



FINANCE AND MARKETS GLOBAL PRACTICE

REPUBLIC OF THE PHILIPPINES: DIAGNOSTIC REVIEW OF CONSUMER PROTECTION IN THE BANKING SECTOR

Volume I
Key Findings and Recommendations

November 2014



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ABBREVIATIONS AND ACRONYMS (VOLUMES 1 AND 2)

BSP	Bangko Sentral ng Philipinas
CDA	Cooperative Development Authority
CIC	Credit Information Corporation
CIS	Credit Information System
DoJ	Department of Justice
DTI	Department of Trade and Industry
EAPF	East Asia and the Pacific Region
FCAG	Financial Consumer Affairs Group
IC	Insurance Commission
MORB	Manual of Regulations for Banks
NCAC	National Consumer Affairs Council
OFC	Office for Competition
PDIC	Philippine Deposit Insurance Corporation
SEC	Securities and Exchange Commission
WB	World Bank

ACKNOWLEDGMENTS

At the request of the Bangko Sentral ng Philipinas (BSP), a World Bank team conducted a Consumer Protection Diagnostic Review of the banking sector in the Philippines between 12 and 23 September 2013, with a particular focus on debit and credit products provided by BSP regulated banks (CP Review). The mission was received by Dr. Johnny Noe E. Ravalo, Assistant Governor, Financial Supervision Research and Consumer Protection Subsector, Bangko Sentral ng Pilipinas (BSP) and held extensive consultations with relevant stakeholders for the purposes of the review. They included senior representatives of: BSP and other relevant stakeholders including government ministries and agencies universal, commercial, thrift and rural banks, mobile money providers and banking industry associations.

The CP Review was conducted as part of the SECO-funded “Consumer Protection and Financial Literacy” program of the World Bank.

The World Bank’s (WB) *Good Practices for Consumer Protection and Financial Literacy* were used as a benchmark for the review.¹ The areas covered included (i) Institutional Arrangements, (ii) the Legal and Regulatory framework, (iii) Transparency and Disclosure, (iv) Business Practices and (v) Complaints handling and Dispute Resolution Mechanisms. Normally a CP Review would also include Consumer Empowerment and Financial Literacy, but this part of the Review is to be conducted at a later stage.

The mission was led by Natalya Mylenko, Senior Financial Specialist, Finance and Private Sector Development (Philippines), East Asia and the Pacific Region (EAPF). The team included Rosamund Grady, Senior Financial Sector Specialist, Financial Inclusion and Infrastructure Practice and Financial Consumer Protection expert and Gem Guiang, Consultant, EAPF. Adetola Adenuga, Financial Analyst provided inputs and support during mission preparation.

The mission team is grateful for the support and collaboration of all with whom they met and who have contributed to the final report. The team particularly wishes to express its appreciation to BSP for their cooperation and collaboration during the preparation of the Review.

The World Bank suggests organizing a dissemination workshop for all relevant stakeholders in conjunction with BSP to disseminate the findings and recommendations of the assessment. All relevant stakeholders (government agencies, financial institutions, industry associations and bodies representing financial consumer interests) would be invited. The final report is also proposed to be published on the World Bank’s website. The recommendations could also form the basis for a potential follow-up technical assistance program to be supported by the World Bank and/or other development partners.

¹<http://responsiblefinance.worldbank.org/~media/GIAWB/FL/Documents/Misc/Good-practices-for-financial-consumer-protection.pdf>

EXECUTIVE SUMMARY

1. The existence of a sound financial consumer protection framework is fundamental to increasing both access and usage of financial services in the Philippines, the quality of those financial services, and supporting further financial sector deepening. Financial consumer protection is a necessary precursor to building trust in the formal financial sector and hence in encouraging financial inclusion. Further, consumer protection will help ensure that expanded access benefits consumers and the economy as a whole. This is because, while increased access can result in significant economic and societal benefits and enhance financial stability, it can be neutral or even harmful if consumers are not able to: (i) exercise their rights as consumers; (ii) select the financial products that suit them best; and (iii) be protected from mis-selling, fraud, and other market abuses.

2. A sound consumer protection regime is complemented with prudential regulation and supervision. Prudential requirements are intended to ensure that the financial promises made by financial institutions are met, while proper oversight by financial authorities ensures adherence to these standards. In this sense, actions to strengthen the regulatory framework and practice of supervision contribute directly to protecting the interests of consumers.

Key Findings

3. There is an impressive focus on consumer protection in the banking sector in the Philippines. This is shown by the wide range of laws and of regulatory instruments issued by BSP (including Circulars) (together “laws”) relating to subjects such as Truth in Lending for loan products, credit cards, microfinance, electronic banking, investment products, responsible lending practices, confidentiality and data protection, cross selling of products, outsourcing of bank functions and compliance systems. Discussions during the mission with BSP and various banks also support the view that BSP is actively focused on enforcing these laws and in providing complaint resolution services.

4. The Philippines also compares well with other economies on its approach to consumer protection in the banking sector (although there is no “international best practice” in the strict sense given the importance of country context). This view is supported by comparing the position in the Philippines to that of 114 other economies surveyed in the 2013 Global Survey on Financial Consumer Protection.² Details of this comparison are in Part III of this report below. Yet, there is space for further strengthening of the financial consumer protection framework as presented in this report and summarized below.

²The Global Survey questionnaires were sent to central banks and bank supervisors in 145 economies and 114 responses were received. A summary report on the results is available at responsiblefinance.worldbank.org.

5. There are multiple regulators involved in consumer protection in relation to debit and credit products in the Philippines. Five different agencies are involved in regulation and supervision: BSP (the lead regulator for banks and quasi banks), the Department of Trade and Industry (DTI) (in relation to the general purpose Consumer Act), the Securities and Exchange Commission (SEC) (in relation to certain lending companies), the Insurance Commission (IC) (in relation to certain financing practices of insurance companies and mutual associations) and the Cooperative Development Authority (CDA) in relation to cooperatives which provide savings and credit facilities). Other relevant agencies are the National Consumers Affairs Council (NCAC) which has overarching coordination responsibility for consumer protection in the Philippines and the Philippine Deposit Insurance Corporation. Of particular concern in this context is the lack of clarity as to the extent to which the Consumer Act applies to banks and the consequential potential for overlap between the functions of BSP and DTI and, in relation to policy matters, the NCAC.

6. Supervision of banks in relation to compliance with BSP supervised consumer protection laws is conducted by the same team that conducts prudential regulation supervision. There is potential for competing priorities if the same team is responsible for supervising the safety and soundness of banks and protecting consumers. Assistance is provided by the Financial Consumer Affairs Group (FCAG) within BSP in raising consumer protection issues, but FCAG does not currently have power to investigate banks, conduct on-site or off-site supervision or to impose sanctions.

7. BSP does not have an explicit mandate in relation to consumer protection. Ideally, the BSP would have a clearly formulated mandate in consumer protection, which would translate into adequate powers and resources to carry out the mandate properly.

8. Whilst there are wide ranging transparency and business conduct laws in place, they do not apply consistently to similar products and services and there are gaps. The regulatory framework is strong in a number of respects (such as the truth in lending requirements and debt collection practices relating to credit cards). However transparency requirements do not apply in the same way to products which have inherently similar characteristics and there are gaps in relation to issues such as statements of account and notice of changes in pricing. Some business conduct issues also need to be addressed: for example in relation to debt collection practices for products other than credit cards (which are already covered); the training of staff and intermediaries; and the introduction of prohibitions on provisions which might inhibit prepayments and switching of banks. Further, the extent to which relevant provisions of the Consumer Law apply to banks is not clear.

9. Recourse mechanisms for consumers are incomplete. Although all banks met by the mission team have internal complaints resolution systems, there are no mandated requirements relating to such schemes. FCAG provides a comprehensive external complaint resolution scheme from within BSP but has significant limitations on its powers and resources. For example, it cannot make binding decisions and it cannot conduct on-site examinations of banks.

Key Recommendations

10. Table 1 below lists the main recommendations and priority actions to enhance the framework for financial consumer protection in the banking sector in the Philippines as at the time of the Consumer Protection (CP) Review. Table 1 does not however provide a comprehensive summary of all recommendations – rather it summarizes the most significant recommendations. Further details are in Volume II. The reference to whether a recommendation is Short Term, Medium Term or Long Term is intended to assist the BSP in developing its priorities for implementation of the mission recommendations (to the extent that they are accepted). It is

envisaged that the relevant periods might be one, two and three years respectively. It is understood that a number of the recommendations below may be covered by the BSP Financial Consumer Protection Framework once it is given the force of law.³

Table 1. Summary of Key Recommendations

RECOMMENDATION (paragraph number in Volume 1)	IMPLEMENTED BY	TERM
INSTITUTIONAL ARRANGEMENTS		
• Separate prudential supervision responsibilities and consumer protection responsibilities in BSP and ensure there are appropriate resources for consumer protection (32)	BSP	Short Term
• Commence formal collaboration process with DTI/CDA (33)	BSP, DTI, CDA,	Short Term
• Clarify BSP mandate for consumer protection (34)	BSP	Long Term
LEGAL AND REGULATORY FRAMEWORK		
• Clarify application of Consumer Law to banking products and services (42)	BSP, DTI	Short Term
• Prohibit harassment of debtors in relation to all types of credit facilities (45)	BSP	Short Term
• Introduce data protection rules for private credit bureaus and their users (51)	SEC	Short Term
• Ensure current consumer protection framework applies in a consistent manner to all banking products and services (38)	BSP	Medium Term
• Require debt collectors to be licensed (for BSP supervised entities) (45)	BSP	Long Term
TRANSPARENCY AND DISCLOSURE OF INFORMATION		
• Require all terms and conditions for any banking product or service to be provided before contract is finalized (50)	BSP	Short Term
• Require all mandated disclosures to be in plain language and at least 12 point font (53)	BSP	Short Term
• Require Key Facts Statements for common debit and credit products and that they be in prescribed form (52)	BSP	Short Term
• Require regular statements of account for credit and debit products and that information on account balances be available on request (55)	BSP	Medium Term
• Consider need for verbal explanations for illiterate customers (52)	BSP	Medium Term
• Require customers to be given time to consider contracts (52)	BSP	Medium Term
• Introduce provisions requiring notices about changes to interest rates, fees and charges, defaults and mortgages and guarantees (57,59 and 60)	BSP	Medium Term

³ The proposed Framework was reviewed during the CP Review Mission but had not been published at the time of preparing this report.

