



# *Republic of Zambia*

## **Diagnostic Review of Consumer Protection and Financial Literacy**

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**Abbreviations and Acronyms**

AfDB	African Development Bank
AMIZ	Association of Microfinance Institutions of Zambia
AML	Anti-Money Laundering
APR	Annual Percentage Rate
ATM	Automated teller machine
BAZ	Bankers Association of Zambia
BBR	Branchless Banking Regulations
BFS	Banking and Financial Services
BFSA	Banking and Financial Services Act
BoZ	Bank of Zambia
BZA	Bank of Zambia Act
CA	Chartered Accountant
CBP	Code of Banking Practice
CCPA	Competition and Consumer Protection Act
CCPC	Competition and Consumer Protection Commission
CCPT	Competition and Consumer Protection Tribunal
CFA	Chartered Financial Analyst
CIU	Collective investment undertakings
CPFL	Consumer protection and financial literacy
CRA	Credit reporting agency
DFID	Department for International Development
DP Bill	Deposit Protection Bill
DPP	Data Protection Principles
FECU	Financial Education Coordinating Unit
FEF	Financial Education Fund
FIC	Financial Intelligence Centre Act
FSDP	Financial Sector Development Plan
IA	Insurance Act
IAZ	Insurers Association of Zambia
IBAZ	Insurance Brokers Association of Zambia
IIZ	Insurance Institute of Zambia
KYC	Know Your Customer
LLC	Limited liability company
LSE	Lusaka Stock Exchange
MFI	Microfinance institution
MFNP	Ministry of Finance and National Planning
MFRs	Microfinance Regulations
MNO	Mobile network operators
MOA	Ministry of Agriculture
MOU	Memorandum of Understanding
NGO	Non-government Organization
NPL	Non-Performing Loan

NPSA	National Payment Systems Act
PIA	Pensions and Insurance Authority
PICZ	Professional Insurance Company of Zambia
PIN	Personal identification number
PLAL	Professional Life Assurance Company
PSRA	Pension Scheme Regulation Act
SEC	Securities and Exchange Commission
SRO	Self Regulatory Organization
TPL	Third party liability
WOCCU	World Council of Credit Unions
Zanaco	Zambia National Commercial Bank
ZAPF	Zambian Association of Pension Funds
ZCF	Zambia Cooperative Federation
ZIBF	Zambian Institute of Banking and Financial Services
ZMK	Zambian Kwacha
ZSIC	Zambian State Insurance Company

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# I. Banking Sector: Comparison with Good Practices

## Section A. Consumer Protection Institutions

### Good Practice A.1. Consumer Protection Regime

#### *Good Practice*

The law should provide clear consumer protection rules regarding banking products and services, and all institutional arrangements should be in place to ensure the thorough, objective, timely and fair implementation and enforcement of all such rules.

- a. Specific statutory provisions should create an effective regime for the protection of a consumer of any banking product or service.
- b. A general consumer agency, a financial supervisory agency or a specialized financial consumer agency should be responsible for implementing, overseeing and enforcing consumer protection regarding banking products and services, as well as for collecting and analyzing data (including inquiries, complaints and disputes).
- c. The designated agency should be funded adequately to enable it to carry out its mandates efficiently and effectively.
- d. The work of the designated agency should be carried out with transparency, accountability and integrity.
- e. There should be co-ordination and co-operation between the various institutions mandated to implement, oversee and enforce consumer protection and financial system regulation and supervision.
- f. The law should also provide for, or at least not prohibit, a role for the private sector, including voluntary consumer organizations and self-regulatory organizations, in respect of consumer protection regarding banking products and services.

**Description**

The financial services laws of Zambia relating to banks contain limited consumer protection provisions and there are scarce supervisory resources for the provisions which do exist.

There is only limited provision in the draft new Banking and Financial Services Act (BFSA) for the existing gaps to be remedied.

**Paragraph (a)**

The banking laws of Zambia contain limited consumer protection provisions which are supervised by scarce BoZ banking supervision staff. Relevant provisions are in the BFSA, the Banking and Financial Services (BFS) (Cost of Borrowing) Regulations, and the BFS (Deposit Charges & Interest) Regulations (hereinafter BFS (Deposit Charges & Interest) Regulations). The primary regulator for these laws is the BoZ. Supervision occurs through BoZ officers responsible for banking supervision and is primarily focused on advertising interest rates and fees and charges applicable to consumer products and services, the setting of the benchmark bank Policy Rate for consumer loans and dealing with consumer complaints.

There are also consumer protection provisions for bank customers in the Competition and Consumer Protection Act (CCPA); however, with only 5 officers responsible for consumer protection in both financial and non-financial sectors, Competition and Consumer Protection Commission (CCPC) does not have sufficient resources and expertise to supervise them. The CCPA contains prohibitions on unfair trading practices, false and misleading representations, advertising and unfair terms, all of which could be applied to financial services and products regulated by the sector specific regulators. These provisions have potential to overlap with provisions in the sector specific laws (for example in relation to disclosures and false and misleading advertising). The Competition and Consumer Protection Commission (CCPC) does not appear to have the resources or the expertise to supervise these laws (there are only 8 officers responsible for consumer protection in the financial and the non-financial sectors).

The BFSA provisions dealing with anti-competitive conduct and certain business practices are of special interest. There are provisions which prohibit:

- Banks and financial institutions from making an agreement with another bank or financial institution with respect to interest rates, charges or the provision of financial services to a person or in a manner that restricts competition (subject to stated exceptions) (s. 40);
- A requirement to acquire a financial service as a condition of receiving a financial service from the institution concerned or any other (s. 41); and
- False and misleading advertisements (s. 49).

There are also requirements to:

- Display names (ss. 44 and 45);
- Provide a new account customer with details of interest and other charges and of how notice will be given of changes (s. 47 (1)) (but not of terms and conditions);
- Provide a new loan customer with details of the cost of borrowing (s. 47 (2));
- Establish and publicize complaint resolution procedures, designate a person with responsibility to administer and manage the procedures and keep records for at least 2 years (s. 48) (this is certainly not best practice in terms of dispute resolution schemes);
- Maintain the confidentiality of confidential information (s. 50); and
- Daily records of customers' transactions and the balance owing (but there is no provision for the customer to inspect those records) (s. 51).



The BFS (Cost of Borrowing) Regulations contain requirements relating to the disclosure of information about interest charges, fees and charges and other information for the purposes of s. 47 of the BFS. In particular, there are the following requirements:

- The “cost of borrowing” is defined as including administrative and similar charges, but excludes various other charges, including charges for arranging the loan and for insurance and various other charges (reg. 2(1));
- The rate of interest for an overdraft, a line of credit or a payment, credit or charge card must be expressed as “the annual effective rate of interest” or the “annual percentage rate (APR)” and calculated in accordance with a prescribed formula (reg. 4);
- The cost of borrowing for a loan repayable in equal installments must be calculated in accordance with a prescribed formula which takes into account interest “plus all other charges” (reg. 5);
- For a loan made under the security of a letter of credit or any other arrangement, or where the loan is repayable on demand in variable amounts, there must be disclosure of the amount of the principal and the method of calculating the cost of borrowing (reg. 7(3));
- Disclosure must be made to a holder of a payment, credit or charge card, of information relating to credit limits, the availability of statements, the minimum amount payable, expressed as a percentage, how charges can be avoided, the maximum amount payable if a card is lost or stolen, charges for accepting or using the card, the cost of borrowing and penalties and other charges for late payments. This information must be given to the holder when, or before, the card is issued (reg. 9(1));
- Penalties and charges for late payments are not to exceed interest on the overdue payment and the legal costs of collection and the legal or other costs for realizing or protecting any security (reg. 10(1));
- There is a prohibition on imposing a charge for a pre-payment of the principal or any installment where the repayment exceeds ZMK 50,000 or extinguishes the debt, is made to a natural person and is not secured by a mortgage on real property (reg. 10(2)); and
- Allowing for the disclosure of estimates (reg. 11).

There is a number of issues associated with the above provisions, including that:

- There are no overarching requirements to disclose all terms and conditions in advance of a facility being provided;
- There is no requirement to disclose the method of calculation of interest charges;
- There is no provision for disclosures in relation to the loan which is not repayable in equal installments (cf. reg. 5);
- Changes which affect the amount of repayments are not required to be given to the borrower – they can be notified through a notice in a branch (reg. 7(4));
- The prohibition on charges for prepayments do not apply to loans secured by mortgages on real estate (reg. 10(2));
- The reg. 2 definition of the “cost of borrowing” excludes various charges, including those which could be significant fixed charges (such as the application fee and the cost of insurance);
- Some of the disclosures may be made by way of a notice in branches, which might not be seen by the consumer concerned (e.g. notices in relation to overdraft accounts (reg. 7(2)(a) and in relation to the amount of periodic payments (reg. 7(3)));
- There is no requirement for separate disclosure of fees and charges;
- There is no requirement for notice of fees payable for use of an ATM at the time of the transaction;

- There is no requirement for periodic statements to be provided;
- There is no requirement for disclosure documents to be informative for customers (which might assist comparison). For example, there is no requirement for disclosure documents to have a minimum font size (say 10 point font), to be simply expressed or to be in the most commonly spoken local languages; and
- The requirements which exist do not take into account the possibility of banking services being provided electronically.

The BFS (Deposit Charges & Interest) Regulations of 1995 contain disclosure provisions relating to charges on deposit accounts. However, we note the following limitations:

- The Regulations only apply to deposit accounts and do not apply to other non – credit products such as bank guarantees, payment services, investment products, custodial services and, importantly, electronic banking services;
- The list of charges which must be disclosed under reg. 2(1) is a definitive list and accordingly does not include any charges which are not on the list (such as a withdrawal charge);
- The disclosures may be made by way of a notice in branches, which might not be seen by the consumer concerned – there is no requirement for individual notice before or after an account is opened (reg. 2(2));
- The written notice need not disclose all applicable charges, although it must indicate that that is the case and that information about charges which are not disclosed is available on request (reg. 2(3));
- Notice of changes may be displayed in a branch, except that there is no requirement to give such a notice if the customer has agreed otherwise (reg. 3); and
- Disclosures of interest charges are also only required to be made available in branches (reg. 6).

Part VII of the CCPA contains various consumer protection provisions with potentially significant penalties. There are prohibitions on:

- Unfair trading practices (ss. 45 and 46);
- False or misleading representations (s. 47);
- Disclaimers of rights given under any written law (s. 48);
- Defective and unsuitable goods and services (s. 49); and
- Charging more than the price displayed for goods or services (s. 51).

Importantly, there is also a provision to the effect that a provision in a contract will not be binding if it is “unfair”. The latter term is defined to mean a term which “causes a significant imbalance in the parties’ rights and obligations arising under the contract, to the detriment of the consumer.” (s. 53). These provisions would apply to a banking customer given the broad definition of a “consumer” (s. 2(1)).

The above provisions are described in further detail below in relation to the relevant Good Practices. In that context we also refer to relevant provisions which may ameliorate the effect of some of the concerns we have expressed above.

*Paragraph (b)*

The only agency of the type described is the general purpose CCPC, which has supervisory authority in relation to the consumer protection provisions in the CCPA, but not in relation to those in the BFSA. The latter provisions are supervised by the BoZ, which does not have a separate consumer protection division and is not perceived as a strong enforcer of consumer protection laws.

The only information that could be found on the BoZ website relating to “consumers” concerned the consumer price indices.

Further, no information relating specifically to consumer protection issues in relation to banking products and services could be found on the website of the CCPC.

If the BFSA is amended as currently proposed, the overlap between the supervisory responsibilities of the BoZ and of the CCPC will be amplified. The proposed re-write of the BFSA, which is due to be introduced into Parliament in October, contains various competition and consumer protection provisions, a number of which overlap with those in the CCPA (for example, in relation to anti-competitive conduct, unfair business practices and unfair terms). There is an express provision in the draft new BFSA which makes it clear the competition and consumer protection provisions in the draft are in addition to those in other laws (such as the CCPA). This means that the supervisory overlap affecting the banking sector will be exacerbated.

*Paragraph (c)*

The CCPA has limited resources of around 20 staff and only 5 available to deal with consumer protection issues in the financial and non-financial sectors.

*Paragraph (d)*

There are no obvious concerns about the integrity or accountability of the CCPC and transparency appears adequate, albeit with slight concerns.

So far as transparency is concerned, it is noted that the CCPC is required to publish an Annual Report concerning the activities and financial condition of the CCPC, which must then be tabled in Parliament (s. 13). Further, it is understood that the BoZ is concerned about the fact that the CCPC raided various banks recently without advising the BoZ. The BoZ’s concern is that such actions may erode confidence in the banking system.

The more fundamental concern about the CCPC is that in some cases the CCPA consumer protection provisions overlap with the banking specific provisions, yet, as noted above, the CCPC does not appear to have the resources or the expertise to supervise these laws.

*Paragraph (e)*

It is understood that there are no formal arrangements for coordination and cooperation between the relevant regulators in relation to consumer protection matters.

Relevant regulators for the purposes of this Good Practice include:

- The BoZ
- The CCPC;
- The Pensions and Insurance Administrator (PIA); and
- The Securities and Exchange Commission (SEC).

The CCPC is required to enter into a memorandum of understanding in the prescribed form with any regulator in a separately regulated sector, such as the banking sector (s. 43). There is such memorandum in relation to the banking sector, but according to the BOZ it has not been effectively operationalized yet. Also it is understood that there is a memorandum of understanding between the CCPC and the PIA and the SEC.

*Paragraph (f)*

There is no prohibition on the private sector having a role in respect of consumer protection regarding banking products and services.

The interaction between the consumer protection provisions in the BFSA and the CCPA should be clarified. Taking into account the current context in Zambia, the CCPA should be amended to make it clear that it does not apply in relation to banking services. At the same time, the BFSA and subordinate regulations or statutory instruments should be amended to incorporate relevant consumer protection provisions included in the CCPA. It is also recommended that all financial regulators (BoZ, PIA and SEC) increase coordination to make sure that similar levels of consumer protection are warranted in the sector-specific financial sector laws.

**Recommendation**

There should be a comprehensive disclosure regime applied to banking products and services. The current regime contains a number of gaps and inconsistencies. Of particular note are the absence of requirements for transparent, clear, and comparable disclosure of key terms and conditions, applicable interest rates, fees and charges; a standard method for calculation of interest; regular account statements; and minimum 10 point font for complex disclosures and clear and comprehensible language. Further, there is no requirement for a Key Facts Statement and the requirements for giving notice of changes to terms and conditions, fees and interest rates are insufficient. Several of these improvements could be undertaken in the short term via regulations and not necessarily through extensive legal changes.

The BoZ should be provided with the resources necessary to supervise consumer protection laws and regulations applicable to the banking sector. The relevant officers should be located in a Division which is separate from the Division responsible for prudential banking supervision and which has a separate reporting line directly to the Governor.

The law relating to competition issues in the banking sector should be clarified. At present there are overlapping provisions on this issue in the BFSA and the CCPA and the overlap will be perpetuated in the draft new BFSA. The responsibility for competition in banking sector should rest with the CCPC, though it should work in close consultation with the BOZ. At a minimum, the memorandum of understanding between the BoZ and the CCPC which clarifies the responsibility for this important issue and the required consultation arrangements should be effectively operationalized.

### Good Practice A.2

#### *Code of Conduct for Banks*

- a. There should be a principles-based code of conduct for banks that is devised by all banks or the banking association in consultation with the financial supervisory agency and consumer associations, if possible. Monitored by a statutory agency or an effective self-regulatory agency, this code should be formally adhered to by all sector-specific institutions.
- b. If a principles-based code of conduct exists, it should be publicized and disseminated to the general public.
- c. The principles-based code should be augmented by voluntary codes of conduct for banks on such matters as facilitating the easy switching of consumers' current accounts and establishing a common terminology in the banking industry for the description of banks' charges, services and products.
- d. Every such voluntary code should likewise be publicized and disseminated.

#### *Description*

There is a voluntary Code of Banking Practice supervised by the Bankers Association of Zambia (BAZ), which is a mixture of principles and rules but it has very limited enforcement mechanisms and is not widely disseminated. Further, the secretariat is poorly resourced, although they appear committed to the need for consumer protection.

#### *Paragraph (a)*

The 2010 Code of Banking Practice (CBP) drawn up by the BAZ is a voluntary code of conduct for relevant banks. Media reports in November 2011 made reference to a revised Code which apparently has a greater emphasis on transparency, but which was not available to the mission (<http://allafrica.com/stories/201111210641.html>).

The CBP is a mixture of :

- A principles-based code: see, for example, clause 4 which requires banks to act fairly and reasonably, to give information on products and services in plain English, to promote informed decisions, to help the customer understand the basic implications of the banker customer relationship in relation to bankers products and services, not to discriminate on numerous specified grounds and to take the necessary actions to promote safe, secure and reliable banking and payment services; and clause 5.1.2 commitment to continuous improvement in the standards of practice and service ; and
- A rules-based code.

The majority of the CBP contains rules dealing with the following issues (amongst others):

- Staff training and competency (clause 5.3);
- A commitment to provide the information required to make appropriate financial decisions (clause 6.1);
- The provision of terms and conditions (clauses 6.2 and 8.2);
- The provision of information on all charges (clause 6.3);
- Interest rates (clause 6.4);
- Marketing and advertising (clause 6.5 – note, however, that non –confidential information may be given to subsidiaries for marketing services without express consent in relation to existing customers);
- A commitment to provide a “Basic / no frill account” (clause 6.10);
- Regular statements (clause 7.1.2);

- Check accounts (clause 7.1.3);
- Dishonored payment instructions and overdrawn accounts (clauses 7.1.4 and 8.4);
- Stop payments (clause 7.1.5);
- Assessment of the ability to repay a loan (clause 8.1);
- Foreign exchange services (clause 9.1);
- Cards and personal identification numbers (PINs), including how to safeguard PINs and related payment instruments (clauses 9.2 and 10.4.2 – 10.4.5);
- Internet/ telephone /mobile banking (clause 9.3);
- Confidentiality (clause 10.1);
- Credit reference agencies (clause 10.2);
- Data transparency (clause 10.3); and
- Financial difficulties (clause 12).

There are also provisions dealing with complaints, which are discussed below in Good Practices E.1 and E.2. However, they are considered to be of limited effectiveness.

*Paragraph (b)*

Clause 5.5.3 of the CBP provides that a copy of the Code is available from:

- The BAZ Secretariat;
- Member banks; and
- Websites of member banks (“where available”)

However, there is no requirement that terms and conditions refer to the applicability of the CBP and no requirement that the existence of the CBP be widely publicized. According to the consulted banks, there is little knowledge amongst bank customers of the existence of the CBP and the CBP is not widely available in branches. The BAZ has been taking steps to educate the public on the CBP through the dissemination of a leaflet on the CBP. However, the BAZ’s efforts are hampered by the attitude of a number of banks to the effect that the Code is aimed at bank behavior and is not “something for the customers”.

*Paragraph (c)*

There appears to be only one Code which is the CBP.

*Paragraph (d)*

See the comments in relation to paragraph (b).

**Recommendation**

It is recommended that the BAZ consider taking steps to require its members to publicize the existence of the CBP so that consumers become more aware of its existence and of the obligations of banks under its terms. The BoZ could also encourage regulated entities to do so. This could be done, for example, by way of notices in branches, on ATMs and on the Internet.

It is also recommended that each member bank includes in their terms and conditions a commitment to abide by the terms of the CBP. This way the banks would be contractually bound by the CBP.

Consideration should be given to making the enforcement mechanisms in the CBP more effective. This could be done (in the absence of an independent external dispute resolution scheme) by giving the Banking Adjudicator power to make decisions binding on the relevant bank.

It is also recommended that the BoZ monitors compliance with the CBP and publicizes its findings.

### Good Practice A.3

#### *Appropriate Allocation between Prudential Supervision and Consumer Protection*

Whether prudential supervision of banks and consumer protection regarding banking products and services are the responsibility of one or two organizations, the allocation of resources to these functions should be adequate to enable their effective implementation.

#### *Description*

There is a clear imbalance between the resources available for prudential regulation and those available for consumer protection.

The BoZ does not have a separate Division or, indeed any specified resources, available to focus specifically on consumer protection regarding banking products and services. It is further understood that the CCPC does not have any such resources.

#### *Recommendation*

As mentioned in Good Practice A.1, it is considered that the BoZ should be provided with the resources necessary to supervise consumer protection laws applicable to the banking sector. The relevant officers should be located in a Division which is separate from the Division responsible for prudential banking supervision and which has a separate reporting line directly to the Governor.



### Good Practice A.4

#### *Other Institutional Arrangements*

- a. The judicial system should ensure that the ultimate resolution of any dispute regarding a consumer protection matter in respect of a banking product or service is affordable, timely and professionally delivered.
- b. The media and consumer associations should play an active role in promoting banking consumer protection.

#### *Description*

This Good Practice is only met to a very limited extent.

##### *Paragraph (a)*

There is a Small Claims Court which has jurisdiction in respect of consumer complaints concerning banking and other financial services. However, it is understood that in practice the Court is not used for such complaints. In any case, it would appear that the Court does not have expertise in the financial sector.

Although aggrieved customers of banks may (and do) also complain to the BoZ, they appear to have very limited resources to deal with them. There were many concerns expressed about the effectiveness of the BoZ as a dispute resolution service.

Further, a person aggrieved by a breach of the consumer protection provisions in the CCPA may complain to the CCPC (s. 54). The CCPC may then investigate and impose a fine (s. 56(4)). However, there is no provision for the affected person to receive any redress. Appeals may be made to the Competition and Consumer Protection Tribunal (CCPT) (s. 68) and from there to the High Court (s.75). These provisions are new and to date have not been used in relation to financial services. The mission team was further advised that the expectation was that the BoZ would be the arbiter of such complaints, rather than the Tribunal. This is problematic as the BoZ does not appear to have the resources to deal with consumer issues.

##### *Paragraph (b)*

It is not clear that consumer protection issues are a priority for the media, although there were various media reports relating to such issues in relation to banking products and services. See e.g. [http://www.postzambia.com/post-read\\_article.php?articleId=20222](http://www.postzambia.com/post-read_article.php?articleId=20222)

#### **Recommendation**

Given the costs and time lags involved with access to judicial relief for individual consumers of financial services, the establishment of an independent external dispute resolution scheme is recommended. Further details of this proposal are in the response to Good Practice E.2.



### Good Practice A.5

#### Licensing

All banking institutions that provide financial services to consumers should be subject to a licensing and regulatory regime to ensure their financial safety and soundness and effective delivery of financial services.

#### Description

The BFSA contains detailed licensing provisions.

The BFSA provides that the BoZ must “*licence, supervise and regulate the activities of banks and financial institutions so as to promote the safe, sound and efficient operations and development of the financial system*” (s. 4(1) (a)).

The BFSA applies to “all banks and financial institutions whether or not constituted by any Act” (s. 3(1)) and the licensing obligations apply to persons who conduct a “banking business” and a “financial services business” (ss. 4, 10 and 17 (1) and (2)).

The term “banking business” is broadly defined to include any of the following:

*“(a) the business of receiving deposits from the public including checking account and current account deposits and the use of such deposits, either in whole or in part, for the account of and at the risk of the person carrying on the business, to make loans, advances or investments;*

*(b) financial services; and*

*(c) any custom, practice or activity prescribed by the Bank of Zambia as banking business;”* (s. 2(1))

The term “financial services” is also very widely defined to include a broad range of “financial services”, other than “the administration of contracts of insurance” and other services specified by the BFSA or otherwise specifically excluded (definitions in s. 2(1)). Given the breadth of the relevant definitions, a regulated financial institution could include, for example, a microfinance institution, a savings and loan club or a credit card company. Although the only reference to “deposits” in the definition of “financial services” is to “deposit brokerage”, it seems to be contemplated that a financial institution could take deposits. This is because the definition of “deposit” refers to amounts of money paid to a bank or a financial institution (s. 2(1)) and the BFS (Deposit Charges & Interest) Regulations refer to deposit accounts kept at financial institutions.

Most of the provisions in the BFSA apply to both banks and financial institutions (including prudential requirements). There are, however, some exceptions in that the ownership and control provisions, the amalgamation and restructuring provisions and the provisions relating to directors and officers do not apply to all financial institutions (s. 37B and First Schedule).

Further, the MF Regulations prohibit any person carrying on a “microfinance business” unless they hold a license under the MF Regulations (s.6 (1)). The term “microfinance business” is not defined but the term “microfinance service ” is defined in s. 2 to mean:

*“the provision of services primarily to small or micro enterprises or low income customers and includes the following:*

*(a) the provision of credit facilities usually characterized by frequent repayments; and*

*(b) the acceptance of remittances and any other services that the Bank of Zambia may designate;”*

The issue for the purposes of the Banking Sector report is how the BFSA and the MF Regulations interact. In the present context, the question is whether a bank or other financial institution primarily providing “microfinance services” (as defined) has to be licensed under both the BFSA and the MF Regulations. It is understood that an example of such an institution is the AB Bank. There is also the related question (which is probably more problematic) as to whether an MFI needs to be licensed under both the MF Regulations and the BFSA.

The draft new BFSA does not appear to clarify these issues, although there have been some changes to relevant definitions. That said, at the time of writing the new Microfinance Regulations were not available.

### ***Recommendation***

The interaction between the BFSA licensing provisions and those in the Microfinance Regulations needs to be clarified.

These issues are dealt with in more detail in the Non-Bank Financial Institutions section of the mission report.

## ***Section B. Disclosure and Sales Practices***

### **Good Practice B.1**

#### ***Information on Customers***

- a. When making a recommendation to a consumer, a bank should gather, file and record sufficient information from the consumer to enable the bank to render an appropriate product or service to that consumer.
- b. The extent of information the bank gathers regarding a consumer should:
  - (i) be commensurate with the nature and complexity of the product or service either being proposed to or sought by the consumer; and
  - (ii) enable the bank to provide a professional service to the consumer in accordance with that consumer’s capacity

#### ***Description***

There are no product / service suitability obligations of the type contemplated in the legislation we have reviewed, although the draft new BFSA contains such a requirement in relation to credit products (see Good Practice B.2).

##### ***Paragraph (a)***

The BFSA does not currently contain such a requirement.

##### ***Paragraph (b)***

There is no requirement of the type described.

#### ***Recommendation***

Requirements should be introduced to ensure product suitability. In particular, it is considered that there should be training and qualification requirements for staff or third party agents who advise on banking products and services, as well as requirements to ensure that sufficient information about the customer’s needs is gathered so as to ensure that appropriate products and services are provided.

## Good Practice B.2

### *Affordability*

- a. When a bank makes a recommendation regarding a product or service to a consumer, the product or service it offers to that consumer should be in line with the need of the consumer.
- b. The consumer should be given a range of options to choose from to meet his or her requirements.
- c. Sufficient information on the product or service should be provided to the consumer to enable him or her to select the most suitable and affordable product or service.
- d. When offering a new credit product or service significantly increasing the amount of debt assumed by the consumer, the consumer's credit worthiness should be properly assessed.

### *Description*

There is no obligation under current law to advise on product suitability or to assess credit worthiness under the current law.

#### *Paragraph (a)*

There is no obligation to assess the needs of a customer for a particular product or service.

#### *Paragraph (b)*

There is no obligation to provide a range of options to a customer.

#### *Paragraph (c)*

There is no obligation to provide comparative information to a customer to enable them to select the most appropriate product. Details of the disclosure obligations that do exist are in Good Practice B.7.

#### *Paragraph (d)*

There is no responsible lending requirement of the type described. However, the draft new BFSa provides that:

*“A financial service provider shall not extend credit to a consumer unless a reasonable financial service provider would believe at the time the loan is agreed that the consumer or consumers will be able to make the scheduled payments associated with the loan, based upon a consideration of the consumers' current and expected income, current obligations, employment status, and other financial resources;”* (clause 67(1)).

There is also a rebuttable presumption that a person is able to make the required payments if total monthly debts due on outstanding obligations do not exceed 70% of gross monthly income as verified by the credit application and a credit report and third party income verification.

There are a number of issues associated with this approach to responsible lending:

- There is no reference to ensuring that the loan is either suitable for the customer's needs or at least not unsuitable (which is a less onerous obligation);
- There is no requirement to verify the information which is provided;
- There are no requirements that a staff member or third party advising on a loan is qualified to provide that advice;

- The provisions only apply in relation to payments on a “loan” and it is not clear that they apply, for example, to payments on a credit card;
- The rebuttable presumption does not take into account the income levels of the applicant (i.e. 30% of a very low income may not be enough for someone on a very low income to meet their daily needs), future debts under an existing line of credit or a credit card, living expenses or the debts or expenses of family members.

The CBP also contains broad provisions in relation to assessing the ability to repay (clause 8.3). These provisions deal with many of the issues identified above. However, as noted, the CBP is a voluntary code which is not realistically enforceable.

### ***Recommendation***

As noted in B.2, requirements should be introduced to ensure product suitability. Further, the proposed responsible lending laws should be reviewed to take into account the points noted above.

## **Good Practice B.3**

### ***Cooling-off Period***

- Unless explicitly waived in advance by a consumer in writing, a bank should provide the consumer a cooling-off period of a reasonable number of days (at least 3-5 business days) immediately following the signing of any agreement between the bank and the consumer.
- On his or her written notice to the bank during the cooling-off period, the consumer should be permitted to cancel or treat the agreement as null and void without penalty to the consumer of any kind.

### ***Description***

There is no such cooling-off requirement under the current law.

### ***Recommendation***

It is recommended that consideration be given to the introduction of a provision of the type proposed. It is, however, recognized that there may be a need for some qualification to an automatic right of cooling off. For example, there could be a right to retain reasonable administrative fees relating to the cancellation of the contract or for the application for the facility. Further, it may be that the right should not apply where there has been a drawdown of a credit facility.

### Good Practice B.4

#### ***Bundling and Tying Clauses***

- a. As much as possible, banks should avoid bundling services and products and the use of tying clauses in contracts that restrict the choice of consumers.
- b. In particular, whenever a borrower is obliged by a bank to purchase any product, including an insurance policy, as a pre-condition for receiving a loan from the bank, the borrower should be free to choose the provider of the product and this information should be made known to the borrower.

#### ***Description***

Bundling practices are widespread and the provisions relevant to this practice are unclear.

##### *Paragraph (a)*

“Bankassurance” is a widespread practice under which a loan is provided on the condition that the customer takes out, or pays for, credit life insurance. The insurance must be paid for as a lump sum up front and we understand that there is no provision for a refund if repayment of the loan is accelerated.

##### *Paragraph (b)*

There is currently no requirement for a borrower to be given a choice of insurer, although the draft new BFSa has a helpful prohibition on requiring a consumer to use a financial service provider’s choice of supplier.

Section 41 of the BFSa is to the effect that a bank must not require a person to receive a financial service as “a condition of being permitted to contract with it or any other person”. The intent seems to be to prohibit third line forcing contracts (e.g. where a bank requires a customer to take out an insurance contract with a related insurer as a condition of being given a loan), but the language is ambiguous.

This ambiguity has been perpetuated in the draft new BFSa, as the terms of clause 60 are identical to the current terms of section 41. However, there is a new provision in the draft new BFSa which provides that:

*“A financial service provider shall not compel a consumer to use that financial service provider’s choice of a supplier of a supplementary or complementary service.”*

It would be helpful if the above provision also applied to a requirement to pay for a service provided by the supplier of a supplementary or complimentary service provider (for example, under a group insurance policy held by a bank).

#### ***Recommendation***

It is recommended that a clear prohibition on third line forcing practices be introduced, coupled with disclosure and rebate provisions.

Such a provision should apply to a requirement to acquire a service from a particular supplier and to a requirement to pay for such service, in either case as a condition of providing a banking service. Further, where there is a tied insurance contract, banks should be required to give a proportionate refund of the applicable premium if the consumer pays out a loan early. It is further recommended to introduce a requirement for disclosure of insurance commissions and premiums.

### Good Practice B.5

#### ***Preservation of Rights***

Except where permitted by applicable legislation, in any communication or agreement with a consumer, a bank should not exclude or restrict, or seek to exclude or restrict:

- (i) any duty to act with skill, care and diligence toward the consumer in connection with the provision by the bank of any financial service or product; or
- (ii) any liability arising from the bank's failure to exercise its duty to act with skill, care and diligence in the provision of any financial service or product to the consumer.

#### ***Description***

No provision dealing explicitly with this issue has been identified.

A qualification to the above comments is that the CCPA provides that an owner or occupier of a shop or other premises must not display any notice or sign which purports to limit a customer's rights under the CCPA or any other written law (s. 48).

Further, there is a prohibition in the CCPA relating to unfair trading which would apply to banks/ financial institutions (s. 46). A trading practice is defined as "unfair" if:

- a) *it misleads consumers;*
- b) *it compromises the standard of honesty and good faith which an enterprise can reasonably be expected to meet; or*
- c) *it places pressure on consumers by use of harassment or coercion;*  
*and thereby distorts, or is likely to distort, the purchasing decisions of consumers.*

The draft new BFSa also prohibits "unfair business practices" which term is defined as:

- a) *any practice that can mislead consumers;*
- b) *any practice that compromises the standard of honesty and good faith which a financial service provider can reasonably be expected to meet; or*
- c) *a practice which places pressure on consumers by use of harassment or coercion; and*

*thereby distorts, or has the effect of distorting, the decisions of a consumer. (Clause 68).*

#### ***Recommendation***

It is recommended that, at a minimum, there be an express provision in the BFSa to the effect that any term of a contract by which a bank seeks to avoid or modify the effect of the BFSa, or to be indemnified for any liability they have under the BFSa, is void.

### Good Practice B.6

#### *Regulatory Status Disclosure*

In all of its advertising, whether by print, television, radio or otherwise, a bank should disclose the fact that it is a regulated entity and the name and contact details of the regulator.

#### *Description*

The BFSA (s. 44) contains extensive requirements for a bank/ financial institution to disclose their name and their licensed status. However there is no requirement to disclose the name and contact details of the regulator. This is also the case under the draft new BFSA.

#### *Recommendation*

It is recommended that banks be required to disclose the name and contact details of the BoZ in their advertising.

### Good Practice B.7

#### *Terms and Conditions*

Before a consumer opens a deposit, current (checking) or loan account at a bank, the bank should make available to the consumer a written copy of its general terms and conditions, as well as all terms and conditions that apply to the account to be opened. Collectively, these Terms and Conditions should include:

- (i) disclosure of details of the bank's general charges;
- (ii) a summary of the bank's complaints procedures;
- (iii) a statement regarding the existence of the office of banking ombudsman or equivalent institution and basic information relating to its process and procedures;
- (iv) information about any compensation scheme that the bank is a member of;
- (v) an outline of the action and remedies which the bank may take in the event of a default by the consumer;
- (vi) the principles-based code of conduct, if any, referred to in A.2 above;
- (vii) information on the methods of computing interest rates paid by or charged to the consumer, any relevant non-interest charges or fees related to the product offered to the consumer;
- (viii) any service charges to be paid by the consumer, restrictions, if any, on account transfers by the consumer, and the procedures for closing an account; and
- (ix) clear rules on the reporting procedures that the consumer should follow in the case of unauthorized transactions in general, and stolen cards in particular, as well as the bank's liability in such cases facilitates the reading of every word.



