and complaints has been made public, and that complaints are recorded;
- Complaints that are not resolved at the FSP/MFSP level may be escalated to another party, either an industry association, an ombud or an appropriate regulatory institution;
- Dispute resolution mechanisms/institutions must be independent, sufficiently resourced and accessible to all consumers, including low-income consumers and those in more remote locations;
- Statistics on consumer complaints, including those related to breaches of codes of conduct, must be published by the industry association, ombudsman or regulatory authority at least annually;
- Regulators should monitor the nature and incidence of complaints and the effectiveness of the complaints handling and dispute resolution mechanisms.

### 3. Situational analysis

#### 3.1. SADC consumer protection regulatory frameworks

The country analysis found both common features and key gaps and differences in the consumer protection framework in SADC countries. Most importantly, it is clear that across most SADC Member States, the minimum legislative and institutional requirements for consumer protection are in place. Specifically, all countries have enacted some form of legislation to protect consumers in the financial services sector and ten of the fifteen SADC countries now have a stand-alone consumer protection law. Nine SADC countries have established some form of consumer protection agency, either as an independent entity, or combined with the competition authority.

**Table 3: Legislative framework**

	Income level	Stand-alone consumer protection law	Competition law	Financial sector laws which contain elements of consumer protection
Angola	Upper middle income	✓		✓
Botswana	Upper middle income	✓	✓	✓
DR Congo	Low income	✓		✓
Lesotho	Lower middle income			✓
Madagascar	Low income			✓
Malawi	Low income	✓		✓
Mauritius	Upper middle income	✓	✓	✓
Mozambique	Low income			✓
Namibia	Upper middle income		✓	✓
Seychelles	High income	✓	✓	✓
South Africa	Upper middle income	✓	✓	✓
Swaziland	Lower middle income		✓	✓
Tanzania	Low income	✓		✓
Zambia	Lower middle income	✓	✓	✓
Zimbabwe	Low income	✓	✓	✓

*Source: Consolidated data from each of the country studies in this document*

Looking beyond the overall legislative framework, the legislation that is in place in SADC countries has been reviewed against ten key provisions of consumer protection in Table 4 in the following section. With the exception of Madagascar and Zambia, all countries mandate the disclosure of information to clients, and prohibit misleading and false advertising and statements. Likewise, 12 of the 15 SADC members provide some form of protection for deposits and policy-holders. On the other hand, the personal data of consumers is only protected in 8 countries; and most countries do not appear to prohibit unfair contract terms.

### 3.2. Preliminary findings

While there is wide coverage of consumer protection legislation in SADC, it is clear that in more developed countries in particular, the existing framework is more developed than in less-developed markets. South Africa, Seychelles and Mauritius appear to have the most comprehensive legislative framework in place, with the DRC and Madagascar the most incomplete. There are however interesting exceptions to this finding – with the legislative framework in wealthier Botswana relatively weak, and that in poorer Malawi relatively strong.

The analysis was not able to assess the extent to which these institutions and instruments are effective in providing the level of oversight and enforcement that is needed to ensure adequate consumer protection. However, in those countries where a dedicated consumer agency exists, enforcement appears to be strong; and where no stand-alone regulator is in place, enforcement is found to be weaker (or not reported). The exceptions to this rule are Tanzania, Namibia and Mozambique, where no consumer agency exists, but there is some evidence of capacity and enforcement.

### 3.3. Issues for further consideration

The main purpose of the status quo analysis was to collect as much descriptive information as possible on the current consumer protection framework in place within all SADC member studies. This has been largely achieved. In doing so, this initial analysis has raised a number of interesting features of the financial service industry in SADC, and the application of consumer protection law in particular, which may require further consideration as part of the country case studies or through additional research. These include:

- ***Ensuring that the consumer protection framework is proportionate to the size and complexity of the market.*** As with all forms of regulation, it is important to ensure that the costs associated with the implementation of consumer protection legislation are proportionate to the resulting benefits that are likely to accrue to the wider public. In large and sophisticated financial markets, a comprehensive regulatory framework may be required to mitigate against the scale and the nature of the risks involved. But in smaller and more traditional financial markets, a lighter form of regulation may be appropriate, at a lower cost to the system as a whole. Within SADC, consideration also needs to be given to the availability of skills and capacity in some countries, and the ability of financial regulators to implement and enforce an unnecessarily complex consumer protection framework. All of these factors need to be taken into account in determining minimum guidelines for an economically diverse region such as SADC.
- ***Assessing the need for a separate or stand-alone consumer protection mechanism.*** In most of the countries analyzed, separate consumer protection authorities do not exist. Rather, consumer protection provisions are pushed down onto financial institutions through the licensing or prudential requirements imposed on them by the overarching insurance or banking regulator, or in some cases, through guidelines issued by sector associations. Whereas this approach may provide some degree of industry oversight, the regulatory scope of these institutions is not always clear (when it comes to consumer protection), and complaints and enforcement mechanisms are generally inadequate. This raises the question of whether a separate and dedicated entity or ombudsman is necessarily required to achieve consumer protection objectives, or whether similar results can be achieved by modifying the mandate and regulatory scope of existing regulators. More information on the effectiveness of these different models within a SADC context is needed.



- ***Extending the consumer protection framework to informal markets and poor consumers.*** Where consumer protection legislation and authorities do exist, they are largely (or exclusively) concerned with the behavior of formal financial markets. On the other hand, the evidence reveals that large numbers of SADC residents do not have access to formal markets, but instead, rely on informal or unregulated micro-finance providers for traditional banking and insurance products. Moreover, poor consumers are less likely to have access to formal complaint mechanisms. Extending the regulatory net to fully incorporate the informal sector is clearly difficult, and often impossible. But it may be useful to explore how specific countries have sought to introduce elements of the consumer protection framework into the micro finance sector; and the specific steps that they have taken to extend consumer protection provisions to poor consumers.
- ***Learning from and educating consumers.*** Most of the information collected thus far has been obtained from regulators directly (through their publications and website). This gives us a very limited view on the appropriateness and effectiveness of the prevailing framework in SADC Member States. Somehow, the perspectives of consumers need to be incorporated. Likewise, consumer education is a key component of an effective consumer protection framework, and it would be valuable to assess the public's general awareness and use of existing laws and mechanisms. The different roles of regulators, associations and financial institutions in educating consumers on their rights and available remedies also need to be considered in greater detail.
- ***Addressing conflicts between consumer reporting and protection.*** In most jurisdictions, consumer protection legislation specifically limits the amount of private information that can be made available by financial intermediaries to each other or to other entities. Whereas these confidentiality provisions are critical from a consumer privacy perspective, they may limit the ability of the industry, more broadly, to report and assess the particular behavior or risk associated with individual clients. This in turn may constrain the ability of the formal financial sector to extend certain services, most notably credit, to new and more risky consumers. It may also impact adversely on competition between different financial service providers. Whereas in some countries, well-regulated credit bureaus have been established to address this specific information asymmetry, in other countries, this does not seem to be the case. The different ways in which the consumer protection framework can allow for the sharing of necessary credit information, without impinging on consumer rights, may require further exploration.

**Table 4: Legal and regulatory framework**

	Protection of deposits	Protection of policy holder	Regulation of credit agreements	Regulation of insurance contracts	Mandatory disclosures by providers & intermediaries	Prohibitions on misleading & false statements & advertising	Prohibitions on fraud & unfair business practices	Prohibitions on unfair contract terms	Personal data protection	Prohibitions on anti-competitive conduct
Angola	✓	✓	✓	✓	✓	✓		✓	✓	✓
Botswana	✓				✓	✓	✓			✓
DR Congo		✓			✓	✓				
Lesotho		✓	✓		✓	✓			✓	
Madagascar	✓	✓		✓						
Malawi	✓	✓	✓		✓	✓	✓		✓	✓
Mauritius	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Mozambique	✓				✓	✓	✓			
Namibia	✓	✓	✓		✓	✓			✓	✓
Seychelles	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
South Africa	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Swaziland		✓		✓	✓	✓			✓	✓
Tanzania	✓	✓	✓	✓		✓	✓	✓		✓
Zambia	✓		✓	✓	✓	✓		✓		✓
Zimbabwe	✓	✓	✓		✓	✓	✓			✓

## 4. Country visits

Of the 15 countries in SADC, two were selected for the piloting of the assessment framework as well as for in-depth case studies. These case studies investigate how the individual countries have implemented the consumer protection provisions contained in the legislative framework. The two countries selected for the in-depth case studies were Botswana - an upper-middle income country with a fairly developed financial market, healthy levels of financial inclusion and a strong regulatory framework; and Malawi - a low income country with relatively low levels of financial inclusion.

