MONGOLIA

Diagnostic Review of Consumer Protection and Financial Literacy

Volume II
Comparison with Good Practices

December 2012

THE WORLD BANK
Financial Inclusion Practice, Micro and SME Finance
Financial and Private Sector Development Vice-Presidency
Washington, DC

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Contents

Tables

Figures

Abbreviations and Acronyms

AFCCR	Agency for Fair Competition and Consumer Rights
AMI	Association of Mongolian Insurers
ATM	Automatic Teller Machine
BoM	Bank of Mongolia
BIS	Bank for International Settlements
BSD	Banking Supervision Department of the BoM
CIB	Credit Information Bureau
CCB	Code of Conduct for Banks of the MBA
CGAP	Consultative Group to Assist the Poor
CP	Consumer Protection
CPFL	Consumer Protection and Financial Literacy
DGF	Deposit Guarantee Fund
DPSLA Law	Law on Deposits, Payment Settlements and Loan Activities
EC	European Commission
ETT	Erdenes Tavan Tolgoi
EU	European Union
FI	Financial Institution
FRC	Financial Regulatory Commission
FSAP	Financial Sector Assessment Program
GDP	Gross Domestic Product
IMF	International Monetary Fund
IPCCN	Interbank Payment Card Centralized Network
IPO	Initial Public Offering
IT	Information Technology
LSE	London Stock Exchange
MASD	Mongolian Association of Securities Dealers
MBA	Mongolian Bankers Association
MCA	Mongolian Consumers Association
MNT	Mongolian Tughrik
MoE	Ministry of Education
MoF	Ministry of Finance
MoJ	Ministry of Justice
MSCH&CD	Mongolian Securities Clearing House and Central Depository
MSE	Mongolia Stock Exchange
MTPL	Motor Third Party Liability
NGO	Non-governmental organization
OECD	Organization for Economic Cooperation and Development
POS	Point of Sale
SCC	Switch and Clearing Center of the BoM
SME	Small and medium sized enterprise
SML	Securities Markets Law
SRO	Self regulatory organization
T+3	3 days after trade date
UK	United Kingdom
WB	World Bank
YoY	Year-on-year

Currency Equivalents

US$1 = 1,370.35 MNT (August 26, 2012)

CONSUMER PROTECTION IN THE BANKING SECTOR

Overview

The Mongolian economy has embarked on a path of very rapid growth driven by investments in the mineral deposits. Following 6.4 percent growth in 2010, real GDP growth is projected at 16 percent on average over the 2011-2013 period, driven primarily by rising exports of coal and other minerals and the rebound in commodity prices. Growth is expected to accelerate further when Oyu Tolgoi, largest copper deposit in Asia, shifts into production—expected by end-2013. However, the risk of overheating due to expansionary fiscal policies, volatile global commodity prices and rising capital inflows is a growing concern.

Pressures faced by the banking sector during the 2008-2009 crisis have further eased. Nevertheless, challenges remain. The banking sector benefited from a faster than expected recovery of the economy as a whole. Credit is growing at a very fast pace, increasing by 72 percent yoy in 2011. Deposits have also grown rapidly after the crisis, by 26 percent in 2009, and by an average of 53 percent in 2010 and 2011. Although the non-performing loan ratio declined from a peak of 24.6 percent in November 2009 to 7.2 percent by the end of 2011, non-performing loan ratios in Mongolia are higher than in most other countries of the region. The total stock of outstanding NPLs amounted to MNT 329 bn at the end of 2011, only slightly lower than MNT 374 bn in December 2010.

The Mongolian financial system is dominated by a few commercial banks. The system comprises 14 banks, of which 13 are private banks, and one is a state-owned bank, 16 insurance companies, one life insurance company, 170 savings and credit cooperatives, 192 other non-bank finance institutions and 88 securities and/or brokerage firms. The banking sector accounts for 96 percent of total assets of the financial system (Table 1). The banking system is highly concentrated, with the top 3 banks accounting for about 70 percent of market share, and the top 5 banks accounting for over 86 percent.

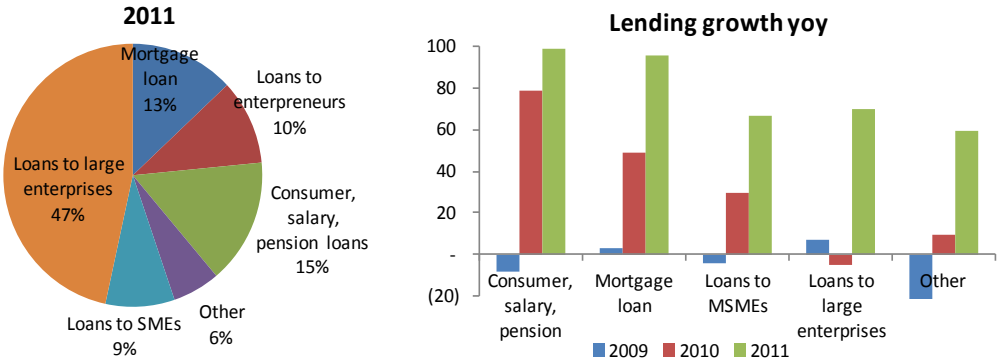
Table 1: Growth in Bank Assets – Dec. 2008 to Dec. 2011

		Dec-08			Dec-09			Dec-10			Dec-11	
	No.	Assets (bn MNT)	Percent of Total Assets	No	Assets (bn MNT)	Percent of Total Assets	No	Assets (bn MNT)	Percent of Total Assets	No	Assets (bn MNT)	Percent of Total Assets
Banks	16	3,527	95.7%	15	4,215	95.5%	14	6,214	96.3%	14	9,223	96.4%
Private	16	3,527	95.7%	14	4,078	92.5%	13	6,034	93.5%	13	8,991	94.0%
State-Owned	0	0	0%	1	137	3.1%	1	180	2.8%	1	232	2.4%

Source: BoM

Bank lending is growing rapidly to both households and corporates. About a third of total loans are to households (13 percent are mortgage loans and 15 percent are consumer, pension, and salary loans), which have increased at the staggering pace of 80 percent from 2010 to 2011 (see Figure 1). Corporate loans account for 66 percent of total loans and have increased by more than 70 percent yoy in 2011. Large-scale investments in the mining sector have led to increased capital inflows, resulting in cheap external funding for banks and rapid credit expansion.