**Description**

There are very limited disclosure obligations relating to the cost of borrowing and fees, charges and interest rates.

A bank or financial institution opening an account for a customer must provide the customer, “at the same time” prescribed information concerning all account maintenance charges, the interest to be paid and how changes in charges or interest rates will be notified (s. 47(1) of the BFS). These provisions appear only to apply to deposit accounts. The BFS (Deposit Charges & Interest) Regulations contain the prescribed information.

The following are comments on the BFS (Deposit Charges & Interest) Regulations:

- Not all charges may be disclosed: the list of relevant charges appears to be a definitive list which leaves scope for charging fees which do not need to be disclosed (for example, charges on withdrawals) (reg. 2(1)). There is also provision for the customer to be told that the statement of charges does not contain all relevant charges and that others are available for disclosure on request or at the time the service is offered (reg. 2(3));
- The obligation is to display and make available the statement to customers and the public at branches where the accounts are kept (which would not assist a customer who has difficulty accessing a branch) (reg. 2(3)). It is accordingly not clear that the customer will actually receive a copy of the statement, or even see it before the account is opened;
- Variations in charges are similarly displayed at branches and it is not the case that all charges must be advised where there is an agreement not to do so (reg. 3);
- There is no requirement for personalized notice of interest rates (again the requirement is to display them in branches where accounts are kept) (reg. 4);
- It is not clear that the regulations require customers to be given the notice of charges and interest rates **before** they decide to open the relevant account although that seems to be the intent of s. 47(1) ; and
- There is no requirement for all terms and conditions to be disclosed.

S. 47(2) of the BFS is to the effect that a bank or financial institution that agrees to make a loan or credit available to a person must “at the same time” provide prescribed information to the customer. In relation to the BFS (Cost of Borrowing) Regulations, we note:

- There are exclusions from the relevant “cost of borrowing” charges and it is not clear why they exist (reg. 2);
- There is no provision for interest to be paid on unpaid daily balances (reg. 4);
- It is not clear how the cost of borrowing is to be determined when a loan is not paid in equal installments (reg. 5(1));
- There is no provision for separate disclosure of the relevant individual charges, even with a loan repayable in equal installments as the interest and the relevant charges are wrapped up in a single “cost of borrowing” charge (reg. 5(1));
- The cost of borrowing for overdrafts and notice of variations can be given by simply displaying a notice in a branch (regulations 7(2) and (4)); and
- There is no requirement for all terms and conditions to be disclosed.

The need for effective disclosure of terms and conditions and related charges is an important issue.

**Recommendation**

There should be a comprehensive disclosure regime applied to banking products and services. The new regime should, at a minimum, require personalized, advance notice of applicable terms and conditions, interest rates, fees and charges, the method of calculating interest and of insurance premiums and commissions, personalized notice of changes and a requirement for clear, comprehensible disclosures.



### Good Practice B.8

#### *Key Facts Statement*

- a. A bank should have a Key Facts Statement for each of its accounts, types of loans or other products or services and provide these to its customers and potential customers.
- b. The Key Facts Statement should be written in plain language and summarize in a page or two the key terms and conditions of the specific banking product or service.
- c. Prior to a consumer opening any account at, or signing any loan agreement with, the bank, the consumer should have delivered a signed statement to the bank to the effect that he or she has duly received, read and understood the relevant Key Facts Statement from the bank.
- d. Key Facts Statements throughout the banking sector should be written in such a way as to allow consumers the possibility of easily comparing products that are being offered by a range of banks.

#### *Description*

There are no such general requirements. See comments in Good Practice B.7 re the limited disclosure rules which do apply.

#### *Recommendation*

It is recommended that a requirement for the provision of a Key Facts Statement is introduced for all banking products and services. Such a statement should:

- Contain only the essential features of the product (e.g. the principal, interest charges and the rate, the method of calculation of interest, the applicable repayments and all fees and charges);
- Be in simple, clearly expressed language of no more than 10 point font; and

Be required to be provided to a customer before they enter into a contract and in sufficient time for the customer to read it.

### Good Practice B.9

#### *Advertising and Sales Materials*

- a. Banks should ensure that their advertising and sales materials and procedures do not mislead customers.
- b. All advertising and sales materials of banks should be easily readable and understandable by the general public.
- c. Banks should be legally responsible for all statements made in their advertising and sales materials (i.e. be subject to the penalties under the law for making any false or misleading statements).

#### *Description*

The current BFSA contains limited provisions relevant to this Good Practice, which will be helpfully expanded in scope if relevant provisions in the draft new BFSA are enacted.

##### *Paragraph (a)*

There is a broad prohibition on false and misleading advertisements concerning financial services and any related fee, rate or charge in s. 49 of the BFSA. Note that it does not apply to online advertisements.

The draft BFSA also contains a provision prohibiting false and misleading advertisements (clause 74). “Advertisement” is very broadly defined in clause 74(2) to include a radio or television announcement, a poster, billboard, leaflet, mobile or other electronic media, and an advertisement in a regularly published newspaper or magazine.

Ss.46 and 47 of the CCPA respectively prohibit unfair trading practices and false or misleading representations.

##### *Paragraph (b)*

There is not an explicit provision to this effect.

##### *Paragraph (c)*

The BFSA penalty is up to 50,000 penalty units (s. 49(1)).

The penalty in the draft new BFSA is 100,000 penalty units (clause 74).

#### *Recommendation*

There are no recommendations in relation to this Good Practice on the assumption that the draft new BFSA will be enacted.

### Good Practice B.10

#### *Third-Party Guarantees*

A bank should not advertise either an actual or future deposit or interest rate payable on a deposit as being guaranteed or partially guaranteed unless there is a legally enforceable agreement between the bank and a third party who or which has provided such a guarantee. In the event such an agreement exists, the advertisement should state:

- (i) the extent of the guarantee;
- (ii) the name and contact details of the party providing the guarantee; and
- (iii) in the event the party providing the guarantee is in any way connected to the bank, the precise nature of that relationship.

#### *Description*

There is no such prohibition or requirement. However, it is considered that the provisions dealing with false and misleading advertisements are adequate in this regard.

#### *Recommendation*

There are no recommendations in this context on the assumption that the relevant provisions in the draft new BFSa will be enacted.

### Good Practice B.11

#### *Professional Competence*

- a. In order to avoid any misrepresentation of fact to a consumer, any bank staff member who deals directly with consumers, or who prepares bank advertisements (or other materials of the bank for external distribution), or who markets any service or product of the bank should be familiar with the legislative, regulatory and code of conduct guidance requirements relevant to his or her work, as well as with the details of any product or service of the bank which he or she sells or promotes.
- b. Regulators and associations of banks should collaborate to establish and administer minimum competency requirements for any bank staff member who: (i) deals directly with consumers, (ii) prepares any Key Facts Statement or any advertisement for the bank, or (iii) markets the bank's services and products.

#### *Description*

Apart from the provisions in the CBP relating to staff training, there is no such requirement.

##### *Paragraph (a)*

The CBP contains provisions to the effect that an adopting bank will ensure that their staff are adequately trained and have sufficient knowledge of the Code to ensure that they can competently and efficiently discharge their functions and provide the banking services they are authorized to provide (clause 5.3). However, as noted above, the CBP is a voluntary code and there is little monitoring of compliance.

##### *Paragraph (b)*

No such collaboration occurs.

#### *Recommendation*

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. 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.

## Section C. Customer Account Handling and Maintenance

### Good Practice C.1

#### Statements

- a. Unless a bank receives a customer's prior signed authorization to the contrary, the bank should issue, and provide the customer free of charge, a monthly statement of every account the bank operates for the customer.
- b. Each such statement should: (i) set out all transactions concerning the account during the period covered by the statement; and (ii) provide details of the interest rate(s) applied to the account during the period covered by the statement.
- c. Each credit card statement should set out the minimum payment required and the total interest cost that will accrue, if the cardholder makes only the required minimum payment.
- d. Each mortgage or other loan account statement should clearly indicate the amount paid during the period covered by the statement, the total outstanding amount still owing, the allocation of payment to the principal and interest and, if applicable, the up-to-date accrual of taxes paid.
- e. A bank should notify a customer of long periods of inactivity of any account of the customer and provide a reasonable final notice in writing to the customer if the funds are to be treated as unclaimed money.
- f. When a customer signs up for paperless statements, such statements should be in an easy-to-read and readily understandable format.

#### Description

There are no requirements for regular account statements, although it is understood that they are provided in practice, with the interval between statements varying between different banks.

Regulation 9(1) of the BFSA (Cost of Borrowing) Regulations requires advice to be given to the holder of a payment, credit or charge card as to the period of time for which each statement of account is to be issued. However there is no requirement to issue statements of account at regular periodic intervals.

The CBP provides for statements to be provided at intervals specified in the relevant agreement. There is also provision for statements to be provided more frequently at periods to be agreed (clause 7.1.2).

Discussions with various banks suggest that there is considerable variation as to when statements are provided and that the relevant period varies between different types of products. It is further understood that fee disclosures are commonly made on the basis that it is only the bundled fees which are disclosed i.e. there is no transparency as to the separate components of the bundled amount.

#### Paragraphs (a) and (b)

There are no requirements of the type described.

#### Paragraph (c)

There is no requirement of the type described (which is not surprising given that credit cards are not a common banking product in Zambia).

#### Paragraphs (d), (e) and (f)

There are no requirements of the type described.

**Recommendation**

At a minimum, there should be a requirement for regular periodic statements of account to be provided to the holders of both debit and credit products. It is suggested that the relevant period be at least monthly in the case of a line of credit facility (such as a credit card or an overdraft), and otherwise six monthly (such as for a home loan).

Such statements should provide details of the following matters in the applicable period:

- The opening and closing balances;
- All transactions in the applicable period (including e.g. any credit provided);
- Any amounts currently overdue and when each such amount became due;
- Any amount currently payable and the date it became due;
- Separate itemization of any fees and charges debited in the period;
- Clear specification of any interest debited or credited in the relevant period;
- Any withdrawal from a transaction account;
- The applicable interest rate in the relevant period; and
- The amount of any interest charge or payment debited or credited to the account.

It is also recommended that customers be given advance notice if an account is to be closed and if moneys are to be treated as unclaimed money.

<b>Good Practice C.2</b>
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**Notification of Changes in Interest Rates and Non-interest Charges**

- a. A customer of a bank should be notified in writing by the bank of any change in:
  - (i) The interest rate to be paid or charged on any account of the customer as soon as possible; and
  - (ii) A non-interest charge on any account of the customer a reasonable period in advance of the effective date of the change.
- b. If the revised terms are not acceptable to the customer, he or she should have the right to exit the contract without penalty, provided such right is exercised within a reasonable period.
- c. The bank should inform the customer of the foregoing right whenever a notice of change under paragraph a. is made by the bank.

**Description**

These Good Practices are only met to a limited extent.

The BFS (Deposit Charges & Interest) Regulations require that changes in specified charges on accounts (which seem to be deposit accounts) must be displayed at branches at least 30 days in advance. However there does not seem to be a requirement to do so where the customer has agreed otherwise (reg. 3). Further, variations in interest rates on deposit accounts must be disclosed by way of a written statement, a notice in branches or an advertisement (reg. 6). There is no requirement for advance notice with such accounts.

In relation to loans, there is an obligation to give notice of any variation which may affect the amount of any periodic payment either by notice or by a “written statement”. This must be done “within a reasonable time” (reg. 7(4) of the BFS (Cost of Borrowing) Reg.).

One of the most common concerns expressed concerned the lack of notice of changes to interest rates and fees and charges. An example given was of the fact that fees charged were notified in a bank statement as a lump sum i.e. there was no detail given of the amount of the particular fees. Further complaints received were about the lack of personalized notice of changes in interest rates and the general opaqueness about how interest rates are calculated.

*Paragraph (a)*

There are no specific requirements to this effect. However, the BFS (Cost of Borrowing) Regulations contains a provision to the effect that any variation which may affect the amount of any prepayment must be notified by means of a written statement or by a notice displayed in branches (reg. 8(7)). There are a number of limitations in these requirements. For example:

- The obligation is to give notice “within a reasonable time” and it is not clear whether this should be before or after the change takes effect;
- There is no requirement to give notice of the actual change in interest rates; and
- There is no requirement to give personalized notice – it is sufficient, for example, to give notice in branches.

*Paragraph (b)*

There is no absolute requirement of the type described. There are limitations on prepayment fees; however they do not apply in all circumstances (for example, when a loan is secured by a mortgage over real estate (reg. 10(2)).

*Paragraph (c)*

There is no such requirement.

***Recommendation***

It is recommended, at a minimum, that a customer be given notice changes in repayments, interest charges, and other fees and charges as follows:

- There should be at least 20 days advance, personalized notice of a change in the amount of a repayment (but if it is a reduction, it could be notified in the next statement of account);
- 20 days advance, personalized notice of a change in the amount of a fee, or a new fee should also be given;
- Notice of a change in interest rates should be given before the change takes effect, either personally or by newspaper notice. In the latter case, the notice should also be given in the next statement of account.

### Good Practice C.3

#### *Customer Records*

- a. A bank should maintain up-to-date records in respect of each customer of the bank that contain the following:
  - (i) a copy of all documents required to identify the customer and provide the customer's profile;
  - (ii) the customer's address, telephone number and all other customer contact details;
  - (iii) any information or document in connection with the customer that has been prepared in compliance with any statute, regulation or code of conduct;
  - (iv) details of all products and services provided by the bank to the customer;
  - (v) all documents and applications of the bank completed, signed and submitted to the bank by the customer;
  - (vi) a copy of all original documents submitted by the customer in support of an application by the customer for the provision of a product or service by the bank; and
  - (vii) any other relevant information concerning the customer.
- b. A law or regulation should provide the minimum permissible period for retaining all such records and, throughout this period, the customer should be provided ready access to all such records free of charge or for a reasonable fee.

#### *Description*

There are some record keeping requirements (ss. 51 (f) and 52 of the BFSA). However there are a number of gaps including the lack of any right of the customer concerned to access the information.

#### *Paragraph (a)*

Section 51(f) of the BFSA requires banks to keep “*records showing, for each customer of the bank of institution on a daily basis, particulars of its transactions with or for the account of the customer and the balance owing to or by the customer*”.

The BFSA also contains an obligation to keep records of certain “credit documentation”, which includes:

- Financial statements of the indebtedness of the borrower and any guarantor;
- A description of collateral;
- A statement of the terms of any credit;
- The signature of each person who authorized the credit on behalf of the bank (s. 52).

The draft new BFSA contains record keeping provisions similar to those in the current BFSA (ss. 53-57).

The BoZ Anti-Money Laundering (AML) Directive, 2004 contains strict requirements concerning the collection of identifying information, and the verification of that information (ss. 6 and 7). The AML Directive applies to a regulated entity, which includes a bank or a financial institution as licensed or supervised by the BoZ. However, it is not clear how the verification requirements work in an electronic environment or whether agents of a regulated entity are authorized to collect, or verify, identification information.



The Financial Intelligence Centre Act, 2010 (FIC Act) also contains strict requirements regarding the collection of identifying information, and the verification of that information (ss. 16-18). The AML Directive will be superseded by the FIC Act. However, this has not yet occurred as the FIC is still being established.

The only provisions in the BFSa relating to record keeping of details of a customer's identity or products and services relate to the obligation to keep records showing, for each customer on a daily basis, particulars of transactions and the balance owing by or to the customer (s. 51(f)). Further, clauses 52(i) and (ii) of the draft Branchless Banking Regulations require financial services providers to sensitize agents on AML / counter terrorism requirements and to ensure that the agents *"Identify customers with at least two characters like IDs, PINs, passwords, ATM card, secret code or secret message while performing any transaction requiring identification"*.

Clause 19 (xvii) further requires that every contract between an agent and a financial services provider *"Specify that the agent shall at all times ensure safe-keeping of all relevant records, data, documents or files or alternately, such records, data, documents or files are shifted to the financial service provider at regular pre-specified intervals for financial service provider's safe-keeping"*.

These provisions in the draft Branchless Banking Regulations are supported by clause 24 (vii) which requires senior management to ensure agents are properly trained on various matters, including relating to the proper identification of customers and record keeping.

#### *Paragraph (b)*

Banking records must be kept for a defined 6 year period, which does not relate to the period from closure of an account (BFSa s. 54). Under the draft BFSa, this period is 10 years (clause 56). Under the AML Directive, a regulated institution must keep copies of identification records for a period of 10 years after termination of the business transaction with the customer (s. 10).

There is no explicit right of access.

#### **Recommendation**

It is recommended that consideration be given to expanding the record keeping obligations of a bank so as to explicitly require retention of the following customer records (as well as those currently provided for in the BFSa):

- Contact details of the customer and of any security provider;
- Details of all products and services provided to the customer;
- All account information relevant to each such service (i.e. not just transaction information – details of all debits and credits, interest rates and fees and charges should also be retained);
- Full details of any collateral provided for a loan;
- All communications related to the account; and
- A copy of any disclosures made to the customer or any security provider (including a copy of the terms and conditions of the account).

Consideration should also be given to requiring records to be kept for a minimum period after termination of the business relationship with the customer.

It is also recommended that customers be given a right of access to their personal information held by a bank. This could be provided for in the proposed data protection laws (see Good Practice D.2).

### Good Practice C.4

#### *Paper and Electronic Checks*

- a. The law and code of conduct should provide for clear rules on the issuance and clearing of paper checks that include, among other things, rules on:
  - (i) checks drawn on an account that has insufficient funds;
  - (ii) the consequences of issuing a check without sufficient funds;
  - (iii) the duration within which funds of a cleared check should be credited into the customer's account;
  - (iv) the procedures on countermanding or stopping payment on a check by a customer;
  - (v) charges by a bank on the issuance and clearance of checks;
  - (vi) liability of the parties in the case of check fraud; and
  - (vii) error resolution
- b. A customer should be told of the consequences of issuing a paper check without sufficient funds at the time the customer opens a checking account.
- c. A bank should provide the customer with clear, easily accessible and understandable information regarding electronic checks, as well the cost of using them.
- d. In respect of electronic or credit card checks, a bank should inform each customer in particular:
  - (i) how the use of a credit card check differs from the use of a credit card;
  - (ii) of the interest rate that applies and whether this differs from the rate charged for credit card purchases;
  - (iii) when interest is charged and whether there is an interest free period, and if so, for how long;
  - (iv) whether additional fees or charges apply and, if so, on what basis and to what extent; and
  - (v) whether the protection afforded to the customer making a purchase using a credit card check differs from that afforded when using a credit card and, if so, the specific differences.
- e. Credit card checks should not be sent to a consumer without the consumer's prior written consent.
- f. There should be clear rules on procedures for dealing with authentication, error resolution and cases of fraud.

**Description**

The limited law relating to issuance and clearing of checks is to be found in the Checks Act 1989 and the National Payments System Act, 2007 (Payments Act). The CBP also contains a number of relevant provisions; however their effectiveness is limited by the poor public visibility of the CBP. ..

**Paragraph (a)**

Sub-paragraphs (i) and (ii): The following rules apply to a dishonored check:

- It is an offence subject to a maximum penalty of 100,000 penalty units or imprisonment up to 2 years to “willfully, dishonestly or with intent to defraud” issue a check on an insufficiently funded account; and
- Participants in the payment system are required to report dishonored checks to the BoZ (s. 33 Payments Act).

Clause 7.4.1 of the CBP also reminds customers of the consequences of issuing a dishonored payment instrument (including a check) under the Payments Act.

The other matters referred to in this Good Practice are covered by the CBP. Clause 7.1.3 requires a bank to provide to a new checking account customer with general descriptive information on:

- The time taken to clear a check and how a check may be specially cleared;
- How and when a check may be stopped;
- How to reduce the risk of unauthorized alteration;
- Dishonors (including post dated and stale check);
- The implications of issuing a dishonored check; and
- The advisability of safeguarding checks.

Further, there are detailed rules in the CBP on the issuance of checks, on cashing third party checks, and on lost or damaged payment instruments (clauses 7.1.3.2 – 7.1.3.4).

The Bank of Zambia Act helpfully provides details of clearing times in various regions of Zambia, and notes that “First day is the date of deposit. Value is given at start of day 3, 4, 6 or 10” (see <http://www.boz.zm/> ).

**Paragraph (b)**

This Good Practice is covered by the abovementioned CBP provision.

**Paragraphs (c), (d) and (e)**

It is understood that electronic check facilities and credit card checks are not available to consumers in Zambia.

**Paragraph (f)**

Clause 7.1.3 requires a bank to provide to a new checking account customer with general descriptive information on the advisability of safeguarding checks as a payment instrument.

**Recommendation**

Consideration should be given to implementing the above Good Practices in relation to credit card checks, should they be introduced in Zambia.

If the recommendations in Good Practice A.2 were implemented, this would also be helpful for the purposes of this Good Practice, as it would lead to greater visibility, understanding, and enforcement of the CBP provisions relating to checks.

### Good Practice C.5

#### *Credit Cards*

- a. There should be legal rules on the issuance of credit cards and related customer disclosure requirements.
- b. Banks, as credit card issuers, should ensure that personalized disclosure requirements are made in all credit card offers, including the fees and charges (including finance charges), credit limit, penalty interest rates and method of calculating the minimum monthly payment
- c. Banks should not be permitted to impose charges or fees on pre-approved credit cards that have not been accepted by the customer.
- d. Consumers should be given personalized minimum payment warnings on each monthly statement and the total interest costs that will accrue if the cardholder makes only the requested minimum payment.
- e. Among other things, the legal rules should also:
  - (i) restrict or impose conditions on the issuance and marketing of credit cards to young adults (below age of 21) who have no independent means of income;
  - (ii) require reasonable notice of changes in fees and interest rates increase;
  - (iii) prevent the application of new higher penalty interest rates to the entire existing balance, including past purchases made at a lower interest rate;
  - (iv) limit fees that can be imposed, such as those charged when consumers exceed their credit limits;
  - (v) prohibit a practice called —double-cycle billing‡ by which card issuers charge interest over two billing cycles rather than one;
  - (vi) prevent credit card issuers from allocating monthly payments in ways that maximize interest charges to consumers; and
  - (vii) limit up-front fees charged on sub-prime credit cards issued to individuals with bad credit.
- f. There should be clear rules on error resolution, reporting of unauthorized transactions and of stolen cards, with the ensuing liability of the customer being made clear to the customer prior to his or her acceptance of the credit card.
- g. Banks and issuers should conduct consumer awareness programs on the misuse of credit cards, credit card over- indebtedness and prevention of fraud.

**Description**

This Good Practice is only followed to a limited degree in Zambia. Although this is not a significant concern at this stage, it will be when the market matures and credit cards become more common.

**Paragraph (a)**

See the Good Practice A.1 description of reg. 9(1) of the BFS (Cost of Borrowing) Regulations regarding the limited disclosure requirements for credit cards. In summary, the only disclosure requirements relate to information relating to credit limits, the availability of statements, the minimum amount payable (expressed as a %), how charges can be avoided, the maximum amount payable if a card is lost or stolen, charges for accepting or using the card, the cost of borrowing and penalties and other charges for late payments. This information must be given to the holder at or before the card is issued.

**Paragraph (b)**

Reg. 9(1) of BFS (Cost of Borrowing) Regulations contains disclosure requirements applicable to credit cards and addresses most of the specific disclosures mentioned in this Good Practice. However there is not a general requirement to disclose all terms and conditions, the method of calculating the minimum monthly payment, the interest rate or all fees and charges. The relevant requirements are as follows:

*9. (1) A bank or financial institution shall disclose to each holder of a payment, credit or charge card, at or before the time at which the card is issued- (a) the particulars of the holder's rights and obligations relating to- (i) the credit limit authorized under the card and the maximum amount of indebtedness that may be outstanding at any time; (ii) the period of time for which each statement of account is issued; (iii) the manner, if any, in which the holder may use the card and avoid any charge; (iv) the minimum amount, if any, that must be paid at the end of each statement period, which amount may be stated as a percentage of the amount outstanding; and (v) the maximum amount of the card-holder's liability for authorized use of the card where it is lost or stolen; (b) the amount of any charge for which the holder is responsible by reason of accepting or using the card and the manner in which the charge is calculated; (c) the cost of borrowing and the manner in which it is calculated; and (d) any charges or penalties to be paid by the borrower as a result of the failure to repay or pay in accordance with the contract governing the loan.*

*(2) Where a bank or financial institution intends to change any of the matters disclosed to a card-holder in accordance with sub-regulation (1), other than a disclosure under clause (i) of paragraph (a), the bank or financial institution shall send or deliver to the card-holder a written statement of the change at least fourteen days before the effective date of the change.*

Note too that there is not a specific requirement to give monthly statements, although there is an obligation to give notice of the period of time for which each statement is issued (reg. 9(1) (a)(ii)).

**Paragraphs (c) and (d)**

There are no such requirements.

**Paragraph (e)**

Apart from a requirement to give 14 days' notice of the matters listed in reg. 9(1) (b) – (d), none of these Good Practices are provided for.

**Paragraph (f)**

There is no legislation of the type described. Further, the CBP simply states that if a card transaction is disputed “we will investigate the matter”.

**Paragraph (g)**

Such campaigns do not appear to be covered in Zambia. This may, of course, be because of the very small credit card market in Zambia.

**Recommendation**

As mentioned in relation to Good Practice B.7, there should be a comprehensive disclosure regime applied to banking products and services. The new regime should, at a minimum, require personalized, advance notice of applicable terms and conditions, interest rates, fees and charges, the method of calculating interest and of insurance premiums and commissions, personalized notice of changes and a requirement for clear, comprehensible disclosures in a minimum of a 10 point font size. There should also be a requirement to give consumers at least annually a clear and prominent warning about the need to safeguard cards and related security devices (such as PINs).

Further, as mentioned in relation to Good Practice C.1, there should be a requirement for regular periodic statements of account to be provided to the holders of credit card accounts. Such statements should be provided at least monthly in the case of a line of credit facility (such as a credit card or an overdraft).

Finally, it is recommended that there be clear rules as to liability for unauthorized transactions on a credit card and which could also apply to a debit card. Such rules should cover, at a minimum, issues such as liability for fraud, loss of a PIN or other security device, liability for loss caused by system or equipment malfunction and the circumstances in which the holder of a card will not be liable for any loss (such as when it is clear they have not contributed to the loss).

Some guidance in this regard may be obtained from the 2011 Australian e-Payments Code at: <http://www.asic.gov.au/asic/asic.nsf/byheadline/Electronic+Funds+Transfer%3A+Code+of+Conduct?opendocument>

### Good Practice C.6

#### *Internet Banking and Mobile Phone Banking<sup>1</sup>*

- a. The provision of internet banking and mobile phone banking (m-banking) should be supported by a sound legal and regulatory framework.
- b. Regulators should ensure that banks or financial service providers providing internet and m-banking have in place a security program that ensures:
  - (i) data privacy, confidentiality and data integrity;
  - (ii) authentication, identification of counterparties and access control;
  - (iii) non-repudiation of transactions;
  - (iv) a business continuity plan; and
  - (v) the provision of sufficient notice when services are not available.
- c. Banks should also implement an oversight program to monitor third-party control conditions and performance, especially when agents are used for carrying out m-banking.
- d. A customer should be informed by the bank whether fees or charges apply for internet or m-banking and, if so, on what basis and how much.
- e. There should be clear rules on the procedures for error resolution and fraud.
- f. Authorities should encourage banks and service providers to undertake measures to increase consumer awareness regarding internet and m-banking transactions.

#### *Description*

There is currently no legal framework which specifically relates to internet banking and mobile phone banking. However mobile phone banking services which involve the delivery of financial services through the use of agents, such as telecommunication companies, are covered by the draft Branchless Banking Regulations (draft BB Regulations) and the draft National Payment Systems Guidelines on E-Money Issuance, 2012 (which are to be re-issued as regulations when they are finalized) (draft E-Money Regulations) also apply to mobile phone banking services which involve the issue of an electronic store of monetary value.

<sup>1</sup> “Internet banking” is defined as banking services that customers may access via the Internet. The access to the Internet could be through a computer, mobile phone (“mobile banking”), or any other suitable device. Payment services that are only initiated via the internet using a mobile phone (e.g. by a mobile banking application using an app on a smart phone) are not considered to be mobile payments; instead they are categorized as internet payments. This interpretation is consistent with the view of the Committee on Payment and Settlement Systems (CPSS) of the Bank for International Settlements (BIS), who is the relevant standard setting body on payment and settlement systems. However, for practical reasons and due to the importance of mobile money in the country, Good Practice C.6 is intended here as also covering mobile payments and, to some extent, e-money.



The BFSA appears to be predicated on the assumption that all transactions are paper based and conducted in branches, given the various references to notices that shall be provided “in writing” and in branches (see, for example, ss. 47 and 48). This is currently a concern given the apparently widespread expansion of internet and mobile phone banking services. At the same time, there appears to be a widespread development of innovative payment schemes and services offered not only by financial institutions, but also telecommunications providers, payment systems providers, remittance services providers and the postal service. These developments are supported by an open and facilitative approach from the BoZ, which has allowed both bank-based and non-bank based models to develop.

The legal regime will be more accommodating of mobile banking, mobile payments and e-money, when the draft BB Regulations and the draft E-Money Regulations come into effect (which is expected to occur in Q3 2012 after the current period of public consultation ceases). Nevertheless, there remain significant consumer protection gaps, as indicated below.

The draft E-Money Regulations apply to “any person conducting or offering to conduct the service of issuing e-money in Zambia” (clause 3(3)). The term “electronic money or e-money” is defined as “an electronic store of monetary value of limited amounts on a device that may be widely used for making payments to undertakings other than the issuer, without necessarily involving Bank of Zambia accounts in the transactions;” (clause 2– emphasis added). The draft Regulations overlap to a considerable extent with the draft BB regulations since an entity providing branchless banking services may well be issuing e-money as part of the services provided and may use agents for the purposes of both services. In any event, it is considered that similar consumer protection provisions should apply in each case.

#### *Paragraph (a)*

The draft BB Regulations will to some extent fill the gap which currently exists in the mobile banking area. According to clause 4, the purpose of the draft BB Regulations is stated to be:

- a) To establish agents as a delivery channel for delivering financial services in a cost effective manner;*
- b) To outline activities which can be carried out by an agent as well as to provide a framework for offering branchless banking services;*
- c) To increase the financial services outreach and to promote financial inclusion within a safe and sound financial system environment;*
- d) To serve as a set of minimum standards of data and network security, customer protection and risk management to be adhered to in the conduct of branchless banking services.*

The draft BB Regulations apply to “the provision of financial services through agents in Zambia”. The term “financial services” is not defined but a “Financial Service Provider” is defined to mean “a bank, financial institution or financial business as defined under the Banking and Financial Services Act” (regulations 2 and 3). It is accordingly considered that the draft BB Regulations would apply to the provision of any regulated financial services through such entities. The usage of agents by banks would clearly be covered.

The provisions which specifically deal with consumer protection include those relating to the following issues (in summary):

- A general obligation to undertake consumer protection measures:
  - a) Appropriate consumer protection against risks of fraud, loss of privacy and loss of service is needed for establishing trust among consumers.*
  - b) Financial service provider shall put in place systems which provide sufficient protection and confidence to consumers of branchless banking services (clause 53).*



- The minimum requirements are for agents: to appropriately identify themselves to customers or users and to make known the services they provide; to issue receipts for each transaction and an acknowledgement of any documents received; to provide a channel for complaints, including a toll-free telephone line which should also be able to be used to verify the authenticity and identity of the agent; to address complaints within a reasonable time and in any event no later than 30 days from the date of the complaint; to “properly” advise customers about the complaints redress mechanism; to have clearly visible signs indicating that it is an agent and for whom; to use secure systems that ensure customer information confidentiality; and not to represent that it is a financial institution (clause 54);
- There are extensive disclosure requirements including to disclose the name of the relevant financial institution; a list of the offered financial services; advice that if the electronic system is down no transaction will be able to be effected; a list of applicable fees and charges; and a copy of the agent’s approval letter from the financial services provider and the address details of the branch to which the agent reports (reg. 55). The disclosure requirements must be conspicuously displayed in the agent’s premises (reg. 56 (1)).
- The agent must also display conspicuously a copy of their appointment letter from, and of the relevant banking license of, the financial service provider, as well as the current license for the commercial activity being undertaken by the agent (reg. 56).
- The agent network may be branded under any name other than one which uses protected words which suggest that the agent is a financial services provider (reg. 57).
- There are financial education obligations to the effect that the financial services provider must carry out “appropriate financial education of their agents, customers and to the public” (reg. 58).

(Regarding the E-Money Regulations, it is worth to note a provision that acknowledges that monies held in a Holding Account are subject to a trust relationship between the e-money institution and its clients (clause 34). Importantly, however, there are no provisions as to the deemed terms of this trust relationship and there is no obligation on a BFSA regulated institution to have a Holding Account.)

#### *Paragraph (b)*

All of the matters referred to in this good practice are covered by the draft BB Regulations, albeit in general terms. In particular:

- data privacy, confidentiality and data integrity: Financial service providers are required to have in place systems that specifically address data confidentiality and integrity and encryption of PIN and electronic transactions (clause 50 (iii) and (iv)); to identify and address technology risks regarding information and data security risks (clause 27(v)); to encrypt PIN and client data (clause 29). Further, the contract with the agent shall require the agent to ensure safe-keeping of all relevant records, data documents or files, or to ensure that they are transmitted to the financial services providers at regular intervals (clause 19(xvii)). The Board of the financial services provider must ensure that they have in place security control policies to safeguard information, communication and technology systems and data from both internal and external threats (clause 23(iii));
- authentication, identification of counterparties and access control: Clause 52(ii) requires that financial services providers require their agents to “*identify customers with at least two characters like IDs, PINs, passwords, ATM card, secret code or secret message while performing any transaction requiring identification*”. Further, clause 24(vii) requires that senior management ensure that agents are properly trained on identification procedures;
- non-repudiation of transactions: clause 50 (v) requires that financial services providers have in place procedures which specifically address customer accountability and non-repudiation of transactions;
- a business continuity plan: clause 27(vi) requires that “*A business Continuity and plan should be developed to mitigate any significant disruption, discontinuity or gap in agent’s function.*”

- the provision of sufficient notice when services are not available: there is not any general requirement to this effect. However, clause 55(iii) requires that agents provide a notice to the effect that if the electronic system is down, no transaction shall be carried out. Further, clause 55(vii) requires agents to provide to customers the toll free telephone line through which customers can contact the financial service provider.