### 4.1. Botswana

Within Botswana, 19 entities were consulted, representing policy makers, regulators, industry associations, an ombudsman, service providers and a consumer watchdog.

**Table 5: Consultations in Botswana**

Entities consulted	Category
Ministry of Finance and Development Planning (MFDP)	Policy-maker
Non-Bank Financial Institutions Regulatory Authority (NBFIRA) Financial Intelligence Agency (FIA) Bank of Botswana (BoB) Competition Authority Consumer Protection Unit	Regulators
Bankers Association of Botswana (BAB) Microfinance Association Micro-lenders Association	Industry Association
Office the Banking Adjudicator (OBA)	Ombudsman
Botswana Insurance Company (BIC) Botswana Life Insurance Zurich Insurance	Service Provider: Insurance
Women's Finance House Letshego Blue Employee Benefit Bayport Financial Services Segwama	Microfinance & Micro-lender
Consumer Watchdog	Consumer representative

#### 4.1.1. Findings on the implementation of consumer protection legislation

The main evaluation instrument used in the stakeholder engagements was the pro-forma assessment framework. The key findings are summarised in Box 10 below.

#### **Box 10: Findings - Botswana**

##### **1. Recognition of the importance of consumer protection in the legal and regulatory framework**

- The Bank of Botswana is reviewing the Banking Act in order to expand the provisions relating to prudential regulation, disclosure and marketing.
- NBFIRA had recently revised the legislation applicable to insurance and retirement funds in order to expand on aspects of prudential regulation and disclosures.
- The Consumer Protection Act (CPA), 1998, is under review to give the Consumer Protection Unit the power to investigate, mediate, and make rulings.
- Despite these revisions retail credit, mobile money and micro-insurance remain largely unregulated by financial sector regulators.

##### **2. The protection of consumer assets (prudential regulation)**

- Prudential regulation is more rigorous in the banking sector, where the prudential minimum capital and liquidity requirements are legislated (with tiering where necessary), monitored, and enforced.
- The level of prudential regulation in the non-banking sector was less clear with regulators and financial service providers providing conflicting responses as to whether or not there were prudential regulations for micro-lenders.

##### **3. Fair treatment of consumers**

- Guidelines on misleading advertising are produced by both the regulators and industry associations.
- There are guidelines from the BoB regulating debt collection methods. However, in the non-banking environment, NBFIRA had not provided any guidance in this regard.
- Banking institutions are held responsible for the actions of their third party agents.
- In the non-banking environment, where sales are conducted by both agents and brokers (where brokers are not employed by the underwriter), the underwriter is not required to provide training to, or monitor the activities of the broker. They are also not held accountable for the actions of the brokers.

##### **4. Responsible conduct by FSPs**

- While not legislated in the banking and non-banking sectors, it is assumed to be a part of the legislative requirement of FSPs that they provide sound financial advice.
- Affordability assessments are a legislative requirement for both the banking and non-banking sector, however NBFIRA did not provide guidance on how such assessments should be conducted in the non-banking sector.
- The only subset of the population on whom affordability assessments must be completed through a bureau are central government employees.

##### **5. Information and disclosure (by FSPs)**

- There are no legislative “plain language” provisions for written contracts and verbal explanations.
- FSPs are required to verbally explain contracts in either English or Setswana.
- No legislation requiring that FSPs provide consumers with written quotes.

##### **6. The effectiveness of regulators**

- The BoB’s Banking supervision department has three units dealing with prudential regulation, business conduct and licensing respectively.
- The BoB and financial industry stakeholders all indicated that the BoB has sufficient capacity to carry out its

responsibilities timeously and effectively.

- NBFIRA segments its units by the types of entities it regulates i.e. insurance, capital markets, retirement funds and investments, and lending.
- All stakeholders engaged indicated that NBFIRA did not have sufficient capacity to undertake its responsibilities timeously and effectively.

#### **7. Financial education**

- Not a legal requirement for regulators, associations or FSPs to provide financial education programmes.
- The BoB has 'requested' that all licensed banks undertake some form of consumer education.
- NBFIRA has not made a similar request.