Figure 1: Bank Lending to Households and Corporates



Source: BoM

Access to financial services in Mongolia appears to be relatively high when measured by the demographic penetration of branches. Mongolia has one of the highest bank branch penetration rates in the world, with 54 branches per 100,000 adults compared to 12 in Korea, 3 in Vietnam and Russia, and 10 in Azerbaijan. However, due to its large territory, Mongolia's geographical branch penetration is one of the lowest in the world. It has only 0.67 branches per thousand km^2, compared to 7 in Vietnam and Malaysia, and almost 50 in Korea. The low population density makes the provision of traditional banking services outside of the large cities costly.

Loan and deposit penetration is also high. There are 260 bank loan accounts per 1,000 adults, compared to 197 in Indonesia, 300 in Georgia, and 27 in Cambodia. There are also more than 2,000 deposit accounts per 1,000 adults, compared to 504 in Indonesia and 678 in Azerbaijan.

Comparison with Good Practices for the Banking Sector

SECTION A	**CONSUMER PROTECTION INSTITUTIONS**
Good Practice A.1.	***Consumer Protection Regime*** **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	Mongolian law does not yet provide clear consumer protection rules regarding banking products and services. Moreover, the institutional arrangements that are in place are not sufficient to ensure the thorough, objective, timely and fair implementation and enforcement of such rules. The law on consumer protection regarding banking products and services is found in the Constitution of Mongolia and in numerous statutes, including most importantly, but not limited to, the Civil Code, the Consumer Protection Law (CP Law), the Banking Law, the Law on Deposits, Payment Settlements and Loan Activities (DPSLA Law), the Law on Advertising and the Competition Law. See the Annex on the Legal and Institutional Framework for a summary of these statutes as well as the institutional arrangements for financial consumer protection. *Agency for Fair Competition and Consumer Rights (the AFCCR)* With theoretical consumer protection jurisdiction over products and services of every description which are, or may become, available in Mongolia, as well as all-encompassing responsibilities under the Competition Law, the Law on Advertising and the Public Procurement Law, the AFCCR is under-resourced and underfunded. Its entire staff consists of 33 employees, three of whom are deployed - at least on a part-time basis - in respect of all AFCCR jurisdictional matters concerning Mongolia's financial services industry. And it funds its entire operations from a relatively small state budget. Notwithstanding these constraints, the AFCCR has recently taken on the role not only of notifying banks of how they should, in certain respects at least, be conducting business with

consumers, but also of applying administrative penalties on banks for their 'failure', at least as alleged by the AFCCR, to comply with CP Law requirements.[1] It appears, however, that there is a lack of coordination between AFCCR, the BoM (Bank of Mongolia) and the Mongolian Bankers Association (MBA).

Finally, although the AFCCR does have explicit power to deal with complaints, at least as provided by the Competition Law,[2] it has so far not dealt with this task, at least in respect of the concerns of consumers of financial products and services. That said, the AFCCR does receive some 70 to 80 consumer complaints, on average, per month dealing in one way or other with financial products or services. No analysis is made of this data, however.

BoM

With some 50 employees, the existing Banking Supervision Department (BSD) of the BoM has one third more staff than the entire employee compliment at the AFCCR.

The BoM has, however, no separate Department explicitly charged with responsibility for formulating business conduct regulations, supervising their application and applying penalties, as appropriate, for transgressions.

While the Law of the Central Bank of Mongolia (the BoM Law) requires the BoM to fulfill its supervisory activities for the purpose of protecting the interests of depositors and customers,[3] this Law has traditionally been interpreted narrowly as requiring the BoM solely to ensure financial stability in the form of a safe and sound banking sector. Some do, however, seek now to re-interpret Article 19 to allow the BoM to be the agency of Government properly authorized not only to devise rules by means of regulations pertaining to banks' business conduct towards consumers, but also to supervise the proper application of these rules by all banks. This re-interpretation was emphasized by senior BoM counterparts, acknowledging the need for an enhanced financial consumer protection framework and the establishment of a separate financial consumer protection unit within BoM.

While the BoM has responsibility for enforcing the entire spectrum of banking legislation, so far at least, only a few banking-related legal and regulatory provisions deal explicitly with aspects of protecting consumers of banking products or services. However, the BoM's Monetary Policy and Banking Supervision Departments have very recently conducted joint on-site inspections in respect of at least certain standards banks maintain in their dealings with their individual customers.

The monitoring and enforcement of the existing financial consumer protection rules are problematic due to a lack of dedicated and specialized staff within the BoM and the unclear delineation of responsibilities between the BoM and the AFCCR.

Finally, while the BoM has no *explicit* statutory power to collect and analyze data in respect of *consumers* inquiries, complaints and disputes with their banks, it has, for some time, been dealing with individual consumer complaints, at least on an informal basis. The BoM has not yet, however, begun to analyze this data.

SPECIFIC PROBLEMS WITH THE PREVAILING LEGAL AND INSTITUTIONAL FRAMEWORKS

Numerous issues arise regarding the laws and institutions referred to above, including the following:

a. From an institutional standpoint, powers of AFCCR and the BoM as regards to financial consumer protection of banks are overlapping and the division of responsibilities between the two agencies remains unclear. The CP Law states that the Constitution, the

[1] So far at least, AFCCR's monitoring of banks has focused on the commitment fees being charged by banks on their consumer
[2] See Competition Law, Article 15.
[3] BoM Law, Article 19.