(Similarly, regarding e-money institutions, Clause 27 of the E-Money Regulations requires them to ensure that: i) they authenticate the identity of customers with whom they transact business; ii) they use transaction authentication methods that ensure that their e-money transactions are not rejected or repudiated once initiated by a customer; iii) they use systems that ensure that customer transactions are completed within 1 minute from the customer initiating the transaction; iv) proper authorization controls and access privileges are in place for all systems, databases and applications; v) measures are in place to protect the data integrity of transactions; vi) clear audit trail for all transactions exists; vii) there is an appropriate degree of confidentiality of all customer and transaction information; they operate their identification, authorization and authentication systems based on international standards; viii) they put in place arrangements to ensure business continuity.)

#### Paragraph (c)

Clause 22 of the draft BB Regulations makes it clear that the ultimate responsibility for an agent lies with the relevant financial services provider who is responsible for monitoring of the agent, control and active oversight of the agent's activities or functions. Clauses 24(i) – (iii) also contain express provisions to the effect that senior management is responsible for establishing an effective management oversight over branchless banking services, which includes a comprehensive process for identifying, managing and mitigating risks associated with reliance on third parties.

#### Paragraph (d)

An agent is required to disclose to a customer the list of charges or fees applicable for each service which are payable to the financial service provider (clause 55(v) of the draft BB Regulations).

(Clause 30 of the E-Money Guidelines requires e-money institutions to: a) disclose all their charges to customers in a conspicuous place within their premises and the premises of all their agents; and b) not to introduce any new charge or increase the rate of an existing charge without prior approval of the BoZ.)

#### Paragraph (e)

There are no provisions in the draft BB Regulations which expressly deal with a customer's rights in the case of error resolution and fraud. Clause 48 (ii) provides however that financial services providers must ensure that relevant equipment is able to “*Reverse incomplete transactions due to error, system failure, power outage or other defects*”. Financial services providers are also required to ensure their systems address error messaging and exception handling (clause 50(ii)). Further, the general requirements of clause 58 are relevant in this context. They provide that:

- Appropriate consumer protection against risks of fraud, loss of privacy and loss of service is needed for establishing trust among consumers.*
- Financial service provider shall put in place systems which provide sufficient protection and confidence to consumers of branchless banking services.*

#### Paragraph (f)

There are no such provisions in the draft BB Regulations and it is not apparent that the BoZ specifically encourages campaigns of the type described. However, it is important to note that clause 58 provides that “*Financial service provider shall carry out appropriate financial education of their agents, customers and to the public*”.

The draft BB Regulations contains a number of important consumer protection provisions which are applicable to this Good Practice. The difficulty is that the draft BB Regulations only applies when agents are used to deliver financial services and are quite limited in scope. Specifically:

- The draft BB Regulations would not apply to an electronic banking transaction where agents are not used, such as Internet banking transactions;
- There is no requirement for the customer to be given a copy of the relevant disclosures which the customer could retain as a record (disclosures are required to be made by way of notice at the agent's premises);
- The disclosure requirements do not cover all relevant terms and conditions; and

It is not clear who has liability in the case of fraud, mistaken payments, other unauthorized transactions and system failures.

### **Recommendation**

It is recommended that new disclosure requirements be introduced, which are specifically applicable to the use of electronic channels to deliver banking services (as well as other financial services). These requirements should apply regardless of whether there is an agent or electronic money involved. For example, the new requirements could apply to the full range of banking (and any other financial services) provided through mobile phones and any other handheld device, the internet or a smart card. It is recommended that the disclosure requirements relate to prior disclosure of:

- The applicable terms and conditions that specifically apply to use of the relevant electronic service (such as how and when the electronic channel can be used (i.e. the instructions for use and the times when the service is available (e.g. is it 24 hours a day?) and also the types of services that can be accessed through the electronic channel (e.g. checking balances and payments); and
- Any fees and charges applicable to use of the relevant electronic channel.

It is also recommended that there be clear rules and procedures as to who has liability in the case of liability in the case of fraud, mistaken payments, other unauthorized transactions and system failures. In summary, it is proposed that the rule should be that unless a loss is directly attributable to a customer (e.g. because they have disclosed their PIN), they should not be liable for any loss caused by such an event. These rules should be required to be disclosed to customers before they start using an electronic service.<sup>2</sup>

It is also recommended that, in relation to all electronic banking services, banks (and other financial services providers) be required to provide a channel for complaints to be made (including a toll free telephone line), to address complaints within a reasonable time (and in any event no later than 30 days from the date of the complaint) and to clearly inform customers about the complaints redress mechanism. Disclosures should be made in writing or in any electronic form which is specifically permitted. Further recommendations in relation to internal complaint resolution mechanisms are dealt with in Good Practice E.1.

It is recommended that specifically skilled resources be provided for supervision of new laws relating to electronic financial services. In particular, it is important that supervisory staff have detailed knowledge of the different technologies that may be used for delivery of financial services and all the attendant risks.

The BoZ is also encouraged to require banks to undertake customer awareness campaigns of the nature of Internet and mobile banking, how to securely conduct transactions and how to safeguard PINs and other security devices. These sorts of issues could also be covered in the process of implementing the National Strategy for Financial Education.

It is also recommended that further consideration be given as to whether BoZ regulated entities should be required to meet Holding Account requirements.

<sup>2</sup> Guidance as to how these recommendations might be implemented might be obtained from Australia's new E-Payments Code: <http://www.asic.gov.au/asic/asic.nsf/byheadline/ePayments-Code> This is, of course, only one example of precedents that might be used.

### Good Practice C.7

#### *Electronic Fund Transfers and Remittances*

- a. There should be clear rules on the rights, liabilities and responsibilities of the parties involved in any electronic fund transfer.
- b. Banks should provide information to consumers on prices and service features of electronic fund transfers and remittances in easily accessible and understandable forms. As far as possible, this information should include:
  - (i) the total price (e.g. fees for the sender and the receiver, foreign exchange rates and other costs);
  - (ii) the time it will take the funds to reach the receiver;
  - (iii) the locations of the access points for sender and receiver; and
  - (iv) the terms and conditions of electronic fund transfer services that apply to the customer.
- c. To ensure transparency, it should be made clear to the sender if the price or other aspects of the service vary according to different circumstances, and the bank should disclose this information without imposing any requirements on the consumer.
- d. A bank that sends or receives an electronic fund transfer or remittance should document all essential information regarding the transfer and make this available to the customer who sends or receives the transfer or remittance without charge and on demand.
- e. There should be clear, publicly available and easily applicable procedures in cases of errors and frauds in respect of electronic fund transfers and remittances
- f. A customer should be informed of the terms and condition of the use of credit/debit cards outside the country including the foreign transaction fees and foreign exchange rates that may be applicable.

#### *Description*

Currently there are no laws that cover these Good Practices.

#### *Recommendation*

As well as the disclosure regime proposed in Good Practice C.6, it is recommended that there be prior disclosure of the following information specific to an electronic funds transfer or remittance:

- (i) the total price (e.g. fees for the sender and the receiver, foreign exchange rates and other costs);
- (ii) the time it will take the funds to reach the receiver;
- (iii) the locations of the access points for the sender and the receiver; and
- (iv) if applicable, whether the fees and charges may vary depending on the circumstances and if so, how.

The Good Practice C.6 recommendations relating to handling of complaints, supervision and customer awareness campaigns also apply in relation to electronic funds transfers and remittances.

### Good Practice C.8

#### Debt Recovery

- a. A bank, agent of a bank and any third party should be prohibited from employing any abusive debt collection practice against any customer of the bank, including the use of any false statement, any unfair practice or the giving of false credit information to others.
- b. The type of debt that can be collected on behalf of a bank, the person who can collect any such debt and the manner in which that debt can be collected should be indicated to the customer of the bank when the credit agreement giving rise to the debt is entered into between the bank and the customer.
- c. A debt collector should not contact any third party about a bank customer's debt without informing that party of the debt collector's right to do so; and the type of information that the debt collector is seeking.
- d. Where sale or transfer of debt without borrower consent is allowed by law, the borrower should be:
  - (i) notified of the sale or transfer within a reasonable number of days;
  - (ii) informed that the borrower remains obligated on the debt; and
  - (iii) provided with information as to where to make payment, as well as the purchaser's or transferee's contact information.

#### Description

The current laws of Zambia do not cover the subject of this Good Practice. However, the draft new BFSa contains provisions prohibiting certain debt collection practices which are helpful but are not considered to go far enough in providing guidance as to the specific practices which constitute harassment or other prohibited conduct.

##### Paragraph (a)

Clause 78 of the draft BFSa relevantly prohibits the following conduct relevant to this Good Practice:

*A financial service provider shall not engage in any conduct, the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt;*

*A financial service provider may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt.*

Clause 66 of the draft new BFSa also prohibits an "unfair business practice" which is defined to include "a practice which places pressure on consumers by use of harassment or coercion; and ... thereby distorts, or has the effect of distorting, the decisions of a consumer". This prohibition could be interpreted to prohibit practices involving the harassment of debtors.

##### Paragraphs (b), (c) and (d)

There are no such requirements.

#### Recommendation

There should be a mandatory rules relating to debt collection covering issues such as:

- The times when the customer may be contacted;
- The frequency of contact;
- Who may be contacted;
- The permitted methods of contacting a person (e.g. whether it is permissible to contact them at their place of work); and
- Harassment – it should be prohibited (as is proposed in the draft BFSa).

### Good Practice C.9

#### *Foreclosure of mortgaged or charged property*

- a. In the event that a bank exercises its right to foreclose on a property that serves as collateral for a loan, the bank should inform the consumer in writing in advance of the procedures involved, and the process to be employed by the bank to foreclose on the property it holds as collateral and the consequences thereof to the consumer.
- b. At the same time, the bank should inform the consumer of the legal remedies and options available to him or her in respect of the foreclosure process.
- c. If applicable, the bank should draw the consumer's attention to the fact that the bank has a legal right to recover the balance of the debt due in the event the proceeds from the sale of the foreclosed property are not sufficient to fully discharge the outstanding amount.
- d. In the event the mortgage contract or charge agreement permits the bank to enforce the contract without court assistance, the bank should ensure that it employs professional and legal means to enforce the contract, including regarding the sale of the property.

#### *Description*

At the time of writing this report, a copy of the legislation relating to foreclosure of mortgages could not be obtained. Accordingly, it was not possible to express any views in relation to this Good Practice.

The following information relating to the foreclosure of mortgages is however noted: the cost of foreclosing a mortgage in Zambia through the required judicial process was reported in 2008 as being 48% of the value of the relevant property and taking around 270 days (which is relatively very high – the Zambian costs in particular were reported as being the highest in the 42 countries surveyed)<sup>3</sup>. These costs in turn are likely to discourage the foreclosure of mortgages.

#### *Recommendation*

There are no recommendations given the inability to review the relevant legislation.

<sup>3</sup> Source: "Comparing the cost of foreclosure in 42 countries": 2008 The International Bank for Reconstruction and Development / The World Bank



## Good Practice C. 10

***Bankruptcy of Individuals***

- a. A bank should inform its individual customers in a timely manner and in writing on what basis the bank will seek to render a customer bankrupt, the steps it will take in this respect and the consequences of any individual's bankruptcy.
- b. Every individual customer should be given adequate notice and information by his or her bank to enable the customer to avoid bankruptcy.
- c. Either directly or through its association of banks, every bank should make counseling services available to customers who are bankrupt or likely to become bankrupt.
- d. The law should enable an individual to:
  - (i) declare his or her intention to present a debtor's petition for a declaration of bankruptcy;
  - (ii) propose a debt agreement;
  - (iii) propose a personal bankruptcy agreement; or
  - (iv) enter into voluntary bankruptcy.
- e. Any institution acting as the bankruptcy office or trustee responsible for the administration and regulation of the personal bankruptcy system should provide adequate information to consumers on their options to deal with their own unmanageable debt.

***Description***

Zambia has a comprehensive Bankruptcy Act (Chapter 82) which covers most of these Good Practices. It is understood that the Act is being substantially revised at present, although a draft was not able to be provided to the mission team.

***Paragraph (a)***

There are no requirements for such notice to be given (other than a formal bankruptcy notice – see paragraph (b)), and it is understood that this Good Practice is not followed as a general practice in relation to all customers.

***Paragraph (b)***

The bankruptcy notice requirements in the Bankruptcy Act would seem to meet the requirements of this Good Practice. Section 4 provides that:

*A bankruptcy notice under this Act shall be in the prescribed form, and shall require the debtor to pay the judgment debt or sum ordered to be paid in accordance with the terms of the judgment or order, or to secure or compound for it to the satisfaction of the creditor or the court, and shall state the consequences of non-compliance with the notice, and shall be served in the prescribed manner.*

The Bankruptcy Act also contains extensive timing requirements in relation to the progress of bankruptcy proceedings. For example, a debtor is taken to have committed an act of bankruptcy if he has not complied with a bankruptcy notice within 7 days of service (s. 3(1) (g)).

*Paragraph (c)*

It is understood that this practice is followed in an informal way. The lack of formal practices may be explained by the reportedly low incidence of bankruptcy amongst bank customers.

*Paragraph (d)*

The Bankruptcy Act contains provisions for debtor's petitions (s.8) and for a composition or a scheme of arrangement (s. 18).

*Paragraph (e)*

There are not any express provisions covering this Good Practice.

**Recommendation**

It is recommended that the upcoming financial education programs also cover the implications of a bankruptcy order, when such an order may be made and the process, and other options for dealing with indebtedness. The Official Receivers and trustees in bankruptcy should also have an obligation to advise debtors of their options and the implications of each option.



## Section D. Privacy and Data Protection

### Good Practice D.1

#### ***Confidentiality and Security of Customers' Information***

- a. The banking transactions of any bank customer should be kept confidential by his or her bank.
- b. The law should require a bank to ensure that it protects the confidentiality and security of the personal data of its customers against any anticipated threats or hazards to the security or integrity of such information, as well as against unauthorized access.

#### ***Description***

There are general confidentiality provisions applicable to banks which, in general terms meet the requirements of this Good Practice, although the definition of “confidential information” should be broadened and obligations relating to security of personal information are not covered.

#### ***Paragraph (a)***

Section 50 (1) of the BFSA is to the effect that a bank and all officers and employees must maintain the confidentiality of all “confidential information”, subject to stated exceptions which are commonly provided for in bank secrecy laws.

The definition of “confidential information” is quite specific. It provides:

*For the purposes of this section, confidential information about a person includes information that is not public, concerning -*

- a) *the nature, amount or purpose of any payment made by or to the person;*
- b) *the recipient of a payment by the person;*
- c) *the assets, liabilities, financial resources or financial condition of the person;*
- d) *the business or family relations of the person; or*
- e) *any matter of a personal nature that the person disclosed to the bank in confidence. (s. 50 (2)).*

This definition contains a number of gaps. For example, it does not expressly cover information about account balances, interest and fees and charges debited to an account or details of any security. Furthermore, there is no provision allowing for disclosure to a credit reporting agency.

Clause 75 of the draft new BFSA is to a similar effect as the current terms of s. 50 except that there is a new provision allowing for disclosure of customer identification information to another financial services provider for the purpose of carrying out customer due diligence.

#### ***Paragraph (b)***

Section 50 (1) of the BFSA is to the effect that a bank and all officers and employees must take reasonable precautions in relation to records and registers required to be maintained by the Act so as to prevent loss or destruction, falsification, inaccuracies and unauthorized access. The Act also contains broad record keeping obligations, including in relation to a customer's transaction, balance and credit information (ss. 51 and 52). Similar provisions are contained in the new draft BFSA (ss. 53, 54 and 57).

**Recommendation**

A comprehensive data protection law should be developed for the purposes of the financial sector. Such a law would cover the following issues:

- The circumstances in which personal data can be collected and the disclosures that must be made at the time of collection;
- The permitted uses and disclosures of personal information and the permitted exceptions (such as disclosures to government authorities, police and courts, disclosures authorized or permitted by law and uses of personal data for marketing purposes);
- Data quality –in summary, the obligation should be that the institution concerned should ensure that any data it collects, uses or discloses is accurate, complete and up-to-date;
- Data security, i.e. and obligation to protect data from misuse and loss and from unauthorized access;
- The need to make customers aware of the bank's policies in relation to the handling of personal data;
- Rights of access and correction;
- Any rights of anonymity;
- Any restrictions on the use of national identifiers (such as the national identification number);
- The circumstances in which transborder data flows are permitted; and
- Any special rules relation to the collection, use and disclosure of sensitive information (e.g. relating to health, religious or political affiliations).

The OECD Guidelines on the Protection of Privacy and Transborder Flows of Personal Data are international standards for the development of comprehensive data protection laws. They could be considered as the basis of any new law which is developed (see

[http://www.oecd.org/document/18/0,3746,en\\_2649\\_34223\\_1815186\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/18/0,3746,en_2649_34223_1815186_1_1_1_1,00.html) )

In the absence of an overarching data protection law, it is suggested that there be included in the law a broader definition of “confidential information”. This definition should clearly cover all identification, account, security and other personal information of a customer and of any security provider. Further, it is recommended that the new BFSa gives consumers common protections such as rights of access and limitations on the collection and use of personal information.

## Good Practice D.2

### *Sharing Customer's Information*

- a. A bank should inform its customer in writing:
  - (i) of any third-party dealing for which the bank is obliged to share information regarding any account of the customer, such as any legal enquiry by a credit bureau; and
  - (ii) as to how it will use and share the customer's personal information.
- b. Without the customer's prior written consent, a bank should not sell or share account or personal information regarding a customer of the bank to or with any party not affiliated with the bank for the purpose of telemarketing or direct mail marketing.
- c. The law should allow a customer of a bank to stop or —opt out of the sharing by the bank of certain information regarding the customer and, prior to any such sharing of information for the first time, every bank should be required to inform each of its customers in writing of his or her rights in this respect.
- d. The law should prohibit the disclosure by a third party of any banking-specific information regarding a customer of a bank.

### *Description*

None of these Good Practices are expressly provided for by the laws of Zambia. Further, it is understood that there is not a general practice amongst banks of following these practices.

Overall, data protection provisions and codes in Zambia are fragmented. There is no comprehensive data protection law to protect the personal information of consumers (or to facilitate the operations of credit reporting agencies – see Good Practice D.4). Although, as noted above, the BFSA currently contains limited provisions dealing with the confidentiality of customer information, such provisions do not cover these Good Practices.

It is considered increasingly important that Zambia develops a data protection law given the increased flows in personal data resulting from the rapid increase in the use of mobile banking and payments systems, the need to build trust in the financial sector to encourage financial inclusion, and the likely increased flows of data across borders for data processing and marketing purposes.

### *Recommendation*

See the recommendation in Good Practice D.1.

### Good Practice D.3

#### *Permitted Disclosures*

The law should provide for:

- (i) the specific rules and procedures concerning the release to any government authority of the records of any customer of a bank;
- (ii) rules on what the government authority may and may not do with any such records;
- (iii) the exceptions, if any, that apply to these rules and procedures; and
- (iv) the penalties for the bank and any government authority for any breach of these rules and procedures.

#### *Description*

There are no such provisions in the laws that were reviewed for the purposes of the mission, except in very limited circumstances.

Disclosures to government authorities may occur in the following circumstances:

- To the BoZ, when it requests the relevant information (s. 50 (1) of the BFSa);
- The AML Directive requires a regulated institution (which would include a bank) to co-operate with law enforcement agencies to facilitate the exchange of information relating to money laundering; and

The Financial Intelligence Centre Act (FIC Act), 2010 contains various disclosure obligations in relation to matters such as the reporting of suspicious transactions and the disclosure of suspicions of money laundering (ss. 29 and 36). S. 13 of the FIC Act is to the effect that the Act prevails over any duty of secrecy, s. 32 provides (in summary) that the law requiring disclosure of information to the Centre prevails over any other law and s. 35 protects a bank making a good faith disclosure. However, information obtained under that Act is subject to strict obligations of confidentiality, subject to an exception for uses and disclosures for the purposes of fulfilling duties under the Act (ss. 39 and 47). There are significant penalties for a breach of these provisions (s. 47 – the penalty for breaching the confidentiality provisions is 500,000 penalty units or imprisonment for 5 years or both).

#### *Recommendation*

There are no recommendations in relation to this Good Practice.

### Good Practice D.4

#### *Credit Reporting*

- a. Credit reporting should be subject to appropriate oversight, with sufficient enforcement authority.
- b. The credit reporting system should have accurate, timely and sufficient data. The system should also maintain rigorous standards of security and reliability.
- c. The overall legal and regulatory framework for the credit reporting system should be: (i) clear, predictable, non-discriminatory, proportionate and supportive of consumer rights; and (ii) supported by effective judicial or extrajudicial dispute resolution mechanisms.
- d. In facilitating cross-border transfer of credit data, the credit reporting system should provide appropriate levels of protection.
- e. Proportionate and supportive consumer rights should include the right of the consumer
  - (i) to consent to information-sharing based upon the knowledge of the institution's information-sharing practices;
  - (ii) to access his or her credit report free of charge (at least once a year), subject to proper identification;
  - (iii) to know about adverse action in credit decisions or less-than-optimal conditions/prices due to credit report information;
  - (iv) to be informed about all inquiries within a period of time, such as six months;
  - (v) to correct factually incorrect information or to have it deleted and to mark (flag) information that is in dispute;
  - (vi) to reasonable retention periods of credit history, for instance two years for positive information and 5-7 years for negative information; and
  - (vii) to have information kept confidential and with sufficient security measures in place to prevent unauthorized access, misuse of data, or loss or destruction of data.
- f. The credit registries, regulators and associations of banks should undertake campaigns to inform and educate the public on the rights of consumers in the above respects, as well as the consequences of a negative personal credit history.

#### *Description*

The credit reporting system in Zambia allows for the operation of private credit bureaus. Currently there is only one licensed private credit bureau or credit reporting agency, namely the Credit Reference Bureau (<http://www.crbafrica.com/contacts/contacts.asp?LOC=CZM>). There is no public credit registry in Zambia.

#### *Paragraph (a)*

There is no data protection agency in Zambia, and as mentioned in Good Practices A.1 and A.3 the CCPC has very limited resources to look at consumer protection issues in the financial sector in addition to all other sectors in the economy. In this context, the BoZ has issued guidelines, regulations and legal provisions covering consumer protection issues, applicable to the institutions that it supervises, which include credit reporting agencies (CRAs).

The BoZ has issued a guideline on licensing for credit reporting agencies (CRAs), as well as extensive guidelines applicable to CRAs and credit providers in respect of credit data and the operations of CRAs. These guidelines are not binding, which limits the effectiveness of the BoZ regarding consumer protection supervision of CRAs, even though compliance is strongly encouraged by the BoZ.

*Paragraph (b)*

A broad range of data may be collected by a CRA, such as identification data, credit data, account general, repayment and default data and credit card loss data (Clauses 2.5, 3.1 and Schedule 2). It is to be noted, however, that there is no provision for access to additional information - such as those held by government agencies responsible for the electoral roll, the national identification system, registration of companies or the new Financial Intelligence Centre – which could be used to verify data provided by credit providers.

Clause 2.6 of the Credit Data Privacy Code (hereinafter Data Code) requires credit providers to take reasonably practicable steps to check credit data for accuracy and to update data provided to a CRA if they discover inaccuracies after the data is provided. There are also more specific obligations in relation to data accuracy in clauses 2.10 and 2.11 (e.g. to update data on the occurrence of events such as the termination of a credit facility or repayment or write-off of an amount in default).

The Data Code also contains strict requirements for data system and integrity for credit data held by a credit provider and by a CRA (cl. 2.32 – 2.37 and 3.20 – 3.24). Principle 4 is also to the effect that all practicable steps shall be taken to ensure that credit data held by a data user is protected against unauthorized or accidental access, processing, erasure or other use. However, the non-binding nature of the Data Code and the absence of a law dealing with protection of personal financial data seem to be limiting different types of institutions from deciding to provide information to the credit bureau (e.g. national identification system, private companies offering credit facilities), due to concerns on protection of confidential information.

*Paragraph (c)*

The legal and regulatory framework on credit reporting is as follows (in summary):

- The BFSa (Credit Reference Services Licensing) Guidelines, 2006 requires any entity providing “credit reference services” to be licensed by the Registrar of Banks and Financial Institutions (Registrar). The term “credit reference service” is defined as: “*the service of compiling and/or processing credit data relating to a person (including credit scoring), for disseminating such data and any data derived therefrom to a credit provider for credit purposes and, for performing any other functions directly related to credit transactions*”. These guidelines include requirements for directors to be “fit and proper” and for clear and comprehensive policies and procedures for use of credit data designed to ensure the security, confidentiality and integrity of credit data (s. 6).
- The BFSa (Submission of Credit Data and Utilisation of Credit Reference Services) Directive, 2006 requires all financial services providers to use the services of a CRA before providing credit, and to submit credit data to such an agency in respect of all credit granted after the Directive came into force.
- The Data Code provides comprehensive guidelines on the handling of credit data by both credit providers and CRAs, and includes six detailed Data Protection Principles (DPPs): purpose and manner of collection of credit data, accuracy and duration of retention of credit data, use of credit data, security of credit data, information to be generally available, and access to credit data.

The above Guideline, Directive and Code were issued by the BoZ pursuant to their powers to issue guidelines under s. 125 of the BFSa. Importantly, they are not binding (as opposed to the regulations or statutory instruments that are prepared by the BoZ and issued by the Ministry of Finance, and provide for the imposition of fines or imprisonment for a breach). However compliance is strongly encouraged by the BoZ and non-compliance with the DPPs will be considered an unsafe and unsound practice for the purposes of the BFSa (cl. 4.3 of the Data Code). Further, non-compliance with a number of specific provisions in the Data Code is deemed to be a breach of a DPP.

*Paragraph (d)*

There are no provisions in the Data Code relating to protection of personal information in cases of cross-border transfer of credit data. However, this is not an issue of concern given the current context of market development in Zambia.

*Paragraph (e)*

There is no provision for a consumer to consent to information-sharing based upon the knowledge of the institution's information-sharing practices. However, Principle 5 in the Data Code provides that:

*All practicable steps shall be taken to ensure that a person can -*

- a) ascertain a data user's policies and practices in relation to personal data;*
- b) be informed of the kind of credit data held by a data user;*
- c) be informed of the main purposes for which credit data held by a data user is or is to be used.*

Clause 3.29 of the Data Code is to the effect that “as a recommended practice” a CRA shall seek to respond promptly to a request for access to credit data by a person who advises that he has been refused credit by a credit provider. However, there is no automatic right of access to credit data. Further, Principle 6 in the Data Code is to the effect that a person can request access to their credit data. However, a reasonable fee may be charged and it is contemplated that access can be refused (because reasons are required to be given if access is refused).

A credit provider is required to tell a person that they have considered a credit report in the context of an application for credit and to give the CRA's contact details (clause 2.20).

There is no obligation to inform a person about inquiries which have been made at a CRA.

Clause 2.8 is to the effect that where a credit provider provides to a CRA any credit data dispute by the person to whom such data relate, there must be an indication of the existence of the dispute and advice must be given of any later resolution of the dispute. However, there is no general right to correct factually incorrect information or to have it deleted or to have flagged information that is in dispute.

Clause 3.3 of the Data Code is to the effect that a CRA must retain account data for so long as any account repayment data is kept. Account data that reveals a material default (i.e. one in excess of 60 days) must be retained for a period of 7 years after the years from the date of final settlement of the amount in default or any discharge from bankruptcy (clause 3.5). Other data must be retained for a period of 7 years from the date of creation of such data or 7 years after the account termination (clause 3.7). Non account data collected must be retained for periods between 7 and 10 years (clause 3.12).

The Data Code also contains strict requirements for data system and integrity for credit data held by a credit provider and by a CRA (cl. 2.32 – 2.37 and 3.20 – 3.24). Principle 4 is also to the effect that all practicable steps shall be taken to ensure that credit data held by a data user is protected against unauthorized or accidental access, processing, erasure or other use.

*Paragraph (f)*

No such coordinated campaigns are undertaken to the knowledge of the mission team, although the Credit Reference Bureau has previously run campaigns to publicize the services of the Bureau and a few banks provide financial education programs which address the issue of credit defaults.



**Recommendation**

The legal and regulatory regime applying to credit reporting activities should be clarified, in order to improve the level of protection of consumers or data subjects, taking into account international best practices<sup>4</sup>. It is recommended that this be done through a new law for credit reporting, and associated regulations, which:

- Incorporates the substance of the Data Code, and includes additional provisions, such as: the consumer's right to access credit data periodically at little or no cost, the consumer's right to challenge -and have corrected- factually incorrect information about him or her and the consumer's right to have disputed information flagged.
- Ensures that the BoZ has an adequate authority to enforce consumer protection in the credit reporting system, taking into account the recommendations mentioned in Good Practices A.1 and A.3;
- Incorporates the requirement for licensed financial institutions to use credit reference service before gathering credit and to update credit data, which is currently included in the BFSa (Submission of Credit Data and Utilisation of Credit Reference Services) Directive;
- Includes adequate confidentiality, data privacy and security provisions, including those related to the information that a CRA could obtain from other data providers and data sources (e.g the Electoral Roll, the National Identification Service, court records, insolvency records and registration of companies) (consequential amendments may need to be made to relevant legislation to make clear that such provisions apply notwithstanding any confidentiality provisions in other legislations).

It is recommended that the data protection provisions specific to CRA activities be incorporated in regulations under the proposed new data protection law. However, if there are significant delays in the enactment of a data protection law, then such provisions might be included in the new specific legal framework for credit reporting

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<sup>4</sup> See, for example, the General Principles for Credit Reporting, issued by the World Bank in 2011, available at [http://siteresources.worldbank.org/FINANCIALSECTOR/Resources/Credit\\_Reporting\\_text.pdf](http://siteresources.worldbank.org/FINANCIALSECTOR/Resources/Credit_Reporting_text.pdf)



## Section E. Dispute Resolution Mechanisms

### Good Practice E.1

#### *Internal Complaints Procedure*

- a. Every bank should have in place a written complaints procedure and a designated contact point for the proper handling of any complaint from a customer, with a summary of this procedure forming part of the bank's Terms and Conditions referred to in B.7 above and an indication in the same Terms and Conditions of how a consumer can easily obtain the complete statement of the procedure.
- b. Within a short period of time following the date a bank receives a complaint, it should:
  - (i) acknowledge in writing to the customer/complainant the fact of its receipt of the complaint; and
  - (ii) provide the complainant with the name of one or more individuals appointed by the bank to deal with the complaint until either the complaint is resolved or cannot be processed further within the bank.
- c. The bank should provide the complainant with a regular written update on the progress of the investigation of the complaint at reasonable intervals of time.
- d. Within a few business days of its completion of the investigation of the complaint, the bank should inform the customer/complainant in writing of the outcome of the investigation and, where applicable, explain the terms of any offer or settlement being made to the customer/complainant.
- e. When a bank receives a verbal complaint, it should offer the customer/complainant the opportunity to have the complaint treated by the bank as a written complaint in accordance with the above. A bank should not require, however, that a complaint be in writing.
- f. A bank should maintain an up-to-date record of all complaints it has received and the action it has taken in dealing with them.
- g. The record should contain the details of the complainant, the nature of the complaint, a copy of the bank's response(s), a copy of all other relevant correspondence or records, the action taken to resolve the complaint and whether resolution was achieved and, if so, on what basis.
- h. The bank should make these records available for review by the banking supervisor or regulator when requested.

#### *Description*

These Good Practices are only followed to a very limited extent.

#### *Paragraph (a)*

The BFSA (s. 48) requires banks to have internal customer complaint resolution procedures, to make those procedures available in writing in branches and to keep records for 2 years. Problematically, the obligation is to designate a customer service officer to deal with complaints who seems to be solely responsible for implementing and administering procedures (s. 48(b)). This should be a "whole of bank" responsibility.

The CBP provides for limited dispute resolution procedures (clause 12). In summary, these procedures are as follows:

- Initially the customer is asked to make use of the internal complaints procedures that every bank is required to have (however there are no requirements as to the timelines within which to deal with a complaint and no requirement to keep the customer informed as to progress);
- The next step is to escalate the complaint to the Chief Executive of the relevant bank;

- If the dispute is not resolved, the customer is asked to write to the Chairman of BAZ, enclosing copies of all relevant documentation, who will then place the matter before a Banking Adjudicator for a no-cost consideration of the matter. The Banking Adjudicator must resolve the dispute within 60 days or else advise the customer of the reasons for the delay and give monthly updates;
- If a customer is still not satisfied, they can pursue other means of resolving the dispute; and
- If the relevant bank refuses to accept a recommendation, then the Banking Adjudicator may publicize that refusal.

The BAZ is required by the CBP to appoint a team of at least three Banking Adjudicators (see Good Practice E.2).

*Paragraphs (b), (c), (d), and (e)*

There are no such requirements.

*Paragraph (f)*

A bank is required “to create and maintain for two years, or such longer period as may be prescribed by the Bank of Zambia, a record of every complaint received and how it was dealt with or disposed of” (section 48(c)).

*Paragraph (g)*

The only record keeping requirements are as described in paragraph (f) above.

*Paragraph (h)*

There is no specific requirement of the type described. However, s. 79 requires a bank to produce records required by the BoZ for the purposes of an inspection.

NOTE: the draft new BFSa has compliant resolution procedures which are identical to those in s. 48 and described above (see clause 76). Specific concerns about the current provisions are:

- The absence of clear timelines for dealing with a complaint;
- The placing of responsibility for resolving complaints on a single officer, rather on the institution as a whole;
- The lack of a requirement to give written reasons for the cause of a delay or for a decision; and

The absence of a requirement to inform customers of the availability of alternative dispute resolution mechanisms (such as under the Code of Banking Practice – see Good Practice E.2).

### **Recommendation**

It is recommended that there be a requirement that all banks comply with internal dispute resolution standards that meet the above stated Good Practices.

As noted in Good Practice C.6, at a minimum there should be a requirement to provide a channel for complaints, including a toll free telephone line; to address complaints within a reasonable time and in any event no later than 30 days from the date of the complaint; and to clearly inform customers about the available complaints redress mechanisms when the account is taken up and at regular intervals afterwards (for example, when a statement is provided). It should be clear that the obligation to deal with complaints in the required way is that of the bank itself (rather than a single officer). Disclosures should be made in writing or in any electronic form which is specifically permitted.

An alternative approach would be to require banks to meet internal dispute resolution standards approved by the BoZ. Such standards could require compliance with relevant international standards on complaint resolution (see ISO 10002 – 2006: Customer satisfaction - Guidelines for complaints handling in organizations).

In relation to the CBP, and as recommended in the context of Good Practice A.3, consideration should be given to making the enforcement mechanisms in the Code more effective. This could be done (in the absence of an independent external dispute resolution scheme) by giving the Banking Adjudicator power to make decisions binding on the relevant bank.

### Good Practice E.2

#### *Formal Dispute Settlement Mechanisms*

- a. A system should be in place that allows customers of a bank to seek affordable and efficient recourse to a third-party banking ombudsman or equivalent institution, in the event the complaint of one or more of customers is not resolved in accordance with the procedures outlined in E.1 above.
- b. The existence of the banking ombudsman or equivalent institution and basic information relating to the process and procedures should be made known in every bank's Terms and Conditions referred to in B.7 above.
- c. Upon the request of any customer of a bank, the bank should make available to the customer the details of the banking ombudsman or equivalent institution, and its applicable processes and procedures, including the binding nature of decisions and the mechanisms to ensure the enforcement of decisions.
- d. The banking ombudsman or equivalent institution should be appropriately resourced and discharge its function impartially.
- e. The decision of the banking ombudsman or equivalent institution should be binding upon the bank against which the complaint has been lodged.