#### **8. Dispute resolution**

Within the Botswana financial sector, several avenues for dispute resolution and redress exist:

Banking Sector:

- Consumers with complaints relating to the banking sector should begin by complaining to the relevant bank's internal complaints handling system.
- As a part of their licensing conditions, all banks must have an internal complaints handling system with documented processes and procedures.
- Detail about the bank's internal complaints handling system must be displayed in banking halls, and must be furnished to the consumer upon their request.
- The Bankers Association of Botswana's Code of Conduct requires member banks to establish processes and procedures to resolve consumer complaints.
- Complaints may be escalated to the Office of the Banking Adjudicator (OBA).
- The details of the OBA must be displayed in the banking halls of BAB member banks, informing consumers of their right to escalate the complaint to the OBA.
- The OBA does not however meet any of the 7 principles outlined by the World Bank for an effective ombudsman.
- If the complaint is not resolved by the OBA, it may be escalated to the BOB.
- The final avenue for recourse available to the consumer is through the court system.

Non-banking sector:

- Consumers should begin by complaining to the relevant FSP's internal complaints handling system.
- As a part of their licensing conditions, all licensed non-bank entities must have an internal complaints handling system with documented processes and procedures.
- Details about the FSP's internal complaints handling system must be displayed in the public areas of the FSP, and must be furnished to the consumer upon their request.
- Complaints may be escalated to NBFIRA.
- The details of NBFIRA must also be displayed in the public areas of the FSP, informing consumers of their right to escalate the complaint to NBFIRA.
- NBFIRA will mediate between the parties to reach an outcome.
- If no agreement is reached, NBFIRA has the power to make binding rulings on licensed entities.
- The final avenue for recourse available to the consumer is through the court system.

Consumer Protection Unit

- Consumers may also lodge complaints through the Consumer Protection Unit (CPU) within the Department of Trade and Consumer Affairs (DTCA) of the Ministry of Trade and Industry (MTI).
- Given the complexity of financial sector complaints, the CPU will refer all complaints to the OBA or NBFIRA

for resolution.

## 4.2. Malawi

Within Malawi, 10 entities were consulted, representing regulators, industry associations, non-governmental organizations, service providers and a consumer watchdog.

**Table 6: Consultations in Malawi**

Entities consulted	Category
Competition and Tariff Commission (CFTC) Reserve Bank of Malawi (RBM)	Regulators
Malawi Union of Savings and Credit Cooperatives (MUSCCO) Malawi Microfinance Network (MAMN) Insurance Association of Malawi (IAM) Life and Pensions Association (LIPA) of Malawi	Industry Associations
Old Mutual Life Assurance C. NICO Life Insurance Co.	Service Provider: Insurance
CARE International	NGO
Consumer Association of Malawi (CAMA)	Consumer representative

### 4.2.1. Findings on the implementation of consumer protection legislation

Once again, the pro-forma assessment framework was used to collect and synthesize information from all stakeholders consulted. The key findings are summarised in Box 11 below.

#### Box 11: Findings – Malawi

<p><b>1. Recognition of the importance of consumer protection in the legal and regulatory framework</b></p> <ul style="list-style-type: none"><li>• Financial sector legislation contained provisions that had only come into force in 2013.</li><li>• The Competition and Fair Trade Commission (CFTC) was established in 2013 even though the relevant legislation establishing the Commission was enacted in 1998.</li><li>• The Consumer Protection and Financial Literacy Unit within the RBM also only started operating in 2013.</li><li>• It is expected that by the end of the 2015 financial year, all FSPs supervised and licensed by the RBM will have complaints handling policies and procedures in place.</li><li>• FSPs must submit complaints registers every quarter.</li><li>• The Malawi Microfinance Network (MAMN) and Malawi Union of Savings and Credit Cooperatives (MUSCCO) have been delegated the responsibility of conducting compliance inspections by the RBM.</li></ul> <p><b>2. Consumer’s assets should be protected (prudential regulation)</b></p> <ul style="list-style-type: none"><li>• All of the financial sector legislation that regulates deposit taking institutions contains prudential regulation.</li><li>• The Acts also contain provisions that require the leadership of financial institutions to be “fit and proper”.</li><li>• The Directives contain additional details on prudential requirements and governance requirements.</li><li>• Bank Supervision is in line with international practice and has adopted Basel II standards since 2013.</li><li>• The Microfinance Act recognizes three types of microfinance institutions (i.e. Microcredit Agencies, Non-deposit taking microfinance institutions and deposit taking Microfinance Institutions) and requires that the Registrar stipulate the prudential limits.</li></ul>
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- The Directives contain the details of the prudential requirements.
- Due to capacity constraints in this sector, the RBM has delegated some supervisory functions such as inspections to MUSCCO and MAMN.
- Although SACCOs are not required through legislation to maintain reserves, MUSCCO operates a Central Finance Facility (CFF) whose requirements dictate that SACCOs invest 10% of their share capital and 15% of deposits in the CFF.
- Village savings and loans associations are however not regulated.