	Civil Code *and other acts pertaining to these laws and regulations* have force and effect in relation to protecting consumer rights.[4] It is questionalbe whether these words include any consumer protection or business conduct requirement in any banking or other financial services law or regulation or whether they should not be interpretated so broadly. Furthermore, the CP Law provides that "State authorities and specialized inspection agencies have the responsibility to monitor the implementation of consumer rights protection laws and regulations".[5] This wording allows the AFCCR to monitor the implementation of consumer rights protection laws and regulations, but it is unclear whether it also allows the BoM to do the same, since, by Article 25.1 of the BoM Law, the BoM supervisor has the powers of a State inspector. If the latter is the case, this brings along the question of overlapping responsibilities and potential conflicts between both agencies. It is questionable whether any bank should be subject to being monitored by two separate entities in respect of the same subject matter. b. The AFCCR is understaffed and underfunded in order to carry out its critically important mandates effectively regarding: (i) all instances of anti-competitive practices throughout the entire economy; (ii) all matters of consumer protection vital to the health and physical safety of every Mongolian; as well as (iii) all advertisements made or disseminated throughout Mongolia from whatever source. c. The Law on Advertising sets out a wide array of requirements for any entity, including any bank that produces and disseminates any advertisement. In addition, this Law has specific provisions dealing explicitly with advertisements by banks and grants the AFCCR power to monitor and enforce the application of these requirements with the authority to apply sanctions on a bank in the event it fails to comply. In addition, by the terms of the Competition Law, no bank may launch an advertisement that has a negative impact on competition,[6] with this requirement, again, being enforced by the AFCCR. Furthermore, all sellers (including banks) are required by the CP Law to provide consumers "truthful information" on their goods and services[7] and not to supply products or provide services based on deceit or misleading information or to conclude contracts with consumers that violate their rights.[8] At the same time, however, the Banking Law prohibits banks, their subsidiaries and controlled companies from making false or misleading advertisements or statements relating to their activities.[9] In addition, the Banking Law requires a bank's advertisements: (i) to reflect truly the bank's activities at a given time; (ii) not to contradict the financial reality of the bank; and (iii) to be in conformity with the legislation (i.e. including the Law on Advertising and the Competition Law).[10] The BoM is also given explicit power to monitor and enforce the application of these requirements, with the authority to apply sanctions on a bank in the event that it fails to comply or otherwise does not conform to "the legislation".[11] It is questionable whether banks' advertisements should be monitored by both the AFCCR and the BoM and, thus, subject banks to double jeopardy, with the possibility of incurring different sanctions from separate institutions for the same improper advertising practice. d. The Law on Competition provides general prohibitions for any entity, including any bank, in terms of anti-competitive practices and grants power to the AFCCR to monitor the application of this Law and to sanction offenders. At the same time, however, the Banking Law prohibits a bank from carrying out or participating in any activity aimed at providing the bank, alone or together with others, a position of dominance in the financial market, or creating unfair advantage to itself or to any third party.[12] Although

[4] CP Law, Article 2.
[5] *Ibid*, Article 20.
[6] Competition Law, Article 12.1.3.
[7] CP Law, Article 12.8.
[8] *Ibid,* Article 12.9.
[9] Banking Law, Article 7.4.8.
[10] *Ibid*, Articles 8.1. and 8.2.
[11] *Ibid*, Article 68.1.11.
[12] *Ibid*, Article 7.4.1.

these Banking Law provisions add nothing of substance to what exists in the Law on Competition, the BoM is empowered to enforce them. And again, the possibility, therefore, exists of banks being subject to double jeopardy by incurring different sanctions from the AFCCR and the BoM in respect of the same improper practice.

e. While the DPSLA Law requires deposit agreements to be in writing,[13] the CP Law permits a consumer to acquire *any* product or service by means of an oral contract.[14]

f. Query whether the AFCCR's obligations to accept and resolve any requests and complaints "within the scope of its powers"[15] and to review and resolve any complaint regarding a decision of a state inspector[16] covers the powers granted to the AFCCR by - and complaints arising as a result of its state inspectors applying - the CP and Advertising Laws.

g. Much is made in the law of Mongolia of the rights and obligations of consumers and their banks in their dealings with one another. The CP Law, for instance, warns sellers (i.e. banks) not to conclude contracts with consumers that violate their rights.[17] And consumers are, therefore, implicitly warned by this provision as well. However, no consolidated statement of all of these rights and obligations has yet been disseminated. In the result, bank staff and consumers have little or no idea whether rights and obligations are being honored.

Given the problems referred to above and the early stage of the development of concepts and policies regarding financial consumer protection, Mongolia does not yet have effective legal and institutional regimes to protect consumers in their acquisition of banking products and services.

COORDINATION AND COOPERATION

Terms of Reference, for instance, have been drafted between AFCCR and the MBA regarding the creation of a favorable environment for fair competition, the protection of consumer rights, the provision of transparent information to consumers and enhanced education and knowledge. However, there appears to be little, if any, regular co-ordination and co-operation between the BoM and the AFCCR in respect of implementing, overseeing and enforcing consumer protection and financial system regulation and supervision.

NON-GOVERNMENTAL ORGANIZATIONS (NGOS)

Although the law does not make specific reference to the private sector and self-regulatory organizations, it does explicitly provide a role for voluntary consumer organizations at least generally, if not in respect of consumer protection regarding banking products and services in particular.

Given the lack of resources available to them, however, no NGO to date has managed to play an effective role in any of these respects regarding matters of financial consumer protection.