#### *Description*

There is currently no provision for an external third party banking ombudsman or equivalent, other than the voluntary scheme provided for recourse to a Banking Adjudicator under the CBP and the ability for a consumer to make a complaint to the CCPC in relation to the consumer protection provisions in the CCPA.

#### *Paragraph (a)*

As mentioned in Good Practice E.1, the CBP provides for the appointment of a Banking Adjudicator in clause 12.1.2. In summary, the BAZ is required to appoint at least three independent persons to act as the Banking Adjudicator (excluding the bank(s) concerned). The Banking Adjudicator has to have relevant experience and be appointed from the banking and the legal industry. The Banking Adjudicator is a no cost service "to rule or recommend on any complaint which you and your bank may not have been able to resolve".

It was reported, however, that the process for consideration of complaints under the CBP has changed. The current process is that complaints are considered by a committee of all member banks (other than the relevant bank) which then makes a recommendation to the Chairperson of the BAZ. Although the rulings are not binding on the relevant bank, there is apparently only one case where a recommendation was not accepted. There are no systematic records kept of how disputes are dealt with by the BAZ and (obviously) no analysis of systematic trends. This is no doubt due to the very limited resources of the BAZ (there are only 2 permanent staff).

Although aggrieved customers of banks may (and do) also complain to the BoZ, they appear to have very limited resources to deal with them. There were many concerns expressed about the effectiveness of the BoZ as a dispute resolution service.

There is also provision for consumers affected by specified practices to make a complaint to the CCPC “in the prescribed manner and form” (s. 54). Part VIII of the CCPA then provides the CCPC with broad power to investigate a complaint by a consumer. The relevant practices include those relating to unfair trading, false and misleading representations, unsuitable services, unfair contracts and terms. A complaint may also be made in relation to any contravention of the CCPA, including those relating to consumer protection (s. 54). The CCPC, at the conclusion of an investigation is required to publish a report of the inquiry and its conclusions in such manner and form as it considers appropriate (s. 55(10)). However, there is no provision for compensation to be awarded to the affected consumer.

*Paragraph (b)*

No evidence of this Good Practice was found in the reviewed terms and conditions.

*Paragraph (c)*

There is no such requirement.

*Paragraph (d)*

There is no requirement to refer to the existence of the Banking Adjudicator in Terms and Conditions.

*Paragraph (e)*

A decision of the Banking Adjudicator is clearly not binding on the bank, as the CBP makes provision for the fact that a bank has refused to accept a recommendation (clause 12.1.2.5).

The draft new BFSA provides for the BoZ to designate or appoint a Financial Ombudsman “*whose responsibility shall be to deal with matters relating to consumer protection in banking and financial services*” (clause 61(1)). There is provision for the BoZ to prescribe regulations concerning the functions, powers and duties of the Financial Ombudsman and for dealing with complaints.

**Recommendation**

Increasing effectiveness of the external dispute resolution process is crucial. In this regard, a single external institutional mechanism covering the entire financial sector should be considered. However, further analysis is needed to identify the most effective institutional setup. Such an analysis should explore different models, and the costing and effectiveness of each in the Zambian context. At a minimum, it is considered that the relevant body should be independent of financial institutions and their regulators, be available at low cost to consumers, have the power to make decisions which are binding on the financial institutions, and operate in accordance with transparent processes and procedures. It is also recommended that it be a licensing condition that the institution concerned be a member of the external dispute resolution scheme. The overseeing body for the scheme should include consumer as well as industry representatives.

Guidance as to the appropriate standards for a Banking and Financial Services Ombudsman may be found in the World Bank’s recent publication on *Resolving disputes between consumers and financial businesses: Fundamentals for a financial ombudsman*, available at: [http://www.networkfso.org/Resolving-disputes-between-consumers-and-financial-businesses\\_Fundamentals-for-a-financial-ombudsman\\_The-World-Bank\\_January2012.pdf](http://www.networkfso.org/Resolving-disputes-between-consumers-and-financial-businesses_Fundamentals-for-a-financial-ombudsman_The-World-Bank_January2012.pdf)

### Good Practice E.3

#### *Publication of Information on Consumer Complaints*

- a. Statistics and data of customer complaints, including those related to a breach of any code of conduct of the banking industry should be periodically compiled and published by the ombudsman, financial supervisory authority or consumer protection agency.
- b. Regulatory agencies should publish statistics and data and analyses related to their activities in respect of consumer protection regarding banking products and services so as, among other things, to reduce the sources of systemic consumer complaints and disputes.
- c. Banking industry associations should also analyze the complaint statistics and data and propose measures to avoid the recurrence of systemic consumer complaints.

#### *Description*

The BoZ publishes data on interest rates and fees and charges. However, the statistics and data mentioned are not published and there is no analysis of complaints by the BoZ or the BAZ.

##### *Paragraph (a)*

No such data is gathered or published.

##### *Paragraph (b)*

The BoZ periodically publishes data on fees and charges levied by commercial banks. However the most recent data at the time of writing was dated December, 2011. The BoZ also publishes information on interest rates in local newspapers on a quarterly basis. It is understood that no other data of the type described is published.

##### *Paragraph (c)*

No such analysis occurs by either the BoZ or the BAZ. However, it is understood that the BoZ is starting to compile statistics on the complaints it receives. Further, at least some of the larger banks undertake analysis of the complaints they receive.

#### *Recommendation*

It is recommended that, if an external dispute resolution scheme is established, then the relevant entity responsible for dispute resolution should be required to record and publish statistics and data on complaints received and any trends.

The BoZ is also encouraged to regularly publish data on interest rates and fees and charges and, prior to the appointment of any entity responsible for dispute resolution, take active steps to record the complaints that it receives and analyze them for evidence of systemic risk. This is a function that could be given to the new Division dealing with consumer protection matters, if it is established as proposed (see Good Practice A.1).

## Section F. Guarantee Schemes and Insolvency

### Good Practice F.1

#### *Depositor Protection*

- a. The law should ensure that the regulator or supervisor can take necessary measures to protect depositors when a bank is unable to meet its obligations including the return of deposits.
- b. If there is a law on deposit insurance, it should state clearly:
  - (i) the insurer;
  - (ii) the classes of those depositors who are insured;
  - (iii) the extent of insurance coverage;
  - (iv) the holder of all funds for payout purposes;
  - (v) the contributor(s) to this fund;
  - (vi) each event that will trigger a payout from this fund to any class of those insured;
  - (vii) the mechanisms to ensure timely payout to depositors who are insured.
- c. On an on-going basis, the deposit insurer should directly or through insured banks or the association of insured commercial banks, if any, promote public awareness of the deposit insurance system, as well as how the system works, including its benefits and limitations.
- d. Public awareness should, among other things, educate the public on the financial instruments and institutions covered by deposit insurance, the coverage and limits of deposit insurance and the reimbursement process.
- e. The deposit insurer should work closely with member banks and other safety-net participants to ensure consistency in the information provided to consumers and to maximize public awareness on an ongoing basis.
- f. The deposit insurer should receive or conduct a regular evaluation of the effectiveness of its public awareness program or activities.

#### *Description*

The BoZ has wide powers which could be relied on to protect depositors. There is no deposit insurance scheme in Zambia, although one is proposed under the terms of the Deposit Protection Bill (DP Bill). The DP Bill provides for the establishment of the Zambia Deposit Protection Fund to be administered by the BoZ. However, the BoZ was not able to indicate when the Bill might pass, although it was noted that it was likely to commence operations shortly thereafter.

*Paragraph (a)*

The BoZ has a broad range of powers which might be relied on to protect depositors. These powers include:

- Power to enter into binding agreements with banks in relation to unsafe or unsound practices (s. 77(1);
- Power to give directions to banks (ss. 77(2) –(10));
- Powers of inspection and to require information and documents to be provided (ss. 78 – 80);
- Power to take supervisory action including taking possession of a bank (leading to a possible restructuring or reorganization) and revoking a license or placing conditions on a license (ss.81 – 84I); and
- Powers in relation to the insolvency, liquidation or dissolution of a bank (ss. 85 – 110B).

The BFSa also prohibits accepting a deposit whilst insolvent (s. 87).

*Paragraph (b)*

Currently there is no law on deposit insurance in Zambia. However the draft DP Bill complies with this Good Practice in the following respects:

- The insurer is stated to be the Zambia Deposit Protection Fund (clause 4);
- The administrator of the Fund is the statutory body named Zambia Deposit Protection Corporation established under the Bill (clause 19);
- The Corporation is required to keep books of accounts and records in accordance with generally accepted international accounting principles (clause 34);
- The initial contribution to the Fund will be 20 billion kwacha, which will be provided by the Government. Other contributions will come from a levy on all financial services providers (ss. 11 and 12) with the potential for fines and sanctions to be added to the Fund and there is also provision for a risk-based contribution scheme (s.13);
- The desired contribution rate is 0.25% of deposits (clause 10);
- A protected “deposit” must be within the broad clause 2 definition of a “deposit” (which would appear to include bank deposits held by consumers) and will be subject to a maximum amount determined by the Minister from time to time (clause 15); and
- The Corporation will become the liquidator of an insolvent contributory Institution (clause 41); and
- Amounts to cover deposits protected by the Fund will be a first priority (clause 45).
- The Corporation is required, within sixty (60) days of the date of liquidation, to commence payment of protected deposits to the depositors of the failed Contributory Institution (clause 44).

*Paragraphs (c), (d), (e) and (f)*

These practices are not yet in place.

**Recommendation**

Once the DP Bill is passed, it is recommended that a widespread consumer awareness campaign of the scheme should be conducted, as well as an education program for financial institutions.

There are no other recommendations on the assumption that the DP Bill will be passed in its current form.



### Good Practice F.2

#### *Insolvency*

- a. Depositors should enjoy higher priority than other unsecured creditors in the liquidation process of a bank.
- b. The law dealing with the insolvency of banks should provide for expeditious, cost effective and equitable provisions to enable the maximum timely refund of deposits to depositors.

#### *Description*

##### *Paragraph (a)*

Depositors have priority in a compulsory liquidation, winding up or dissolution of a bank or financial institution, after the BoZ expenses, taxes and rates and wages and salaries up to the prescribed limit have been paid (s. 107(1) of the BFSa). However, there are no specific provisions currently dealing with the refund of deposits.

##### *Paragraph (b)*

There are no provisions dealing specifically with the process for refunding deposits. However, the BFSa does provide that:

- Where there is a voluntary liquidation, there cannot be any distribution to shareholders until all claims of depositors and other creditors have been paid in full and the BoZ has received an amount to cover any disputed claims (s.92); and
- If the amount available for payment of claims in a class in a compulsory winding up is insufficient to meet all claims then they shall abate *pari passu* (BFSa s. 107(2)).

#### *Recommendation*

It is recommended that consideration be given to prescribing in further detail the procedures (including the related timelines) to be followed for refund of deposits in the event of the insolvency of a bank.



## Section G. Consumer Empowerment

### Good Practice G.1

#### ***Broadly based Financial Capability Program***

- a. A broadly based program of financial education and information should be developed to increase the financial capability of the population.
- b. A range of organizations, including those of the government, state agencies and non-government organizations, should be involved in developing and implementing the financial capability program.
- c. The government should appoint an institution such as the central bank or a financial regulator to lead and coordinate the development and implementation of the national financial capability program.

#### ***Description***

The BoZ is about to implement a National Strategy on Financial Education for Zambia which would meet these Good Practices. There is, however, still a need to secure (donor) funds for the implementation of the Strategy.

The following description of the FE Strategy is taken from the draft submitted to the Secretariat of the Financial Sector Development Program on 4<sup>th</sup> November, 2011.

#### ***Paragraph (a)***

The Strategy was commissioned by the Bank of Zambia and was co-funded by the UK's Department for International Development's (DFID's) Financial Education Fund (FEF) and by FinMark Trust. The development of the Strategy was overseen by the Financial Sector Development Plan (FSDP) Financial Education Working Group, with technical support from FinMark Trust.

The primary objective of the Strategy is to empower Zambians with knowledge, understanding, skills, motivation and confidence to help them to secure positive financial outcomes for themselves and their families by 2017. In the longer term, the aim is to have a financially educated Zambian population by 2030. The programs have different components for children, youth and adults.

The principles guiding how the financial education programs will be implemented are as follows:

1. *Work in partnership;*
2. *Build on existing initiatives;*
3. *Maximize cost-effectiveness;*
4. *Foster sustainable changes;*
5. *Focus on clients and their needs;*
6. *Communicate effectively; and*
7. *Measure impact – and share the results.*

(Para 90 – details of these principles are in paragraphs 91 to 102).

In addition to the Strategy, there are a number of financial education programs being undertaken by civil society groups and some financial institutions. Such programs include, for example, the Financial Fitness Program conducted by Zanaco Bank (<http://www.zanaco.co.zm/CSR.htm>) and a program conducted by Barclays Bank and Junior Achievement Zambia (<http://www.barclays.com/africa/zambia/banking-on-brighter-futures.html>).

It is also encouraging to note the emphasis on financial education in the draft BB Regulations. As noted above, there are financial education obligations to the effect that the financial services provider must carry out “appropriate financial education of their agents, customers and to the public” (reg. 58).

*Paragraph (b)*

There appears to be a reasonably broad range of organizations involved in the FSDP Financial Education Working Group. It is understood that representatives from the following organizations are members:

- BoZ;
- Bankers Association of Zambia (BAZ);
- Competition & Consumer Protection Commission;
- Zambia Institute of Bankers;
- Economics Association of Zambia;
- Ministry of Finance & National Planning;
- Association of Microfinance Institutions in Zambia;
- Ministry of Commerce – Private Sector Development Unit;
- FinMark Trust Zambia;
- Junior Achievement Zambia; and
- The Pensions and Insurance Authority.

*Paragraph (c)*

The BoZ will lead and coordinate the Strategy through a Financial Education Coordinating Unit (FECU). The FECU is expected to be established at the time that the Strategy is launched.

**Recommendation**

The early implementation of the Strategy is encouraged. It is recommended that this be done through a phased approach under which pilots are utilized and evaluated prior to a full scale roll out. Further, the Strategy may need to be updated based on the findings of the upcoming FinScope survey, which is expected to be expanded beyond the scope of the 2009 survey so that it also covers at least some aspects of financial capability. If the survey results are insufficient to facilitate implementation, a full-fledged financial capability survey should be considered in the medium term.

Implementation of the Strategy should also take place in consultation with a broad range of stakeholders. Relevant stakeholders could include a broad range of financial institutions, the Zambia Consumer Association and other relevant civil society groups, the Credit Reference Bureau as well as the BoZ and other relevant government agencies and Ministries.

It is also suggested that consideration be given to inviting the Zambia Consumer Association to be a member of the FSDP Financial Education Working Group. It is, however, appreciated that the Association’s very limited resources may make membership impracticable, especially as the Association is represented on the FSDP Implementation Committee.

### Good Practice G.2

#### *Using a Range of Initiatives and Channels, including the Mass Media*

- a. A range of initiatives should be undertaken by the relevant ministry or institution to improve people's financial capability regarding banking products and services.
- b. The mass media should be encouraged by the relevant ministry or institution to provide financial education, information and guidance to the public regarding banking products and services.
- c. The government should provide appropriate incentives and encourage collaboration between governmental agencies, banking regulators, the banking industry and consumer associations in the provision of financial education, information and guidance regarding banking products and services.

#### *Description*

At this stage there the initiatives contemplated by this Good Practice are not being undertaken in a comprehensive way by the BoZ or by banks. There are, however, important financial education initiatives being undertaken by Barclays Bank and Junior Achievement Zambia (<http://www.barclays.com/africa/zambia/banking-on-brighter-futures.html>) and through the Financial Fitness Program conducted by Zanaco Bank (<http://www.zanaco.co.zm/CSR.htm>).

#### *Recommendation*

It is recommended that consideration be given to implementing the above Good Practices as part of the implementation of the FE Strategy.

### Good Practice G. 3

#### *Unbiased Information for Consumers*

- a. Regulators and consumer associations should provide, via the internet and printed publications, independent information on the key features, benefits and risks –and where practicable the costs– of the main types of banking products and services.
- b. The relevant authority or institution should encourage efforts to enable consumers to better understand the products and services being offered to consumers by banking institutions, such as providing comparative price information and undertaking educational campaigns.

#### *Description*

This Good Practice is only followed to a very limited extent by the BoZ and the Zambia Consumer Association does not have a particular focus on financial products and services.

The BoZ periodically publishes data on fees and charges levied by commercial banks. However the most recent data at the time of writing was dated December, 2011. The BoZ also publishes information in interest rates quarterly in local newspapers.

It is understood that no other data of the type described is published.

#### *Recommendation*

It is recommended that the BoZ publish on its website, as well as in newspapers, up to date comparative price information relating to retail banking products.

Consideration should also be given to requiring banks to publish a “comparison rate” which combines the applicable interest rate with known fees in accordance with a statutory formula.

Alternatively, banks could be required by the BoZ to publish information on fees and charges and interest rates in relation to their own products and services. This information could be required to be published in local newspapers, on websites and in branches. The difficulty with this approach of course is that it does not allow for comparison of products.

#### Good Practice G.4

##### *Consulting Consumers and the Financial Services Industry*

- a. The relevant authority or institution should consult consumers, banking associations and banking institutions to help them develop financial capability programs that meet banking consumers' needs and expectations.
- b. The relevant authority or institution should also undertake consumer testing with a view to ensuring that proposed initiatives have their intended outcomes.

##### *Description*

Consultation of the type proposed is to some extent taking place through the Financial Education Strategy and the FSDP Financial Education Working Group described in Good Practice G.1. However, at present there is no consumer testing of proposed initiatives.

##### *Recommendation*

The recommendations in Good Practice E.1 are equally applicable to Good Practice G.4. In particular, it is recommended that there be early implementation of the Strategy and that this be done through a phased approach under which pilots are utilized and evaluated prior to a full scale roll out. Further, there should be widespread consultation with a broad cross-section of stakeholders in relation to the detail of such initiatives.

#### Good Practice G.5

##### *Measuring the Impact of Financial Capability Initiatives*

- a. The financial capability of consumers should be measured, amongst other things, by broadly-based household surveys and mystery shopping trips that are repeated from time to time.
- b. The effectiveness of key financial capability initiatives should be evaluated by the relevant authorities or institutions from time to time.

##### *Description*

No such measurements are currently undertaken in Zambia. However, as mentioned in Good Practice G.1, a new FinScope financial access survey is planned which is expected to cover at least some aspects of financial capability (there are insufficient funds for a full financial capability survey). If the survey results are insufficient to facilitate implementation, a full-fledged financial capability survey should be considered in the medium term.

##### *Recommendation*

It is recommended that, at a minimum, the proposed FinScope survey be expanded as mentioned above on the assumption that the Government is not able to conduct a full financial capability survey at present given insufficient resources.

## Section H. Competition and Consumer Protection

### Good Practice H.1

#### **Regulatory Policy and Competition Policy**

Regulators and competition authorities should be required to consult one another for the purpose of ensuring the establishment, application and enforcement of consistent policies regarding the regulation of financial services.

#### **Description**

There is no such requirement at present, although the BoZ and CCPC have signed a memorandum of understanding, but it has not been operationalized yet.

The CCPA applies in relation to the provision of “services”, which is broadly defined and would clearly include financial services. The term is defined as follows:

*““services” includes the carrying out and performance on a commercial basis of any engagement, whether professional or not, other than the supply of goods, but does not include the rendering of any services under a contract of employment” (s. 2(1)).*

There are various exclusions to the application of the CCPA in section 3 but none apply to financial services.

It is further made clear that the CCPA applies to the financial services sector by section 43, which is to the effect that Part III of the CCPA (Restrictive Business and Anti-Competitive Trade Practices) applies to “*the economic activities of an enterprise in a sector where a regulator exercises statutory power*”. Section 44 further provides that the CCPC may conduct a market conduct enquiry into a regulator under Part V of the CCPA.

The CCPC is then required to enter into a memorandum of understanding in the prescribed form with any regulator in such a sector (s. 43). However, according to the BoZ there is no such memorandum in relation to the banking sector, although there is a draft. However, it is understood that there is a memorandum of understanding between the CCPC and the Pensions and Insurance Authority (PIA) and the Securities and Exchange Commission (SEC).

The CCPA applies for the benefit of a “consumer” who is broadly defined as:

*“consumer” means—*

*(a) for the purposes of Part III, any person who purchases or offers to purchase goods or services supplied by an enterprise in the course of business, and includes a business person who uses the product or service supplied as an input to its own business, a wholesaler, a retailer and a final consumer; and*

*(b) for the purposes of the other Parts of this Act, other than Part III, any person who purchases or offers to purchase goods or services otherwise than for the purpose of re-sale, but does not include a person who purchases goods or services for the purpose of using the goods or services in the production and manufacture of any other goods for sale, or the provision of another service for remuneration;*

It was reported that the CCPC has been quite proactive in relation to competition issues affecting the banking sector. For example, it is understood that they have sanctioned banks for collusive conduct in relation to a requirement that borrowers use a panel law firm agreed amongst the banks for the purposes of a banking facility (such as a mortgage or a conveyance).

Banks and other regulated financial institutions are also subject to the anti-competitive conduct provisions of the BFSA. In summary, there are prohibitions on banks and financial institutions making an agreement with another bank or financial institution with respect to interest rates, charges or the provision of financial services to a person or in a manner that restricts competition (subject to stated exceptions) (s. 40)

### **Recommendation**

The BoZ and the CCPC should proceed as soon as possible with making the memorandum of understanding required by s. 43 of the CCPA fully operational, with a view to achieving clarity as to who is responsible for competition issues in relation to the banking and financial institutions sector.

It is understood that the proposal is that the CCPC will be responsible for regulating such conduct, with an obligation to consult with the BoZ. This seems to be a reasonable approach, although it is noted that it will require consequential amendments to the abovementioned provisions of the BFSA.

## **Good Practice H.2**

### **Review of Competition**

Given the significance of retail banking to the economy as a whole and to the welfare of consumers, competition authorities should:

- (i) monitor competition in retail banking;
- (ii) conduct, and publish for general consumption, periodic assessments of competition in retail banking (such as the range of interest rates across banks for specific products); and
- (iii) make recommendations publicly available on enhancing competition in retail banking.

### **Description**

None of this **action** is taken by either the CCPC or the BoZ in Zambia.

It is to be noted, however, that the BoZ recently announced that, from the end of April 2012, it would be introducing a benchmark interest rate called the Bank of Zambia Policy Rate (<http://www.lusakatimes.com/2012/03/27/bank-zambia-introduce-interest-rate-benchmark-april/>). The BoZ also advised of its expectation that, going forward, commercial banks would set their interest rates by reference to the BoZ Policy Rate plus or minus a margin.

Other concerns expressed about competition issues were as follows:

- Financial literacy is essential if efforts to improve competition amongst banks is to have any chance of success;
- There is increasing competition amongst banks and mobile network operators (MNOs) in relation to the delivery of financial services through new technologies;
- Competition is hampered by the fact that Zambia does not have a national switch, which could be accessed by smaller banks and other financial institutions so that their customers could use the ATMs of other banks; and

Fees and conditions for switching loans secured by a mortgage are prohibitive. One example cited to us was of a fee equal to 5% of the outstanding principal. Another example was of a requirement for an extremely lengthy period of notice.

**Recommendation**

It is recommended that, at a minimum, there be monitoring of the interest rates across banks for retail banking products and publication of the current range of rates applicable to standard loan products.

It is also recommended that, subject to a few exceptions, there be a ban on fees for the early termination of a credit contract. Suggested exceptions to such a prohibition are for a fee that only reimburses the credit provider for the reasonable administrative cost of terminating the credit contract and a reasonable “break costs” fee covering differences in interest rates in the case of the early termination of a fixed rate contract.

The proposed establishment of a national switch is also supported, coupled with rules making provision for access by all financial institutions.

**Good Practice H.3*****Impact of Competition Policy on Consumer Protection***

The competition authority and the regulator should evaluate the impact of competition policies on consumer welfare, especially regarding any limitations on customer choice and collusion regarding interest and other charges and fees.

***Description***

No such evaluation takes place at present.

***Recommendation***

It is recommended that consideration be given to conducting such an evaluation to the extent resources permit.



## II. Non-Bank Credit (Microfinance) Institutions: Comparison with Good Practices

### Section A. Consumer Protection Institutions

#### Good Practice A.1

##### *Consumer Protection Regime*

The law should provide clear consumer protection rules in the area of non-bank credit institutions, and there should be adequate institutional arrangements to ensure the thorough, objective, timely and fair implementation and enforcement of all such rules, as well as of sanctions that effectively deter violations of these rules.

- a. There should be specific statutory provisions, which create an effective regime for the protection of consumers of non-bank credit institutions.
- b. There should be a government authority responsible for implementing, overseeing and enforcing consumer protection in the area of non-bank credit institutions.
- c. The supervisory authority for non-bank credit institutions should have a register which lists the names of non-bank credit institutions.
- d. There should be coordination and cooperation among the various institutions mandated to implement, oversee and enforce consumer protection and financial sector regulation and supervision.
- e. The law should provide for, or at least not prohibit, a role for the private sector, including voluntary consumer associations and self-regulatory organizations, in respect of consumer protection in the area of non-bank credit institutions.

##### *Description*

The existing legal and regulatory framework includes limited provisions on consumer protection applicable to large microfinance institutions, which are regulated by the BoZ, but there are still several gaps. The draft new Banking and Financial Services Act (BFSA) includes additional consumer protection provisions, but there would still be need to incorporate other provisions and issue new regulations to cover remaining gaps.

### *Legal Framework for Consumer Protection in Microfinance Sector*

In terms of specific statutory provisions for microfinance institutions (MFIs), the main piece of legislation is the Banking and Financial Services (Microfinance) Regulations (hereinafter MFRs), issued in January 2006 under the BFSA. Since the MFRs were enacted, the BoZ is the main supervisory and regulatory authority of MFIs. According to the MFRs, the BoZ supervises two of the three types of MFIs:

- *Deposit-taking MFIs (with capital of at least ZMK 250 million)*, which are authorized to provide credit facilities, compulsory savings for borrowers, domestic remittances, linkage banking (operation not yet defined) and other services as prescribed by the BoZ, and must register as a company;
- *Non-deposit-taking MFIs (with minimum capital of ZMK 25 million)*, which are only authorized to provide credit facilities, and may be registered as company, NGO or cooperative.

The MFRs require that these types of MFIs be licensed by the Registrar of Banks, Financial Institutions and Financial Businesses (appointed by the Ministry of Finance, as established by the BFSA in Section 20).

The third tier of MFIs, composed of *non-deposit-taking MFIs with capital lower than ZMK 25 million*, are *neither licensed nor supervised by the BoZ*. According to Section 3 of the MFRs, these MFIs are required to be registered and regulated by its primary regulator, namely the Registrar of Companies, Registrar of Societies or Registrar of Cooperatives, depending on the nature of the MFI. These MFIs would then have to comply only with the provisions of the Companies Act, the Cooperative Societies Act or the Money Lenders Act.

In terms of the overall financial sector legislation, the BFSA does include some consumer protection provisions, relating disclosure, complaints handling and business practices. At the same time, the MFRs include specific consumer protection provisions applicable to regulated MFIs regarding registration, disclosure of information and confidentiality. However, there is no clarity whether other regulations created under the BFSA and by nature applicable to all financial institutions would also be applicable to MFIs. The same goes for some provisions under the BFSA, that may appear inconsistent with provisions under the MFRs. Furthermore, all provisions under BFSA and MFRs would not be applicable to the third tier of MFIs.

The new draft BFSA includes new sections covering important consumer protection issues, such as business practices and dealing with the public; customer records; prohibition of anti-competitive and collusive practices; disclosure of interest rates and charges; prohibition of unfair business practices, irresponsible lending, coercive behavior, unfair contract terms, unfair debt collection; data protection; complaints procedures.

Part VII of the Competition and Consumer Protection Act (CCPA) No. 24 of 2010 includes general consumer protection provisions, relating unfair trading practices, false or misleading representations, price displays, unfair contract terms and complaints handling. The Act applies to all types of providers of goods, products and services, so it will certainly apply to financial products and services offered by all types of MFIs. The Competition and Consumer Protection Commission (CCPC) may thus apply such Act to oversee and enforce consumer protection matters relating to MFIs and other types of financial institutions if / and when consumers are unfairly treated. The CCPC is ascribed to the Ministry of Commerce, Trade and Industry.

Consequently, on the one hand, there is an overlap regarding consumer protection legal provisions in the CCPA and BFSA that are applicable to large MFIs; on the other hand, there is an inconsistent legal framework for consumer protection in the microfinance sector, given that the small MFIs (those in the third tier defined in the MFRs) would only be covered by the CCPA provisions.

The Money Lenders Act includes some provisions related to consumer protection, such as prohibition of false statements and representations, restrictions on advertisements, prohibition of compounding interest in case of payment defaults, obligation to provide information as to the state of a loan, and prohibition of charges for loan processing. However, the Act does not provide the Registrar with supervisory or enforcing powers, but mostly focuses on the role of the subordinate courts to fine moneylenders that do not follow the law and demand them to take corrective actions.

It is also worth to note that there is no leasing law yet in Zambia, which has hampered the development of the retail financial leasing market. In addition, the 2008 modifications to the Tax Code have reduced the use of leasing products in Zambia, given that previous tax benefits were eliminated (e.g. the lessee is only allowed to deduct against income the finance charge and not the rental charge, and the lessee is responsible to claim capital allowances as opposed to the lessor as it was before).

#### *Enforcement of Consumer Protection in Microfinance*

The BoZ has a non-bank financial institutions department in charge of monitoring all MFIs under its authority (in addition to other entities such as bureaux de change and leasing companies), but mostly from financial and prudential supervisory perspectives. There is no staff specialized on market conduct or consumer protection issues, let alone a specialized unit to deal with such issues. The CCPC has only 5 staff dedicated to look at consumer protection issues in the entire economy, and they have not enforced the consumer protection provisions of the CCPA in any financial institution yet.

#### *Register*

The BoZ's website has a section that lists all types of financial institutions under its supervision. However, there is no public register available or known that indicates a list of all those MFIs (moneylenders, credit cooperatives) that are not supervised by the BoZ.

#### *Coordination*

Section 43 of the CCPA allows for improving coordination and harmonization of approaches between the CCPC and any sector regulator (e.g. BoZ), through the signing of a memorandum of understanding (MoU). Although Section 43 refers to competition issues only, such MoU could also cover consumer protection issues. The CCPC and the BoZ have signed the MoU, though it has not yet been effectively operationalized.

#### *Role of Civil Society*

The Constitution of Zambia from 1991 guarantees the right of any person to freedom of assembly and association, that is, "his right to assemble freely and associate with other persons and in particular to form or belong to any political party, trade union or other association for the protection of his interests" (Article 21).

The MFRs indirectly allows for the establishment of self-regulatory organizations in the microfinance sector. Section 4(2) states that the BoZ may delegate to any person (i.e. natural or legal) the performance of any of the powers conferred upon the BoZ in the MFRs. The new draft BFSa also includes a provision allowing the BoZ to delegate licensing, registration and supervisory powers to an agent. The Association of Microfinance Institutions of Zambia (AMIZ) is a voluntary network of microfinance institutions established in March 1998 with the mission to facilitate, support and upgrade the activities undertaken by member MFIs and represent them in the best way possible by utilizing microfinance best practices. It currently has 24 members, which provide services to around 1,000,000 urban and rural active clients, estimated to represent about 90% of total microfinance clients in Zambia. However, the Association of Microfinance Institutions of Zambia (AMIZ) is already facing difficulties to play the role of a representative body for the industry. This is due, among other reasons, to the fact that there are at a minimum two clusters of institutions that perceive themselves as having different missions and types of operations, namely, the traditional or developmental MFIs and the payroll lenders or financing companies. In addition, small moneylenders are mostly not part of AMIZ.

The Zambian Cooperative Federation (ZCF) was established in 1973 as an apex organization to coordinate the development of businesses by the cooperative movement in Zambia. It has a tiered structure that starts with about 27,000 *primary cooperative societies* (each with a minimum of 100 members), which own shares in the 34 operative *district cooperative unions* (acting mostly as warehousing and storage agencies), which in turn connect to 10 *provincial cooperative unions* (established to drive agricultural marketing). The estimated total membership of the cooperative movement ranges from 2.7 to 3.5 million Zambians. The ZCF used to have subsidiary companies providing services to cooperatives, but they have ceased operations. The ZCF has remained an active advocacy organization for the cooperative movement in Zambia, and a coordinator of development programs for cooperatives, and now is working on a strategy to become an operational apex, financing and self-regulatory organization for the cooperative segment, in cooperation with the Ministry of Agriculture.

### **Recommendation**

The legal framework for consumer protection in the microfinance sector should be improved, by amending the BFSa and the MFRs to incorporate relevant consumer protection provisions included in the CCPA, to clarify the application of BFSa provisions to MFIs, and to incorporate other important overall financial consumer protection provisions. Such provisions should cover disclosure, business practices, complaints handling, and data protection (the draft new BFSa includes important new provisions, but more would be needed).

It is also important that all regulated MFIs follow the same consumer protection rules, to avoid regulatory arbitrage, and that clear authority to monitor consumer protection issues regarding regulated microfinance providers be identified in the law. Also, consequential amendments would have to be made to the CCPA so that overlaps between CCPA and financial sector laws dealing with consumer protection (e.g. the amended BFSa and MFRs, the Money Lenders Act) are removed.

To supervise implementation of the financial consumer protection provisions, the BOZ should establish a specific market conduct / consumer protection unit, separate from the prudential function and reporting directly to the Board, in charge of overseeing enforcement of consumer protection legislation for regulated MFIs as well as banks and other credit institutions, in line with BOZ mandate. Further recommendations in this area are included in Good Practice A.3

An MoU should urgently be signed between the BoZ and the CCPC in order to ensure consistency in the application of the consumer protection legislation to MFIs (furthermore, there should be a joint MoU between CCPC, BoZ and the Pensions and Insurance Authority, so that consistency is maintained across all financial sectors).

The BoZ should also finalize the discussions of the Leasing Bill with all relevant stakeholders and request its discussion in Parliament. The BoZ should ensure that relevant consumer protection provisions for leasing are introduced in the new Leasing Act itself.

### Good Practice A.2

#### *Code of Conduct for Non-Bank Credit Institutions*

- a. There should be a principles-based code of conduct for non-bank credit institutions that is devised in consultation with the non-bank credit industry and with relevant consumer associations, and that is monitored by a statutory agency or an effective self-regulatory agency.
- b. If a principles-based code of conduct exists, it should be publicized and disseminated to the general public.
- c. The principles-based code should be augmented by voluntary codes on matters specific to the industry (credit unions, credit cooperatives, other non-bank credit institutions).
- d. Every such voluntary code should likewise be publicized and disseminated.