<ul style="list-style-type: none"> Make disclosure requirements consistent across products, services and channels (50) 	BSP	Long Term
<ul style="list-style-type: none"> Require customers to be advised about implications of checks (52) 	BSP	Long Term
BUSINESS PRACTICES		
<ul style="list-style-type: none"> Mandate reasonableness of prepayment fees, default interest charges and enforcement expenses (64) 	BSP	Short Term
<ul style="list-style-type: none"> Require banks to ensure that their staff, third party agents and authorized representatives are adequately trained and advised on product suitability (67) 	BSP	Medium Term
<ul style="list-style-type: none"> Introduce provisions relieving consumers from the consequences of being sold unsuitable products (68) 	BSP	Medium Term
DISPUTE RESOLUTION MECHANISMS		
<ul style="list-style-type: none"> Require banks to have internal complaint resolution systems (70) 	BSP	Short Term
<ul style="list-style-type: none"> Consider support for civil society consumer organizations in the Philippines (79) 	BSP	Medium Term
<ul style="list-style-type: none"> Require FCAG to conduct a public awareness campaign and that banks inform consumers about FCAG (78) 	BSP	Medium Term
<ul style="list-style-type: none"> Give FCAG power to make binding decisions (78) 	BSP	Long Term

THE PHILIPPINES: DIAGNOSTIC REVIEW OF CONSUMER PROTECTION IN THE BANKING SECTOR

I. THE BANKING SECTOR IN THE PHILIPPINES

11. BSP has a broad mandate to regulate the banking and quasi- banking sector. BSP was established on 3 July 1993 pursuant to the provisions of the 1987 Philippine Constitution and the 1993 New Central Bank Act. The powers and functions of BSP are exercised by the Bangko Sentral Monetary Board.⁴ BSP took over from the Central Bank of Philippines, which was established on 3 January 1949, as the country's central monetary authority. BSP's mandate is expressed as follows in s. 3 of RA 7653 The New Central Bank Act of 1993:

"The Bangko Sentral shall provide policy directions in the areas of money, banking, and credit. It shall have supervision over the operations of banks and exercise such regulatory powers as provided in this Act and other pertinent laws over the operations of finance companies and non-bank financial institutions performing quasi-banking functions, hereafter referred to as quasi-banks, and institutions performing similar functions.

The primary objective of the Bangko Sentral is to maintain price stability conducive to a balanced and sustainable growth of the economy. It shall also promote and maintain monetary stability and the convertibility of the peso."

12. The banking sector is composed of universal and commercial banks, thrift banks, rural and cooperative banks, as well as quasi - banks. In summary, these different types of institutions may be described as follows:

- **Universal and commercial banks** offer the widest variety of banking services among financial institutions. In addition to the function of an ordinary commercial bank, universal banks are also authorized to engage in underwriting and other functions of investment houses, and to invest in equities of non-allied undertakings.
- **Thrift and savings banks** consist of savings and mortgage banks, private development banks, stock savings and loan associations and microfinance thrift banks.
- **Rural and cooperative banks** (which are differentiated from each other by ownership) operate in rural areas and are used for basic banking services.
- **Islamic banks** which can offer the services described in MORB X101(6).
- **Non-banks with quasi banking functions**, which the BSP describes as "*institutions engaged in the borrowing of funds from 20 or more lenders for the borrower's own account through issuances, endorsement or assignment with recourse or acceptance of deposit substitutes for purposes of relending or purchasing receivables and other obligations.*"⁵

⁴S.6 RA 7653 New Central Bank Act.

⁵ See <http://www.bsp.gov.ph/banking/bspsup.asp> and also s. 4.6 of the General Banking Law of 2000.

13. Table 2 below shows that the banking sector is dominated by the universal and commercial banks:

Table 2. Banking Sector

	Total Assets (bill. PHP) End-June 2013	% Market share in terms of total assets (2013)	Deposits (bill. PHP) End-June 2013	% Market share in terms of deposits (2013)
Philippine banking system	8,616.5		6,351.7	
Universal banks	6,836.8	79.34 %	5,048.7	79.48 %
Commercial banks	872.7	10.1 %	596.5	9.39 %
Thrift banks	710.9	8.3 %	571.1	8.99 %
Rural banks	182.8	2.1 %	126.1	1.99 %
Cooperative banks	13.1	.15 %	8.9	.14 %

Source: BSP Philippine Banking System Semester 2, 2013⁶

14. Table 3 below shows the top universal and commercial banks with their corresponding assets, loans, and deposits:

Table 3. Universal and Commercial Banks

Top Banks (in billions of pesos)						
Name of Bank	Rank for Assets	Assets	Rank for Loans	Loans	Rank for Total Deposits	Total Deposits
BDO Unibank, Inc.	1	1,339.2	1	772.9	1	1,014.4
Metropolitan Bank & Trust Co.	2	1,218.2	3	523.6	2	878.7
Bank of the Philippine Islands	3	1,008.1	2	558.6	3	824.5
Land Bank of the Philippines	4	682.0	4	245.0	4	542.7
Philippine National Bank	5	549.3	5	212.6	5	419.6
Rizal Commercial Bank Corp.	6	376.0	7	181.1	8	248.4
Development Bank of the Philippines	7	350.5	9	114.7	11	172.8
China Banking Corp	8	343.1	6	181.8	6	290.4
Union Bank of the Philippines	9	333.7	11	92.8	7	259.8
Security Bank Corp	10	293.3	8	125.9	10	178.9
Citibank	11	256.0	10	95.2	12	168.6

Source: Business World Research (August 2013)

⁶ Other statistics of interest: the BSP Philippine Banking System Semester 2, 2013 also showed that in the year to end-June 2013, the banking sector grew by 16.2 percent (from P7,410.1b) and that gross NPLs were at 3.3 percent of the total loan portfolio (TPL), easing from 3.6 percent of a year earlier.

15. The physical network for the banking sector is almost entirely provided by domestic banks, with universal banks providing the majority of branches:

Table 4. Physical Composition: Distribution of Physical Network

As of June 2013	Distribution of Physical Network					
	Total		Head Office		Branch/Other Office	
	No.	% Share	No.	%Share	No.	%Share
All Domestic Banks	9,405	98.6 %	663	97.1 %	8,742	98.7 %
Universal Banks	4,217	44.2	11	1.6	4,206	47.5
Commercial Banks	443	4.6	6	0.9	437	4.9
Thrift Banks	1,634	17.1	66	9.7	1,568	17.7
Rural Banks*	2,500	26.2	541	79.2	1,959	22.1
Cooperative Banks	147	1.5	36	5.3	111	1.3
Government Banks	464	4.9	3	0.4	461	5.2
All Foreign Bank Branches and Subsidiaries	138	1.4 %	20	2.9 %	118	1.3 %
Universal Banks	17	0.2	6	0.9	11	0.1
Commercial Banks	93	1.0	10	1.5	83	0.9
Thrift Banks	28	0.3	4	0.6	24	0.3
<ul style="list-style-type: none"> • <i>Inclusive of microfinance-oriented rural banks</i> • <i>Source: BSP Philippine Banking System Semester 2, 2013</i> 						

BSP supervises 7,006 institutions, which represent 27,395 head offices and branches. In its figures for June 2013⁷, the following were reported:

- Among the number of financial institutions supervised by BSP, the biggest group were pawnshops (63.9 percent of total institutions, or 17,514)⁸; rural banks and cooperatives were the next largest group, with about 577 head offices and 2,070 branches; and
- Due to ongoing industry consolidations, acquisitions and closures, the number of operating banks declined by 29 banks during the first half of year 2013, while 365 branch offices were added into the physical banking network.

16. E-banking and payments services in the Philippines are expanding. There is a variety of e-banking services on offer in the Philippines including internet banking, mobile phone banking and e-money instruments such as cash or remittance cards and electronic wallets which are accessible via mobile phones or other access devices. In the BSP 2013 Semester 2 Status report on the Philippine Financial System⁹, the following figures were provided on e-banking services (amongst others):

- 74 banks offering an ATM network (67 in 2012)
- 62 banks offering electronic wallets (62 in in 2012).
- 29 banks offering cash or remittance card products (31 in 2012).
- 43 banks offering internet banking (39 in 2012).

⁷ BSP Philippine Banking System Semester 2, 2013

⁸ The BSP has supervision powers over pawnshops pursuant to Presidential Decree 114 of 29 January 1973.

⁹ BSP Philippine Banking System Semester 2, 2013.

- 16 banks offering phone banking (non – mobile based) (unchanged from 2012).
- 30 banks offering mobile phone banking (24 in 2012).

17. For completeness it is to be noted that banks are not allowed to outsource “*inherent banking functions*”, which are defined as “*servicing the deposit transactions*” of a bank.¹⁰

This would appear to prevent reliance on agents for the delivery of traditional banking services as has happened in other countries. However, electronic money services are well developed and it is to be noted that as at end – June 2013 off-site ATMs grew by 20.5 percent to 5,405 units compared to on-site ATM growth of 12.9 percent to 7,724 units.