Although the CP Law gives power to the AFCCR not only to engage with NGOs (such as the Mongolian Consumers Association (the MCA)) on a contractual basis regarding the dissemination of relevant information and awareness raising among consumers, but also to provide NGOs with professional and methodological support, very little, if any, has yet been forthcoming in any of these respects. Due to its wide focus and lack of resources and specialized training, the MCA is simply unable to support a proper financial consumer

[13] See DPSLA Law, Article 4.3.
[14] *CP Law*, Article 11.1.
[15] Competition Law, Article 15.1.12.
[16] *Ibid*, Article 15.1.16.
[17] CP Law, Article 12.9.

	protection environment. Furthermore, the Law on Advertising provides that any NGO that is devoted to protecting consumer rights[18] is entitled to: a) submit claims to the court on behalf of consumers regarding any violation of the legislation on advertising; b) issue an opinion as to whether an advertisement complies with the requirements of the legislation; and c) comment or provide recommendations regarding the producer and disseminator of the advertisement.[19] Finally, NGOs may also be assigned[20] certain tasks related to the control of advertisements, with the related costs being financed in whole or in part from the central State budget.[21] To date, however, no NGO has apparently taken on any such role at least in respect of any advertisement produced or disseminated by any bank.
Recommendation	*THE INSTITUTIONAL ARRANGEMENTS* Mongolia does not need two institutions to regulate, monitor and supervise the business conduct of banks towards their consumers. Given the current capacity constraints the AFCCR faces in terms of budgetary resources and financial sector expertise, early consideration should be given to strengthening the role of BoM in financial consumer protection. Thus, as a matter of high priority in the short-term, the BoM should strengthen its role in respect of regulating and monitoring the business conduct of banks in their dealings with consumers in order to ensure compliance with legal requirements and enforcement in cases of violation of market conduct regulations by establishing a dedicated financial consumer protection unit within BoM separate from prudential supervision. The unclear delineation of responsibilities between BoM, Financial Regulatory Commission (FRC) and AFCCR should be addressed in the medium term. As a first step, a clear consensus among all concerned of the appropriate rights and responsibilities of the BoM, FRC and AFCCR in respect of consumer protection in the banking, insurance and securities sector should be reached by the signing of comprehensive Memoranda of Understanding (MoUs). Due to the capacity constraints AFCCR is facing considerations should be given to allocating all regulation and supervision of financial consumer protection with the existing financial sector regulators. The reason for proposing existing financial sector regulators to house this function is due to their highly specialized expertise and institutional focus on the financial sector. *THE LEGAL FRAMEWORK* Of high priority in the medium-term, there is the need to strengthen and clarify the legal framework for financial consumer protection through the coordinated efforts of the BoM, FRC, Ministry of Finance (MoF) and AFCCR. Overlaps between general consumer protection provisions and sector-specific legislation need to be addressed. Considerations should be given to amending the CP Law and the Law on Advertising to exclude the financial sector from their application so as to ensure that regulation and supervision of financial consumer protection rests with the existing financial

[18] Such as the MCA.
[19] Law on Advertising, Article 25.2.
[20] Presumably it is for the AFCCR to make any such assignment, although this is not clear.
[21] Law of Advertisement, Article 25.3.

	sector regulators. Also the Competition Law should be amended to exclude financial institutions from the application of its provisions on advertisement. On the other hand, the Banking Law should be revised so as to make clear that AFCCR is *the* authority in charge of enforcement of provisions on unfair competition and market dominance. Nevertheless, AFCCR and the BoM need to consult cooperate with one another, in order to ensure consistent competition policies regarding banking products and services or to conduct joint studies on competition issues, including assessing the impact of banking regulations on competition. See Section H for more details. *COORDINATION* A mechanism is needed to provide effective coordination among agencies regarding financial consumer protection issues. As a matter of high priority in the medium-term, therefore, a coordination mechanism should be established at least among BoM, the FRC and MoF. Perhaps to be called the Financial Consumer Protection Task Force, this body should introduce a more strategic perspective in respect of financial consumer protection, define joint priorities and coordinate proposed legal and regulatory changes. *NGO's* As a matter of considerable priority in the long-term, the capacity of consumer associations should be significantly strengthened with the assistance of Government, the BoM and the FRC, with consumer associations becoming active and effective participants in the consultative process on a wide range of matters concerning financial consumer protection. The MCA will need significant assistance from Government before it will be able to play a role in matters of financial consumer protection. The MCA could, however, play an important role in raising awareness of financial consumers' rights, monitoring business practices by mystery shopping[22], and giving advice to consumers, among other tasks. This organization should be involved in consultative processes in consumer protection activity, for example in commenting on draft BoM regulations, in order to ensure that the voice of consumers is heard during the formulation of financial services policies and the rules that flow from them.
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	No principles-based code of conduct for banks exists which is formally adhered to by all banks. In 2010, however, the MBA devised a voluntary Code of Conduct (CCB) with a view to its apparent application by MBA member banks as they would see fit.

[22] Mystery shopping is a tool used externally by market research companies or watchdog organizations or internally by companies themselves in order to measure the quality of a service being offered or the extent of compliance with a regulation or to gather specific information about products and services. The mystery consumer's specific identity is generally not known by the establishment being evaluated.

	The MBA was established on 1993 but has only been active since 2005. Although there is no statutory requirement that all banks licensed to do business in Mongolia be members of the MBA, all banks are MBA members. The By-Laws of the MBA define and regulate the objectives and functions of the Association, as well as the principles, structure and organization of the Association, and the terms, rights and responsibilities of officers, committees and boards. The MBA is an independent, non-profit, non-government organization established by banking, as well as non-banking, financial institutions, provided that any such institution is officially licensed to operate within Mongolia.[23] Although the explicit purpose of the MBA is to serve its members, not consumers,[24] a main objective of the MBA is to promote the sound and efficient development of the financial sector.[25] Among other things, the functions of the MBA are to represent members by participating in the legislative process of laws/regulations governing the financial sector, to establish and develop standards used in banking and financial sector operations, and to train the staff of banking and financial institutions.[26] In order to achieve its objectives and implement its functions, among other activities, the MBA is to: a. coordinate activities of the Association with the BoM;[27] b. participate in the regulatory process, and cooperate with legislators and regulators by formulating draft laws and regulations affecting banking and financial sector operations, monetary and credit system, financial market development and member's common interests;[28] c. introduce and implement standards related to the operations and staffing of banking and other member financial sector institutions;[29] and d. inform the public and educate customers regarding the banking system and its operations, the management of financial risks, the activities of member banking and non-bank financial institutions, and to conduct corresponding surveys.[30] However, to date at least, the MBA has been largely unable to perform these activities due to capacity constraints. Notwithstanding the fact that the MBA's By-Laws make no reference to the potential formulation by the MBA of a code of conduct, as indicated above the CCB was devised in 2010. As is stated in its introduction, the CCB "defines the rules of conduct that banks intend to adopt in their dealings with their private customers." It is also stated in the introduction that "the code constitutes a charter for [bank] customers, who shall be able to invoke it against their bank". Furthermore, it is likewise indicated that the CCB represents "the minimum standard to be achieved by all banks", with all banks being at liberty to "provide more definite or more specific standards of quality for its own customers." The CCB then sets out the following seven basic principles, namely: a. Openness and clarity of information; b. Dialogue; c. Discretion and confidentiality; d. Expertise and know-how;