#### *Description*

There are no industry codes of conduct for any type of microfinance institution. Apparently there were initial efforts by AMIZ to develop a code of conduct some time ago, but the member MFIs could not agree on next steps as an industry, so no code was elaborated.

The ZCF indicates that it subscribes to the international principles of cooperatives and credit union operations (e.g. developed by WOCCU and by the International Cooperative Alliance) and encourages its members to comply with them.

Few individual MFIs have subscribed to the Smart Campaign's Client Protection Principles (mostly as an initiative of foreign MFI investors), trained staff to become assessors and even undertaken self-assessment of compliance with the principles. However, there seems to be no major publicity of such campaign in the premises of the MFIs, for consumers to know the principles followed by the MFI.

#### *Recommendation*

AMIZ and any other similar association in the non-bank credit institution segment (e.g. ZCF, the barely operative leasing association, any future association of moneylenders or consumer finance companies) should ideally develop a code of conduct on consumer protection issues for each segment, and have it endorsed by all the association's members. The codes should incorporate principles on disclosure, complaints handling, responsible lending, fair pricing, debt collection, advertising, among others. The codes should be adequately publicized and disseminated to the general public, for example by having them available in the premises (on the walls or printed and easily accessible to any customer), including a reference to the code in all advertising and marketing materials from individual institutions and their associations. Each code should also include effective mechanisms for consumers to complain against violations of the code and for each industry association to monitor compliance by its members.

The elaboration of an industry-based code of conduct is usually a crucial step in the development of a self-regulatory organization (especially in the non-bank credit sector), since it provides minimum industry standards that financial institutions should follow, and includes the basis of authority for an industry association to enforce such standards. This is also why it is recommendable that the code be shared for suggestions with the financial supervisory authority and even consumer associations.



### Good Practice A.3

#### *Other Institutional Arrangements*

- a. Whether non-bank credit institutions are supervised by a financial supervisory agency, the allocation of resources between financial supervision and consumer protection should be adequate to enable their effective implementation.
- b. The judicial system should ensure that the ultimate resolution of any dispute regarding a consumer protection matter with a non-bank credit institution is affordable, timely and professionally delivered.
- c. The supervisory authority for non-bank credit institutions should encourage media and consumer associations to play an active role in promoting consumer protection regarding non-bank credit institutions.

#### *Description*

There is no adequate institutional capacity for consumer protection supervision of MFIs.

BoZ's non-bank financial institutions onsite and offsite supervision units are mostly in charge of prudential and financial supervision, but also look at consumer protection issues, including consumer complaints. These units only have 11 staff altogether to oversee about 70 licensed institutions (e.g. MFIs, bureaux de change, leasing companies). Non-licensed MFIs (those belonging to the Tier III of the MFRs, which include cooperatives and moneylenders) are not subject to any type of financial supervision by BoZ, or by other regulators, namely the Ministry of Finance (regulator under the Money Lenders Act) or the Ministry of Agriculture (regulator under the Cooperatives Act).

The CCPC has fewer than 20 staff to look at competition and consumer protection issues in the entire economy (and only 5 of those staff focus on consumer protection issues). Also, as explained before, there is no strong association of MFIs to operate as a self-regulatory organization.

Consumers may go to the Small Claims Court or the Higher Court to present their complaints regarding financial products and services. According to mission meetings, processes can take up to 6 years in the Higher Court.

There is no major activity of consumer associations or the media regarding retail financial sector issues.

#### *Recommendation*

The institutional arrangements for consumer protection supervision of MFIs in Zambia should be improved.

As mentioned in Good Practice A.1, in the short term it is recommended that a separate Division for consumer protection issues be created within the BoZ, at the same hierarchy level as the Division for prudential supervision, and with separate reporting lines to the Board. This measure may require a modification of the statutory mandate of the BoZ to explicitly incorporate a consumer protection mandate. A training program on consumer protection and microfinance supervision should then be developed for the staff of this new Division. The CCPA should be revised to clearly identify the authority responsible for consumer protection issues in each financial segment.

The BoZ should be responsible for consumer protection supervision of all supervised and regulated MFIs. In regards to small non-regulated MFIs, and due to its limited capacity to conduct supervision of such institutions throughout the country, the BoZ should limit its activities on market monitoring and increasing consumer awareness. To this end, the BoZ could consider commissioning a study about their operations which could be updated every two years, and conducting extensive consumer awareness campaigns which would also cover these institutions.

## Good Practice A.4

**Registration of Non-Bank Credit Institutions**

All financial institutions that extend any type of credit to households should be registered with a financial supervisory authority.

**Description**

Currently, the MFRs require that all MFIs that belong to Tiers I and II need to be registered and licensed by the BoZ, and meet minimum requirements, especially in terms of governance (Parts II and V). The MFRs clearly state that only licensed microfinance institutions can conduct microfinance business as defined in the MFRs (Regulation 6). The MFRs also indicate that “a microfinance institution shall display or exhibit its license in a conspicuous place on the approved premises where it conducts its business” as well as a certified copy of its license in a conspicuous place on the premises of every branch where it conducts business (Regulation 10).

The MFRs licensing requirements do not apply to MFIs that belong to Tier III (those with capital below ZMK 25 million). Such MFIs are regulated by their primary regulator (the Registrar of Cooperatives, the Registrar of Companies, or the Registrar of Societies), and are required to register as MFI with a body designated by the BoZ (the aforementioned Registrars). The Cooperative Societies Act includes very basic requirements for registration (besides presentation of application and bylaws, and payment of fees, the Registrar *may* request information on educational activities conducted toward members, availability of officers capable of undertaken administrative functions, or expected number of members). The Money-lenders Act states that a license would be granted by the Registrar following the presentation of a certificate issued by a first- or second-class subordinate court; in turn, the court could refuse a certificate only on four grounds, including *satisfactory evidence* that the proposed person responsible for the management of the money-lending business is not fit and proper (an assessment that might not be easy to undertake by a court officer). Thus, requirements under both registration regimes are far below those established by the BoZ for other non-bank credit institutions.

The BFSA also indicates that the Registrar of Banks and Financial Institutions (a person appointed by the Ministry of Finance on the recommendation of the BoZ) shall create and maintain the Register of Banks and Financial Institutions, which shall contain the particulars of all licensees and of the licenses they hold (Section 19). The BFSA also requires that the Register or a copy of the Register be available for inspection by the public at the head office of the BoZ during regular business hours, upon payment of a fee as established by regulation (Section 22). The new draft BFSA would replace the role of such Registrar with that of a Registrar of Financial Service Providers, who would be a qualified BoZ officer.

The BoZ’s website has a webpage with information of the Registered Non-Bank Financial Institutions, including address, telephone and fax number. There is no public information on the number of non-licensed MFIs that have been registered under their primary regulators (Registrar of Companies, Societies or Cooperatives).

**Recommendation**

In regards to small non-regulated MFIs, and due to its limited capacity to conduct supervision of such institutions throughout the country, the BoZ should limit its activities on market monitoring and increasing consumer awareness in this market segment.



## Section B. Disclosure and Sales Practices

### Good Practice B.1

#### Information on Customers

- a. When making a recommendation to a consumer, a non-bank credit institution should gather, file and record sufficient information from the consumer to enable the institution to render an appropriate product or service to that consumer.
- b. The extent of information the non-bank credit institution gathers regarding a consumer should:
  - (i) be commensurate with the nature and complexity of the product or service either being proposed to or sought by the consumer; and
  - (ii) enable the institution to provide a professional service to the consumer in accordance with that consumer's capacity.

#### Description

The BFSA requires all financial institutions to maintain proper credit documentation and any other information concerning its relations with customers. Credit documentation is defined as: reasonably current statements of the indebtedness of the borrower and any guarantor of the borrower to the financial institution; a description of any collateral over which the institution has any mortgage or charge as security; a statement of the terms of the credit, including principal, interest rate, payments schedule and the borrower's objective or purpose for borrowing; and the signature of each person who authorized the credit on behalf of the institution (Section 52). However the BFSA does not require that this type of information is gathered before making a recommendation on a financial product or service to a consumer, or that the required information be commensurate to the nature and complexity of such product or service.

Statutory Instrument No. 142 of 1996 requires the Board of a financial institution to specify, at a minimum, standards for loans and extensions of credit, and the institution's functions of lending and approving of loans, delegation of responsibilities and the process of reviewing the quality of loans. However, this statute does not go into more detail regarding the extension of credit.

The BoZ issued in September 2008 the "Risk Management Guidelines for Financial Service Providers Regulated by Bank of Zambia." Regarding credit risk management, the Guidelines indicate that "all sources of credit risk, including political, economical, business, social/cultural and technological, must be identified and analyzed before granting a credit. The identification process must be comprehensive in order to capture all key risks for an effective assessment" (7.4.2). Later, the Guidelines indicate that the credit files must contain "sufficient information necessary to assess the borrower's current financial conditions, repayment performance" (7.5).

However, these Guidelines are not mandatory regulations (or statutory instruments) and even in the present form they would not comply with the Good Practice. Also, they do not apply to small MFIs (Tier III). Furthermore, there are no statutes or guidelines on savings products (offered by Tier I MFIs) regarding this Good Practice.

#### Recommendation

There should be statutory requirements on the gathering of sufficient information from the consumer to enable an regulated NBCI to make an appropriate recommendation of a financial product or service. These requirements should cover all types of financial products (not only credits). NBCIs should then train their retail officers on this issue.

### Good Practice B.2

#### *Affordability*

- a. When a non-bank credit institution makes a recommendation regarding a product or service to a consumer, the product or service it offers to that consumer should be in line with the need of the consumer.
- b. Sufficient information on the product or service should be provided to the consumer to enable him or her to select the most suitable and affordable product or service.
- c. When a non-bank credit institution offers a new credit product or service that significantly increases the amount of debt assumed by the consumer, the consumer's credit worthiness should be properly assessed.

#### *Description*

There is no explicit statutory requirement to undertake an assessment of the suitability and affordability of a financial product or service.

The "Risk Management Guidelines for Financial Service Providers Regulated by Bank of Zambia" indicates that financial institutions must assess the risk profile of the customer/transaction, taking into consideration:

1. The borrower, borrower's industry and macro economic factors;
2. The purpose of credit and source of repayment;
3. The track record/repayment history of borrower;
4. The repayment capacity of borrower;
5. The proposed terms and conditions and covenants;
6. The adequacy and enforceability of collaterals;
7. The authority to borrow; and
8. The credit risk-rating framework/model.

The Guidelines recommend financial institutions to take into consideration the integrity, reputation and legal capacity of the borrower, but without fully basing the decision to grant credit on the perception of a borrower's reputation. The Guidelines also indicate that financial institutions must ensure that the customer uses the credit for the purpose it is borrowed, and that whenever the borrower uses funds for purposes not shown in the original proposal, the financial institutions must take steps to determine the implications on creditworthiness (7.4.3).

Also, in December 2008, the BoZ issued the Directive on Submission of Credit Data and Utilisation of Credit Reference Agencies, which requires all licensed financial service providers to use the services of a credit reference agency at all time before granting credit to any customer. Failure of doing so constitutes an unsafe and unsound practice as defined in the BFSa. This is an important basic requirement that will help licensed MFIs in their affordability assessments.

At a more general level, the CCPA prohibits a person or an enterprise (e.g. a financial institution) to supply a consumer with goods that are not fit “for the purpose that the consumer indicated to the person or the enterprise” (Section 49). Furthermore, the CCPA gives consumers the right to lodge a complaint with the CCPC in cases where a firm has provided unsuitable services to a consumer (Section 54).

The new draft BFSI includes an important provision prohibiting irresponsible lending practices (Section 67). This provision indicates that a financial institution shall only extend credit when it believes that consumer(s) will be able to make the scheduled payments associated with the loan, taking into consideration the consumer’s current and expected income, current obligations, employment status, and other financial resources. Such provision also states that there shall be a rebuttable presumption that a consumer will make the scheduled payments if, when the credit is approved, the consumer’s total debts due on outstanding obligations do not exceed 70 percent of his/her monthly gross income, as verified by the credit application, a credit report and a third-party income verification document. However, this provision leaves some issues behind. For example, there is no explicit requirement for a retail financial officer to ensure that the financial product or service is not unsuitable to the consumer; there is no reference in the law to savings or other financial products besides loans; the indicated rebuttable presumption on scheduled payments of loans do not seem to consider future obligations or lines of credit, total household income and household expenses, as well as mechanisms to verify cash flow of micro-entrepreneurs or low-income households.

### ***Recommendation***

There should be statutory requirements on the assessment of affordability and suitability of financial products and services being offered, as explained before. These requirements should cover all types of financial products, and be applicable to all types of regulated providers. NBCIs should then train their retail officers on this issue, including through initiatives by the industry association(s).

## **Good Practice B.3**

### ***Cooling-off Period***

- a. Unless explicitly waived by the consumer in writing, a non-bank credit institution should provide the consumer a cooling-off period of a reasonable number of days immediately following the signing of an agreement between the institution and the consumer.
- b. On his or her written notice to the non-bank credit institution during the cooling-off period, the consumer should be permitted to cancel or treat the agreement as null and void without penalty to the consumer of any kind.

### ***Description***

There is no requirement of a cooling-off period in Zambia. However, some MFIs have implemented such policy when offering microcredits, arguing that it is better for them to have consumers canceling the credit as soon as possible, rather than many months after the credit was granted when they start having difficulties paying the credit back.

### ***Recommendation***

There should be a reasonable cooling-off period for consumers to be able to cancel an agreement within a short-term period of time after a financial agreement was signed. While some reasonable administrative costs related to the origination and cancelation of credit could be charged, no penalty should be charged. The number of days should take into account the short-term nature of microcredits, but in any case the cooling-off period should be incorporated in a manner to minimize the effect of high-pressure sales and impulsive credit requests.

### Good Practice B.4

#### *Bundling and Tying Clauses*

- a. As much as possible, non-bank credit institutions should avoid the use of tying clauses in contracts that restrict the choice of consumers.
- b. In particular, whenever a borrower is required by a non-bank credit institution to purchase any product, including an insurance policy, as a pre-condition for receiving a loan, the borrower should be free to choose the provider of the product and this information should be made known to the borrower.
- c. Also, whenever a non-bank credit institution contracts with a merchant as a distribution channel for its credit contracts, no exclusionary dealings should be permitted.

#### *Description*

Tying insurance contracts with microcredits is a widespread practice. It is common practice for MFIs to sign agreements with a single insurance company to offer its policies as insurance of a type of credit they issue (e.g. one insurance company would be used for all types of agricultural credits, and another one may be used for all types of housing credits). Several MFIs acknowledged that many clients did not understand the nature of the insurance, or why the cost of credit had to increase due to the payment of premiums. The mission also learned that there have been cases where the term of an insurance policy was longer than that of the credit, and consumers would not get a refund for the additional months; furthermore, the consumer could be starting a new credit cycle and be required to hire a new insurance policy with the same financial institution, even though the new credit was a continuation of the previous already-insured credit. The mission also learned that MFIs generally do not give a copy of the insurance contract to the consumer.

The BFSA prohibits a financial institution to require any person “to contract to receive any financial service as a condition of being permitted to contract with it or any other person to receive any other financial service, or any goods or other services” (Section 41). This requirement would prohibit the practice of tying products, such as life insurance with consumer credit. However, the provision is not completely clear in this respect.

The new draft BFSA includes the same provision on prohibition of collateral contracts, but it also adds a provision on prohibition of coercive behavior, which prohibits a financial institution to compel a consumer to use the institution’s choice of a supplier of a supplementary or complementary service.

According to Section 45 of the CCPA, a practice that “places pressure on consumers by use of harassment or coercion” is considered an unfair trading practice. According to the CCPC, this provision would mean that bundling and tying practices would prima facie be illegal. In practice, the CCPC would analyze them under the rule of reason i.e. on a case-by-case basis.

#### *Recommendation*

There should be a clear provision prohibiting tying clauses, eliminating current ambiguities in the text of the law. Consumers should also be given a proportionate refund of the applicable premium if they pay back their loan early or before the term of the insurance policy. An indicator of cost of credit should incorporate such insurance-related costs so that it is easier for consumers to compare the total cost of credit among different NBCIs -and banks. In addition, the disclosure formats given to the client should identify separately the amount of insurance premiums and any related type of commission paid, as well as key information on coverage and exclusions. Consumers must be given a copy of the credit insurance contract.

### Good Practice B.5

#### *Key Facts Statement*

- a. Non-bank credit institutions should have a Key Facts Statement for each type of account, loan or other products or services.
- b. The Key Facts Statement should be written in plain language, summarizing in a page or two the key terms and conditions of the specific financial product or service, and allowing consumers the possibility of easily comparing products offered by different institutions.

#### *Description*

MFRs require all deposit-taking MFIs (Tier I), at the time of providing a credit, to disclose to the customer the cost of borrowing in a written statement. This statement should include the content indicated in the Form MF5 “Contents of Disclosure Statement”. This Form lists 19 items related to the cost of credit and conditions of a credit product, including annual interest rate, length of term of the loan, factors that would cause the term of a loan to vary, etc. Form MF5 is the same as the Schedule of Regulation 6 under Statutory Instrument 179 “Cost of Borrowing” (which brings up the question of whether this Statutory Instrument is or not applicable to licensed MFIs).

Although Form MF5 provides a good first step towards the creation of a key facts statement, some important elements are missing. For example, there is no clear definition of the methodology to calculate the interest rate (flat interest rate or declining balance), which in practice means that the interest rate included in the Form might not be comparable among MFIs. Also, there is no instruction on how to incorporate compulsory savings or insurance fees in the total cost of credit, or even how to calculate the effective interest rate. If Form MF5 is assumed to follow the same assumptions as the Statutory Instrument 179, similar issues still remain; this regulation explicitly excludes insurance charges in the calculation of the cost of borrowing, it wrongly considers effective interest rate and annual percentage rate (APR) as synonyms. There is also no predefined format in any of these regulations, so that all providers of a same type of product are required to use the same type of disclosure document.

The MFRs also indicate that the format should be disclosed at the time of providing a credit, which could be interpreted, for example, as showing a printed format when the consumer signs the loan agreement, and not beforehand.

The MFRs do not establish a specific penalty for noncompliance with providing Form MF5 to a client, so the general penalty would apply (i.e. a fine not exceeding 50,000 penalty units, or a term of imprisonment not greater than 2 years, or both).

#### *Recommendation*

Standardized, comparable and simple key facts statements should be developed by the BoZ, with inputs from financial industry associations, for each type of retail financial product offered by MFIs, and required to be provided to consumers by all regulated MFIs. Key facts statements should be given to the consumers that ask for detailed information on a financial product, so that they can study the key information of the offered financial product before accepting the offer and, if needed, compare offers from different providers. A good starting point for a key facts statement of consumer loans is the current disclosure format defined in the MFRs (Form MF5) and the Statutory Instrument 179, but changes should be made to take into account the weaknesses identified above. Key facts statements should later be developed for other financial products (e.g. savings and current accounts).

Different formats of key facts statements should be tested with consumers to choose the format that is more easily understood by them. Consideration should be given to preparing key facts statements in the most spoken local language where an MFI branch is located, so that the consumers living in such area can read these disclosure formats (or discuss them with community leaders).

MFIs should train their personnel so that they can clearly explain all the terms included in the key facts statements. Consumer awareness campaigns should also be developed in order to disseminate the requirement to provide consumers with key facts statements, and to explain key concepts and terms included in the statements. Regular monitoring should be undertaken by the industry associations, consumer associations and the BoZ to ensure that all MFIs offer and explain the key facts statements to their customers. Consumer associations can also organize workshops or roadshows to explain in more detail how to read and analyze the information disclosed in the key facts statements.

### Good Practice B.6

#### *Advertising and Sales Materials*

- a. Non-bank credit institutions should ensure that their advertising and sales materials and procedures do not mislead customers.
- b. All advertising and sales materials should be easily readable and understandable by the general public.
- c. Non-bank credit institutions should be legally responsible for all statements made in advertising and sales materials (i.e. be subject to the penalties under the law for making any false or misleading statements).

#### *Description*

According to the BFSA, Section 49, a bank or financial institution that publishes or permits the publication of any advertisement concerning any financial services offered by it or by any other bank or financial institution, or quoting a fee, rate or charge for any such service, that is false or misleading shall be guilty of an offence and could be subject to a fine up to 500,000 penalty units.

At the same time, general misleading or unfair advertisement can be captured under the CCPA No. 24 of 2010, Part VII. The CCPA prohibits institutions to engage in unfair trading practices, which in turn are defined as those: i) misleading consumers, ii) compromising the standard of honesty and good faith which an enterprise can reasonably be expected to meet, or iii) placing pressure on consumers by use of harassment or coercion. Violation to this provision is subject to a fine not exceeding 10% of the institution's annual turnover or 150,000 penalty units, whichever is higher.

The CCPA also indicates that any institution liable of making a false or misleading representation concerning, among others, the price (which would include for example, interest rates, commissions, fees, etc.) of any service; the need for any service; or the existence, exclusion or effect of any condition, warranty, guarantee, right or remedy; is liable to pay a fine to the CCPC, similar to that indicated in the previous paragraph.

The new draft BFSA incorporates a provision prohibiting financial institutions to engage in any unfair business practice, defined as such that: i) can mislead consumers, ii) compromises the standard of honesty and good faith which a financial service provider can reasonably be expected to meet, or iii) places pressure on consumers by use of harassment or coercion. This provision would then transpose the prohibition of unfair trading practices of the CCPA into the BFSA.



**Recommendation**

Overlapping provisions in the CCPA and the BFSA regarding rules on advertising and marketing should be resolved, so that a clear and consistent regulatory framework is applicable to all financial service providers, and there is no regulatory arbitrage. A way to deal with this overlap would be to incorporate the unfair business practice provision into the BFSA (as planned) and make this provision applicable to all regulated financial service providers.

**Good Practice B.7****General Practices**

Specific rules on disclosure and sales practices should be included in the non-bank credit institutions' code of conduct and monitored by the relevant supervisory authority.

**Description**

There are no industry codes of conduct in the NBCI sector.

However, BoZ has made some important steps to improve disclosure in the MFI sector. For example, licensed MFIs are required to publish twice a year details of their charges, fees and commissions in the newspapers. The BoZ also published this information online, but the current file available on the website says it is from June 2009. The BoZ has also prepared a directive requiring all financial institutions to use the declining balance method of calculation of interest rates, in order to improve pricing transparency.

**Recommendation**

The BoZ should issue the aforementioned directive requiring all financial institutions to use the declining balance method of calculation of interest rates.

The BoZ should regularly update the comparison tables disclosing financial charges, fees and commissions for accounts and other general services, as well as the table with the demonstration of the cost of borrowing ZMK 1,000,000 from a microfinance institution. The BoZ should publish a glossary of terms explaining in simple terms the different concepts included in all the tables, as well as a quick note to guide consumers on how to read the tables and what information they should pay special attention to (e.g. the column of total cost of credit over lending period).



### Good Practice B.8

#### *Disclosure of Financial Situation*

- a. The relevant supervisory authority should publish annual public reports on the development, health, strength and penetration of the non-bank credit institutions, either as a special report or as part of the disclosure and accountability requirements under the law that governs these.
- b. Non-bank credit institutions should be required to disclose their financial information to enable the general public to form an opinion regarding the financial viability of the institution.

#### *Description*

According to Article 61 of the BFSA, a bank or financial institution (including an MFI) shall publish in a newspaper of general circulation in Zambia a copy of their annual financial statements and of their quarterly financial statements. In addition, the financial institution shall display both statements in a conspicuous place in each branch, at all times when it is open for business.

In theory, this article implies that all MFIs need to comply with such requirement. However, the MFRs only specifies the requirement for a deposit-taking MFI to display its balance sheet and income statement in a conspicuous place on its business premises, with no reference to this type of requirement for other MFIs.

The BoZ includes in its Annual Report a section on non-bank financial institutions, which includes a brief overview of the sector, with indicators of structure, number of licenses and branches approved, as well as overall performance, capital and assets of subsectors.

However, there is no easily available information on institutions not licensed by the BoZ, such as moneylenders and cooperatives.

#### *Recommendation*

The BoZ should clarify that a non-deposit taking MFI shall also be required to display its financial information (balance sheet and income statement) in a conspicuous place on its business premises.

The Registrars of Cooperatives and of Moneylenders should make available information on the financial service providers registered by them.

## **Section C. Customer Account Handling and Maintenance**

### **Good Practice C.1**

#### **Statements**

- a. Unless a non-bank credit institution receives a customer's prior signed authorization to the contrary, the non-bank credit institution should issue, and provide the customer with, a monthly statement regarding every account the non-bank credit institution operates for the customer.
- b. Each such statement should: (i) set out all transactions concerning the account during the period covered by the statement; and (ii) provide details of the interest rate(s) applied to the account during the period covered by the statement.
- c. Each credit card statement should set out the minimum payment required and the total interest cost that will accrue, if the cardholder makes only the required minimum payment.
- d. Each mortgage or other loan account statement should clearly indicate the amount paid during the period covered by the statement, the total outstanding amount still owing, the allocation of payment to the principal and interest and, if applicable, the up-to-date accrual of taxes paid.
- e. A non-bank credit institution should notify a customer of long periods of inactivity of any account of the customer and provide reasonable final notice in writing to the customer if the funds are to be transferred to the government.
- f. When a customer signs up for paperless statements, such statements should be in an easy-to-read and readily understandable format.

#### **Description**

There is no requirement for MFIs to provide consumers with a regular written or electronic statement of a financial product. MFIs usually give a payment schedule to their customers when the loan contract agreement is signed, and consumers present the schedule when they pay their installments and if they do not have it with them, they can ask for another copy of the schedule. In the case of deposit-taking MFIs, there is also no requirement to provide a periodic statement of the deposit account.

#### **Recommendation**

MFIs should be required to have a monthly account statement available to each customer free of charge, for all types of financial products. The statement can be sent to the customer through postal mail or, provided that the consumer indicates so, collected by him or her in the premises of the MFI, or sent to the consumer by electronic means (including SMS).

## Good Practice C.2

***Notification of Changes in Interest Rates and Non-Interest Charges***

- a. A customer of a non-bank credit institution should be notified in writing by the non-bank credit institution of any change in:
  - (i) the interest rate to be paid or charged on any account of the customer as soon as possible; and
  - (ii) a non-interest charge on any account of the customer a reasonable period in advance of the effective date of the change.
- b. If the revised terms are not acceptable to the customer, he or she should have the right to exit the contract without penalty, provided such right is exercised within a reasonable period.
- c. The non-bank credit institution should inform the customer of the foregoing right whenever a notice of change under paragraph a. is made by the institution.

***Description***

Section 47 of the BFSFA states that when a financial institution (e.g. a licensed MFI) opens a new account for a customer, at the same time, it shall provide in writing: i) a statement of all charges for maintaining the account and accessing the funds on account, ii) a statement of the interest to be paid by the institution, and iii) a statement of how the institution will advise the customer of any new charges or changes in the charges or interest disclosed. Section 47 also indicates that the BoZ may prescribe the form, content, method of disclosure, and means and frequency of publishing any change of information required to be disclosed.

The draft new BFSFA would include a provision prohibiting financial institutions from introducing a new charge or increasing the rate of an existing charge without prior approval of the BoZ.

***Recommendation***

The legal and regulatory framework should be amended to include clear provisions on notification of changes in interest rates and non-interest charges, which should be applicable to all financial institutions (including small MFIs). Such provisions should require financial institutions to give a personalized notification (not only notification in branches or advertisements) to their customers a specific and reasonable number of days in advance of changes in interest rates and charges (20 days would be preferable, but a shorter period might be considered if the product has a very short term). The regulation should also give the customer the right to exit the contract without penalty, and require financial institutions to inform the customer of such right.

### Good Practice C.3

#### *Customer Records*

- a. A non-bank credit institution should maintain up-to-date records in respect of each customer of the non-bank credit institution that contain the following:
  - (i) a copy of all documents required to identify the customer and provide the customer's profile;
  - (ii) the customer's address, telephone number and all other customer contact details;
  - (iii) any information or document in connection with the customer that has been prepared in compliance with any statute, regulation or code of conduct;
  - (iv) details of all products and services provided by the non-bank credit institution to the customer;
  - (v) a copy of all correspondence from the customer to the non-bank credit institution and vice-versa and details of any other information provided to the customer in relation to any product or service offered or provided to the customer;
  - (vi) all documents and applications of the non-bank credit institution completed, signed and submitted to the non-bank credit institution by the customer;
  - (vii) a copy of all original documents submitted by the customer in support of an application by the customer for the provision of a product or service by the non-bank credit institution; and
  - (viii) any other relevant information concerning the customer.
- b. A law or regulation should provide the minimum permissible period for retaining all such records and, throughout this period, the customer should be provided ready free access to all such records.

#### *Description*

The BoZ Anti-Money Laundering Directives of 2004 requires regulated financial institutions to maintain: "(a) a business transaction record for a period of 10 years after termination of the business transaction, and (b) copies of identification records for a period of 10 years after termination of the business transaction with the customer" (Section 10). The Directives indicate that records should be kept by way of original printed copies of documents or by electronic copies, and should be sufficient to permit a reconstruction of individual business transactions, including amounts and types of currency.

The BoZ's Risk Management Guidelines from 2008 indicate that, at the minimum the credit administration unit must ensure that, among other issues, "Credit files are maintained and kept up to date. The credit files must contain all correspondence with the borrower and sufficient information necessary to assess the borrower's current financial conditions, repayment performance. This information should be filed in an organized and referenced manner."

#### *Recommendation*

In addition to the existing requirements included in the BFSa and the AML Directives, financial institutions should be required to maintain details of all the products and services provided to the customer (including terms and conditions), all communications exchanged with the customer regarding the products provided, documents and applications signed by the customer (and guarantor), and disclosure statements or formats given to the customer (and/or guarantor). Customers should also be provided free access to their personal records.

## Good Practice C.5

**Debt Recovery**

- a. All non-bank credit institutions, agents of a non-bank credit institutions and third parties should be prohibited from employing any abusive debt collection practice against any customer of the non-bank credit institution, including the use of any false statement, any unfair practice or the giving of false credit information to others.
- b. The type of debt that can be collected on behalf of a non-bank credit institution, the person who can collect any such debt and the manner in which that debt can be collected should be indicated to the customer of the non-bank credit institution when the credit agreement giving rise to the debt is entered into between the non-bank credit institution and the customer.
- c. A debt collector should not contact any third party about a non-bank credit institution customer's debt without informing that party of the debt collector's right to do so; and (ii) the type of information that the debt collector is seeking.
- d. Where sale or transfer of debt without borrower consent is allowed by law, the borrower should be:
  - (i) notified of the sale or transfer within a reasonable number of days;
  - (ii) informed that the borrower remains obligated on the debt; and
  - (iii) provided with information as to where to make payment, as well as the purchaser's or transferee's contact information.

**Description**

There is currently no regulation or law covering debt collection practices in Zambia. The new draft BFSa includes an important provision on unfair debt collection practices, which prohibits financial institutions to engage in any conduct that harass, oppress, or abuse any person in connection with the collection of a debt; and to use any false, deceptive, or misleading representation or means in the context of debt collection.

**Recommendation**

The provision on unfair debt collection included in the new draft BFSa is an important first step to provide a legal basis for consumer protection regarding this issue. It is crucial that this provision be applicable not only to regulated MFIs, but also to any private institution undertaking the collection of a debt being transferred by an MFI. More specific rules on prohibited debt collection practices, and/or basic principles for responsible debt collection practices should be developed and followed by all entities undertaking debt collection. Consumers should be made aware of their rights regarding debt collection practices, and provided with mechanisms to complain against abusive practices.

## **Section D. Privacy and Data Protection**

### **Good Practice D.1**

#### ***Confidentiality and Security of Customers' Information***

- a. The financial transactions of any customer of a non-bank credit institution should be kept confidential by the institution.
- b. The law should require non-bank credit institutions to ensure that they protect the confidentiality and security of personal data of their customers against any anticipated threats or hazards to the security or integrity of such information, and against unauthorized access.

#### ***Description***

The BFSA (Section 50) indicates that a financial institution and its directors, CEO, CFO, managers and employees shall maintain the confidentiality of all confidential information obtained in their business activities, except: a) in accordance with the express consent of the customer, or the order of a court; b) where the interest of the licensee itself requires disclosure; or c) where the BoZ, following the Law, requests it. The BFSA states that confidential information includes non-public information of a person, concerning: a) the nature, amount or purpose of any payment made by or to the person; b) the recipient of a payment by the person; c) the assets, liabilities, financial resources or financial condition of the person; d) the business or family relations of the person; or (e) any matter of a personal nature that the person disclosed to the bank in confidence.

Also, according to the MFRs (Article 44), a licensed MFI and its staff shall ensure that all transactions are conducted in strict confidence and that the confidentiality of customers is maintained.

In addition, the Credit Data (Privacy) Code provides guidelines to the credit providers (including licensed MFIs) regarding the handling of customers' credit data. These guidelines include issues of data security and system integrity safeguards, and non-access for direct marketing. Also, Part V points out that no provision of the Code shall abrogate, limit, or modify any duty of confidentiality mandated by the law.

#### ***Recommendation***

Even though the BFSA and MFRs include provisions on confidentiality, the more detailed guidelines on credit data protection (Credit Data Code) are not mandatory. In addition, all these instruments do not apply to non-licensed MFIs.

An overall law covering protection of personal financial data (or an overall data protection law) should be issued in Zambia, in order to further guarantee the protection of confidentiality, privacy and security of personal data of all types of borrowers and depositors. This law would also be applicable to non-financial institutions that exchange information with credit bureaus. The existence of a legal framework on data protection could help increasing the confidence in the use of the credit reference services, which would facilitate the expansion of credit data.

### Good Practice D.2

#### *Credit Reporting*

- a. Credit reporting should be subject to appropriate oversight, with sufficient enforcement authority.
- b. The credit reporting system should have accurate, timely and sufficient data. The system should also maintain rigorous standards of security and reliability.
- c. The overall legal and regulatory framework for the credit reporting system should be: (i) clear, predictable, non-discriminatory, proportionate and supportive of consumer rights; and (ii) supported by effective judicial or extrajudicial dispute resolution mechanisms.
- d. Proportionate and supportive consumer rights should include the right of the consumer
  - (i) to consent to information-sharing based upon the knowledge of the institution's information-sharing practices;
  - (ii) to access his or her credit report free of charge (at least once a year), subject to proper identification;
  - (iii) to know about adverse action in credit decisions or less-than-optimal conditions/prices due to credit report information;
  - (iv) to be informed about all inquiries within a period of time, such as six months;
  - (v) to correct factually incorrect information or to have it deleted and to mark (flag) information that is in dispute;
  - (vi) to reasonable retention periods of credit history; and
  - (vii) to have information kept confidential and with sufficient security measures in place to prevent unauthorized access, misuse of data, or loss or destruction of data.
- e. The credit registers, regulator and associations of non-bank credit institutions should undertake campaigns to inform and educate the public on the rights of consumers in the above respects, as well as the consequences of a negative personal credit history.