### **3. Fair treatment of consumers**

- Financial sector regulations prohibit fraudulent and deceptive advertising.
- Unfair business practices have been outlawed by the Competition and Fair Trade Act (2010).
- The Banking Act (1989) and Microfinance Act (2010) both required that interest calculations on borrowed funds be calculated on a reducing balance basis, but the extent to which financial service providers adhere to these provisions is not clear. .
- Debt collection practices by regulated entities are regulated by the CFTC.
- In the less formalized market, in particular relating to VSLAs and SACCOs, debt collection methods are not always conducted legally.

### **4. Responsible conduct by service providers**

- In Malawi there are two Credit Bureaus which are meant to facilitate credit checks.
- Many of the licensed lenders are unwilling to provide information to the credit bureaus.
- The clause in the Access to Information Bill had not been enacted to bring the privacy laws in line with the Credit Reference Bureau Act (2010).

### **5. Consumers should have access to information**

- A number of the larger traditional financial institutions have taken on a policy where all contracts must be explained to the consumer.
- The contract remains in English, but product disclosures will be in a language of their choice, such as chiChewa.
- Credit legislation in Malawi requires that a schedule is presented to the client showing how the debt will be amortized over time and that once the agreement is in place, that the client should be presented with a statement on a monthly basis.
- Challenges include the cost of printing as well as the low literacy levels of consumers.

### **6. Privacy and personal data protection**

- Financial institutions in Malawi have taken a very conservative approach to the protection of personal data.
- All the large FSPs interviewed indicated that members of staff were required to sign an oath of secrecy.
- Breaching this oath is generally a dismissible offence.
- This strict view on privacy was partly attributed to the fact that many of the licensed service providers in insurance and banking were subsidiaries of larger international groups which internally had already adopted strict standards for the protection of personal information.

### **7. Competition should be promoted**

- All competition matters are the responsibility of the CFTC.
- Concerns were raised by respondents regarding the effectiveness of the CFTC and the decisions of the Commission.
- Further analysis of the mergers in question however indicated that the mergers approved by the Commission did not result in substantial concentration of the market.

### **8. Effective oversight**

- Financial sector directives give financial service providers 30 days to resolve a complaint.

- If a complaint is not resolved in 30 days, the consumer is entitled to escalate it to the RBM.
- The RBM then has a further 30 days to resolve the complaint.
- The Consumer Association of Malawi (CAMA) suggests that in practice it could take up to 120 days to reverse a transaction that a bank had conducted in error.
- The RBM had not adopted clear guidelines or processes for dealing with complaints. The result was that at times decisions were taken by the regulator without giving the service provider an opportunity to respond to the claim.
- Furthermore the Central Bank currently does not have the capacity to enforce all consumer protection provisions.
- Some inspectorate functions have however been delegated to MUSCCO and MAMN.

#### **9. Promoting financial literacy**

- There is no legal requirement compelling FSPs to provide financial literacy programmes.
- Some providers voluntarily conduct product awareness programmes.
- Whilst the Central Bank welcomes such initiatives, it is concerned about the potential for miss-selling and deceptive advertising.
- RBM will introduce new regulations that will require that all such programmes are approved by the RBM.
- With funding from the World Bank, the RBM and CFTC have been running an annual one week programme focused on promoting financial literacy.