[23] See MBA By-Laws Article 1.2.
[24] Ibid.
[25] *Ibid*, Article 2.1.3.
[26] *Ibid*, Article 2.2.2, 2.2.5 and 2.2.6.
[27] *Ibid*, Article 2.3.1.
[28] *Ibid*, Article 2.3.2.
[29] *Ibid*, Article 2.3.7.
[30] *Ibid*, Article 2.3.11.

	e. Security and reliability; f. Integrity of the banking system; and g. Problem resolution. These principles are, in turn, followed by a series of provisions covering the services which banks may offer regarding payments, savings, loans and electronic banking. Many of the CCB's provisions amount to little more than statements of good intention, while other stated requirements are either so vague as to be meaningless or unrealistically ambitious. So far at least, however, none of what appears in the CCB is relevant in any practical sense, whether for banks, their staff members or consumers for the simple reason that, contrary to what is indicated in its introductory language,[31] the CCB has never been published in any format. It, therefore, remains unavailable for consumers and bank staff in pamphlet format in any bank branch and the MBA and is likewise unavailable on any website, including that of the MBA. As a result, the effective application of the CCB is obviously not monitored by the MBA or any other institution, including the BoM.
Recommendation	The MBA should re-formulate and update the CCB in respect of those matters that its member banks will agree to do voluntarily with consumers in mind, over and above all statutory and regulatory requirements. After a process of consultation with all relevant stakeholders, including the MCA, the revised CCB should then be shared with BoM and published widely. An updated CCB (whether in place voluntarily or by statute) that is widely disseminated, generally understood and widely applied would bring many advantages to banks and to consumers. Dissemination of the revised CCB could be by means of brochures available in every bank branch, as well as by downloading the entire document on the websites of the BoM, the MBA and every bank. Regardless of the means of publication, there should be a clear indication of every bank's agreement to comply with all of its CCB commitments and of its willingness to be held accountable by the MBA,[32] the BoM and consumers for any failure to do so. In revising and up-dating the CCB the following could be considered, although with recognition of the existing constraints on the MBA's capacity and expertise: • establishing precise, common terminology in the banking industry for the description of banks' charges, services and products; • setting minimum standards regarding the information to be provided in any banking advertisement; • establishing an effective and clear procedure to deal with customer complaints, which has to be observed and disclosed, up-front, to the consumer; • notifying consumers of their rights when their disputes with their banks are not resolved by their banks to their satisfaction; • providing explicitly for how the revised CCB must be published and disseminated; • requiring the provision to the consumer of a standard package of necessary information on consumer credit before the granting of any consumer credit; • requiring a minimum of 11 point font size in all information materials and contracts; • requiring the provision of the form of typical contracts at the request of any consumer; and • permitting the MBA to suspend a bank's MBA membership and widely publicizing this fact whenever a bank consistently fails to conform to the CCB.

[31] Here the statement is made that: "The complete text of the Code of Conduct may be obtained from banks themselves or from the Mongolian Bankers Association."

[32] By Article 10.2.1 of the MBA's By-Laws, the MBA's Inspection Board is empowered, on paper at least, to monitor the enforcement of the MBA's By-Laws. Although this Inspection Board is not yet operational, once it is properly staffed, it could conceivably also monitor the application of the CCB.

	The Code of Banking Practice approved by the Banking Association of South Africa in June 2010 - and in force as of 1 January 2012 – may be a useful reference.[33] In the event that the CCB, in either the current or revised form, does not get published and effectively applied, consideration could also be given to devising a principles-based, statutory Code of Conduct for banks that is formulated in close consultation with the MBA and the MCA.
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	Although still staffed inadequately to perform its role as effectively as it would like, the existing Supervision Department of the BoM has performed the role as the prudential supervisor of banks from the outset of BoM's existence. Consumer protection regarding banking products and services is, however, a new concept in Mongolia and so far - at least – there have been only very modest allocations of resources to this cause, whether to the AFCCR or within the BoM.
Recommendation	In the short term, a sustainable and practical way to ensure proper market conduct oversight in Mongolia would be to establish a dedicated consumer protection unit with dedicated specialized staff within BoM separate from prudential supervision. Having in mind budgetary and human resource constraints, initially this unit could be established with a limited number of staff and be gradually expanded.
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	By certain standards, Mongolia's judicial system earns relatively high marks, especially for the speed of the judicial process. From the filing of court papers to the completion of the enforcement of judgment it takes some 314 days in respect of a breach of contract. This amounts to some 40 per cent less than the average delay in the East Asia and Pacific Region as well as throughout OECD member countries.[34] However, concerns also exist regarding the prevailing lack of professional judicial expertise when called upon to preside over litigation aimed to ensuring that statutory and contractual rights and obligations regarding the supply of banking products and services are fully honored. So far at least, no judicial specialization is encouraged or permitted in commercial or financial matters, let alone in respect of issues of consumer protection. As indicated above, consumer associations lack funds and the human resources needed to play any active role in promoting banking consumer protection. As far as the media are concerned, while press coverage of important developments appears from time-to-time, there have apparently been only a few instances, to date, of television and radio programming devoted to any matters of banking consumer protection.
Recommendation	*Judicial system* The capacity of the Mongolian judicial system to deal with complaints of consumers of financial products and services needs to be reviewed. Furthermore, an assessment should