#### *Description*

The Credit Data (Privacy) Code includes several key provisions regarding credit reference services. However, this Code does not have the power of a law or regulation –it is only a guideline for all financial institutions supervised by the BoZ. The same goes for the Guidelines for Credit Reference Services Licensing of 2006.

Also, in December 2008 the BoZ issued the Directive on Submission of Credit Data and Utilisation of Credit Reference Services, which requires all licensed financial service providers to: i) use the services of a credit reference agency at all time before granting credit to any customer, and ii) submit credit data to a credit reference agency in respect all credit granted to a customer after the coming into force of the Directive. Failure of complying with the Directive constitutes an unsafe and unsound practice as defined in the BFSa.



**Recommendation**

A law on credit reporting should be developed, in order to have a clear framework and adequate enforcement authority related to credit reporting activities. The law should cover licensing, mandatory requirements for credit institutions to obtain credit reports and update reported data (i.e. both financial and non-financial), and other important provisions specific to such agencies in line with international good practices<sup>5</sup>.

## **Section E. Dispute Resolution Mechanism**

### **Good Practice E.1**

**Internal Complaints Procedure**

Complaint resolution procedures should be included in the non-bank credit institutions' code of conduct and monitored by the supervisory authority.

**Description**

The BFSA requires licensed MFIs to establish (and make available to consumers) procedures for handling customer complaints and an employee designated to administer such procedures. According to the BFSA, an MFI shall:

- a) establish, and make available in writing to its customers in the public portion of each branch, procedures for dealing with complaints made by customers concerning their relations with the bank or financial institution;
- b) designate a manager or employee to be the customer service officer and to be responsible for implementing and administering those procedures, including receiving, dealing with or otherwise disposing of all complaints received; and
- c) create and maintain for two years, or such longer period as may be prescribed by the BoZ a record of every complaint received and how it was dealt with or disposed of.

However, there is no further guidance regarding this topic. It has been noted that while some MFIs visibly display in their premises information about the consumers' right to complain and the MFIs' procedures to handle complaints, other MFIs only have a suggestion box in their agencies, with no further information easily visible to the consumer. Also, MFIs do not have specific internal manuals regarding the maximum period they can take to respond to a consumer complain.

**Recommendation**

The BoZ should issue more specific regulations on consumer complaints handling by MFIs. The BoZ should define procedures that the MFIs should have and how they have to make them available to their customers (e.g. by including information on complaints procedures and contact information in pre-contract disclosure documents or key facts statements). The BoZ should also require regulated MFIs to submit monthly or quarterly statistics on consumer complaints following a predefined format that can distinguish among inquiries, complaints and disputes; identify the product that the consumer is having problems with and the nature of the problem; include demographic information on the complainant whenever possible; and include the status of the response to the complaint, and the type of response given, if any. The BoZ should use this information as input to its risk-based supervision, analyze complaints data in its annual report, and share main trends and findings with the public.

<sup>5</sup> See, for example, the General Principles for Credit Reporting, issued by the World Bank in 2011, available at [http://siteresources.worldbank.org/FINANCIALSECTOR/Resources/Credit\\_Reporting\\_text.pdf](http://siteresources.worldbank.org/FINANCIALSECTOR/Resources/Credit_Reporting_text.pdf)

## Good Practice E.2

***Formal Dispute Settlement Mechanisms***

- a. A system should be in place that allows consumers to seek affordable and efficient third-party recourse, such as an ombudsman, in the event the complaint with the non-bank credit institution is not resolved to the consumer's satisfaction in accordance with internal procedures.
- b. The role of an ombudsman or equivalent institution in dealing with consumer disputes should be made known to the public.
- c. The ombudsman or equivalent institution should be impartial and act independently from the appointing authority, the industry and the parties to the dispute.
- d. The decisions of the ombudsman or equivalent institution should be binding upon non-bank credit institutions. The mechanisms to ensure the enforcement of these decisions should be established and publicized.

***Description***

Microfinance consumers do not have access to an affordable, quick and fair mechanism to resolve their disputes with microfinance institutions. Currently, consumers present their disputes to the BoZ, the CCPC, consumer associations, or even the Police. However, to obtain final redress, they have to go to the Supreme Court or the Small Claims Courts, in processes that may take more than five years. The current draft of the BFSA allows for the creation of a Financial Ombudsperson, which would provide consumers with an out-of-court dispute resolution mechanism.

***Recommendation***

The Zambian authorities should assess the feasibility of an effective external dispute resolution mechanism (e.g. Financial Ombudsperson as proposed in the new draft BFSA) to deal with consumer complaints and disputes in the financial sector. However, prior to choosing the final institutional setup, a thorough assessment of various options should be conducted. The assessment should take into account its sources of funding, governance structure to ensure independence and transparency, mechanisms to make it accessible to all types of financial consumers living in urban and rural areas, its relationship with other existing authorities (BoZ, CCPC, Pensions and Insurance Authority), its functions and scope of activities, among other issues.

## Section F. Consumer Empowerment

### Good Practice F.1

#### ***Broadly based Financial Capability Program***

- a. A broadly based program of financial education and information should be developed to increase the financial capability of the population.
- b. A range of organizations—including government, state agencies and non-governmental organizations—should be involved in developing and implementing the financial capability program.
- c. The government should appoint an institution such as the central bank or a financial regulator to lead and coordinate the development and implementation of the national financial capability program.

#### ***Description***

Several social-oriented microfinance institutions currently offer financial training to potential and new customers. These financial education activities focus on areas such as cash and loan management. However, there is no information on sector-coordinated financial education activities, or any activity led by AMIZ or by the BoZ regarding financial education yet.

In July 2012, the Government of Zambia approved the National Strategy on Financial Education for Zambia. The elaboration of this broad-based strategy was commissioned by the BoZ and overseen by the Financial Sector Development Plan's Financial Education Working Group, with technical support from FinMark Trust.

The strategy is comprehensive and includes programs aimed for children, youth, and adults (in the workplace, for small-scale farmers and for MSMEs). The first phase of implementation of this strategy will be from 2012-2017, and has as primary objective “to empower Zambians with knowledge, understanding, skills, motivation and confidence to help them to secure positive financial outcomes for themselves and their families by 2017”. The long-term goal is a financially educated population by 2030.

The strategy has identified MFIs and industry associations as key stakeholders in several areas of implementation, such as financial education for the youth in urban and rural areas, financial education programs for MSMEs, and financial education through media channels.

#### ***Recommendation***

The financial education strategy should be presented publicly to raise awareness on the strategy and communicate to the Zambian population the importance of financial education for the Government of Zambia, the BoZ, the financial industry and the civil society.

The Financial Education Working Group should take into account inputs from all types of financial service providers that are currently undertaking financial education activities (e.g MFIs, ZCF, etc.) given their outreach at the district and community level.

### Good Practice F.2

#### *Using a Range of Initiatives and Channels, including the Mass Media*

- a. A range of initiatives should be undertaken by the relevant authority to improve the financial capability of the population, and especially from low-income communities.
- b. The mass media should be encouraged by the relevant authority to provide financial education, information and guidance to the public, including on non-bank credit institutions and the products and services they offer.
- c. The government should provide appropriate incentives and encourage collaboration between governmental agencies, the supervisory authority for non-bank credit institutions, the associations of non-bank credit institutions and consumer associations in the provision of financial education, information and guidance to consumers.

#### *Description*

The Financial Education Working Group includes members of different types of institutions, including AMIZ, Junior Achievement, Economics Association of Zambia. The financial education strategy includes several types of programs to be undertaken, including financial education through different forms of entertainment, such as television and radio soaps.

#### *Recommendation*

The Financial Education Working Group should implement different types of initiatives, including through the media. However, it is important that the initiatives start by testing pilots where the potential impact can be assessed and later such initiatives can be scaled up. From the outset, adequate impact evaluation mechanisms should be incorporated in the design of financial education programs.

## Good Practice F.3

*Unbiased Information for Consumers*

- a. Consumers, especially the most vulnerable, should have access to sufficient resources to enable them to understand financial products and services available to them.
- b. Supervisory authorities and consumer associations should provide, via the internet and printed publications, independent information on the key features, benefits and risks – and, where practicable, the costs – of the main types of financial products and services, including those offered by non-bank credit institutions.
- c. The relevant authority should adopt policies that encourage non-government organizations to provide consumer awareness programs to the public regarding financial products and services, including those offered by non-bank credit institutions.

*Description*

The BoZ requires licensed MFIs (and other financial institutions) to publish twice a year details of their charges, fees and commissions in wide-circulation newspapers. The BoZ's website has a Non-Bank Supervision section that includes a list of the licensed non-bank financial institutions, financial statements of non-bank financial institutions, documents from the Financial Sector Development Plan (including the results of the FinScope 2009 survey), and financial charges and fees for accounts and other general services. However, the only file available was outdated, with financial charges and fees as of June 2009.

*Recommendation*

The BoZ should regularly update the comparison tables disclosing financial charges, fees and commissions for accounts and other general services, as well as the table with the demonstration of the cost of borrowing ZMK 1,000,000 from a microfinance institution. The BoZ should publish a glossary of terms explaining in simple terms the different concepts included in all the tables, as well as a quick note to guide consumers on how to read the tables and what information they should pay special attention to (e.g. the column of total cost of credit over lending period).

The BoZ should also prepare consumer-friendly documents that provide independent information on the key features, benefits and risks of financial products and services, especially those offered by MFIs.

### Good Practice F.4

#### *Consulting Consumers and the Financial Services Industry*

The relevant authority should consult consumer associations and associations of non-bank credit institutions to help the authority develop financial capability programs that meet the needs and expectations of financial consumers, especially those served by non-bank credit institutions.

#### *Description*

Although the BoZ consults with the NBCI industry regarding proposals to amend or issue new legislations and regulations, it was learned that in some cases, draft regulations or legislative packages were shared with the industry but only giving a couple of days to analyze them and provide comments.

#### *Recommendation*

It is advisable that the consultation process encourages a genuinely open dialogue between the BoZ and the NBCI industry. It is also important that the BoZ encourages a stronger role of the industry associations, by asking them to gather comments from their members.

The BoZ should also invite consumer associations to present comments on legal and regulatory proposals, and to participate in financial education and consumer protection events.

### Good Practice F.5

#### *Measuring the Impact of Financial Capability Initiatives*

- a. Policymakers, industry and consumer advocates should understand the financial capability of various market segments, particularly those most vulnerable to abuse.
- b. The financial capability of consumers should be measured, amongst other things, by broadly based household surveys that are repeated from time to time.
- c. The effectiveness of key financial capability initiatives should be evaluated by the relevant authority from time to time.

#### *Description*

The upcoming FinScope survey will be expanded to include some questions related to financial capability. However, Zambia has not yet undertaken any thorough assessment of the levels of financial capability of the population.

#### *Recommendation*

Given that the authorities are planning to conduct the expanded FinScope by the end of 2012, a full-fledged financial capability survey could be considered in the medium term.

Such a nationally representative survey on the levels of financial capability of the Zambian population should be conducted using questionnaires and methodologies already tested in other developing countries, such as those developed by the World Bank's Russia Financial Literacy and Financial Education Trust Fund<sup>6</sup>. The financial capability survey should serve as a baseline for the design of a financial education program in Zambia. The results of the survey should be used to identify target segments of the population in most need of improving financial capability, as well as to highlight topics or concepts that are not well understood by the population, useful channels to disseminate financial education, among other relevant information.

A follow-up survey in 3 to 5 years should be carried out to measure any impact at a macro level of the implementation of financial education and consumer protection measures.

In addition, impact evaluation mechanisms should be incorporated from the outset in the design of specific financial education measures. Consideration could be given to the use of randomized control trials, in order to determine measures that produced desired positive effects on specific segments of the population.

<sup>6</sup> See [www.finlitedu.org](http://www.finlitedu.org)



### III. Insurance Sector: Comparison with Good Practices

#### Section A. Consumer Protection Institutions

##### Good Practice A.1

###### *Consumer Protection Regime*

The law should provide for clear rules on consumer protection in all matters of insurance and there should be adequate institutional arrangements for implementation and enforcement of consumer protection rules.

- a. There should be specific provisions in the law, which create an effective regime for the protection of retail consumers of insurance.
- b. The rules should prioritize a role for the private sector, including voluntary consumer organizations and self-regulatory organizations.

###### *Description*

The Insurance Act (IA) features a principles based approach which should give the Registrar the power to enforce consumer protection points. There is little history of the Registrar issuing edicts on consumer protection and therefore precedence and procedures need to be set.

Specific principles in the industry code state that business is to be carried on with the public in an “honest, fair and equitable manner”. The code also contains the principles based rule that companies are to provide “efficient service to their clients whose interests will be regarded as paramount”, i.e. that policyholders rank above all others in corporate governance.

Regulation can only be effective to any degree if it is principles based. Mandated rules cannot possibly cover every aspect in an ever changing world.

In addition to the basic principles enunciated in the Act, there are a variety of mandated consumer protection benchmarks.

False advertising is prohibited and confidentiality is a must. Print must be at least eight points in size. On amalgamations, policyholder interests are to be respected. Companies are also to provide clear and unambiguous descriptions of policy coverage. Consumers may get a copy of a document submitted to the Pensions and Insurance Authority (PIA) by a company. A purchaser of life insurance has a 30 day cooling off period.

Only licensed agents or brokers may solicit business or present it to companies. Companies may only accept business from licensed agents and brokers. A policyholder has the right to go over the policy despite what it may say in the policy (IA section 79).

Policy forms must be submitted to the Registrar before being used. This is not the best way to deal with the inclusion of rights in a policy. The law should list what is to be included and anything not in the insurance contract is deemed to be. Such an approach speeds up innovation in the industry and hastens the introduction of new products in a competitive market. It also avoids inadvertent oversight in the approvals process.

The Registrar has the right to request that premium rates be submitted to him and to order the insurer to cease using “inappropriate rates” (IA section 74). This however is not consumer protection per se, but rather to prevent companies from engaging in price wars that could destabilize the markets and ultimately result in bankruptcies.

However experience in other countries has shown that regulation in all aspects, not just consumer protection, can only be effectively enforced through the combination of law and modern corporate governance for insurance companies. The law in Zambia has some points on corporate governance, but they are insufficient (e.g. the new law requires that 30% of directors be independent). These should be required in the law and the PIA should audit against them just as it audits against accounting and actuarial standards.

Some points that should be included are:

- The company’s stated objective must be policyholder interests
- The Board is responsible to the policyholders (as it is to the shareholders)
- Each company must have a code of ethics
- Each company must have a conduct review committee
- Each company must have a compliance committee
- There must be written procedures for all areas of company policy including relations with policyholders. (Did the company stray from written procedures to the detriment of this policyholder? If the procedure is anti-consumer protection in general, the PIA should step in.)
- There must be a written policy for communication with policyholders

The law should also include enforcement powers for PIA in this regard. Under the current act the PIA can only suspend a license. The PIA needs a regulatory ladder with a number of steps open to it. Under the new law, a ladder will include fines but more rungs could be added in terms of suspension and black listing of directors, public notices, etc.

- a) The principles based clauses in the act do provide an effective regime for the protection of the consumers. However, the enforcement has been minimal. This is because there have been few consumer based issues in the nascent industry, rather than inertia on the part of the Registrar. However, certain practices do occur that should be looked into. For example, companies are writing automobile policies that exclude payments for personal accident benefits to anyone below 21 or over 70. It is most unusual to insure someone, and only pay property damage and third party based on age.
- b) In the private sector, the Code of Conduct for the members of the Insurance Association of Zambia (IAZ) requires insurance companies to follow certain consumer protection rules. The association is to work for a “community awareness of the benefits and essential role of the insurance industry”. This is to reduce the costs of insurance to everyone.

The Insurance Institute of Zambia code of ethics requires its insurance professionals to act “honestly and fairly at all times when dealing with clients”. It also contains several other principles based admonitions such as be a “good steward of their interests”, and “act openly, fairly and respectfully at all times providing all customers with due respect consideration and opportunity”.

Hence, the private sector does have a strong role to play in consumer protection and has some standards for such action. However, these groups are only within the industry, and consumer organizations have not yet taken up insurance as a cause.

Other laws in theory may also apply to the insurance industry. For instance, under the Competition and Consumer Protection Act, the Commissioner does have the right on his own initiative to investigate the sector. If this right were to be exercised, it most likely would be exercised in the area of competition rather than in a specific consumers' rights issue. For instance, the banking sector was recently investigated for alleged rate fixing. He also has the right to declare a contract not binding if it generates a significant imbalance in the rights of the company and the policyholder to the detriment of the policyholder. At the same time, this law also directs the Commission to have a memorandum of understanding with the insurance Registrar, which it does. Hence, complaints sent to the Commissioner are usually forwarded to the Registrar with the Commissioner keeping a list and following up.

### ***Recommendation***

Institutional arrangements for the implementation and enforcement of consumer protection provisions are lacking. There is a need for a new insurance act based on modern concepts such as corporate governance intertwined with a principles basis approach. The proposed draft law is a step forward, but needs to include much more in these areas. Capacity building in the PIA and education within the industry is also required.

Exclusion by age should not be allowed for personal accident benefits.

The PIA needs a more extensive regulatory ladder in order to deal with violators through a series of increasing penalties, depending on the seriousness or the frequency of the transgression. Additions in the new act are a step forward, but more could be added.

### Good Practice A.2

#### *Contracts*

There should be a specialized insurance contracts section in the general insurance or contracts law, or ideally a separate Insurance Contracts Act. This should specify the information exchange and disclosure requirements specific to the insurance sector, the basic rights and obligations of the insurer and the retail policyholder and allow for any asymmetries of negotiating power or access to information.

#### *Description*

Zambia does not separate the supervision of solvency and market conduct. As a result policy conditions are included in the insurance law.

Part IX of the Insurance Act deals with insurance policies (and Part XIV of the proposed draft act). Policies must be submitted to the Registrar at least 30 days prior before using. Approval is by negative response. Print must be clear and at least eight point type face. Coverage ceases after thirty days of unpaid premium i.e. there is a 30 day grace period for late premiums. Payment to a broker for this section means the same as payment directly to the company. All policies will be in Zambian currency. Only companies licensed in Zambia may issue policies and amounts payable will be payable in Zambia. The policyholder may exercise his rights, policy terms notwithstanding, in any court of competent jurisdiction in Zambia. Arbitration may be used to determine amounts owing and such arbitration will be under Zambian law and in Zambia.

A policy is not invalidated because the policyholder failed to comply with some provision of another act applying to that policy. A minor may enter into an insurance contract. A life insurance policy shall name a beneficiary. Life benefits may not be attached by creditors in the estate.

The Registrar may request a submission of rates and may change them if “determined to be inappropriate”. This means the Registrar may interfere in the market to prevent price cutting.

A life policy will not be voided because of an incorrect statement on the application unless that statement was “material to the risk of the insurer”. A misstatement of age will not nullify a life policy but result in an adjusted death benefit. A suicide provision is limited to the period specified.

A policyholder may have a lost policy replaced. There is a cooling off period of 30 days for a life policy (section 96(1)) although many people interviewed did not know of such a provision. It is also in the new act and those interviewed were of the view that this was a new provision.

There is a provision that a company may not discriminate in pricing between two people with an “equal expectation of life”. How this is to apply is unclear given such factors as differences in life expectancies between the sexes, and from different occupations, education, wealth, etc.

The Competition and Consumer Protection Act has a section giving power to rule a contract non-binding if the Commission finds a significant imbalance in the rights and obligations to the detriment of the consumer. It is difficult to see this law applied in the circumstances of an insurance policy.

**Recommendation**

Regulation should be by provisions (reserves) not preapproval of policies. In a principles based approach, and by the new International Financial Reporting Standards, the company has the right to charge whatever it wishes but its provisions will be calculated as the difference between future values of cash flows in and out. The actual premium is only a fixed number in this equation. Requiring preapproval of premiums gives implicit approval of the premium and a corresponding provisions schedule. This is how a mandated system works, not a principles-based system.

With compulsory insurance, such as auto third party liability (TPL), there needs to be a control on maximum premiums, which the Registrar has. But interference in other premiums should not be allowed unless some unusual non market events result in consumer gouging. Fears of overcharging in other lines will be allayed through public education programs and posting of results.

**Good Practice A.3****Codes of Conduct for Insurers**

- a. There should be a principles-based code of conduct for insurers that is devised in consultation with the insurance industry and with relevant consumer associations, and that is monitored and enforced by a statutory agency or an effective self-regulatory agency.
- b. If a principles-based code of conduct exists, insurers should publicize and disseminate it to the general public through appropriate means.
- c. The principles-based code should be augmented by voluntary codes for insurers on such matters specific to insurance products or channels.
- d. Every such voluntary code should likewise be publicized and disseminated.

**Description**

Zambia is quite advanced in that it has strong principles-based codes of conduct for its insurance companies, brokers and members of its Insurance Institute, not to mention the codes of conduct for professionally qualified people such as Chartered Accountants (CA) or Chartered Financial Analysts (CFA).

These codes are monitored and enforced by the respective self-governing organizations. By law, all companies must belong to the IAZ and all brokers must belong to Insurance Brokers' Association of Zambia (IA section 134).

The codes give the organizations the right to remove members.

The PIA is well aware of the codes and dialogue exists between all parties. Currently there is discussion between the PIA and the IAZ.

The codes of conduct are available to the public. On occasion they are published, but not regularly.

**Recommendation**

No recommendations as these codes are quite advanced.

### Good Practice A.4

#### *Other Institutional Arrangements*

- a. Prudential supervision and consumer protection can be placed in separate agencies or lodged in a single institution, but allocation of resources between prudential supervision and consumer protection should be adequate to enable the effective implementation of consumer protection rules.
- b. The judicial system should provide credibility to the enforcement of the rules on financial consumer protection.
- c. The media and consumer associations should play an active role in promoting consumer protection in the area of insurance.

#### *Description*

- a) In Zambia the PIA is responsible for both prudential supervision and consumer protection. The Insurance Act refers to the performance of functions that the Registrar “shall at all times have regard to the need to protect the rights, benefits and other interests of policy holders and any beneficiaries of policies of insurance” (IA section 99).  
  
The funds available to the Registrar are limited as they are levies against companies in a very small industry. However, the PIA shows great interest in consumer rights and as far as can be determined allocates its resources accordingly.
- b) The judiciary has not been faulted, but the length of time for a small claims court decision is troublesome.
- c) The media has not played a noticeable role in consumer protection in the insurance field. As public education programs grow, it is to be hoped that the media will take a greater interest in consumer issues in the insurance sector.

#### *Recommendation*

There is a very strong argument that consumer issues in the insurance sector should be covered by the PIA, though in a newly established unit separate from prudential function. Funding for such unit would need to be determined, but the monies coming to the PIA should not be affected. The current fees from the insurance companies are compatible with international standards and any reduction in these fees would seriously weaken prudential regulation.

### Good Practice A.5

#### ***Bundling and Tying Clauses***

Whenever an insurer contracts with a merchant or credit grantor (including banks and leasing companies) as a distribution channel for its contracts, no bundling (including enforcing adhesion to what is legally a single contract), tying or other exclusionary dealings should take place without the consumer being advised and able to opt out.

#### ***Description***

The Insurance Act makes no reference to bundling.

Credit life insurance (which may include disability as well) ensures that a loan is paid off in the event of borrower's death. In this regard, many banks may have group life policies on all their borrowers, while the insured may not be aware of this. In such cases the bank would pay a group premium to an insurance company and the insurance would be in place. In other cases, particularly auto loans, the borrower would be sold an individual policy. It may not necessarily be to the borrower's disadvantage to buy the policy offered as the insurance company, perhaps a captive of the bank or auto dealer doing the lending, has the data on the group, the history, has set the underwriting standards, etc. The expenses of distributions, especially agents' commissions, are often lower.

However, there often is a disadvantage because the underwriter may charge high premiums. It may also be that the borrower already has enough life insurance and does not need to buy any more. Hence a borrower should have the right to opt out if he has insurance already. If not, a borrower should have the right to choose another company.

The situation with non-life insurance is similar. Here the same problem of loan repayment is present, but the collateral is not the earning power of the borrower but the value of the property pledged. Hence, lenders will want fire insurance at a very minimum, where they will be the beneficiaries. In this case the bank may also have a very convenient policy ready, although it may be expensive, while the property may already be insured. Another problem occurs because non-life insurance is based on indemnity, i.e. the payout is limited to damages. Hence adding another policy in practice could result in no insurance at all (from that additional policy) because the damages would be paid by the existing policy. Therefore, borrowers should have the right to insure with another company in order to meet the lender's right to have adequate insurance to cover its collateral.

Another potential problem that has not surfaced in Zambia yet is "forced insurance". This occurs when the borrower lets his insurance lapse. The lender then has the right to insure the building to protect his interests and charge the premium to the outstanding balance of the loan. In this situation there must be reasonable limits based on the premiums charged.

In Zambia the PIA is beginning to look into the whole tying situation.

#### ***Recommendation***

Customers should have the right to opt out of insurance not essential to the collateral for the loan.

Customers should have the right to supply the insurance from another carrier.

Limits need to be placed on forced insurance.



## Section B. Disclosure & Sales Practices

### Good Practice B.1

#### *Sales Practices*

- a. Insurers should be held responsible for product-related information provided to consumers by their agents (i.e. those intermediaries acting for the insurer).
- b. Consumers should be informed whether the intermediary selling them an insurance contract (known as a policy) is acting for them or for the insurer (i.e. in the latter case the intermediary has an agency agreement with the insurer).
- c. If the intermediary is a broker (i.e. acting on behalf of the consumer) then the consumer should be advised at the time of initial contact with the intermediary if a commission will be paid to the intermediary by the underwriting insurer. The consumer should have the right to require disclosure of the commission and other costs paid to an intermediary for long-term savings contracts. The consumer should always be advised of the amount of any commission and other expenses paid on any single premium investment contract.
- d. An intermediary should be prohibited from identically filling brokering and agency roles for a given general class of insurance (i.e. life and disability, health, general insurance, credit insurance).
- e. When a bank is the intermediary, the sales process should ensure that the consumer understands at all times that he or she is not purchasing a bank product or a product guaranteed by the bank.
- f. Sanctions, including meaningful fines and, in the case of intermediaries, loss of license, should apply for breach of any of the above provisions.

#### *Description*

Zambia law and practice deal with many but not all of these points.

The Registrar has powers under the principles-based Insurance Act. The Registrar may act (e.g. suspend, revoke, or refuse to issue or renew a license) if there are circumstances which “either are likely to lead to improper conduct of business or reflect discredit on the method of conducting business” of the licensee (or applicant), or if the applicant is “no longer efficiently, honestly and fairly performing the duties” expected.

There are some mandated rules that also give the Registrar power of supervision over individuals who are not following consumer protection principles. For example, there are wide licensing requirements for intermediaries working in the insurance industry, from agents to loss assessors. Hence, the PIA has powers to enforce acceptable behavior against intermediaries through fines and the negating of licenses.

The PIA has the power to hold companies responsible for product related information under the false advertising provisions of the Insurance Act.

There is no legal requirement that a salesman identify himself as an agent or a broker.

There is no requirement that brokers proclaim their commissions. The law is also weak on rebating. It can be argued that disclosure of commissions increases rebating. To date these issues have not arisen.

The law allows an individual to be an agent for only one life company and one general company simultaneously. One cannot be both an agent and a broker. (section 30)

The law states that all brokers must belong to the brokers association (IA section 134) and hence must adhere to its code of conduct.

In addition to the powers of the Registrar cited above, the Registrar may suspend a license, require assets to be maintained to meet future liabilities of any person who fails to comply with any provision of the Insurance Act, lift the licensee if the person is mentally or physically incapable or convicted of a crime involving fraud or dishonesty. (IA Part VIII)

In the case of a broker's license, it may be suspended if the brokerage company does not meet minimum financial criteria.

The Registrar may also present a petition for bankruptcy against an individual (IA section 72).

Hence Zambia is well equipped for these issues of consumer protection.

The Competition and Consumer Protection Act has clauses forbidding misleading consumers, compromising standards of good faith and, coercion (section 45).

### ***Recommendation***

Brokers should be required to obtain professional liability insurance to cover misdeeds with respect to clients.

Consideration could be given to requiring disclosure if the commission levels between products differ markedly.

A salesman could be required to disclose if he is an agent or a broker.

### Good Practice B.2

#### *Advertising and Sales Materials*

- a. Insurers should ensure their advertising and sales materials and procedures do not mislead customers. Regulatory limits should be placed on investment returns used in life insurance value projections.
- b. Insurers should be legally responsible for all statements made in marketing and sales materials they produce related to their products.
- c. All marketing and sales materials should be easily readable and understandable by the general public.

#### *Description*

Zambia has the legal basis to require these consumer protection points because it is a principles based system. For instance, the Registrar could act under the principle that a company must operate in an “honest, fair and equitable manner”.

Companies can be taken to task through the false advertising provisions of the Insurance Act (section 130).

Companies must file copies of documents sent to all shareholders, policyholders or debenture holders. (IA section 61) This section of course does not deal with materials given to prospective customers.

Easily readable is a term difficult to legislate. The PIA can deal with this through the general principles based powers of the act.

Life insurance projections should be reasonable. This point is not dealt with specifically under the act. This is probably because it is not an issue yet in the development of the life industry. The life industry is tiny and is not selling products with unguaranteed values. Such products would include participating (with dividends) policies, universal life policies, and segregated funds. One way to deal with this is to require such projections to be reasonable in the professional opinion of the actuary if he developed the program used for projections. Another would be an “assumptions in projections must be reasonable in the circumstances” clause.

The Competition and Consumer Protection Act has clauses forbidding misleading consumers, compromising standards of good faith and, coercion (section 45).

#### *Recommendation*

The Registrar should consider an edict requiring that “assumptions in projections of non-guaranteed benefits must be reasonable in the circumstances”, with the insurance company held responsible for breaches of this concept.

### Good Practice B.3

#### *Understanding Customers' Needs*

The sales intermediary or officer should be required to obtain sufficient information about the consumer to ensure an appropriate product is offered. Formal —fact finds should be specified for long-term savings and investment products and they should be retained and be available for inspection for a reasonable number of years.

#### *Description*

Not knowing the customer is seldom a problem in insurance.

In insurance an application must be filled out. This application will contain all the information needed for the underwriters to make their decisions. The information they have is far greater than in other financial institutions such as banks. In property insurance this would be a description of the property and pertinent facts about it, ownership declaration, and some basic details about the buyer. The underwriter would also be privy to the collateral aspects of the property with respect to a loan. In life insurance the material is substantial – age, sex, age of parents when they died, income, health history, associates, employment, hobbies, etc.

Hence, fact finding is usually not a problem in insurance.

That being said, facts may be ignored in the presentation in order to oversell.

However, agents/brokers may be using computer projections of some sort even at this stage of the industry. In that case these projections should be given to the customer with the assumptions clearly stated.

#### *Recommendation*

Any projections used in sales presentations or presentations designed to maintain business must be made available to the consumer with any assumptions clearly stated.

### Good Practice B.4

#### *Cooling-off Period*

There should be a reasonable cooling-off period associated with any traditional investment or long-term life savings contract, after the policy information is delivered, to deal with possible high pressure selling and mis-selling.

#### *Description*

Zambia does have a cooling off period for life insurance. However, this provision was not well known to many of the interviewees when asked if they were aware about such a clause.

This is an extremely important part of consumer protection in insurance, particularly life insurance. It is said that general insurance is not sold but explained. When the person realizes the risk they will buy general insurance. Life insurance however must be sold, and is often sold under high emotional pressure (e.g. “How much do you love your family?”)

Both the current Act and the proposed new draft provide for a 30 day cooling off period for life insurance only. This is good for the consumers, as in many countries a cooling off period would only be ten days.

#### *Recommendation*

A reasonable cooling off period should be provided for non-life policies as well.

### Good Practice B.5

#### *Key Facts Statement*

A Key Facts Statement should be attached to all sales and contractual documents, disclosing the key factors of the insurance product or service in large print.

#### *Description*

Disclosure procedures of this sort are in place with some companies in their policy opening page. It can be argued that the policy itself is the facts disclosure. But an easily read summary of the facts prevents many misunderstandings in the future.

#### *Recommendation*

Companies should provide an easily read, brief summary of the policy to be given to the customer. This fact sheet should state what is insured, what triggers a claim and what the financial settlement will be. Such a settlement may be for the value of the damage or for the amount in the case of life insurance. The coverage should be clear as to what is insured and what is not.

### Good Practice B.6

#### *Professional Competence*

- a. Sales personnel and intermediaries selling and advising on insurance contracts should have sufficient qualifications, depending on the complexities of the products they sell.
- b. Educational requirements for intermediaries selling long-term savings and investment insurance products should be specified, or at least approved, by the regulator or supervisor.

#### *Description*

The Insurance Act, requires one to be licensed to act as an insurer, a broker, loss adjustor, assessor, claims agency or agent. (Part II)

Zambia does not have a system of regulator set exams for licenses, given PIA's scarce resources at this time.

Requirements are usually based on years of experience as discussed above. However, the standard that is developing is that agents must have attended a two-week course at the Zambian Business College or equivalent. A new entry to the world of brokerage gains his experience on the job under the tutelage of experienced senior officers of the firm.

The Registrar maintains control over agents in different ways. For instance it is an offence for a company to accept business from someone not licensed as an agent or broker.

The Registrar may recall a license of one considered not fit and proper or if it is considered "necessary for the protection of current or future policyholders" (IA section 64)

All intermediaries are approved and supervised by the Registrar.

#### *Recommendation*

Consideration could be given to having the PIA establish minimum professional requirements for sales intermediaries.

### Good Practice B.7

#### *Regulatory Status Disclosure*

- a. In all of its advertising, whether by print, television, radio or otherwise, an insurer should disclose: (i) that it is regulated, and (ii) the name and address of the regulator.
- b. All insurance intermediaries should be licensed and proof of licensing should be readily available to the general public, including through the internet.

#### *Description*

There is no requirement for insurers to state that they are regulated and to include the name of the regulator. However, the law prohibits any company from using the word insurance unless it is licensed. It also prohibits an agent or broker from bringing business to a non-licensed insurance company. Similarly, the law prohibits a company from accepting business from an agent or broker who is not licensed.

It is therefore difficult for a non-licensed company to operate.

A list of licensed companies is available on the internet.

#### *Recommendation*

In all of its advertising, the insurer should be required to disclose that it is regulated as well as the name and address of the regulator.



### Good Practice B.8

#### *Disclosure of Financial Situation*

- a. The regulator or supervisor should publish annual public reports on the development, health, strength and penetration of the insurance sector either as a special report or as part of the disclosure and accountability requirements under the law governing it.
- b. Insurers should be required to disclose their financial information to enable the general public to form an opinion with regards to the financial viability of the institution.
- c. If credible claims paying ability ratings are not available, the regulator or supervisor should periodically publish sufficient information on each insurer for an informed commentator or intermediary to form a view of the insurer's relative financial strength.