#### **10. Accessible dispute resolution and redress**

- There are challenges in accessing consumers outside the three main urban areas of Lilongwe, Blantyre and Mzuzu.
- Complainants in rural areas would have to travel large distances at great personal cost to lodge a complaint.
- To deal with these concerns the CFTC is looking into using Ministry of Industry and Commerce offices in all districts throughout Malawi.
- Mobile network operators (MNOs) are at a distinct advantage as they are able to use their 24 hour call centers to capture complaints.

### **4.3. Key findings**

The country consultations served two purposes. Firstly, they provided more detailed information on the state of consumer protection legislation and enforcement in Botswana and Malawi. Secondly, they served as pilots for the deployment of the draft consumer protection assessment framework. Following these visits, it was recommended that the following changes be made to this framework:

- The framework must clearly reflect “Who” will use it and for “What” purpose. This will have a strong bearing on the final design of the assessment framework in terms of (1) how the questions will be phrased and (2) how much time will be required to complete the framework.
- Each question in the framework must be specific, ideally allowing for “yes/no” answer, and should not allow for multiple responses.
- A glossary of terms is required in order to ensure that all respondents across the different countries have a common understanding of key concepts and questions.
- The framework must not only focus on the legislative framework but should also allow for an assessment of the extent to which these provisions have been implemented.
- The framework must contain a mechanism for identifying the most appropriate respondent in order to avoid non-responses. In this regard, the respondent should be sufficiently knowledgeable on the sector and the legal frameworks in place, to respond accurately.



- The perceptions of regulators and the regulatory entities may differ and their responses may contradict each other. The assessment framework must record these contradictions in order to highlight differences in perceptions and encourage validation.

## **5. Consumer protection assessment framework**

### **5.1. Purpose**

To enable countries, regulators and financial service providers to assess the adequacy of their existing consumer protection legislation and controls, an excel-based framework has been developed as an output of this study. The proposed framework is informed by the G20 high level principles on financial consumer protection and the CGAP Guidelines for Consumer Protection in Low Access Environments; however it has been specifically adapted to account for the findings of the situational analysis, and the structure of the financial sector in SADC member states. A draft framework was piloted through fieldwork in two SADC countries – Botswana and Malawi – and subsequently revised to account for a number of issues that arose during these consultations.

The main purpose of this framework is to highlight gaps in the design and implementation of consumer protection laws and practices, by institution, market and specific products. To do so completely, requires a substantial amount of information from government, regulators, and different kinds of financial service providers. Whereas some issues and questions apply to all respondents, many are institution or product specific. Moreover, in some countries, a full range of financial services is available, whereas in others, services are more limited or provided by a narrower set of institutions.

For these reasons, the framework has been designed in such a way that it can be customised by different countries and users. Specifically, the framework allows the user to specify the organisation that he or she represents, and the specific markets and sub-sectors that are relevant. In doing so, the framework serves to guide government and regulators so that they can strengthen or extend consumer protection laws and regulations; while also providing industry with an indication as to where they should look to improve systems, procedures and controls.