18. There are two electronic money providers in the Philippines:

- **The SMART Money card enables customers to engage in a wide variety of payments transactions through either the use of Smart Money MasterCard debit card or through a mobile phone (e-wallet) where the Smart Money Card is linked.** SMART Money is an electronic wallet, similar to a bank account, that allows bill payment, reloads of airtime and money transfers using a SMART Mobile phone. With the SMART Money MasterCard, a cardholder can also do transactions over the ATM and and Point-of-Sale (POS) terminals. It is considered to be a bank based model because the e-money issuer is a bank while the IT infrastructure/platform and network of agents are being provided/outsourced to Smart.
- **GCash presents a nonbank-based model of branchless banking.** GCash clients load cash onto electronic “wallets” on their mobile phones from which they can then make payments (via SMS) to other GCash clients using their Globe mobile phone. Other services include the ability to use the service to pay for utilities, credit cards, Globe Telecom bills and top ups for mobile phones. Value in GCash accounts, and information about transactions, is held by G-Xchange, Inc. (GXI), a wholly-owned subsidiary of Globe Telecom, Inc. that is registered with BSP as a remittance agent and Electronic Money Issuer-Others.¹¹

II. FINANCIAL INCLUSION IN THE PHILIPPINES

19. See Annexure II for details of the 2012 position in relation to financial inclusion in the Philippines, as reported in the World Bank’s Global Financial Inclusion (Global Findex) base.¹²

¹⁰ MORB X162.2 and also s.2.1 of BSP Circular 268 of 2000.

¹¹ Both are registered as remittance companies under Circular 471 of 2005 and the third parties who provide cash-in and cash-out services are also required to be registered as remittance agents and comply with the related AML training requirements as well as other administrative obligations.

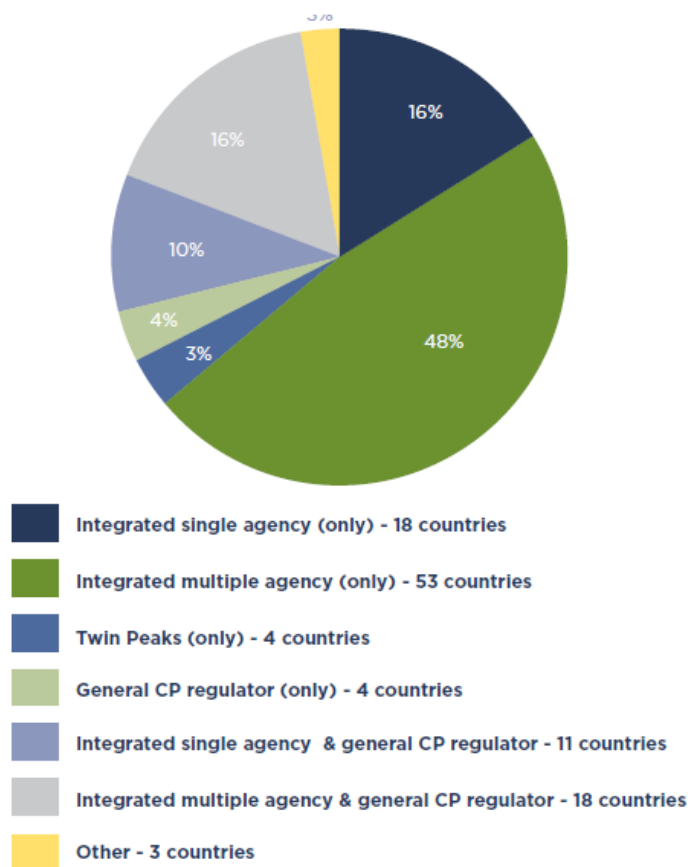
¹² <http://econ.worldbank.org/WBSITE/EXTERNAL/EXTDEC/EXTRESEARCH/EXTPROGRAMS/EXTFINRES/EXTGLOBALFIN/0,,contentMDK:23147627~pagePK:64168176~piPK:64168140~theSitePK:8519639,00.html>

III. HOW THE PHILIPPINES COMPARES INTERNATIONALLY

20. Philippines compares well with other economies on its approach to consumer protection in the banking sector based on the results of the World Bank Global Survey on Consumer Protection and Financial Literacy conducted in 2013. The following paragraphs set out the indicators we have considered in this context and compare the position of the Philippines with other economies, as indicated by the 2013 Global Survey.

21. The Philippines multi-agency model for consumer protection in the financial sector is a common one: the Global Survey results indicate that 74 percent of jurisdictions with multiple regulators are involved in financial consumer protection, as is the case in the Philippines. Further, in 26 percent of economies, the responsibilities are shared between financial and general consumer protection regulators.

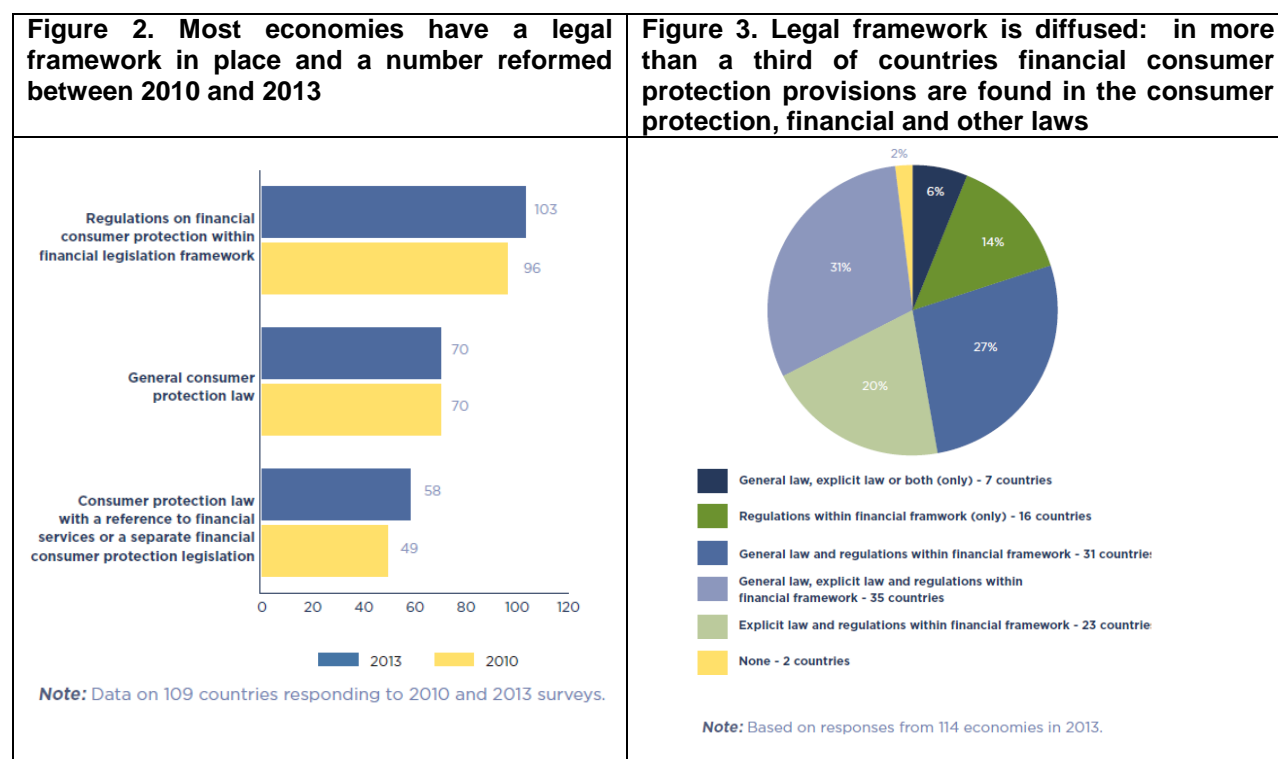
Figure 1. Global Survey: Institutional Arrangements for Financial Consumer Protection



Note: Data for 111 countries that provided information on financial consumer protection institutional arrangements.

22. The Global Survey shows that there are many other countries with the Philippines' diffuse financial consumer protection legal framework: as mentioned above, the Philippines' Consumer Law specifically regulates the providers of credit products as well as having general provisions which appear to apply to all financial services providers. Further, there are also specific consumer protection provisions within the framework of financial sector laws in the Philippines (especially in the BSP regulations, but also in SEC and IC regulated laws). The results from the Global Survey suggesting this is not uncommon are indicated in Figures 3 and 4 below:

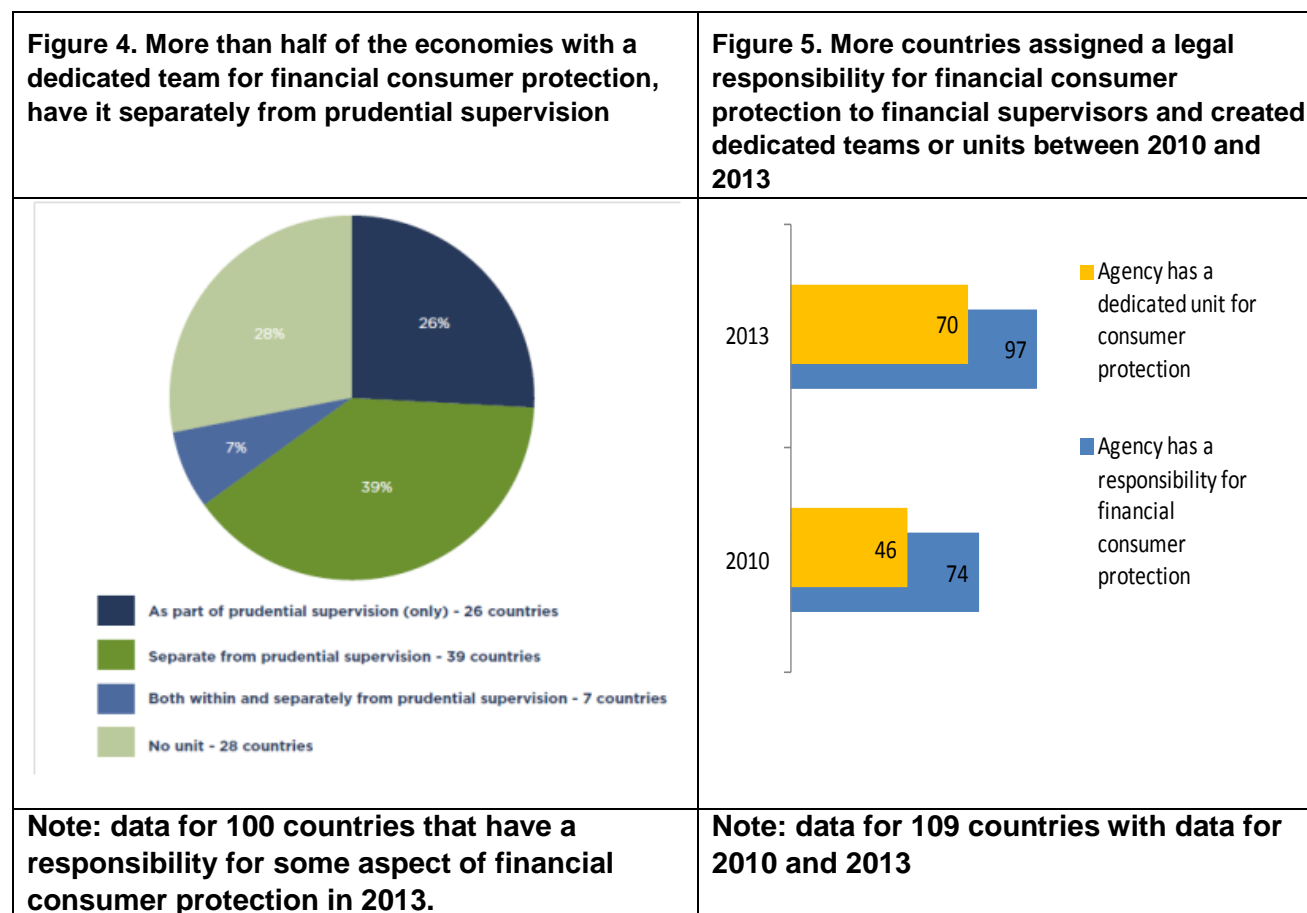
Figures 2 and 3. Global Survey: Financial Consumer Protection Legal Framework



23. The proposal to enhance the responsibilities of FCAG is in line with global trends: FCAG provides complaint resolution and financial education services but does not currently have power to pro-actively supervise FCP laws. However the mission team understands that consideration is being given to enhancing the responsibilities of FCAG under the proposed BSP Financial Consumer Protection Framework so that they have a more direct supervisory role. The BSP Financial Consumer Protection Framework is envisioned to encompass: (i) standards of consumer protection conduct for BSP-supervised financial institutions; (ii) on-site consumer protection assessment; (iii) rating and enforcement actions, (iv) off-site surveillance; and (v) market monitoring. This would be in line with findings from the Global Survey in which the number of agencies responding that they have a responsibility for financial consumer protection increased from 74 in 2010 to 97 in 2013. Further, the number of economies that have agencies with dedicated resources and staff in this area of work also increased from 46 in 2010 to 70 in 2013. To put it another way, 72 percent of agencies with in responsibility for financial consumer protection had a dedicated team or unit in place to perform this function, as compared to 62 percent of economies in 2010.

24. The Global Survey also indicates that there is an increasing trend to separate prudential supervision and consumer protection supervision. See Figures 5 and 6 below. This is also broadly consistent with our understanding of the approach being proposed by BSP under the BSP Financial Consumer Protection Framework.

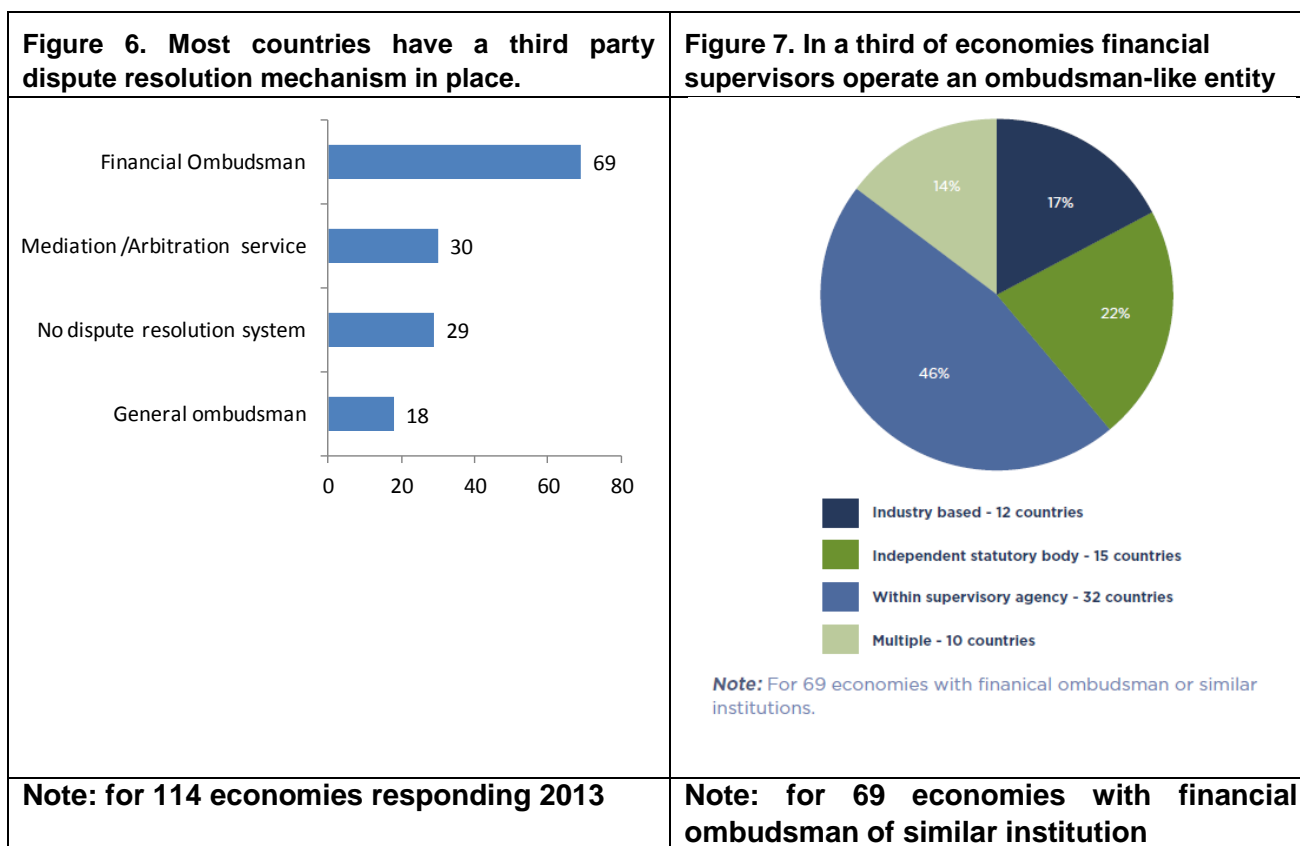
Figures 4 and 5: Global Survey: Separation of Prudential and Consumer Protection Supervision



25. The Global Survey suggests there is an increasing trend to require financial institutions to have internal complaints resolution mechanisms, which we understand is being proposed in the Philippines and is recommended in this report. According to the Survey results, financial service providers in 73 percent of economies (83 out of 114) are required to implement procedures and processes for resolving customer complaints.

26. As in the Philippines, the majority of economies responding to the Global Survey have an independent third party dispute resolution mechanism in place, with that service being provided by the financial supervisor in approximately one third of such economies:

Figures 6 and 7: Global Survey: External Dispute Resolution Systems



IV. GENERAL FRAMEWORK FOR FINANCIAL CONSUMER PROTECTION IN THE PHILIPPINES

A. Institutional Arrangements

27. The overall institutional arrangements for consumer protection applicable to debit and credit products are somewhat fragmented as there are overlapping, and to some extent inconsistent provisions, applying to BSP, DTI, SEC, IC and CDA regulated entities. The institutional arrangements are summarized in Scheme 1 below. The relevant agencies include:

- **BSP itself:** BSP has a broad mandate over the banking and quasi- banking sector expressed as follows in s. 3 of RA 7653 The New Central Bank Act of 1993 (emphasis added):

“The Bangko Sentral shall provide policy directions in the areas of money, banking, and credit. It shall have supervision over the operations of banks and exercise such regulatory powers as provided in this Act and other pertinent laws over the operations of finance companies and non-bank financial institutions performing quasi-banking functions, hereafter referred to as quasi-banks, and institutions performing similar functions.

The primary objective of the Bangko Sentral is to maintain price stability conducive to a balanced and sustainable growth of the economy. It shall also promote and maintain monetary stability and the convertibility of the peso.”.

Although the abovementioned mandate does not specifically mention BSP as having a consumer protection mandate, there is a variety of consumer protection related laws and Circulars applicable to BSP regulated entities. They include (amongst others) the disclosure requirements in the Truth in Lending Act (RA 3765) and the related Circulars 730 and 754 and disclosure rules applying specifically to credit card issuers and the providers of electronic banking services.