[33] The Banking Association of South Africa's Code of Banking Practice, in force as of 1 January 2012, is found at: http://www.banking.org.za/consumer_info/code_of_banking/code_of_banking.aspx.
[34] See, for instance, IFC/World Bank, Doing Business: at http://www.doingbusiness.org/data/exploreeconomies/mongolia.

	be made as to whether *any* capacity-building support should be allocated to the judicial system with specific reference to the resolution of disputes initiated by financial consumers. Consideration should also be given to introducing a judicial specialization in respect of all commercial and financial matters at least initially in the courts in Ulaanbaatar. *Media* The media should play an active role in promoting financial consumer protection. Proper media coverage of consumer mistreatment by financial institutions is an effective tool in promoting consumer protection through "naming and shaming". However, it is important that journalists be educated to understand financial issues thoroughly so as to be able to transmit relevant information accurately and adequately. There should be a general public awareness campaign in relation to consumers' rights generally and regarding financial products and services in particular, as well as in respect of the statutory and other obligations that the State, the BoM, banks and other financial institutions have towards consumers. *Consumer Associations* To promote its participation in respect of issues of consumer protection regarding financial services in general, and in banking services in particular, consideration should be given to providing (or channeling) funding mechanisms to the MCA. In addition, it will also be important to promote the participation of the MCA in working groups or consultative bodies, in order to ensure that consumers are represented during the formulation of future financial services policies and the drafting of pertinent laws and regulations as a result.
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	Every Mongolian bank that provides services to consumers is required to be licensed by the BoM.[35] Each licensed bank is subject to a regulatory regime to ensure its financial safety and soundness. Furthermore, a prospective bank must meet certain prudential tests before becoming licensed. There are, however, no explicit statutory requirements for a prospective bank in terms of how it must effectively deliver its financial products and services to consumers. Indeed, banks are only beginning to be subject to a regulatory regime aimed at ensuring that they deliver products and services effectively and properly to consumers. The ultimate role BoM should play in terms of consumer protection in financial services is still being defined. What amounts to "appropriate" regulation of banks, at least is respect of their "effective delivery of financial services," will therefore inevitably take time to be developed, applied and enforced.
Recommendation	This Good Practice forms the basis for the enforcement of consumer protection in the banking system (see Basel Core Principle 3). The BoM should have explicit power to set criteria for business conduct and to reject applications for registration of companies that manifestly do not - or are highly unlikely to - meet each of these standards.
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**

[35] In accordance with the Banking Law.

	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	With the exception of FATF-related rules regarding client identification and the provision of the CP Law that gives consumers the statutory right to have "access to objective and truthful information related to the consumer product [so as to] help [them] make sound choices and informed decisions,"[36] there are no statutory or regulatory requirements in these respects. Therefore, each bank is free to devise practices which it deems most appropriate. In most cases, it appears that banks make few, if any, recommendations to consumers. Rather, they respond to requests being made by consumers, most frequently either to open one or more accounts or else to enter into a loan agreement. In addition, it may be noted in passing that the CCB requires consumers to provide their banks with accurate and complete information so that banks can serve their interests, honor their legal obligations and personalize the advice that they give.[37] The CCB also requires banks to provide advice and proposals of service to consumers taking into account their aims and needs as stated beforehand.[38] As indicated above, however, the CCB has never been published.
Recommendation	The gathering, filing and recording by a bank of sufficient information from a consumer to enable the bank to render an appropriate product or service to that consumer not only makes good business sense, it is a requirement for purposes of complying with Basel Core Principle 18[39] issued by the BIS and with the standards issued by FATF on money laundering and terrorist financing. The BoM should, therefore, prepare a draft Regulation requiring all banks to gather adequate information regarding any customer/consumer for the purpose of ensuring that the consumer is only offered products and services that are appropriate in his or her circumstances. That same Regulation should also require each bank to gather such quantity and quality of information regarding a consumer as is commensurate with the nature and complexity of the product or service either being proposed to - or being sought by - the consumer and which will enable the bank to provide a professional service to the consumer.
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	Although the CCB requires banks to assess the needs of their individual customers and weigh the affordability for any consumer of any product or service being offered to a

[36] CP Law, Article 7.1.
[37] The CCB, Article 2.2.
[38] *Ibid*, Article 2.3.
[39] Supervisors must be satisfied that banks have adequate policies and processes in place, including strict "know-your-customer" rules, that promote high ethical and professional standards in the financial sector and prevent the bank from being used, intentionally or unintentionally, for criminal activities.

	consumer, as indicated above, the CCB has never been published or disseminated and is, therefore, unknown to - and not applied by - all those within the banking sector, including consumers. There is no statutory or regulatory obligation on a bank to provide a range of options for consumers to choose from, nor is a bank obliged to provide enough information on any product or service in order to enable a consumer to select the most suitable product considering its cost. At least in one respect, however, this Good Practice is generally adopted by Mongolian banks. This is the case because they routinely assess a consumer's credit worthiness before significantly increasing the amount of debt assumed by the consumer. There are challenges for banks to provide consumers with sufficient information on any product or service so as to enable them to select what is most suitable and affordable, whether within a bank or between various banks. Not only do most consumers lack basic financial capability, most front-line bank staff lack awareness and capacity to convey relevant information effectively to customers. Reportedly, consumers do complain about the practice of at least some banks in requiring police reports and other extraneous documentation as part of the process of assessing a consumer's capacity to repay a loan.
Recommendation	Questions of affordability should be dealt with in a future draft BoM Regulation that deals with the disclosure of information to customers of banks (hereinafter the "Disclosure Regulation"). This draft should then be circulated widely for review and comment before being revised, as appropriate, and then promulgated. Secondly, prior to having a consumer enter into a consumer credit agreement with it, a bank should be required to: a) ensure that its advertising, if any, in respect of the credit cautions the consumer against being an irresponsible borrower; b) obtain independently verifiable evidence of its consumer's assets and liabilities in order to ascertain whether the consumer has the financial capacity to repay the principal of the credit and all interest accruing thereon; c) go over each term of the agreement with the consumer so as to establish to the bank's reasonable satisfaction that the consumer understands and agrees with each term of the agreement, including the certain, likely and possible future implications of each term; d) explain to the consumer the potential risks that may accrue to him or her in respect of future interest rate adjustments, if any; e) set forth why, when and on what basis, a floating interest rate may adjust, with reference to an objective and widely-publicized reference point and with a stated cap for each adjustment (either upward or downward), as well as a stated total cap (upward or downward) over the entire term of the credit; f) ensure that the agreement is written in plain language and in a font size and spacing that readily facilitates the reading of every word; and g) afford its consumer ample opportunity to read, reflect and comment upon each term of the agreement before signing it. The following may be useful references in this regard: the EU Directive on Unfair Terms in Consumer Contracts 1993/13/EEC and EU Directive on Credit Agreements for Consumers, 2008/48/EC; the Peruvian Regulation 6941-2008 (Rules for administration of over-indebtedness risk of retail debtors) to ensure that consumers do not use easy access to credit cards or other forms of credit to become over-indebted. In addition, as a matter of high priority in the medium-term, the loan application process should be analyzed by the BoM and the MBA and all unnecessary thresholds for lending transactions prohibited.