#### *Description*

Surprisingly, there does not appear to be any requirement that a company's financial position be advertised or made public.

There is no "blue book" prepared by the regulator with a summary of the financial statements of each company and a summary of the industry totals. A document does go to the Minister of Finance and then to Parliament, which has the consolidated balance sheets of the companies, but no individual company numbers. There is no statement of the number of companies impaired.

A list of companies is available from the PIA, but no information on their status.

An insurance company must prepare audited financial statements for distribution to its shareholders and the Registrar each year. (IA section 45) The distribution to shareholders is to comply with the Companies Act.

There is no requirement under the Insurance Act for the figures to be published or made available to policyholders or the general public.

There is no rating agency covering insurance companies in Zambia. Summary balance sheets are published at least on line in many countries. Of course the regulator cannot make any comment on the financial strength of any one company. Doing so could well lead to a run on that company and cause insolvency. It is a principle of regulation that the regulator must be neutral in market perceptions. However, as stated above, the regulator can provide financial and statistical information of each insurer.

#### *Recommendation*

Companies should be required to publish their financial results each year.

## Section C. Customer Account Handling and Maintenance

### Good Practice C.1

#### *Customer Account Handling*

- a. Customers should receive periodic statements of the value of their policy in the case of insurance savings and investment contracts. For traditional savings contracts, this should be provided at least yearly, however more frequent statements should be produced for investment-linked contracts.
- b. Customers should have a means to dispute the accuracy of the transactions recorded in the statement within a stipulated period.
- c. Insurers should be required to disclose the cash value of a traditional savings or investment contract upon demand and within a reasonable time. In addition, a table showing projected cash values should be provided at the time of delivery of the initial contract and at the time of any subsequent adjustments.
- d. Customers should be provided with renewal notices a reasonable number of days before the renewal date for non-life policies. If an insurer does not wish to renew a contract it should also provide a reasonable notice period.
- e. Claims should not be deniable or adjustable if non-disclosure is discovered at the time of the claim but is immaterial to the proximate cause of the claim. In such cases, the claim may be adjusted for any premium shortfall or inability to recover reinsurance.
- f. Insurers should have the right to cancel a policy at any time (other than after a claim has occurred – see above) if material non-disclosure can be established.

#### *Description*

- a) Companies are not required by law to send policyholders yearly statements of their policy's numbers. This is not a problem in the Zambian market however, as the types of products with unguaranteed cash surrender values and undefined death benefits are not being sold.
- b) Disputes over values may go either to the company, the PIA, arbitration or small claims court as described above.
- c) The cash surrender values would be in the policies for the type of policies being sold. There were no stories of companies refusing to give the policyholder this information.
- d) There is no stated number of days before a premium is due that a policyholder must receive the notice of premium due.
- e) Non-disclosure is only an issue if the question is asked and an incorrect answer is given. Non-disclosure is otherwise the company's problem. The legal test in non-disclosure is whether the company would have issued the policy if the disclosure given had been true. Otherwise the cause of death, for instance, is insignificant. The law does specifically adjust the death benefit for misstatement of age, which is in line with the general contract law, for the correct statement of age would not have prevented the policy being issued.

Insurers should have the right to cancel policies for false disclosure or other major changes such as the use of property (from storing carrots to storing dynamite for example)

#### *Recommendation*

Regulation should be introduced to require annual statements for policies with unguaranteed values.

## ***Section D. Privacy & Data Protection***

<b>Good Practice D.1</b>
<p><b><i>Confidentiality and Security of Customers' Information</i></b></p> <p>Customers have a right to expect that their financial transactions are kept confidential. Insurers should protect the confidentiality and security of personal data, against any anticipated threats, or hazards to the security or integrity of such information, and against unauthorized access.</p>
<p><b><i>Description</i></b></p> <p>Confidentiality is required by law.</p> <p>Confidentiality is required in the code of conduct of the IAZ - “members shall respect the confidentiality of information supplied to them by brokers and clients”.</p> <p>The Insurance Institute’s code of conduct states that members must “not make improper use of information obtained as an employee or disclose or allow to be disclosed information confidential to your employer.” This would of course include information on clients.</p> <p>There have been no complaints about confidentiality in the insurance sector.</p> <p>Companies seem very sensitive to this issue and as one company spokesperson said they drill it into the heads of new recruits from day one.</p>
<p><b><i>Recommendation</i></b></p> <p>Although confidentiality is formally required, the relevant provisions should also be included in the recommended overall data protection law.</p>

## ***Section E. Dispute Resolution Mechanisms***

### **Good Practice E.1**

#### ***Internal Dispute Settlement***

- a. Insurers should provide an internal avenue for claim and dispute resolution to policyholders.
- b. Insurers should designate employees to handle retail policyholder complaints.
- c. Insurers should inform their customers of the internal procedures on dispute resolution.
- d. The regulator or supervisor should investigate whether insurers comply with their internal procedures regarding consumer protection.

#### ***Description***

Insurers in Zambia are by and large providing internal dispute mechanisms with several having disputes go to the very senior officers. The IAZ has no such process while the Insurance Brokers Association has a formal committee to hear complaints and another committee to hear appeals of the first committee.

Although disputes have been few in numbers, many companies are having one person keep track of them and registering them. No requirements exist in the Insurance Act for procedures, employees designated for policyholder complaints, nor notification of policyholders of channels open to them.

There does not seem to be a formal notification of policyholders of a company's dispute resolution process.

In good corporate governance dispute resolution procedures would be written and kept up to date by each company. In such a case the regulator would audit against this procedure (e.g. Was the individual discriminated against according to the procedure? Does the PIA agree that the procedure is good consumer conduct?)

#### ***Recommendation***

Companies should be required to keep written procedures for dispute resolution and the PIA should audit against those procedures.

### Good Practice E.2

#### *Formal Dispute Settlement Mechanisms*

- a. A system should be in place that allows consumers to seek affordable and efficient third-party recourse, which could be an ombudsman or tribunal, in the event the complaint with the insurer cannot be resolved to the consumer's satisfaction in accordance with internal procedures.
- b. The role of an ombudsman or equivalent institution *vis-à-vis* consumer disputes should be made known to the public.
- c. The ombudsman or equivalent institution should be impartial and act independently from the appointing authority and the industry.
- d. The decisions of the ombudsman or equivalent institution should be binding upon the insurers. The mechanisms to ensure the enforcement of these decisions should be established and publicized.

#### *Description*

The PIA receives policyholder complaints but has little power to enforce them. There is an inherent conflict of interest in having the PIA as the arbitrator of market conduct disputes and the regulator of solvency. It is hard for a solvency regulator to award large settlements against a weak company.

The Competition and Consumer Protection Act gives power to its Commission to investigate whenever it has reasonable grounds to believe that there is, or is likely to be, a contravention of the act (section 55) and also provides for a tribunal to which anyone may appeal under the act (section 67, 68). But as mentioned earlier, insurance matters are deferred to the PIA under their memorandum of understanding.

The idea of various external dispute resolution mechanisms (e.g. tribunals, ombudsman) has been discussed. However, the most effective system has yet to be determined.

#### *Recommendation*

An external dispute resolution system should be established. However, various options for effective institutional setup of external dispute resolution should be assessed.

## Section F. Guarantee Schemes and Insolvency

### Good Practice F.1

#### *Guarantee Schemes and Insolvency*

- a. With the exception of schemes covering mandatory insurance (and possibly long-term insurance), insolvency guarantee schemes are not to be encouraged for insurance because of the opaque nature of the industry and the scope for moral hazard. Strong governance and prudential supervision are better alternatives.
- b. Nominal defendant arrangements should be in place for mandatory insurances such as motor third party liability insurance to cover situations where there is no insured guilty party.
- c. Assets covering life insurance mathematical reserves and investment contract policy liabilities should be segregated or at the very least earmarked, and long-term policyholders should have preferential access to such assets in the event of a winding-up.

#### *Description*

- a) An Insurance Fidelity Fund is to be established by the Minister of Finance “for the purpose of indemnifying or otherwise protecting policy holders and other persons interested in the policies prejudiced by the inability of an insurer...to meet its liabilities” (IA Part XI, section 109). However, the statutory instruments have not yet been issued to establish this fund some 15 years after the act came into effect. Further, the current value of the Fund is insufficient to protect policyholders.
- b) There is no uninsured motorist provision in Zambian insurance law to pay when someone is hit by an uninsured vehicle.
- c) Insurers are to set up statutory funds under the old British accounting system. In this system a group of assets will be earmarked to cover life insurance liabilities and another group of assets will be earmarked to cover general insurance liabilities. Upon insolvency, life insurance liabilities will have priority over general insurance liabilities.

Companies are no longer allowed to write general and life business in the same company. (IA section 3) At one time they were; so, the dual fund rule is still in the law particularly with respect to insolvency. With the advent of companies writing only life or general insurance, the idea of funds is definitely outdated. There is no longer a need to have two different managed groups of assets to match two different books of liabilities.

#### *Recommendation*

The Fidelity Fund should be established as conceived by the law. However, a more adequate and sustainable source of funding is necessary for it to serve its purpose. Funding could be of a pre-funded nature, or it could be government guarantees of a loan to be repaid by future industry levies.

Clauses for uninsured motorists should be in all compulsory insurance.

The idea of statutory fund accounting is not needed when companies must be either life or non-life. It should be removed from the act as this creates the impression, and is sometimes used as an argument, that the liabilities of the company are covered only by the fund, when in fact the liabilities are covered by all the assets of the company. The priority of policyholders should not be weakened in any arguments this way. This is a fundamental principle of corporate governance and regulation.

A risk based solvency ratio approach should be introduced into the law to define capital adequacy to replace the fund accounting approach.

## Section G. Consumer Empowerment

### Good Practice G.1

#### ***Broadly based Financial Capability Program***

- a. A broadly based program of financial education and information should be developed to increase the financial capability of the population.
- b. A range of organizations—including government, state agencies and non-governmental organizations—should be involved in developing and implementing the financial capability program.
- c. The government should appoint an institution such as the central bank or a financial regulator to lead and coordinate the development and implementation of the national financial capability program.

#### ***Description***

Zambia is to be commended on its recent initiative to add financial education to the curriculum of its elementary and high schools. All residents of the country will be touched by this foray into public education. The proposal will go to Cabinet this fall. Despite limited resources the regulator and the industry association are working to have more public education through various channels, including media talk shows.

#### ***Recommendation***

No recommendations.



### Good Practice G.2

#### *Unbiased Information for Consumers*

- a. Consumers, especially the most vulnerable, should have access to sufficient resources to enable them to understand financial products and services available to them.
- b. Financial regulators should provide, via the internet and printed publications, independent information on the key features, benefits and risks—and where practicable the costs—of the main types of financial products and services.
- c. Non-governmental organizations should be encouraged to provide consumer awareness programs to the public regarding financial products and services.

#### *Description*

There are publications by individual companies, brochures and sales material that explain many of the points. However, there is limited material on the internet.

The PIA has limited resources to maintain the comprehensive website. Information on the cost of insurance products is very complicated. The PIA has put out a list of premiums for compulsory third party liability where policy terms and benefits are fixed.

To date no NGOs have shown interest in insurance. The industry would welcome such commentators for the increased awareness of its products.

The Insurance Act gives some protection against blatant bias by prohibiting “misleading, false or deceptive” advertisements or statements to induce one to enter into an insurance contract (IA section 129).

#### *Recommendation*

The PIA should make an attempt to improve the public availability of key information of relevant insurance products.

### Good Practice G.3

#### *Measuring the Impact of Financial Capability Initiatives*

- a. Policymakers, industry and advocates should understand the financial capability of various market segments, particularly those most vulnerable to abuse.
- b. The financial capability of consumers should be measured through a broad-based household survey that is repeated from time to time.
- c. The effectiveness of key financial capability initiatives should be evaluated.

#### *Description*

Under the Financial Sector Development Plan of the Government of Zambia a follow up FinScope survey will be expanded to cover financial capability. It is expected that the survey will be completed before the end of 2012. Due to budgetary constraints the authorities are unable to conduct a full-fledged financial capability survey in the near term.

In the absence of formal surveys and statistics companies are relying on their own knowledge and limited surveys and have started to develop micro insurance programs.

#### *Recommendation*

No recommendation.

## IV. Pensions Sector: Comparison with Good Practices

### Section A. Consumer Protection Institutions

Since the pension system in Zambia does not include personal pensions in the form of Pillar II pensions, Pillar III pensions or tax-advantaged personal pension accounts, this diagnostic report and the more detailed analysis that follows will not be able to fully evaluate the pension system in light of the good practices for retail consumers of pension plans and services. Zambia does not have “pension consumers” who are sold pension plans by one or several competing brokers or who choose between different investment strategies offered by one pension plan.

#### Good Practice A.1

##### *Consumer Protection Regime*

The law should recognize and provide for clear rules on consumer protection in the area of private pensions and there should be adequate supporting institutional arrangements:

- a. There should be specific provisions in the law, which create an effective regime for the protection of consumers who deal directly with pension management companies and members/ affiliates of occupational plans.
- b. There should be a general consumer protection agency or a specialized agency, responsible for the implementation, oversight and enforcement of pension consumer protection, as well as data collection and analysis (including inquiries, complaints and disputes).
- c. The law should provide, or at least not prohibit, a role for the private sector, including voluntary consumer organizations and self-regulatory organizations, in respect of consumer protection regarding private pensions.

##### *Description*

- a. The Pension Scheme Regulation Act of 1996 (PSRA) provides for the regulatory structure for the pensions system in Zambia.  
A draft of a new Pensions Act is currently under discussion. It retains the basic characteristic of current pension schemes that are offered by employers as part of the employment package and does not include personal pensions in the form of Pillar II, Pillar III or tax advantaged personal pension accounts.
- b. The pensions sector is regulated by the Pensions and Insurance Authority (PIA) that was created in 1996 (for pensions) and enlarged in 1997 (for insurance). It is the responsibility of the PIA to ensure that pension schemes are operated in a prudent and safe manner in order to protect the interests of the members.
- c. The law allows for a role for the private sector. The industry has a professional association, the Zambian Association of Pension Funds (ZAPF), which is comprised of pension fund managers, administrators, custodians, lawyers and other scheme advisors.

**Recommendation**

No recommendations

**Good Practice A.2*****Code of Conduct for Private Pension Funds***

- a. Private pension funds should have a voluntary code of conduct.
- b. If such a code of conduct exists, private pension funds should publicize the code to the general public through appropriate means.
- c. Private Pension Funds should comply with the code and an appropriate mechanism should be in place to provide incentives to comply with the code.

***Description***

a) The ZAPF is an association of pension fund managers, administrators, custodians, lawyers and other scheme advisors. ZAPF's main activity is to promote the activities of the members, including professional development through conferences, seminars and workshops, networking and advocacy of the perspectives of the members. It has not promulgated a Code of Conduct for the operation of pension schemes.

b) and c) Not applicable

***Recommendation***

The ZAPF should issue a code of conduct for pension schemes, trustees, managers, administrators, advisors, and other individuals who manage or service pension schemes.

**Good Practice A.3*****Other Institutional Arrangements***

- a. The judicial system should provide credibility to the enforcement of the rules on pension consumer protection.
- b. The media and consumer associations should play an active role in promoting pension consumer protection.

***Description***

a) According to the PIA, the judicial system works well in settling all kinds of disputes, including financial disputes.

b) The pension sector is covered by the media.

***Recommendation***

No recommendations

#### Good Practice A.4

##### ***Licensing***

- a. All private pension funds should be obliged to obtain a license from the supervisory authority.
- b. The entities that act for and provide support to a private pension fund should obtain a license from the supervisory authority.

##### ***Description***

- a) The PIA licenses all pension schemes, which must obtain a license before operation. In approving a pension scheme, the PIA will review the qualifications and fitness of the trustees, as well as their financial and organizational capacity to carry out their work.
- b) The PIA also licenses all of the participants in the pensions sector, including the pension schemes, fund managers, administrators, and custodians. The licensing comprises a review of the corporate structure of the manager (it must be an LLC), the fitness of the officers of the licensed entities, the professional capacity of the licensee to carry out its responsibilities, and the financial condition of the licensee.

##### ***Recommendation***

No recommendations

## Section B. Disclosure and Sales Practices

### Good Practice B.1

#### General Practices

There should be disclosure principles that cover an investor's relationship with a person offering a private pension fund in all three stages of such relationship: pre-sale, point of sale, and post-sale.

- a. The information available and provided to an investor should inform the investor of:
  - (i) the choice of accounts;
  - (ii) the characteristics of each type of account or service; and
  - (iii) the risks and consequences of purchasing each type of account.
- b. A private pension fund and entities acting on its behalf should be legally responsible for all statements made in marketing and sales materials related to its products.
- c. A natural or legal person acting as the representative of a private pension fund or entity acting on its behalf should disclose to an investor whether the person is licensed to act as such a representative and who licenses the person.
- d. If a private pension fund or an entity acting on its behalf delegates or outsources any of its functions or activities to another legal entity or physical person, such delegation or outsourcing should be fully disclosed to the investor, including whether the person to whom such function or activity is delegated is licensed to act in such capacity and who licenses the person.

#### Description

a) Pension schemes are not sold to customers, but are a benefit of employment. Employees do not have the right to opt out of a pension scheme once an employer has established it. In addition, pension schemes obtain approval from the PIA to follow a particular investment strategy for the pension scheme. The pension schemes do not set up a series of funds with different investment goals and risk profiles which are then offered to their members. As a result, employees have no choices of investment options and must accept the pension scheme and its strategy as established by the trustees.

Nonetheless, the PSRA provides for disclosure to an employee as a member a copy of the rights and obligations of the employee in the scheme. In addition, the pension scheme is obligated under the PSRA to give each year to every member a benefit statement showing the member's actual benefits and the member's accrued portable benefits. On leaving a plan prior to the plan being payable, the member will receive a calculation of his or her portable benefits. Although the law provides for "full portability," it is not clear in the law what are the procedures by which these benefits are invested in a new employer's scheme or under what terms.

b), c), and d) Not applicable

#### Recommendation

No recommendations

### Good Practice B.2

#### *Terms and Conditions*

- a. Before commencing a relationship with an investor, a private pension fund or a person acting on its behalf should provide the investor with a copy of its general terms and conditions, as well as any terms and conditions that apply to the particular account.
- b. The terms and conditions should always be in a font size and spacing that facilitates easy reading.
- c. The terms and conditions should disclose:
  - (i) details of the general charges;
  - (ii) the complaints procedure;
  - (iii) information about any compensation scheme that the securities intermediary or CIU is a member of, and an outline of the action and remedies which the investor may take in the event of default by the private pension fund;
  - (iv) the methods of computing interest rates paid or charged;
  - (v) any relevant non-interest charges or fees related to the product;
  - (vi) any service charges;
  - (vii) the details of the terms of any leverage or margin being offered to the client and how the leverage functions;
  - (viii) any restrictions on account transfers; and
  - (ix) the procedures for closing an account.

#### *Description*

a) As described in Good Practice B.1, pension schemes are not sold to customers, but are a benefit of employment. Employees do not have the right to opt out of a pension scheme, have no choices of investment options, and must accept the pension scheme and its strategy as established by the trustees.

Nonetheless, the PSRA provides for disclosure to an employee as a member a copy of the rights and obligations of the employee in the scheme. In addition, the pension scheme is obligated under the PSRA to give each year to every member a benefit statement showing the member's actual benefits and the member's accrued portable benefits. On leaving a plan prior to the plan being payable, the member will receive a calculation of his or her portable benefits. Although the law provides for "full portability," it is not clear in the law what are the procedures by which these benefits are invested in a new employer's scheme or under what terms.

b) and c) Not applicable

#### *Recommendation*

No recommendations



### Good Practice B.3

#### *Advertising and Sales Materials*

- a. Pension management companies should ensure their advertising and sales materials and procedures do not mislead the customers.
- b. All marketing and sales materials of pension management companies should be easily readable and understandable by the average public.
- c. The pension management company should be legally responsible for all statements made in marketing and sales materials related to its products, and for all statements made by any person acting as an agent for the company.

#### *Description*

a) As described in Good Practice B.1, pension schemes are not sold to customers, but are a benefit of employment. Employees do not have the right to opt out of a pension scheme once an employer has established it.

b) and c) Not applicable

#### *Recommendation*

No recommendation

### Good Practice B.4

#### *Disclosure of Financial Situation*

- a. The regulator or supervisor should publish annual public reports on the development, health and strength of the pensions industry either as a special report or as part of its disclosure and accountability requirements under the law that governs these.
- b. All pension management companies should disclose information regarding their financial position and profit performance.

#### *Description*

a) Not all of the public reports on the industry by the PIA have been placed on the website.

b) All pension schemes must disclose in their annual audited report their condition to the PIA. Under Article 15 of the PSRA, the Registrar of Pension Schemes shall maintain a Register of Pension Schemes that contains the financial condition and plan summary. This Register and the information in it are available to the public on request at the offices of the Registrar. However, the annual audited reports are not required to be made public free of charge.

#### *Recommendation*

The PIA should make all annual public reports on the state of the pensions industry available free of charge on the website.

### Good Practice B.5

#### *Key Facts Statement*

A Key Facts Statement disclosing the key factors of the pension scheme and its services should be presented by the pension management company before the consumer signs a contract.

#### *Description*

Since there is no “sale” of the pension scheme, there is no need for a Key Facts statement.

#### *Recommendation*

No recommendation

### Good Practice B.6

#### *Special Disclosures*

- a. Customers should be notified of any planned change in fees or charges a reasonable period in advance of the effective date of the change.
- b. Pension management companies should inform consumers upfront of the nature of any guarantee arrangements covering their pension products.
- c. Customers should be informed upfront regarding the time, manner and process of disputing information on statements and in respect of transactions.
- d. Customers should be informed in writing, at the time of sale or when joining an occupational plan, of the options available to them if they decide to change employer, move or retire.

#### *Description*

There are no provisions in the law requiring notification of changes in charges, disclosure of guarantee arrangements, disclosure of dispute resolution mechanisms or disclosure of options for changing employers, moving or retiring.

#### *Recommendation*

The law should be amended to provide for more disclosure to employees who are plan members as to the mechanisms for the operation of the pension scheme and fees that are charged to it. Most importantly, they should receive more detailed information on how to verify and dispute, if necessary, their statements, as well as the mechanisms for providing for “full portability” if they change employers.

Good Practice B.7
<b>Professional Competence</b> a. Marketing personnel, officers selling and approving transactions, and agents, should have sufficient qualifications and competence, depending on the complexities of the products they sell. b. The law should require agents to be licensed, or at least be authorized to operate, by the regulator or supervisor.
<b>Description</b> Not applicable
<b>Recommendation</b> No recommendation

Good Practice B.8
<b>Know Your Customer</b> The sales officer should examine important characteristics of any potential customer, such as age, employment prospects and financial position, and be aware of the customer's risk appetite and his or her long-term objectives for retirement, and recommend relevant financial products accordingly.
<b>Description</b> Not applicable.
<b>Recommendation</b> No recommendation.

Good Practice B.9
<b>Suitability</b> A private pension fund should ensure that, taking into account the facts disclosed by the investor and other relevant facts about that investor of which it is aware, any recommendation, product or service offered to the investor is suitable to that investor.
<b>Description</b> Not applicable
<b>Recommendation</b> No recommendation

### Good Practice B.10

#### *Sales Practices*

- a. Legislation and regulations should contain clear rules on improper sales practices in the solicitation, sale and purchase of securities. Thus, securities intermediaries, investment advisers, CIUs and their sales representatives should:
  - (i) Not use high-pressure sales tactics;
  - (ii) Not engage in misrepresentations and half truths as to products being sold;
  - (iii) Fully disclose the risks of investing in a financial product being sold;
  - (iv) Not discount or disparage warnings or cautionary statements in written sales literature;
  - (v) Not exclude or restrict, or seek to exclude or restrict, any legal liability or duty of care to an investor, except where permitted by applicable legislation.
- b. Legislation and regulations should provide sanctions for improper sales practices.
- c. The securities supervisory agency should have broad powers to investigate fraudulent schemes.

#### *Description*

Not applicable.

#### *Recommendation*

No recommendation.

### Good Practice B.11

#### *Relationships and Conflicts*

- a. A private pension fund should disclose to its clients all relationships that it has which impact on the client's account, such as banks, custodians, advisers or intermediaries which are used to maintain and manage the account.
- b. A private pension fund should disclose all conflicts of interest that it has with the client and the manner in which the conflict is being managed.

#### *Description*

Private pension vehicles that are offered by some financial entities are not pension schemes under the PSRA, but are simply investment products offered to individuals for their personal savings for retirement. These products are regulated under the Securities Act. In addition, there does not appear to be any tax advantage to the individuals buying these private investment products.

#### *Recommendation*

No recommendation

**Good Practice B.12*****Contracts***

There should be consistent contracts or membership forms for pension products and the contents of a contract should be read by the customer or explained to the customer before it is signed.

***Description***

Not applicable. Private pension vehicles that are offered by some financial entities are not pension schemes under the PSRA but are simply investment products offered to individuals for their personal savings for retirement. These products are regulated under the Securities Act.

***Recommendation***

No recommendation

**Good Practice B.13*****Cooling-off Period***

There should be a reasonable cooling-off period associated with any individual pension product.

***Description***

Not applicable, since there aren't any private pension plans. Private pension vehicles are not pension schemes under the PSRA but are simply investment products regulated under the Securities Act.

***Recommendation***

No recommendation.

## ***Section C. Customer Account Handling and Maintenance***

### **Good Practice C.1**

#### ***Segregation of Funds***

Funds of pensions should be segregated from the funds of all other market participants.

#### ***Description***

There is no specific provision in the PSRA requiring the segregation of the assets of a pension scheme from the assets of managers, administrators, custodians, brokers, advisers and other persons who service the schemes. Pension schemes are set up as trusts whose assets cannot be legally comingled with fund managers or fund administrators. Under Section 31 of the PSRA, the contributions to a pension scheme from a member or an employer shall not be part of the assets of the member or employer in the event of bankruptcy, and cannot be attached due to a judgment against a member or employer. However, this provision does not extend to the assets of a manager, administrator, advisor or custodian of the scheme, thus leaving the assets of the schemes potentially subject to attachment in the event of the bankruptcy of, or judgments against, a manager, administrator, advisor or custodian.

#### ***Recommendation***

In order to provide legal clarity in the event of bankruptcy of or litigation against a service provider of a pension fund, the government should consider placing a specific provision in the new pension law that clearly and comprehensively segregates the assets of a pension scheme from assets of all other market participants.

### Good Practice C.2

#### Statements

- a. Customers or occupational plan members should receive a regular streamlined statement of their account that provides the complete details of account activity (including investment performance on a standardized basis) in an easy-to-read format, making reconciliation easy.
- b. Plan members should have a means to dispute the accuracy of any transaction recorded in the statement within a reasonable, stipulated period.
- c. When plan members sign up for paperless statements, such statements should be in an easy-to-read and readily understandable format.

#### Description

- a. The PSRA provides that a pension scheme is obligated to give each year to every member a benefit statement showing the member's actual benefits and the member's accrued portable benefits. On leaving a plan prior to the plan being payable, the member will receive a calculation of his or her portable benefits.
- b. There is no mechanism for disputing the accuracy of the statements.
- c. Not applicable

#### Recommendation

Customers should have a mechanism to dispute the accuracy of their annual statements

### Good Practice C.3

#### Prompt Payment and Transfer of Funds

When a pension plan member requests the payment of funds in his or her account, or the transfer of funds and assets to another pension fund, the payment or transfer should be made promptly.

#### Description

Although the PSRA provides that the pension amounts are “fully portable,” it does not provide for a mechanism for prompt transfer.

#### Recommendation

A requirement for prompt transfer should be a part of portability of pension assets.



### Good Practice .

#### *Pension Member Records*

- a. A pension plan, its asset manager, custodian, securities intermediary, and investment adviser should maintain up-to-date plan and member records, as appropriate, containing at least the following:
  - (i) a copy of all documents required for member identification and profile;
  - (ii) the member's contact details;
  - (iii) all contract notices and periodic statements provided to the member;
  - (iv) details of advice, products and services provided to the member;
  - (v) details of all information provided to the member in relation to the advice, products and services provided to the investor;
  - (vi) all correspondence with the member;
  - (vii) all documents or applications completed or signed by the member;
  - (viii) copies of all original documents submitted by the member in support of an application for the provision of advice, products or services;
  - (ix) all other information concerning the member which the pension plan, its asset manager, custodian, securities intermediary or investment advisor is required to keep by law;
  - (x) all other information which the pension plan, its asset manager, custodian, securities intermediary or investment advisor obtains regarding the investor.
- b. Details of individual transactions should be retained for a reasonable number of years after the date of the transaction. All other records required under a. to j. above should be retained for a reasonable number of years from the date the relationship with the investor ends. Investor records should be complete and readily accessible.

#### *Description*

- a. There are no provisions for record keeping in the PSRA.
- b. There is no provision for length of time.

#### *Recommendation*

The new pension law or regulations should contain a record keeping provision.

## Section D. Privacy and Data Protection

### Good Practice D.1

#### *Confidentiality and Security of Customers' Information*

- a. The financial activities of any customer of a pension management company should be kept confidential and protected from unwarranted private and governmental scrutiny.
- b. The law should require pension management companies to ensure that they protect the confidentiality and security of personal information of their customers against any anticipated threats or hazards to the security or integrity of such information, and against unauthorized access to, or use of, customer information that could result in substantial harm or inconvenience to any customer.

#### *Description*

There are no specific privacy or confidentiality provisions in the PSRA protecting information of pension scheme members' information.

#### *Recommendation*

Privacy provisions for member information should be included in the pensions law or a more general act governing the confidentiality of personal information of a citizen.

### Good Practice D.2

#### *Sharing Customer's Information*

- a. Pension management companies should inform the consumer of third-party dealings for which the pension management company intends to share information regarding the consumer's account.
- b. Pension management companies should explain to customers how they use and share customers' personal information.
- c. Pension management companies should be prohibited from selling (or sharing) account or personal information to (or with) any outside company not affiliated with the pension management company for the purpose of telemarketing or direct mail marketing.
- d. The law should allow a customer to stop or —opt out of the sharing by the pension management company of certain information regarding the customer, and the pension management company should inform its customers of their opt-out right.
- e. The law should prohibit the disclosure of information of customers by third parties.

#### *Description*

See Good Practice D.1

#### *Recommendation*

Privacy provisions for member information should be included in the pensions law or a more general act governing the confidentiality of personal information of citizens and the sharing of their information.

**Good Practice D.3*****Permitted Disclosures***

- a. The law should state specific procedures and exceptions concerning the release of customer financial records to government authorities.
- b. The law should provide for penalties for breach of confidentiality laws.

***Description***

See Good Practice D.1

***Recommendation***

Privacy provisions for member information should be included in the pensions law or a more general act governing the confidentiality of personal information of citizens, including penalties for violations of their confidentiality.

***Section E. Dispute Resolution Mechanisms*****Good Practice E.1*****Internal Dispute Settlement***

- a. An internal avenue for claim and dispute resolution practices within the pension management company should be required by the supervisory agency.
- b. Pension management companies should provide designated employees available to consumers for inquiries and complaints.
- c. The pension management company should inform its customers of the internal procedures on dispute resolution.
- d. The regulator or supervisor should investigate whether pension management companies comply with their internal procedures regarding dispute resolution.

***Description***

- a. There is no provision in the PSRA related to internal dispute resolution.
- b. , c. and d. Not applicable

***Recommendation***

The new law or regulations should require that pension schemes have provisions for internal dispute resolution.

### Good Practice E.2

#### *Formal Dispute Settlement Mechanisms*

A system should be in place that allows consumers to seek third-party recourse in the event they cannot resolve a pensions-related issue with their employer or a pension management company.

#### *Description*

There is currently no dispute resolution procedure or institution established in the PSRA although a Tribunal is being proposed for the amendments to the law. A dispute between a member and a pension scheme would need to be established in court. Although the courts are considered to be a fair venue for dispute resolution, the cost of pursuing a small claim may not justify bringing such a case. Several people interviewed indicated that a Financial Tribunal has been discussed for handling financial issues, including customer complaints. The manner in which this is set up varies from country to country and sometimes involves a tribunal for the entire financial sector and sometimes separate tribunals for each substantive area such as securities markets, insurance, banking and pensions. Whichever structure is chosen in Zambia, it would be very useful for financial consumers such as pensioners if it significantly lowered the costs of pursuing a complaint.

#### *Recommendation*

The establishment of an effective external dispute resolution system (e.g. ombudsman, financial tribunal, etc.) for pensions should be explored and considered by the Government of Zambia.

## **Section F. Guarantee Schemes and Safety Provisions**

### **Good Practice F.1**

#### ***Guarantee Schemes and Safety Provisions***

Guarantee and compensation schemes are less common in the pensions sector than in banking and insurance. There are more likely to be fiduciary duties and custodian arrangements to ensure the safety of assets.

- a. There needs to be a basic requirement in the law to the effect that pension management companies should seek to safeguard pension fund assets.
- b. There should also be adequate depository or custodian arrangements in place to ensure that assets are safeguarded.

#### ***Description***

- a. Section 8(2) of the PSRA provides that all pension schemes shall be set up as irrevocable trusts. Section 8(3)(b) provides that the rules of the pension scheme shall set forth the duties of the trustees of the pension scheme. Section 18(1)(a) provides that all pension schemes should make arrangements for the protection of pension rights in order to protect investors. Although the duties of care for trustees can be inferred from their fiduciary position, there is no specific provision as to how they should safeguard the assets of the pension scheme. In addition, the law only speaks to protecting pension scheme rights, which can be different from the pension assets. There are no provisions for the duties of asset managers, administrators, advisors and custodians in regards to the assets of the pension scheme.
- b. The PSRA has a provision for the licensing for a custodian to handle the assets of a pension scheme, however, there is no specific requirement that a custodian be used and, in fact, no entities have qualified to obtain a license as a custodian. Under Section 31 of the PSRA, the assets of the pension scheme are not part of the assets of a member or employee in the event of bankruptcy and also cannot be attached due to a judgment against a member or employer. However, this provision does not extend to a manager, administrator, advisor or custodian of the scheme, thus leaving the assets of the schemes potentially subject to attachment in the event of their bankruptcy or judgments against them.

#### ***Recommendation***

The asset protections provisions in the pension law need to be significantly strengthened in order to clearly set out the duties of the entities that manage and service pension schemes and to provide for penalties for their failure to perform those duties.