- **The Department of Trade and Industry (DTI):** The DTI administers the Consumer Law, which specifically regulates the providers of credit products as well as having general provisions which appear to apply to all financial services providers. However the mission team was told that the DTI relies on two opinions from the DoJ to the effect that the BSP is to be considered as the implementing agency for the application of the Consumer Law to BSP regulated institutions with respect to consumer credit card transactions. This is notwithstanding that the Consumer Law does not mention BSP and the DTI is mentioned as the implementing agency for some (but not all) of the relevant provisions.
- **The National Consumers Affairs Council (NCAC):** The NCAC was established by the Consumer Law. It has wide ranging functions (in summary) to rationalize and coordinate the functions of all agencies charged with consumer protection in the Philippines and to advise on policy and legislation and conduct consumer education functions. Notwithstanding these broad functions, the mission team was advised that the budget for the NCAC is a very limited budget of around 2 million pesos and it has only 3 full time staff. Its members consist of 4 consumer representatives, 2 business and industry representatives and representatives of the DTI, Agriculture, Health and Education, Culture and Sports. Significantly, its members do not include a representative of the BSP. However the mission team was advised that there is consultation with the BSP on relevant programs.

- **The Securities and Exchange Commission (SEC):** The SEC has jurisdiction over “*lending companies*” (which do not include regulated banking institutions or, indeed, any financial institution otherwise regulated).¹³ The only specific consumer protection provision in the SEC Lending Company Act appears to be designed to ensure that loan agreements with Lending Companies are consistent with RA 3765 Truth in Lending Act of 1963 and with RA 7394 The Consumer Law of the Philippines. The SEC has also applied the BSP Truth in Lending Circular 730 to the institutions they regulate.¹⁴
- **The Cooperative Development Authority (CDA):** The CDA is responsible for regulating and registering cooperatives (which include credit cooperatives and the purposes of which can include the ownership of cooperative banks).¹⁵ The promotion and development of cooperative banks is described as a “*major concern*” of the CDA, which is to be undertaken in collaboration with the BSP.¹⁶ Further, Chapter V111 of the 6938 Cooperative Code contains detailed provisions concerning cooperative banks, but makes it clear they are under the supervision of the BSP.¹⁷ There do not appear to be any consumer protection provisions in either RA 6938 Cooperative Code of the Philippines or in RA 6939 Establishment of Cooperative Development Authority. However, the CDA has applied the BSP Truth in Lending Circular 730 to the institutions they regulate.¹⁸
- **The Insurance Commission (IC):** The IC regulates insurance companies and mutual benefit associations, which may provide finance on the security of their policies. The IC, like the SEC and the CDA, has applied the Truth in Lending Circular to the institutions they regulate.¹⁹
- **PDIC:** The PDIC Charter provides for a deposit insurance scheme for member banks up to a prescribed limit which is currently 500,000 Pesos for both individual and corporate customers and which applies on a per customer / per institution basis.²⁰ The scheme applies to banks incorporated under Philippine laws (such as universal and commercial banks, savings banks, development banks, rural banks, cooperative banks and stock savings and loan associations and branches and agencies of foreign banks in the Philippines). The PDIC Charter also gives PDIC wide ranging powers to deal with insolvent banks. PDIC’s powers are frequently used: the mission team was advised that, over the last 5 years, on average around 25 PDIC insured banks per year have been closed (in the period until 30 June 2012, 22 had been closed).
- **The Department of Justice (DoJ):** the DoJ has been designated as the Competition Authority and an Office for Competition (OFC) has been established to exercise this function. The DoJ also supervises the Office for Alternative Dispute Resolution established by the Alternative Dispute Resolution Act of 2004.

¹³ RA 9474 Lending Company Regulation Act of 2007

¹⁴ Memorandum Circular No.7 series of 2011

¹⁵ RA 6938 Cooperative Code of the Philippines and RA 6939 Establishment of Cooperative Development Authority

¹⁶ S.12 RA 6939

¹⁷ S.105 RA 6938

¹⁸ Memorandum Circular 2012- 05

¹⁹ Circular 31 of 2011

²⁰ The PDIC Charter is provided for under RA 3591

28. Active steps are also being taken to achieve coordination between relevant agencies (. Of particular importance is the Financial Sector Forum. The Forum, which was launched in 2004, seeks to deepen coordination among its four participating agencies, including in relation to financial consumer protection and education issues. The four agencies involved are the BSP, the PDIC, the IC and the SEC. Collaboration with DTI is also ongoing through the participation of BSP in the consumer protection initiatives of the NCAC (which is under the auspices of DTI). There is also ongoing collaboration between BSP and CDA through the participation of BSP in the coordinating committee organized by CDA which monitors programs, provides a system of consultation, and recommends policies related to the development of the cooperative sector.

29. Although the BSP supervises relevant consumer protection laws and, through its Financial Consumer Affairs Group (FCAG), provides a comprehensive external complaints resolution service, there are limitations in this approach. From numerous meetings with BSP supervisory units and banks, it seems to be the case that the BSP seeks to actively supervise the consumer protection laws currently in place. The limitation is that this supervision is currently carried out by the same team that undertakes prudential supervision and it is not clear that the relevant officers have specialized training on consumer protection matters or make use of consumer protection specific supervisory tools (such as mystery shopping, review of advertisements, or consumer forums). On-site supervision is also dependent on annual visits (other than in exceptional cases approved by the Monetary Board or the Governor). Further, although FCAG appears to provide a comprehensive complaint resolution service, it does not currently have the power to pro-actively supervise market conduct matters or conduct on-site supervision.

Key Recommendations

30. There should be a clear separation within BSP of responsibilities for supervision of banking consumer protection laws and responsibility for prudential supervision and be properly resourced so as to encourage pro-active supervision and to avoid conflicts between supervising financial institutions and protecting the interests of their customers. A practicable way to achieve this would be to provide FCAG with the relevant responsibilities (as we understand is currently proposed under the BSP Consumer Protection Framework) on the assumption that FCAG would also be given the resources to undertake these new responsibilities.

31. BSP should continue to actively consult and collaborate with other supervisors of providers of debit and credit products, including the DTI, the SEC, the IC and, in the future, also including the CDA. This is important to ensure consistency of protection for consumers and to minimize the risk of regulatory arbitrage.

32. While the present legal framework provides BSP jurisdiction over banks and quasi-banks, it may be useful to clarify the legal mandate for consumer protection for the institutions BSP regulates. S.3 of the New Central Bank Act provides in this regard that “*The Bangko Sentral ... shall have supervision over the operations of banks and exercise such regulatory powers as provided in this Act and other pertinent laws over the operations of ... quasi-banks, and institutions performing similar functions.*”

B. Legal and Regulatory Framework

33. A wide range of laws and regulatory instruments (including Circulars) (together “laws”) apply to the banking sector in the Philippines and support consumer protection. These include laws in relation to Truth in Lending for loan products, credit cards, microfinance, electronic banking, investment products, responsible lending practices, confidentiality and data protection, cross selling of products, outsourcing of bank functions and compliance systems. The laws specifically applicable to regulated banking institutions are consolidated in the voluminous 2008 BSP Manual of Regulations for Banks (MORB). Details of relevant laws are discussed in Volume II of this report.

34. Improvements could, however, be made in a number of respects to the existing consumer protection framework of laws. The key issues and related recommendations are discussed below.

Consumer Protection Framework

35. Although there are many examples of strong consumer protection provisions in the laws which apply to BSP regulated entities, they do not apply in a consistent manner and are incomplete. For example: the requirements for disclosures in the Truth in Lending laws apply to “loans” (which are not defined); apply in different terms to credit cards; and do not apply at all to other lines of credit; the provisions dealing with collection of credit card debts do not apply more generally in relation to all consumer credit products; and periodic statements of account are only required in relation to check accounts.²¹ Further there is no overarching requirement for disclosure of all terms and condition of a banking product.

Key Recommendations

36. Conduct a review of the current consumer protection framework applying to BSP regulated entities to ensure that it applies in a consistent manner to all products and services. The aim should be to ensure that the same rules apply to products and services which are similar in nature. For example, transparency and disclosure rules should be the same for all credit products, subject only to differences in product features (for example, credit card products provide for revolving balances whereas a fixed term loan product does not). Although specific proposals to assist with this recommendation are set out below under “Transparency and Disclosure”, it is considered that a more general review would be helpful.

Consumer Law

37. The Consumer Law and the legislation supervised by the BSP both apply to regulated banks but there are overlaps and differences. This has the potential to cause confusion amongst regulated entities and consumers who seek to understand their rights. For example, both laws contain disclosure requirements for credit contracts but they are expressed in different terms. Further, the Consumer Law contains specific provisions in relation to credit sale and installment contracts which reflect the nature of those products. There are also provisions in the Consumer Law dealing with prepayments, rebates due on prepayment and delinquency and deferral charges and credit advertising which do not appear in the BSP laws. See Annexure II of Volume II of this Report for further details of the differences.

²¹ MORB X185.12(c)

39. The inconsistencies are of concern given that the Consumer Law on its face applies to all service providers, including BSP regulated banks. However the BSP does not at present supervise compliance with the Consumer Law, although the mission team was told that the DTI relies on two opinions from the DoJ to the effect that the BSP is to be considered as the implementing agency for the application of the Consumer Law to BSP regulated institutions with respect to consumer credit card transactions. This is notwithstanding that the Consumer Law does not mention BSP and the DTI is mentioned as the implementing agency for some (but not all) of the relevant provisions. Notwithstanding this lack of clarity, some of the banks the mission team interviewed said that they treated the Consumer Law as applying to them. For example, they comply with the provision confirming a borrower's right to prepay a credit contract²². It is also to be noted that there is currently a DTI proposal to make the BSP the implementing authority for the application of the Consumer Law to the institutions it regulates (although to date it is understood that the BSP has not been consulted on this proposal).