Good Practice B.3	***Cooling-off Period*** **a. Unless explicitly waived in advance by a consumer in writing, a bank should provide the consumer a cooling-off period of a reasonable number of days (at least 3-5 business days) immediately following the signing of any loan agreement between the bank and the consumer.** **b. On his or her written notice to the bank during the cooling-off period, the consumer should be permitted to cancel or treat the agreement as null and void without penalty to the consumer of any kind.**
Description	There are no statutory or regulatory requirements in these respects. Typical bank practice is to charge various up-front costs to any consumer who seeks a loan, for example, a set-up or application fee, and, in some cases also, appraisal and legal fees, and/or an initial premium on a policy that insures the collateral. There is, however, no statutory or regulatory obligation on banks to disclose the above to any consumer when he or she takes out a loan and the general practice is to keep silent about these matters. Mongolians who borrow typically enter into loan agreements with their banks without the benefit of information on competing terms on offer by other banks. This is of particular concern in respect of variable rate consumer loans, where clear statements of when, the precise basis upon which, and the extent that, interest charges will vary over the life of the loan, are routinely not provided.
Recommendation	Unless explicitly waived in advance by a consumer in writing, banks should be required to provide their consumers a cooling-off period[40] of a reasonable number of days (say, three to five business days) immediately following the signing of any loan agreement during which time consumers may, on written notice to the bank and the repayment to it of all outstanding principal, treat the agreement as null and void and without penalty of any kind.[41] If this topic is not dealt with in an appropriate future revision of a well-publicized CCB among *all* of Mongolia's banks, it could be provided for in a new Disclosure Regulation (referred to in B.2 above), with the obligation accruing to all banks to advise their customers of their rights in this regard when they take out their loans.
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	The Banking Law prohibits banks from requiring a customer to use its controlled companies, subsidiaries, branches, representative offices and other services as a pre-condition for providing any of its services.[42] Also, by the Competition Law, any bank that is found to be dominant is thereby prohibited from demanding additional sale requirements when selling a product.[43]

[40] For a description of cooling-off periods in several EU Member States, see the EC's Discussion Paper for the amendment of the Directive 87/102/EEC concerning consumer credit at http://ec.europa.eu/consumers/cons_int/fina_serv/cons_directive/cons_cred1a_en.pdf.

[41] Only in the event of a banking product or service that involves market risk should a consumer who cancels his or her contract during the cooling-off period be required to compensate the bank for any processing fees.

[42] Banking Law, Article 16.1.5.

[43] Competition Law, Article 7.1.3.

	There is no requirement, however, that consumers be informed by their bank of the nature of the relationship between the bank and any seller of a tied product. In particular, given the nascent stage of development of the Mongolian insurance sector, when a policy of insurance is a pre-requisite for obtaining a loan, banks are reluctant to allow their consumers freedom to choose their own insurance provider since some insurance companies are generally not yet deemed strong enough financially to provide the sort of loss protection that banks require.
Recommendation	Consideration should be given to developing a prohibition against coercive tied selling. Such a prohibition would be intended to address situations where the consumer is forced to purchase a bundled product in order to receive a specific financial service. That freedom of choice should be communicated to the prospective consumer orally and in writing prior to the signing of the agreement**.**
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	By the terms of the Civil Code, if a party (i.e. a bank) offers to contract with a consumer on the basis of standard conditions,[44] any such condition is invalid, among other things, if it provides or allows: a) the bank the right to be released from liability, provided by law;[45] or b) the denial or limitation of the bank's responsibility for damages caused by the bank, due to an extremely negligent or a deliberate action by the bank or its legal representative.[46] Also, by the terms of the CCB, banks are required to act with care[47] making it implicit, at least, in any communication or agreement with a consumer, a bank is prohibited from excluding or restricting - and from seeking to exclude or restrict – its duty of care to the consumer.
Recommendation	None.
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	By the terms of the Law on Advertising, any printed advertisement related to activities that require a license must include the name of the authority that issued the license and the serial number of the license.[48] Thus, it is illegal for banks to issue printed advertisements without including the name of the BoM and the bank's license number as issued by the BoM. There is no legal or regulatory requirement, however, to indicate explicitly that the bank is regulated by the BoM; nor are the contact details of the BoM required to appear in any printed advertisement. Furthermore, there are no requirements in these respects regarding bank advertisements on radio, television, movie screens or the

[44] "Standard conditions" in contracts are those that are determined beforehand - but not by law - and are non-negotiable. See the Civil Code, Article 200.1.
[45] Civil Code, Article 202.2.9.
[46] *Ibid*, Article 202.2.11.
[47] CCB, Article 5.3.
[48] Law on Advertising, Article 6.2.