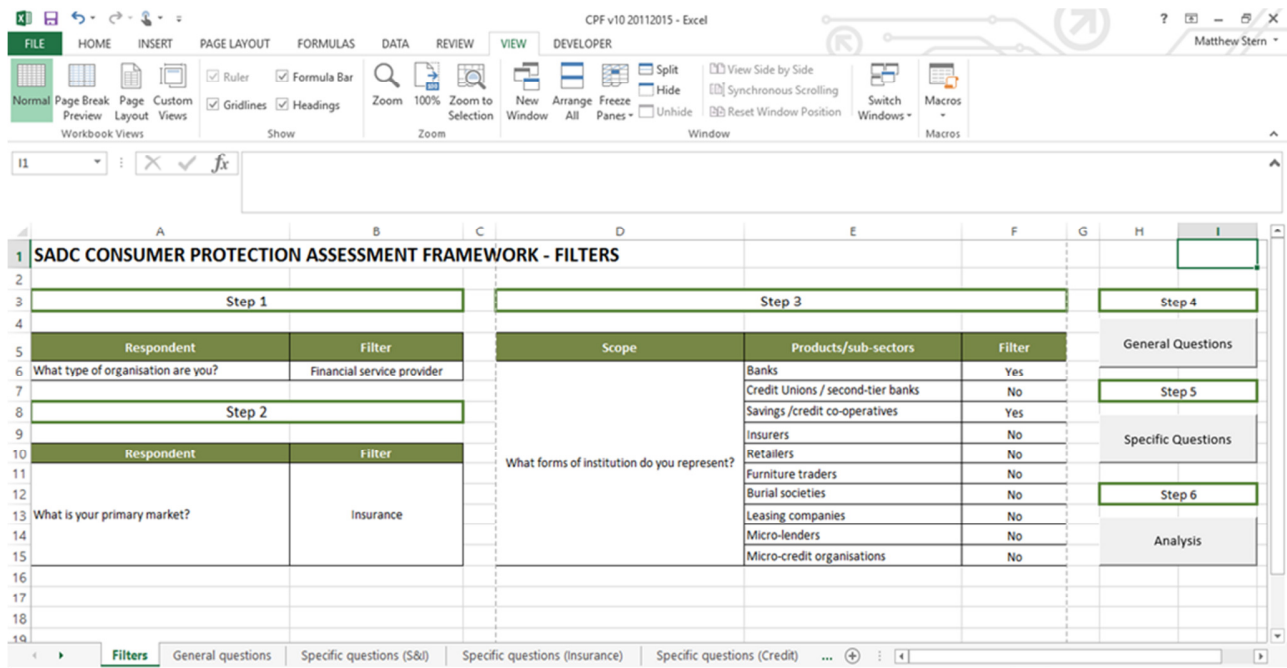
The Consumer Protection Assessment Framework will be available from 1 April 2016 upon request from FinMark Trust.

### **5.2. How does it work**

The framework consists of a set of five excel worksheets, each of which contains a set of questions and in most cases, a drop-down menu of answers. A final and sixth spreadsheet provides a synthesis of the results and serves to identify the main gaps by market and institution.

Step 1 – 3: The user begins by working through three different ‘filters’ which require him/her to specify the organisation, market and institution which he/she represents. In doing so, the remaining four spreadsheets adjust automatically to limit the questions to those of interest to the respondent.

**Figure 2: Step 1, 2 and 3**



Step 4: Next, the user is directed to a set of general questions, which apply to all financial markets. Whereas the framework asks for some responses to be validated, this is not a requirement for the completion of this section, in that it does not influence the final analysis.

Step 5: Once the general questions have completed, the user is expected to return to the ‘filters’ sheet, and proceed to the specific questions. Depending on the market selected, the user will be directed to a further set of questions.

Step 6: Finally, the user may move to the analysis sheet.

The framework is not restricted in any way - in that the user can choose which questions to answer or not and can move between sheets in any order. Moreover, the user can remove the filters at the top of each sheet if he/she would like to see or answer a wider set of questions.

It is also important to highlight that the framework is simply a set of excel spreadsheets. As such, the user can save or change the data at any time; and can copy or analyse the results in their own manner or format. Whereas this provides the user with a high degree of flexibility; it does also mean that the framework can be easily changed or ‘damaged’.

A glossary of terms will be added into the final framework.

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## 7. Acronyms

AFI	Alliance for Financial Inclusion
BAB	Bankers Association of Botswana
BIC	Botswana Insurance Company
BoB	Bank of Botswana
CAMA	Consumer Association of Malawi
CFF	Central Finance Facility
CFTC	Competition and Fair Trade Commission
CFTC	Competition and Tariff Commission
CGAP	The Consultative Group to Assist the Poor
CPA	Consumer Protection Act
CPU	Consumer Protection Unit
DTCA	Department of Trade and Consumer Affairs
FIA	Financial Intelligence Agency
FMT	Finmark Trust
FSB	Financial Stability Board
FSP	Financial Service Provider
IAM	Insurance Association of Malawi
LIPA	Life and Pensions Association
MAMN	Malawi Microfinance Network
MFDP	Ministry of Finance and Development Planning
MFS	Mobile Financial Services
MFSWG	Mobile Financial Services Working Group
MNO	Mobile Network Operators
MTI	Ministry of Trade and Industry
MUSSCO	Malawi Union of Savings and Credit Cooperatives
NBFIRA	Non-Bank Financial Institutions Regulatory Authority
OBA	Office the Banking Adjudicator
RBM	Reserve Bank of Malawi
SADC	Southern African Development Community
UN	United Nations