Key Recommendations

40. Clarify the application of the Consumer Law to BSP regulated entities and the products and services they provide, and of the BSP's supervision mandate in relation the Consumer Law. This should be preferably achieved through the following steps:

- Conduct a careful review of the Consumer Law to identify those provisions which should appropriately apply to regulated banks but are not currently covered by other laws specifically applying to such banks (for example, the provisions dealing with prepayments and unfair terms); and
- Then apply the relevant provisions to banks, whilst at the same time making it clear that the Consumer Law does not apply to banks.

41. An alternative approach would be for the BSP to actively supervise compliance of regulated banks with the Consumer Law. This approach would seem to require the BSP to be formally designated as the "*implementing authority*" for the relevant general and specific provisions of the Consumer Law (unless, of course, the BSP wished to rely on the DoJ Opinion referred to above). However this approach would give rise to supervision and compliance complexities given the differences between the Consumer Law and BSP specific laws. Therefore, this alternative is not recommended.

Debt Collection

42. The only laws relating specifically to debt collection practices apply to credit cards, and there are no laws requiring the licensing of debt collectors. The relevant provisions concerning harassment of credit card holders were introduced as a result of specific complaints. It is considered that debt collectors should be supervised more generally given the sensitivity of the information they handle and the commission incentives they have to take strong measures to collect debts. Further considerations in support of this view are that, given the ongoing expansion in the availability of retail banking services in the Philippines and the low levels of financial literacy, there is a high risk of debtors not understanding their rights in relation to the collection of debts and of them being abused.

²² Article 137

Key Recommendations

43. Debt collectors in the Philippines should be required to be licensed and to comply with specified business conduct rules. There should also be strict requirements prohibiting the harassment of borrowers (regardless of the type of debt) and to keep debtor information confidential. These recommendations are made notwithstanding that there are general controls over the outsourcing of services by banks as well as regulation against unfair collection practices (helpful though they are, they do not provide consumers with specific protections).

Competition Law

44. There is not at present an overarching Competition Law applying to the banking sector in the Philippines, although it is understood that various attempts have been made to have such a law passed by Congress in recent years. However this position is not of immediate concern as the banking system appears to be competitive judging by the number of banks and the apparent lack of restrictions on switching banks and closing accounts. There are also relevant provisions in laws applying to BSP entities and in the Constitution. The 1987 Constitution (Article XII, Section 19) prohibits anti-competitive conduct and unfair competition and there are numerous laws dealing with different aspects of competition. Although the BSP itself does not have a specific mandate in relation to competition in the banking sector, to some extent it relies on its mandate over the operations of the banking sector to exercise this function. For example, mergers of banks require the approval of the BSP.²³ Further, the DoJ has been designated as the Competition Authority and an Office for Competition (OFC) has been established to exercise this function. The DoJ also supervises the Office for Alternative Dispute Resolution.

Key Recommendations

45. In the long term, we support the enactment of a Competition Law clearly applicable to the banking sector in the Philippines. However this is not an immediate priority for the reasons given above.

C. Transparency and Consumer Disclosure

46. The provision of clear, standardized and comparable information to consumers—which is consistent to the extent applicable across all products – is an important mechanism to promote competition, bringing down the cost of financial products and services.

Transparency of Contract Terms

47. The requirements for disclosures in contracts for bank services are incomplete and fragmented because they do not include a requirement to disclose all contract terms, do not cover debit products and, even in relation to credit products, are incomplete. Although the mission team acknowledges the importance of the new Truth in Lending rules and the credit card disclosure requirements, there remain a number of gaps. They include the following:

- There is no requirement for pre-contractual disclosure of **all** contractual terms or for a customer to be given a copy of the contract document;

²³ MORB X108.1

- The Truth in Lending requirements are incomplete in that they do not require disclosure of key information such as the term of the loan, repayments or the security to be given;
- The Truth in Lending requirements apply to “loans” but the term is undefined for the purposes of MORB 307. For example, it is not clear that this term applies to credit-sales contracts for the purchase of cars and other goods;
- The credit card disclosure requirements in MORB X320.4 do not reflect the revolving nature of a credit card (for example, they refer to installment loans);
- Further, the credit card disclosure requirements do not apply to other types of revolving credit facilities (such as overdrafts and other lines of credit) and do not require disclosure of the method for determining the minimum monthly amount due (for example, a percentage of the outstanding balance); and
- The use of the “sample” form of disclosure attached to Circular 730 applies only in relation to loans (not revolving lines of credit) and its use appears to be optional, provided the required information is disclosed in the contract itself.

48. The current framework also does not address the need to ensure customers understand the terms of the contracts they are signing and the features of the related products. This is of particular concern in a country such as the Philippines where there are low levels of financial literacy and high levels of illiteracy and where the banking products being made available to customers are changing rapidly and are increasingly complex through their reliance on new technologies.

Key Recommendations

49. Ideally, there would be a comprehensive, consistent contractual disclosure regime applied to banking products and relevant distribution channels which goes beyond the current Truth in Lending regime and the disclosure rules for deposit products and credit cards. For credit products this should include requirements for disclosure of, at a minimum: the amount borrowed; the applicable interest rate and total interest charges; details of all fees and charges; whether interest rates are fixed or variable, the method of calculating interest charges (flat or on a declining basis); the amount and frequency of repayments, of any security given and the applicable default rate of interest; any applicable insurance premiums and commissions; and a requirement to give reasonable notice of changes (say 20 days). For deposit products the minimum information should include: the applicable interest rate; details of all fees and charges; whether interest rates are fixed or variable; the method of calculating interest charges (flat or on a declining basis); and any minimum balance requirement. Similarly, there should be a clear requirement for pre-contractual disclosure of all terms and applicable charges relevant to electronic banking and e-banking channels. For distribution channels, the minimum information should include notice of fees and liability in relation to errors and fraud. Further, the requirement to disclose information about fees on overseas remittances should also apply to remittances in the Philippines.

50. The abovementioned information is the minimum that should be given to customers if they are to be able to make an informed decision about the service and to be fully aware of their rights and responsibilities.

51. Contract documents could also be made comprehensible through summaries of key information, clear language and format and explanations from bank staff in appropriate cases. This might be achieved by implementing the following specific recommendations:

- A Key Facts Statement should be provided on the first page of every contract summarizing the key terms. More specifically for loans, it is recommended that consideration be given to amending the requirements of Circular 730 so that it is clear that the use of the prescribed form is mandatory, it is required to be in a minimum of a 12 point font and so that the mandated information required to be disclosed includes all key terms of a loan contract. In particular, it is considered that the required information should also include the total amount to be repaid, the term of the loan, the total amount of repayments and information about any security which must be provided (for example, in the case of a housing loan secured by real estate);
- It is also recommended that consideration be given to new requirements to provide a “Key Facts Statement” for revolving credit products (such as credit cards and overdrafts) and deposit products;
- Contracts should be both intelligible and legible and in a minimum of 12 point font;
- Contract documents should be explained to customers who would not otherwise understand them;
- Customers should be given time to consider documents before the contract is signed; and
- Customers should be required to be advised on the implications of issuing checks and their liability as drawers or endorsers of checks.

Statements of Account

52. Although statements of account are provided by banks as a matter of practice, other than in relation to checking accounts, there are no mandated requirements for banks to provide customers with regular statements or up-date account information on request. This information would enable customers to check for the accuracy of balances and debits and credits and generally facilitate management of their accounts. This is particularly important for long term and revolving credit facilities (such as overdrafts and credit card contracts) and variable rate contracts.

Key Recommendations

53. Consideration should be given to requiring banks to provide regular statements of account for debit and credit products and, in addition, to make information on account balances available on request. There should not be any requirement to pay a fee in either case. Information in statements could include, for example, details of opening and closing balances, debits and credits and especially of interest charges and fees and charges in the statement period. Exceptions may apply in particular cases – for example, there might be no need for a statement with a fixed rate loan where the repayment amounts and all applicable fees are set out in the contract and there has been no change to the contract requirements.

Notice of Changes to Contracts

54. A further concern is that there does not appear to be any requirement for BSP regulated banks to advise customers of any changes to interest rates and fees and charges.

Key Recommendations

55. There should be a requirement for advance notice to customers of changes to applicable interest rates and fees and charges. Ideally the amount of notice would be around 20 days so that customers have time to consider the implications of the notice and, if need be, change banks. This notice should be given by mail, email or having regard to the most appropriate/relevant channel (given the particular conditions of the client).

Notice of default and about the effect of giving a mortgage or guarantee

56. There do not appear to be specific requirements for debtors to be given a notice of default and time to remedy the default or for debtors and guarantors to be given notice of the effect of giving a mortgage or a guarantee (as the case may be). Although the mission team did not identify any problems in practice in this regard, it is considered that the identified gaps relate to important consumer protection issues and there is a need for action to be taken.

Key Recommendations

57. It is recommended that banks be required to give debtors at least 30 days' notice before any action is taken in relation to a default. The notice should include advice as to the action the debtor needs to take to remedy the default and as to the implications of any acceleration clause in the contract.

58. It is also recommended that there be included on the front page of any mortgage or guarantee document a clear warning in a statutorily prescribed format of the effect of a default on the relevant loan or of the guarantee (as the case may be). For a mortgage, the warning could be as simple as a clear statement in large print to the effect that a default means that the mortgagor could lose their home in the case of default. A similar statement of the effect of giving a guarantee should also be provided, with a suggestion that the guarantor obtain legal or financial advice if they have any concerns about the effect of the guarantee.