## Section G. Consumer Empowerment

Good Practice G.1
<p><b><i>Broadly based Financial Capability Program</i></b></p> <ul style="list-style-type: none"> <li>a. A broadly based program of financial education and information should be developed to increase the financial capability of the population.</li> <li>b. A range of organizations—including government, state agencies and non-governmental organizations—should be involved in developing and implementing the financial capability program.</li> <li>c. The government should appoint an institution such as the central bank or a financial regulator to lead and coordinate the development and implementation of the national financial capability program.</li> </ul>
<p><b><i>Description</i></b></p> <ul style="list-style-type: none"> <li>a. The Financial Sector Development Program is bringing together the BoZ, PIA and SEC to develop an investor education program. This project also includes the development of curricula for high schools.</li> <li>b. A wide range of institutions are involved in the program.</li> <li>c. It is not clear if one of the institutions has been appointed to lead the program.</li> </ul>
<p><b><i>Recommendation</i></b></p> <p>This program needs continued support and deepening.</p>

Good Practice C.2
<p><b><i>Using a Range of Initiatives and Channels, including the Mass Media</i></b></p> <ul style="list-style-type: none"> <li>a. A range of initiatives should be undertaken to improve people's financial capability.</li> <li>b. The mass media should be encouraged by the relevant authority to provide financial education, information and guidance to the public, including on the private pensions sector.</li> <li>c. The government should provide appropriate incentives and encourage collaboration between governmental agencies, the supervisory authority for private pensions, the private pension industry and consumer associations in the provision of financial education, information and guidance to consumers, particularly on the private pensions sector.</li> </ul>
<p><b><i>Description</i></b></p> <p>a)-c). See Good Practice G.</p>
<p><b><i>Recommendation</i></b></p> <p>No recommendations</p>

### Good Practice G.3

#### *Unbiased Information for Consumers*

- a. Financial regulators and consumer associations should provide, via the internet and printed publications, independent information on the key features, benefits and risks –and where practicable the costs- of the main types of financial products and services, including private pensions.
- b. The relevant authority should adopt policies that encourage non-government organizations to provide consumer awareness programs to the public in the area of pensions.

#### *Description*

- a. The PIA provides some information on its website regarding the fund industry, but does not provide an analysis of the costs and benefits of different types of financial products. Since all pensions are occupational, consumers do not have a choice between different private pensions.
- b. See Good Practice G.1

#### *Recommendation*

The Financial Sector Development Program's financial literacy program should be supported.

### Good Practice G.4

#### *Measuring the Impact of Financial Capability Initiatives*

- a. The financial capability of consumers should be measured through a broad-based household survey that is repeated from time to time.
- b. The effectiveness of key financial capability initiatives should be evaluated.

#### *Description*

There are no financial literacy surveys currently being conducted and thus no evaluations of them.

#### *Recommendation*

A financial literacy survey would be useful to determine the financial capacity and understanding of consumers.

## V. Securities Sector: Comparison with Good Practices

### Section A: Investor Protection Institutions

Good Practice A.1
<p><b>Consumer Protection Regime</b></p> <p>The law should provide for clear rules on investor protection in the area of securities markets products and services, and there should be adequate institutional arrangements for the implementation and enforcement of investor protection rules.</p> <ol style="list-style-type: none"> <li>There should be specific legal provisions that create an effective regime for the protection of investors in securities.</li> <li>There should be a governmental agency responsible for data collection and analysis (including complaints, disputes and inquiries) and for the oversight and enforcement of investor protection laws and regulations.</li> </ol>
<p><b>Description</b></p> <ol style="list-style-type: none"> <li>The Securities Act provide for a comprehensive legal regime for the protection of investors in securities. The Securities and Exchange Commission (SEC) has the power to promulgate rules (under Zambian law the rules are considered to be “statutory instruments”) and it has issued an extensive set of rules on Conduct of Business for market professionals for the protection of customers.</li> <li>The SEC is responsible for the oversight and enforcement of investor protection laws and rules promulgated by it. However, it does not have a statutory responsibility for collecting and analyzing data related to complaints and disputes.</li> </ol> <p>It is not clear if the SEC has adequate resources to carry out its responsibilities and thus, although an extensive legal structure for investor protection has been put in place, the implementation of the program may need further development. The lack of annual reports or other self-evaluations of the SEC on its website is of concern.</p> <p>A draft of a new Securities Act is currently under discussion. It does not significantly change the current customer protection provisions which are in effect and concentrates on other areas of securities market operation such as clearing and settlement, insider trading, and civil liability of issuers and their officers. Nonetheless, two provisions will have an impact on consumer protection: (1) the legal authority of the SEC for enforcement of the securities law will be substantially increased and (2) a Securities Market Tribunal is being considered which will hear securities related matters, including customer complaints.</p>
<p><b>Recommendation</b></p> <p>The institutional capacity of the SEC needs to be strengthened. In addition, it should have the resources to continue collecting, evaluating and responding to complaints.</p>



### Good Practice A.2

#### *Code of Conduct for Securities Intermediaries, Investment Advisers and Collective Investment Undertakings*

- a. Securities intermediaries, investment advisers and CIUs should have a voluntary code of conduct.
- b. If such a code of conduct exists, securities intermediaries, investment advisers and CIUs should publicize the code to the general public through appropriate means.
- c. Securities Intermediaries, Investment Advisers and CIUs should comply with the code and an appropriate mechanism should be in place to provide incentives to comply with the code.

#### *Description*

- a. The Securities Act Section 40 provides that the SEC may issue a Code of Conduct for the securities industry. The SEC has issued the code, the Securities Conduct of Business Rules, which is comprehensive and obligatory. There is no industry created, voluntary code of conduct.
- b. The Code is publicized as part of the legal framework for the securities industry and is part of the legal documents that are on the SEC's website; however, there is no provision in the law or regulations that the Code should be publicized to clients by licensees.
- c. The members of the securities industry are obligated to comply with the Code and can have their licenses suspended or revoked for failure to comply with the Code.

#### *Recommendation*

The SEC and the industry should give more emphasis and publicity to the Code since it helps to increase customer confidence in the securities market.

### Good Practice A.3

#### *Other Institutional Arrangements*

- a. The judicial system should provide an efficient and trusted venue for the enforcement of laws and regulations on investor protection.
- b. The media should play an active role in promoting investor protection.
- c. The private sector, including voluntary investor protection organizations, industry associations and, where permitted, self-regulatory organizations should play an active role in promoting investor protection.

#### *Description*

- a. The SEC and other industry participants interviewed in the course of the diagnostic consider the legal system to be fair and a trusted venue for settling investor disputes. However, the costs of bringing a lawsuit can be prohibitive for smaller cases.
- b. There is an active media industry in Zambia, however due to the small size of the financial sector, it does not play an active role in promoting investor protection.
- c. Although there is an Association of Pension Funds in Zambia, there do not appear to be associations of mutual funds or brokers. The establishment of such institutions would be helpful to the securities industry and to investors in educating the public about the securities markets and helping them develop confidence in the market.

#### *Recommendation*

An association of brokers should be established to promote good practices in the securities industry and educate customers.

### Good Practice A.4

#### *Licensing*

- a. All legal entities or physical persons that, for the purpose of investment in financial instruments, solicit funds from the public should be obliged to obtain a license from the supervisory authority.
- b. Legal entities or physical persons that give investment advice and hold customer assets should be licensed by the securities supervisory authority.
- c. If a jurisdiction does not require licensing for legal entities or physical persons that give only investment advice, such persons should be supervised by an industry association or self-regulatory organization and the anti-fraud provisions of the securities laws or other consumer laws should apply to the activity of such persons.

#### *Description*

- a. Under Section 18 of the Securities Act and related regulations, all legal entities and natural persons are obligated to get a license from the SEC to engage in securities business and take money from customers. In general, this entire group will be referred to as “licensees” in this diagnostic review.
- b. Under Section 19 of the Securities Act, all persons providing investment advice are required to be licensed by the SEC.
- c. Not applicable

#### *Recommendation*

No recommendation.

## Section B. Disclosure and Sales Practices

### Good Practice B.1

#### General Practices

There should be disclosure principles that cover an investor's relationship with a person offering to buy or sell securities, buying or selling securities, or providing investment advice, in all three stages of such relationship: pre-sale, point of sale, and post-sale.

- a. The information available and provided to an investor should inform the investor of:
  - (i) the choice of accounts, products and services;
  - (ii) the characteristics of each type of account, product or service;
  - (iii) the risks and consequences of purchasing each type of account, product or service;
  - (iv) the risks and consequences of using leverage, often called margin, in purchasing or selling securities or other financial products; and
  - (v) the specific risks of investing in derivative products, such as options and futures.
- b. A securities intermediary, investment adviser or CIU should be legally responsible for all statements made in marketing and sales materials related to its products.
- c. A natural or legal person acting as the representative or tied-agent of a securities intermediary, investment adviser or CIU should disclose to an investor whether the person is licensed to act as such a representative and who licenses the person.
- d. If a securities intermediary, investment adviser or CIU delegates or outsources any of its functions or activities to another legal entity or physical person, such delegation or outsourcing should be fully disclosed to the investor, including whether the person to whom such function or activity is delegated is licensed to act in such capacity and who licenses the person.

#### Description

- a. (i) There is no general obligation to provide an investor with the choice of accounts and products available, although the websites of the dealers indicate that they do provide this information in a general way.  
 (ii) There is no obligation to describe the characteristics of each type of account to the clients.  
 (iii), (iv) and (v) There is a general requirement that licensees fully explain the investments and instruments to the clients so that they are aware of the risks (Section 11(a) of the Securities Conduct of Business Rules). This would generally cover these areas.
- b. The Securities Conduct of Business Rules Section 35 states that a violation of the rules, including rules on advertising, constitutes a contravention for which the license can be suspended or revoked. Therefore the entities are liable for their statements and advertising.
- c. The Securities Conduct of Business Rules Section 12 provides that a licensee should provide information as to his identity and activity and place within a larger group. This would presumably include whether the licensee is registered, although it doesn't explicitly say it.
- d. There is no provision in the law or regulations requiring disclosure of the entity receiving the outsourcing unless the outsourcing creates a conflict.

**Recommendation**

Full disclosure should be required in the areas of outsourcing and the full range of services available so that clients could make a more informed choice when choosing a particular financial product.

**Good Practice B.2****Terms and Conditions**

- a. Before commencing a relationship with an investor, a securities intermediary, investment adviser or CIU should provide the investor with a copy of its general terms and conditions, as well as any terms and conditions that apply to the particular account.
- b. The terms and conditions should always be in a font size and spacing that facilitates easy reading.
- c. The terms and conditions should disclose:
  - (i) details of the general charges;
  - (ii) the complaints procedure;
  - (iii) information about any compensation scheme that the securities intermediary or CIU is a member of, and an outline of the action and remedies which the investor may take in the event of default by the securities intermediary or CIU;
  - (iv) the methods of computing interest rates paid or charged;
  - (v) any relevant non-interest charges or fees related to the product;
  - (vi) any service charges;
  - (vii) the details of the terms of any leverage or margin being offered to the client and how the leverage functions;
  - (viii) any restrictions on account transfers; and
- d. the procedures for closing an account.

**Description**

- a. Section 15 of the Securities Conduct of Business Rules requires a written contract for Discretionary Accounts. Section 16 states that a contract under Section 15 or otherwise should contain adequate detail as to the basis of the services provided. However, there is no requirement for a written contract and the resulting disclosure of terms and conditions in a non-discretionary account.
- b. Section 62 of Securities Collective Investment Schemes Rules says that all warnings must be easy to read. Section 10(2) of the Securities Conduct of Business Rules provides that all account documents should be presented fairly and clearly but has no specific rule on font size.
- c. In general, there is no specific content for a contract set forth in the Securities Conduct of Business Rules, except for the charges and fees for the services rendered.
  - (i) Section 19 of the Securities Conduct of Business Rules provides that a licensee shall provide information regarding all of its fees and charges before providing services
  - (ii) and (iii) No specific provision
  - (iv) v and vi - Section 19 of the Securities Conduct of Business Rules would cover these areas. Fees for CIUs should be disclosed under Section 55 of the Securities Collective Investment Schemes Rules.
  - (vii), (viii) and (ix) No specific provision

**Recommendation**

The SEC should require that all licensees provide to customers a copy of all of the terms and conditions of the contract for services provided and that the terms contain the terms and conditions in detail. There should be a requirement for a written contract setting out these terms and conditions for non-discretionary accounts.

**Good Practice B.3****Professional Competence**

Regulators should establish and administer minimum competency requirements for the sales staff of securities intermediaries, investment advisers and CIUs, and collaborate with industry associations where appropriate.

**Description**

Under the Securities Conduct of Business Rules Section 14 a licensee is responsible for verifying the fit and proper character of any representative working for it. However, there is no legal requirement that the SEC or an industry association under the SEC's supervision administer a competency examination. Nonetheless, SEC in conjunction with ZIBCT and LuSE currently administers the Stockbrokers Course. All securities licensees must take this course.

**Recommendation**

It might be useful if the securities law contained a requirement that sales people should be examined; however in light of current practice this does not appear to be a problem.

#### Good Practice B.4

##### ***Know Your Customer (KYC)***

Before providing a product or service to an investor, a securities intermediary, adviser or CIU should obtain record and retain sufficient information to enable it to form a professional view of the investor's background, financial condition, investment experience and attitude toward risk in order to enable it to provide a recommendation, product or service appropriate to that investor.

##### ***Description***

Section 18 of the Securities Conduct of Business Rules provides for a KYC rule. However, there is no provision for a warning to a customer that failure to fully disclose his financial condition will result in the licensee being unable to determine whether a transaction is unsuitable for the client.

##### ***Recommendation***

The rule should contain a warning to a non-disclosing customer that the licensee will not be able to advise as to the suitability of the investment without the disclosure of the information in order to provide protection to a licensee from such a client.

#### Good Practice B.5

##### ***Suitability***

A securities intermediary, investment adviser or CIU should ensure that, taking into account the facts disclosed by the investor and other relevant facts about that investor of which it is aware, any recommendation, product or service offered to the investor is suitable to that investor.

##### ***Description***

Section 18 of the Securities Conduct of Business Rules provides for a suitability rule. However, there is no provision for a warning to a customer that wants to conduct an unsuitable transaction against the advice of the licensee.

##### ***Recommendation***

There should be a requirement for a warning to a client who wants to conduct an unsuitable transaction in order to protect the licensees.

### Good Practice B.6

#### *Sales Practices*

- a. Legislation and regulations should contain clear rules on improper sales practices in the solicitation, sale and purchase of securities. Thus, securities intermediaries, investment advisers, CIUs and their sales representatives should:
  - (i) Not use high-pressure sales tactics;
  - (ii) Not engage in misrepresentations and half truths as to products being sold;
  - (iii) Fully disclose the risks of investing in a financial product being sold;
  - (iv) Not discount or disparage warnings or cautionary statements in written sales literature;
  - (v) Not exclude or restrict, or seek to exclude or restrict, any legal liability or duty of care to an investor, except where permitted by applicable legislation.
- b. Legislation and regulations should provide sanctions for improper sales practices.
- c. The securities supervisory agency should have broad powers to investigate fraudulent schemes.

#### *Description*

- a.
  - (i) There is no provision in the law or regulations on high-pressure sales tactics.
  - (ii) Sections 50 and 51 of the Securities Act; Sections 10(1) and 11(b) of the Securities Conduct of Business Rules; and Article 74 of the Securities Act regarding CIUs provides that licensees shall not mislead customers.
  - (iii) Section 8 of the Securities Conduct of Business Rules says that all advertisements must disclose the risk associated with the contents of the advertisement. Section 11 says that the licensee must take all reasonable steps to see that the customer understands the risks involved.
  - (iv) There is no provision in the law or regulations forbidding the disparagement of warnings.
  - (v) Section 17 of the Securities Conduct of Business Rules prohibits the limitation of liability of a licensee in a customer contract.
- b. Section 35 of the Securities Conduct of Business Rules states that violation of the regulations is a contravention and can result in suspension and revocation of the license.
- c. Section 53 of the Securities Act gives the SEC the power to conduct inspections of licensees, but no investigative powers in regards to third parties. Section 35 of the Securities Conduct of Business Rules also states that violation of the regulations is a contravention and can result in suspension and revocation of the license. There is a limited and weak range of sanctions in the securities law that should be widened, as in other countries, to include sanctions such as fines, warnings and criminal sanctions. The current draft law on securities will significantly improve the SEC's powers in this area.

#### *Recommendation*

In general, the law and regulations are good in prohibiting fraudulent sales tactics. There are some areas that are not covered but which should be in future amendments to the regulations, such as high-pressure sales tactics and disparagement of warnings.

The SEC's limited powers to enforce the law should be increased. It does not have the power to investigate entities that are not licensees or to obtain information regarding persons who are not licensees. In addition, the sanctions that it can impose are limited and should be expanded to include fines and warning notices. The provisions in the new draft securities law giving the SEC more enforcement powers should be enacted.



### Good Practice B.7

#### *Advertising and Sales Materials*

- a. All marketing and sales materials should be in plain language and understandable by the average investor.
- b. Securities intermediaries, investment advisers, CIUs and their sales representatives should ensure their advertising and sales materials and procedures do not mislead the customers.
- c. Securities intermediaries, investment advisers and CIUs should disclose in all advertising, including print, television and radio, the fact that they are regulated and by whom.

#### *Description*

- a. Section 2(1) in the Schedule to Section 5 of the Securities Advertisements Rules states that all advertising and material should be written in a way so that it is not misunderstood.
- b. Section 2(2-4) in the Schedule to Section 5 of the Securities Advertisements Rules states that advertisements shall not be misleading. In addition, under Section 58 of the Securities Collective Investment Schemes Rules, all advertisements for CIUs must be sent to and approved by the SEC before they are used.
- c. A “short form securities advertisement” would contain such information, although there does not seem to be a general requirement to do so other than the obligation in Section 12 of the Securities Conduct of Business Rules that a licensee should take steps to ensure that a customer knows the identity of the licensee and where he or she fits in an organization where the person works.

#### *Recommendation*

The question of identity of a sales person should start with a clear statement of registration status of the person and the entity they are working for. This should be added to future amendments to the Securities Conduct of Business Rules.

### Good Practice B.8

#### *Relationships and Conflicts*

- a. A securities intermediary, investment adviser or CIU should disclose to its clients all relationships that it has which impact on the client's account, such as banks, custodians, advisers or intermediaries which are used to maintain and manage the account.
- b. A securities intermediary, investment adviser or CIU should disclose all conflicts of interest that it has with the client and the manner in which the conflict is being managed.

#### *Description*

- a. There is no requirement for a disclosure of entities that will have an impact on the client's account, unless there is a conflict.
- b. Section 6 of the Securities Conduct of Business Rules and Sections 43-46 of the Securities Collective Investment Schemes Rules provide for the disclosure of conflicts.

#### *Recommendation*

The regulations should include a requirement for a disclosure of the identity of all entities that will have an impact on the client's account as a result of their relationship with a licensee, regardless of whether there entity has a conflict of interest.

### Good Practice B.9

#### *Specific Disclosures by CIUs*

- a. CIUs should disclose to prospective and existing investors:
  - (i) the CIU's policies with regard to frequent trading and the risks to investors from such policies;
  - (ii) any inducements that it receives to use particular intermediaries or other financial firms, such as "soft-money" arrangements; and
  - (iii) a fair and honest description of the performance of the CIU's investments over several different periods of time that accurately reflect the CIU's performance.
- b. In addition, a CIU should provide a Key Facts Statement for each fund that it is offering to the client that succinctly explains the fund in clear language. Such document is in addition to any other disclosure documents required by law.

#### *Description*

- a. There are no provisions in the law or regulations related to elements (i) and (ii). Securities Collective Investment Schemes Rules Sections 11(e-g) provide for the description of CIU performance over different time periods.
- b. Section 13 of the Securities Conduct of Business Rules and Sections 24 and 25 of the Securities Collective Investment Rules only provide for the provision of a prospectus and do not include a Key Facts Statement.

#### *Recommendation*

The law should explicitly require a CIU to explain its policies on frequent trading and soft money agreements with its brokers.

In addition, the law should require the use of a Key Facts Statement to clearly and simply explain a CIU to a potential customer.

### Good Practice B.10

#### *Specific Disclosures by Investment Advisers*

- a. Investment advisers should disclose to prospective and existing clients:
  - (i) whether the investment adviser is also registered in another capacity and whether the adviser deals with the client's account in the second registered capacity; and
  - (ii) whether the financial instruments that the investment adviser is recommending are held in the adviser's own inventory or the inventory of a legal or natural person related to the adviser and will be bought from or sold to its own inventory or the inventory of a related party.
- b. An investment adviser should provide prospective and existing clients with a Key Facts Statement for each product or service that is being offered or sold to the client that succinctly explains the product or service in clear language.

#### *Description*

There are no provisions in the law or regulations related to these elements.

#### *Recommendation*

The regulations should require more extensive disclosure by investment advisors regarding registrations in other capacities and their securities holdings.

In addition, the law should require the use of a Key Facts Statement to clearly and simply explain an investment advisor's services to a potential customer.

## ***Section C. Customer Account Handling and Maintenance***

### Good Practice C.1

#### *Segregation of Funds*

Funds of investors should be segregated from the funds of all other market participants.

#### *Description*

Section 44 of the Securities Act and Section 22 of the Securities Accounting and Financial Requirements Rules require segregation of customer assets and the safekeeping thereof. Section 29 of the Securities Conduct of Business Rules requires the safekeeping of customer assets.

#### *Recommendation*

No recommendation.

### Good Practice C.2

#### *Contract Note*

- a. Investors should receive a detailed contract note from a securities intermediary or CIU confirming and containing the characteristics of each trade executed with them, or on their behalf.
- b. The contract note should disclose the commission received by the securities intermediary, CIU and their sales representatives, as well as the total expense ratio (expressed as total expenses as a percentage of total assets purchased).
- c. In addition, the contract note should indicate the trading venue where the transaction took place and whether (i) the intermediary for the transaction acted as a broker in the trade, (ii) the intermediary or CIU acted as the counterparty to its customer in the trade, or (iii) the trade was conducted internally in the intermediary between its clients.

#### *Description*

- a. Section 41 of the Securities Act requires that a contract note be prepared and given to customers for each transaction.
- b. Section 41(2) (h) requires that the commission be on the contract note.
- c. (i) Section 41 assumes that the intermediary is acting as a broker.  
(ii) Section 41(2)(b) provides that the intermediary must disclose whether it is acting as a dealer and as a counterparty to the trade.  
(iii) There is no specific provision for internal cross trading.

#### *Recommendation*

If cross trading is common in Zambia, the SEC may want to require its disclosure in the contract note.

### Good Practice C.3

#### *Statements*

- a. An investor should receive periodic, streamlined statements for each account with a securities intermediary or CIU, providing the complete details of account activity in an easy-to-read format.
  - (i) Timely delivery of periodic securities and CIU statements pertaining to the accounts should be made.
  - (ii) Investors should have a means to dispute the accuracy of the transactions recorded in the statement within a stipulated period.
  - (iii) When an investor signs up for paperless statements, such statements should also be in an easy-to-read and readily understandable format.
- b. If a legal or natural person who provides only investment advice to customers also holds client assets, the client statements should be prepared by and sent from the custodian for the assets and not from the investment adviser.

#### *Description*

- a. Section 20(2) of the Securities Conduct of Business Rules provides for the preparation and sending of statements, but only as to managed accounts. There are no specific provisions in the law or regulations regarding elements (i)-(iii).
- b. There is no provision in the law or regulations related to this element.

#### *Recommendation*

The SEC should require that statements be sent to all customers no matter what type of account they hold in a timely fashion and with the right to challenge the accuracy of the statements.

If it is a practice for investment advisors to hold client money, then the custodian of the funds should prepare the statements.

### Good Practice C.4

#### *Prompt Payment and Transfer of Funds*

When an investor requests the payment of funds in his or her account, or the transfer of funds and assets to another securities intermediary or CIU, the payment or transfer should be made promptly.

#### *Description*

There is no provision in the law or regulations related to this element.

#### *Recommendation*

The regulations should require the prompt payment of funds and the SEC should be able to levy monetary sanctions for the failure to do so.

### Good Practice C.5

#### *Investor Records*

- a. A securities intermediary, investment adviser or CIU should maintain up-to-date investor records containing at least the following:
  - (i) a copy of all documents required for investor identification and profile;
  - (ii) the investor's contact details;
  - (iii) all contract notices and periodic statements provided to the investor;
  - (iv) details of advice, products and services provided to the investor;
  - (v) details of all information provided to the investor in relation to the advice, products and services provided to the investor;
  - (vi) all correspondence with the investor;
  - (vii) all documents or applications completed or signed by the investor;
  - (viii) copies of all original documents submitted by the investor in support of an application for the provision of advice, products or services;
  - (ix) all other information concerning the investor which the securities intermediary or CIU is required to keep by law;
  - (x) all other information which the securities intermediary or CIU obtains regarding the investor.
- b. Details of individual transactions should be retained for a reasonable number of years after the date of the transaction. All other records required under a. to j. above should be retained for a reasonable number of years from the date the relationship with the investor ends. Investor records should be complete and readily accessible.

#### *Description*

- a. There are no details in the Securities Conduct of Business Rules regarding which investor records should be maintained and how they should be maintained.
- b. Section 31(2) of the Securities Conduct of Business Rules provide that the records should be maintained for 6 years.

#### *Recommendation*

The SEC's next amendment to the Securities Conduct of Business Rules should provide for the specific records that should be maintained by a licensee.

## Section D. Privacy and Data Protection

### Good Practice D.1

#### ***Confidentiality and Security of Customers' Information***

Investors of a securities intermediary, investment adviser or CIU have a right to expect that their financial activities will remain private and not subject to unwarranted private and governmental scrutiny. The law should require that securities intermediaries, investment advisers and CIUs take sufficient steps to protect the confidentiality and security of a customer's information against any anticipated threats or hazards to the security or integrity of such information, and against unauthorized access to, or use of, customer information.

#### ***Description***

Section 33(1) of the Securities Conduct of Business Rules provides that a licensee shall keep all information of a customer confidential. The Rules do not provide any procedures for how the information should be kept confidential.

#### ***Recommendation***

The Rules should provide more detail as to the procedures and methods that a licensee should use to keep information confidential.

### Good Practice D.2

#### ***Sharing Customer's Information***

Securities intermediaries and CIUs should:

- (i) inform an investor of third-party dealings in which they are required to share information regarding the investor's account, such as legal enquiries by a credit bureau, unless the law provides otherwise;
- (ii) explain how they use and share an investor's personal information;
- (iii) allow an investor to stop or "opt out" of certain information sharing, such as selling or sharing account or personal information to outside companies that are not affiliated with them, for the purpose of telemarketing or direct mail marketing, and inform the investor of this option.

#### ***Description***

There are no provisions providing for the sharing of information within financial conglomerates or between related entities. There is no data privacy protection law in Zambia. There are no provisions in the law or regulations related to elements (i) – (iii).

#### ***Recommendation***

The data protection provisions in the securities laws are not well developed. The regulations for the securities laws should provide more detail on procedures for sharing information or a separate data privacy law should be enacted which covers this. This is particularly important regarding a customer's right to opt out of information sharing provisions.



### Good Practice D.3

#### *Permitted Disclosures*

- a. If there are to be any specific procedures and exceptions concerning the release of customer financial records to government authorities, these procedures and exceptions should be stated in the law.
- b. The law should provide for penalties for breach of investor confidentiality.

#### *Description*

- a. Section 33(2) of the Securities Conduct of Business Rules states that a licensee can disclose information pursuant to a court order or to the SEC, stock exchange of which he is a member or clearing house, but there is no requirement to provide a customer with these different means of disclosure of the client's information.
- b. A licensee who violates the disclosure provisions can be punished by a suspension or revocation of his license under Section 35 of the Securities Conduct of Business Rules.

#### *Recommendation*

No recommendations

## ***Section E. Dispute Resolution Mechanisms***

### **Good Practice E.1**

#### ***Internal Dispute Settlement***

- a. An internal avenue for claim and dispute resolution practices within a securities intermediary, investment adviser or CIU should be required by the securities supervisory agency.
- b. Securities intermediaries, investment advisers and CIUs should provide designated employees available to investors for inquiries and complaints.
- c. Securities intermediaries, investment advisers and CIUs should inform their investors of the internal procedures on dispute resolution.
- d. The securities supervisory agency should provide oversight on whether securities intermediaries, registered investment advisers and CIUs comply with their internal procedures on investor protection rules.

#### ***Description***

- a. Section 30 of the Securities Conduct of Business Rules requires a licensee to have internal procedures for handling customer complaints and taking prompt remedial action.
- b. and c. There are no specific provisions in the law or regulations related to these elements.
- d. The existence of the internal dispute resolution system falls within the general supervisory powers of the SEC.

#### ***Recommendation***

The regulations should require that licensees provide information to customers as to the internal dispute resolution procedures. It would be helpful if specific employees were assigned to handle disputes so that a body of experience and continuity in the dispute resolution area could be developed in a licensee.

### Good Practice E.2

#### *Formal Dispute Settlement Mechanisms*

There should be an independent dispute resolution system for resolving disputes that investors have with their securities intermediaries, investment advisers and CIUs.

- a. A system should be in place to allow investors to seek third-party recourse, such as an ombudsman or arbitration court, in the event the complaint with their securities intermediary, investment adviser or CIU is not resolved to their satisfaction in accordance with internal procedure, and it should be made known to the public.
- b. The independent dispute resolution system should be impartial and independent from the appointing authority and the industry.
- c. The decisions of the independent dispute resolution system should be binding on the securities intermediaries and CIUs. The mechanisms to ensure the enforcement of these decisions should be established and publicized.

#### *Description*

- a. The Arbitration Act provides for a third party dispute resolution system. It is voluntary and both parties must agree to use the Arbitration Court. The arbiter is chosen by an independent third party, however if the parties can't agree on the arbiter or the arbiter cannot or will not act, the Court has the power to appoint the arbiter. The arbitration process is expensive and not used to settle smaller disputes that are usually found between retail investors and a broker.
- b. The arbitration system appears to be impartial and independent.
- c. A Court can set aside an arbitration award under Section 15 of the Arbitration Act if there has been misconduct on the part of an arbitrator or if the award has been improperly procured. A court can also remit an award back to the arbiters for reconsideration under Section 14 of the Arbitration Act. Otherwise, under Section 16 of the Arbitration Act, the order of the arbiters has the force and enforceability of a decree of the Court.

A new draft securities law is being discussed which would include a Securities Market Tribunal to hear securities related matters, including customer complaints.

#### *Recommendation*

Due to the expense of the arbitration system, it is not particularly useful for smaller disputes of retail customers. The exact structure of the external dispute resolution mechanism warrants further analysis.

## ***Section F. Guarantee Schemes and Insolvency***

### **Good Practice F.1**

#### ***Investor Protection***

- a. There should be clear provisions in the law to ensure that the regulatory authority can take prompt corrective action on a timely basis in the event of distress at a securities intermediary, investment adviser or CIU.
- b. The law on the investors' guarantee fund, if there is one, should be clear on the funds and financial instruments that are covered under the law.
- c. There should be an effective mechanism in place for the pay-out of funds and transfer of financial instruments by the guarantee fund or insolvency trustee in a timely manner.
- d. The legal provisions on the insolvency of securities intermediaries, investment advisers and CIUs should provide for expeditious, cost-effective and equitable provisions to enable the timely payment of funds and transfer of financial instruments to investors by the insolvency trustee of a securities intermediary or CIU.

#### ***Description***

- a. Section 61 of the Securities Act gives the SEC the power to apply to the court for a winding up of a licensed company under the Companies Act if it feels that there is a need to do it to protect investors. Similarly, Section 62 gives the SEC the power to obtain an Order under the Bankruptcy Act against an individual to protect investors and preserve assets. If the danger is imminent, Section 63 of the Securities Act gives the SEC the power to request a court to freeze assets and appoint an administrator over the property of the licensee.
- b. Article 64 of the Securities Act and the Securities Compensation Fund Regulations provide for a clear procedure for the scope and operation of the Compensation Fund.
- c. The Compensation Fund has procedures for resolution of claims and payouts. There have not been any examples of these procedures in action, so it is difficult to determine their promptness in practice. Moreover, the Compensation Fund is seriously underfunded and could not cover a significant default by a broker. There is also a guarantee fund at the Lusaka Stock Exchange/Central Depository that exists to ensure that all trades are effectuated, even if a broker defaults. This fund is also underfunded.
- d. As mentioned, Sections 61 and 62 give the SEC the authority to obtain an Order under the Companies Act or Bankruptcy Act against a company or individual respectively to protect investors and preserve assets. The speed of payout will depend on the functioning of the court system that participants have said operates fairly efficiently.

#### ***Recommendation***

The securities brokers should increase the funding of both the Compensation Fund and the Guarantee Fund, since both are key for protecting retail investors.

## Section G. Consumer Empowerment

### Good Practice G.1

#### *Broadly based Financial Capability Program*

- a. A broadly based program of financial education and information should be developed to increase the financial capability of the population.
- b. A range of organizations—including government, state agencies and non-governmental organizations—should be involved in developing and implementing the financial capability program.
- c. The government should appoint an institution such as the central bank or a financial regulator to lead and coordinate the development and implementation of the national financial capability program.

#### *Description*

- a. The Financial Sector Development Program is bringing together the Bank of Zambia, PIA and SEC to develop an investor education program. This project also includes the development of curricula for high schools. This program needs continued support and deepening.
- b. Since the program is in the development phase, it is still possible for the three agencies to include more non-governmental institutions in the program.
- c. The Bank of Zambia, PIA and SEC are jointly developing the investor education program under the Financial Sector Development Program.

#### *Recommendation*

The investor education program should be developed as quickly as possible.

### Good Practice G.2

#### *Using a Range of Initiatives and Channels, including the Mass Media*

- a. A range of initiatives should be undertaken to improve people's financial capability.
- b. This should include encouraging the mass media to provide financial education, information and guidance.

#### *Description*

- a. At the moment, Zambia appears to be concentrating on one major program.
- b. Since the investor education program is in the development phase, it is still possible to include the mass media in the program.

#### *Recommendation*

The investor education program should be developed as quickly as possible.

### Good Practice G.3

#### *Unbiased Information for Investors*

- a. Financial regulators should provide, via the internet and printed publications, independent information on the key features, benefits and risks—and where practicable the costs— of the main types of financial products and services.
- b. Non-governmental organizations should be encouraged to provide consumer awareness programs to the public regarding financial products and services.

#### *Description*

- a. This information is not currently provided in a detailed, updated manner.
- b. There are no significant NGOs in the securities area due to the small size of the securities market.

#### *Recommendation*

Financial regulators should maintain up-to-date websites and publications that contain information on the securities market and the key features of the main types of financial products and services.

### Good Practice G.4

#### *Measuring the Impact of Financial Capability Initiatives*

- a. The financial capability of consumers should be measured through a broad-based household survey that is repeated from time to time.
- b. The effectiveness of key financial capability initiatives should be evaluated.

#### *Description*

- a. There is no financial capability survey program in place in Zambia.
- b. Since the financial literacy program is in the preparation stage, no evaluation of its effectiveness has been made.

#### *Recommendation*

A financial literacy survey should be undertaken to determine investors' literacy.