D. Business Practices

Credit Bureaus and Data Protection

59. Consumer protection rights applying to credit information are fragmented and incomplete. Presently RA 9510 An Act Establishing the Credit Information System and for Other Purposes provides the legal basis for the establishment of the public-private Credit Information Corporation (**CIC**) and contains various provisions designed to protect the rights of data subjects.²⁴ However the Corporation is not yet fully operational. At the same time there are two private credit bureaus for banking activities operating in the Philippines.²⁵ Debtors whose credit information is held by these credit bureaus do not have the rights provided for by RA 9510. Further, the credit bureaus are not required to be licensed and their operations are not supervised in any way. However the operations of both the credit bureaus and the CIC are also subject to the provisions of the new Data Privacy Act of 2012.²⁶ The banks using the services of the credit bureaus are also required to comply with relevant BSP rules (for example, the rule requiring banks to keep up to date information they have given credit bureaus).²⁷ This fragmentation of the law on credit information means that there is uneven protection of the rights of data subjects.

²⁴ 60 percent of the stock of the CCIC is to be owned by the National Government and 40 percent by private investors (Article 5 of RA 9510).

²⁵ The BAP Credit Bureau operated by the Bankers Association of the Philippines, which provides positive and negative information (http://www7.bapcb.com/v2_services.bap.htm). The other credit reporting service is provided by TransUnion in relation to credit cards (<http://www.transunion.ph/philippines/business/service-solutions/credit-reporting.page>). There is also a credit bureau for microfinance called the Microfinance Data Sharing System (MiDAS), which was formed by the seven (7) largest microfinance institutions in the Philippines in 2012 (<http://business.inquirer.net/39021/credit-bureau-for-microfinance-formed>).

²⁶ RA 10173

²⁷ MORB X306.7

Key Recommendations

60. The legal framework for the overall credit information system should be reviewed to address consumer protection concerns in relation to the credit information contained in all credit bureaus. In summary, there should be a level playing field so that the rights of data subjects are the same, regardless of whether their information is held by the CIC or a private credit bureau.

Fees and Interest Rates

61. The Philippines does not at present have any significant restrictions on the interest charges or fees that may be charged by banks for credit and debit facilities, which is helpful from a competition viewpoint. The few restrictions, which we have identified, which do exist are in the Consumer Law. They include, for example:

- The prohibition on “*penalties*” for prepaying a contract²⁸;
- A requirement to give at least a 10 days grace period before a delinquency charge is payable²⁹; and
- The rule that deferral charges can only be made if they have been previously agreed³⁰.

Key Recommendations

62. In the interests of encouraging the ability to switch banks (and completion) and fairness, limited restraints on the certain fees and charges should be introduced. They include the following proposals:

- Prepayment and account closure fees could be required to reflect the true cost of the closure. This would mean that these fees would only be able to be charged to the extent they reflect the reasonable administrative costs of the relevant event;
- Default interest charges should only relate to the amount in default. Ideally these charges would only be on the amount in default (i.e. not on the entire outstanding balance) and while the default continues; and
- Enforcement expenses should be required to be reasonable.

Staff Training and Product Suitability

63. Although it is understood that banks conduct training programs on a regular basis for their staff in relation to products and services, there are only limited requirements in this regard. For example there are specific requirements in relation to directors and officers and concerning staff engaged in specific activities such as microfinance and anti-money laundering programs. However there are no requirements of a general nature to the effect that all staff and intermediaries have to be appropriately trained and qualified so as to ensure that consumers are appropriately advised.

64. Further, consumers do not seem to have any rights when they are sold products which were clearly unsuitable for their needs. For example, there are detailed provisions in place designed to ensure responsible lending practices from a credit risk perspective, but there do not appear to be rules in place which deal with the rights of consumers if these rules are breached (and the consumer receives credit which was clearly not affordable).

²⁸ Article 137

²⁹ Article 134

³⁰ Article 135

Key Recommendations

65. It is considered that, at a minimum, it should be a banking license condition that the bank in question must ensure that their staff, third party agents and authorized representatives are adequately trained and have the skills, experience and professional qualifications necessary to ensure that they can competently carry out their functions and advise consumers. This would include, for example, a requirement that those staff and others who provide financial product advice have all the competencies and qualifications required to ensure that they perform the services that they are authorized to provide to an acceptable standard and so as to ensure that products provided to consumers are suitable for their needs, capacity and objectives (which should also be required to be ascertained).

66. There should also be provision for protecting a consumer from the consequences of being provided with unsuitable products. For example, the current regime requiring responsible lending practices should be reviewed with a view to introducing laws which protect a consumer from the consequences of “irresponsible” lending. A court might, for example, be given the right to adjust the amounts payable under the contract or order the discharge of a mortgage or make other changes to the contract terms. The relevant laws should also be reviewed so as to ensure that they apply consistently to different credit products and to an increase in the amount of credit, as well as a new credit facility.

E. Dispute Resolution Mechanisms

Internal Complaints Handling Systems

67. Although all banks met by the mission team have internal complaints resolution systems, there are no mandated requirements relating to such schemes. It is a fundamental principle of global standards on consumer protection that “*financial services providers and authorised agents should have in place mechanisms for complaint handling and redress*”.³¹ There are a variety of reasons why this is important in addition to the fundamental interest in ensuring consumers are treated fairly and equitably: having such systems in place assists in building trust in financial institutions which can in turn assist in meeting financial inclusion targets; if information on complaints is required to be provided to financial regulators it can be a useful source of information on systemic issues of concern as well as being a source of information for consumers if the information is required to be published; and, finally, having effective complaint resolution systems in place reduces the pressure on external dispute resolution bodies such as FCAG.

Key Recommendations

68. Organizations regulated by BSP should be required to meet internal dispute resolution standards set by BSP. At a minimum, the standards should set timelines for resolving complaints, require regular reporting to the customer and reasons for adverse decisions and require reporting of complaint statistics to the BSP. International standards on complaint resolution could be helpful in this context.³²

³¹ Extract from Principle 9 of the G20 High- Level Principles on Financial Consumer Protection (see also the WB's Good Practices on Financial Consumer Protection)

³² See e.g. AS ISO 10002-2006 Customer satisfaction - Guidelines for complaints handling in organizations (<http://infostore.saiglobal.com/store/details.aspx?ProductID=341668>)

External Dispute Resolution Systems

69. At present the responsibility for providing an external dispute resolution system in the Philippines rests with FCAG in BSP. BSP does not have explicit power to deal with consumer complaints but at present provides a comprehensive complaint investigation and mediation resolution service through FCAG. Although FCAG does not have a power to issue binding decisions, it is understood that regulated banks generally comply with the decisions arrived at through FCAG facilitation and mediation services.

70. FCAG was established pursuant to BSP Officer Order No. 892 on 15 October 2006 to support the Supervision and Examination Sector of BSP (SES) through the following functions: facilitating communication with BSP supervised financial institutions to address consumer complaints or disputes; initiating the adoption or modification of policies, rules and regulations in line with consumer protection laws and BSP's financial literacy programs (but FCAG does not itself have the relevant powers (e.g. to make regulations although it can (and does) make suggestions for changes); and providing liaison activities and advice between the BSP supervision departments and the public, the legislature and financial institutions.

71. Complaints must be lodged in writing but can be delivered personally, by email or fax to the FCAG office in the BSP Manila building. FCAG will then take the issue up with the financial institution, which is required to reply directly to the complainant, with a copy to FCAG. FCAG may also facilitate a meeting between the complainant and the financial institution. The purpose of the meeting is to provide an opportunity to both parties to explain each other's position on the issues and possibly find ways to reconcile differences and resolve the concerns. In 2012, FCAG received 1,854 complaints from the public.

72. FCAG may also raise issues of individual or systemic concern with relevant BSP supervisors. For example, the mission team was advised that FCAG raised an issue concerning debt collection practices in relation to credit cards which resulted in the introduction of strong BSP rules concerning such practices.³³

73. There are, however, significant limits to FCAG's powers. In particular, FCAG does not have power to make binding decisions, to impose sanctions or to conduct on – site examinations of financial institutions. Accordingly any issues of concern (whether individual or systemic) can only be raised with the relevant BSP supervisory department. The mission team was advised that these issues may be provided for under the proposed BSP Financial Consumer Protection Framework. However details of the new proposals were not publicly available at the time of the mission.

74. Apart from FCAG, there do not appear to be any bodies external to banking institutions to represent the interests of bank customers. The mission team was not able to identify any relevant civil society groups which might be interviewed to discuss issues relevant to consumers of financial services. It is further noted that the National Consumer Affairs Council does not have the resources or expertise to deal with consumer complaints about financial services. Such complaints are usually referred directly to the FCAG when they are received by the Council.

³³ See <http://www.bsp.gov.ph/about/ConsumerAssistanceMechanismFlyer.pdf> for details of the current mandate.

Key Recommendations

75. Although the complaint resolution service offered by FCAG seems to operate very effectively in a number of respects, there are a number of ways in which the current operations might be improved in the interests of complying with international best practice on financial ombudsman schemes. At a minimum, having regard to the World Bank's publication on *Resolving Disputes between Consumers and Financial Businesses: Fundamentals for a Financial Ombudsman*³⁴, it is proposed that

- FCAG could be given the power to make decisions which bind the financial institution concerned;
- Regulated banks could be required to advise customers with whom they have a dispute that the customer can take the complaint to FCAG (but only after the customer has first tried to have the bank deal with the complaint); and
- FCAG should undertake a public awareness campaign of the availability of its services.

76. Consideration should be given to providing support to credible and independent research or consumer advocacy groups that can represent consumer interests and, in particular, help consumers compare offerings and prices. This information should go beyond product and budgeting training to include information on consumers rights for recourse, to receive statements on their accounts, receive information on products before committing to them, to be treated with respect and in monitoring/correcting their information in the credit bureau.

³⁴http://www.networkfso.org/Resolving-disputes-between-consumers-and-financial-businesses_Fundamentals-for-a-financial-ombudsman_The-World-Bank_January2012.pdf.

APPENDIX I: METHODOLOGY OF CONSUMER PROTECTION AND FINANCIAL LITERACY REVIEW

1. The CPFL 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.
2. CPFL Reviews against Good Practices have been conducted by the World Bank in both middle as well as low income countries. These include Armenia, Azerbaijan, Bosnia and Herzegovina, Bulgaria, Croatia, the Czech Republic, Kazakhstan, Kosovo, Latvia, Lithuania, Malawi, Mongolia, Mozambique, Nicaragua, Pakistan, Romania, the Russian Federation, South Africa, Slovakia, Tajikistan, Tanzania, Ukraine and Zambia.
3. The main objective of the Review is to assess the legal/regulatory and institutional frameworks for financial consumer protection in a country, with reference to international practices. The Review addresses the following issues: (1) legal, regulatory and institutional framework, (2) transparency and disclosure of information, (3) retail business practices of financial institutions, (4) complaints and dispute resolution mechanisms, and (5) consumer awareness and education regarding the use of financial services as well as consumers' rights and responsibilities and provide prioritized recommendations in these areas.
4. The Review is based on compliance with a set of Good Practices developed using international benchmarks, such as the principles released by the Basel Committee, IOSCO and IAIS, as well as the OECD recommendations for financial education and awareness on pensions, insurance, and credit products. The Good Practices incorporate provisions of directives, laws, regulations and codes of business practices from the EU, United States, Australia, Canada, France, Ireland, Malaysia, Mexico, New Zealand, Peru and South Africa.
5. The CPFL Review includes a detailed assessment of each relevant financial segment compared to the Good Practices (Volume II), and a report summarizing the key findings for the assessment and prioritized recommendations (Volume I).

APPENDIX II : PHILIPPINES FINANCIAL ACCESS DATA: FINDEX 2012

Philippines

East Asia & Pacific		Lower middle income	
Population (millions)	93.3	GNI per capita (\$)	2,060
	Country data	East Asia & Pacific	Lower middle income
Account at a Formal Financial Institution			
All adults (% , age 15+)	26.6	54.9	28.4
Male adults (% , age 15+)	19.0	57.6	33.9
Female adults (% , age 15+)	33.7	52.3	22.9
Young adults (% , ages 15–24)	18.3	52.1	21.5
Older adults (% , age 25+)	30.3	54.9	31.2
Adults with a primary education or less (% , age 15+)	12.3	46.5	20.8
Adults with a secondary education or more (% , age 15+)	33.1	71.0	45.4
Adults in income quintiles I (lowest) and II (% , age 15+)	10.4	39.8	19.7
Adults in income quintiles III, IV, and V (highest) (% , age 15+)	39.6	65.6	36.3
Adults living in a rural area (% , age 15+)	19.5	49.5	25.3
Adults living in an urban area (% , age 15+)	37.1	70.8	36.0
Access to Formal Accounts (% , age 15+)			
0 deposits/withdrawals in a typical month (% with an account)	6.2	13.2	6.8
0 deposits in a typical month (% with an account)	14.7	19.1	11.6
1–2 deposits in a typical month (% with an account)	67.4	64.6	70.9
3+ deposits in a typical month (% with an account)	15.1	7.8	11.8
0 withdrawals in a typical month (% with an account)	11.7	20.5	13.7
1–2 withdrawals in a typical month (% with an account)	66.4	55.0	64.4
3+ withdrawals in a typical month (% with an account)	18.8	14.3	15.1
ATM is the main mode of deposit (% with an account)	19.6	13.9	4.5
Bank teller is the main mode of deposit (% with an account)	47.8	76.4	80.2
Bank agent is the main mode of deposit (% with an account)	13.2	2.5	4.0
ATM is the main mode of withdrawal (% with an account)	62.5	39.1	31.0
Bank teller is the main mode of withdrawal (% with an account)	24.2	55.9	56.8
Bank agent is the main mode of withdrawal (% with an account)	6.4	1.3	3.0
Has debit card	13.2	34.5	10.1
Use of Formal Accounts (% , age 15+)			
Use an account for business purposes	5.6	3.2	4.1
Use an account to receive wages	8.5	16.9	8.5
Use an account to receive government payments	5.5	6.3	3.9
Use an account to receive remittances	12.2	8.8	3.7
Use an account to send remittances	5.3	7.1	3.0
Mobile Payments (% , age 15+)			
Use a mobile phone to pay bills	2.1	1.3	2.0
Use a mobile phone to send money	7.3	1.0	2.4
Use a mobile phone to receive money	12.5	1.2	3.8
Savings (% , age 15+)			
Saved any money in the past year	45.5	39.8	27.6
Saved at a formal financial institution in the past year	14.7	28.4	11.1
Saved using a savings club in the past year	6.5	4.3	7.2
Saved for future expenses in the past year	31.8	28.2	19.9
Saved for emergencies in the past year	36.9	29.6	22.1
Credit (% , age 15+)			
Loan from a formal financial institution in the past year	10.5	8.6	7.3
Loan from family or friends in the past year	39.0	27.2	26.6
Loan from an informal private lender in the past year	12.7	1.9	5.3
Outstanding loan to purchase a home	3.6	4.4	2.2
Outstanding loan for home construction	5.8	5.4	4.7
Outstanding loan to pay school fees	20.7	5.8	6.8
Outstanding loan for health or emergencies	28.7	9.7	14.8
Outstanding loan for funerals or weddings	5.4	1.8	3.9
Insurance (% , age 15+)			
Personally paid for health insurance	5.5	36.8	5.1

APPENDIX III: INSTITUTIONAL STRUCTURES

Box 1. Models of Institutional Set up for Consumer Protection Regulation and Supervision

- **Single Agency Approach.** One institutional approach is to have prudential and consumer protection supervision allocated within the same supervisory agency. This is the case in Kazakhstan, where the Agency on Regulation and Supervision of Financial Market and Financial Organizations is statutorily responsible for both the stability of the financial sector and maintenance of financial consumer protection. In Malaysia the Bank Negara Malaysia (central bank) is responsible for both prudential and consumer protection oversight of financial institutions (except securities). The two mandates are overseen by separate departments but in close coordination. Placing consumer protection in the same department as prudential supervision creates potential conflicts with the traditional and long-standing prudential supervisory roles tending to dominate in allocation of resources and priorities. Prudential supervision can, however, provide useful early warning signals for business conduct supervision. International experiences shows that, if a supervisory agency adopts consumer protection as part of its mandate, business conduct supervision should be separated from prudential supervision and have adequate specialized staff and resources to perform its specialized responsibilities effectively in order to avoid conflicts of interest.
- **Specialized Financial Consumer Protection Agency.** Some countries have established one or more specialized regulators for financial consumer protection. Australia was the first country to set up a so-called 'twin peak' structure where the Market Conduct Regulator is responsible for overseeing the way in which market participants behave, while the other peak – the Prudential Regulator – is charged with overseeing the financial health, safety and soundness of market participants. This approach was followed by the Netherlands. Recent trends in financial consumer regulation point to the development of such specialized agencies, as seen in the creation of the Financial Consumer Agency of Canada (2001), the establishment of the Consumer Financial Protection Bureau in the United States (2011) and the proposed Financial Conduct Authority of the United Kingdom. Conflicts of interest can thereby be avoided between oversight that focuses on ensuring the stability of the financial system as a whole, and supervision that seeks to ensure that individual consumers of financial services are protected in the market. While this model has the advantage of clearly defined objectives and mandates of the respective agencies the challenge is to provide a new financial consumer protection agency with sufficient authority and credibility within the financial system.
- **General Consumer Protection Body.** A third approach is for a body with jurisdiction to cover all consumer protection issues to be required as a result to include financial products and services in its mandate as well. This is the case in Brazil, where many basic consumer protection rights are guaranteed in the Consumer Protection Code. The Department for Consumer Protection and Defense (housed at the Ministry of Justice) has oversight over consumer protection in general, including financial consumer protection issues, although the Central Bank of Brazil covers some financial services issues not mentioned in the Code. The challenge of the general consumer protection agency approach is to provide sufficient resources in order to handle financial services issues properly since technical aspects of financial services require specialized staff with sector-specific knowledge, expertise and experience.

APPENDIX IV: MODELS OF FINANCIAL OMBUDSMAN STRUCTURES

To further improve access to justice for citizens, governments often take further steps to provide alternative dispute resolution systems that allow for an out-of court-decision to be taken when parties fail to arrive voluntarily to a conclusion to a complaint. Generally, there are three models of financial ombudsman applied:

- **Ombudsmen established by financial services associations:** Decision by such an ombudsman is not legally binding but his findings are usually respected by financial institutions voluntarily as a part of self-regulation of the market, sometimes with financial companies even publicly declaring to be bound by the ombudsman's decisions. In countries, such as Germany, an industry-based ombuds structure for each part of the financial sector has proven effective. However, in the case of such an ombudsman structure established by professional association, attention should be paid to the presence of conflicts of interest. Also, consumers may perceive the ombudsman as someone who will always decide in favor of the financial institution and against the consumer.
- **Statutory independent ombudsmen:** In this approach, the ombudsman has functions and powers set up by national laws and members appointed by government authority. For example, the UK established a scheme by law to function as an independent 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 easy for consumers to identify to which agency they should submit their inquiries and complaints. While this model has the advantage of clearly defined objectives and mandates the challenge is to provide the new ombudsman with sufficient authority and resources.
- **Ombudsman structure established within the regulatory and supervisory agency:** A third model is the set-up of a financial ombudsman structure within a regulatory and supervisory agency. For example in the case of Bosnia Herzegovina, a Banking System Ombudsman has been established as an independent organizational unit within the Banking Agency of the Republic of Srpska. While this model has the advantage of using existing institutional arrangements to build upon the challenge is to ensure independence of such an ombudsman structure and avoid conflicts of interest.