	internet. The uniform practice of banks has been to ignore the requirements regarding printed advertisements, perhaps since no sanction is provided by the Law on Advertising for a bank's failure to comply.
Recommendation	Article 6.2 of the Law on Advertising should be enforced and consideration given, in time, to amending this Law: (a) to extend the requirements to bank advertisements on radio, television, movie screens or the internet; (b) to provide for an appropriate sanction in the event of a failure to comply with its terms; and (c) to require banks to provide the contact details of the BoM in *all* of its advertisements.
Good Practice B.7	***Terms and Conditions*** **a. 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.** **b. The Terms and Conditions should be written in plain language and in a font size and spacing that facilitates the reading of every word.**
Description	While no bank account can be opened by a consumer without a written account agreement having first been signed by the consumer and his or her bank, any such agreement typically makes reference to the binding application of a separate document known as the bank's general terms and conditions and, at best, contains the consumer's acknowledgement that he or she has read these terms and conditions. More frequently, however, by signing the account agreement, the consumer is required simply to acknowledge the fact that the bank's general terms and conditions will apply. Although there is no statutory or regulatory requirement that a bank's general terms and conditions actually be provided by it to its customers, a copy of the account agreement is invariably made available to the consumer. This most frequently contains terms and conditions that are additional to those in the bank's general terms and conditions. In addition to any obligations to consumers that banks may agree to incur in accordance

	with their agreements with them,[49] the DPSLA Law places a range of obligations banks owe to consumers. Of relevance to this Good Practice, these obligations include the duty: a. to provide consumers with deposit agreements in writing[50] and "accurate information" with respect to their operations at the time deposit agreements are signed with depositors;[51] b. to disclose information to the public with respect to their interest rates on sums deposited and other terms for which deposits are accepted;[52] c. to specify in their deposit agreements, the term of the deposit, the interest rate, the amount of the funds to be deposited, the methodology for the calculation of interest on the deposit, how the agreement may be cancelled and the liabilities of the parties to it in the event of failure to comply with its conditions;[53] d. to establish and disclose to the public the conditions on which any loan shall be granted, such as the purposes for which the loan may be granted, the interest rate, and the term and other conditions of the loan;[54] and e. to open a loan account for the borrower/consumer and provide a loan on the basis of a mutually agreed loan agreement which stipulates the conditions of the loan such as the interest rate on the loan, the term of the loan and other conditions of the loan.[55] No statutory or BoM regulatory obligations, however, are placed upon a bank to provide any individual customer with: a. details of the bank's general charges; b. a summary of the bank's complaints procedures; c. a statement regarding steps that are available to the consumer in the event any dispute he or she may have with the bank is not settled amicably; d. an outline of the action and remedies which the bank may take in the event of a default by the consumer; e. the Code of Conduct referred to in A.2 above; f. any service charges to be paid by the consumer, g. restrictions, if any, on account transfers by the consumer; h. the procedures for closing an account; i. clear rules on reporting procedures the consumer should follow in the event of unauthorized transactions in general, and stolen cards in particular; and j. the bank's liability in such cases. In addition, there are no statutory or regulatory requirements to the effect that Terms and Conditions must be written in plain language and in a font size and spacing that facilitates the reading of every word.
Recommendation	In the first place, it would be helpful if all banks were required by BoM Regulation to comply with all aspects of this Good Practice, including providing all consumers with the information indicated in a. through k. above. This could be made a part of a new Disclosure Regulation referred to in B.2. Secondly, information on financial services should be easy to understand and should use comparable terms and measures across institutions. Therefore, of some priority in the medium term, the BoM and the MBA should develop and require the application by all banks of a glossary of standard financial terms. The promotion of clear, standardized and comparable disclosure to consumers can be an effective mechanism to promote competition, bringing down the cost of financial products and services.

[49] See the DPSLA Law, Article 7.2.7.
[50] *Ibid*, Article 4.3. A deposit agreement may be in the form of a safe deposit/savings book or account certificate in accordance with Paragraph 3 of Article 454 of the Civil Code.
[51] *Ibid*, Article 3.2.
[52] *Ibid*, Article 3.3.
[53] *Ibid*, Article 4.2.
[54] *Ibid*, Article 21.1.
[55] *Ibid*, Article 21.2.

	Thirdly, of high priority in the medium term, the BoM and the MBA should develop and require the application by all banks of a standard methodology for financial institutions that discloses the total price or cost of financial products to consumers ('effective interest rate') and is comparable across all banks. A future BoM Regulation should specify a standard methodology required to be applied by all banks and the BoM should then monitor compliance in using it. Banks should be required to disclose their effective interest rates, or the interest rate spread (that includes fees in the calculation) over a reference rate such as the BoM Reserve Rate, and to use that percentage in all of their advertising, marketing and sales materials. For example, Peru's Regulation of Transparency requires banks to disclose the "TCEA", or Annual Effective Cost Rate, which is expressed as an interest rate, but includes all costs associated with a consumer credit. Finally, the BoM should establish a price comparison webpage on its website to provide consumers with the means to compare the cost (or return) and terms of similar financial products and to provide an incentive for providers to compete to improve product design and pricing. The webpage could also include easy-to-use financial tools, for example to compare similar products, or to plan for expenditures (such as the birth of a child, or for health insurance). As a complement to that webpage, price comparison tables should also be made available by means of newspapers, consumer associations, and through suitable outlets in rural areas. National price comparison websites have increased competition and reduced consumer prices, for example in the case of the financial regulator's website in Peru.[56]
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 is no statutory or regulatory requirement for banks to provide consumers with a 1- or 2-page Key Facts Statement that summarizes in plain language the terms and conditions and relevant warnings for any of their products or services. Nor does the CCB provide a requirement to do so. Although most banks produce small, single sheet or folded glossy pamphlets regarding their major consumer products and services, these are for purposes of advertising, do not include all essential terms and conditions, and do not allow for the easy comparison of products being offered by a range of banks. Such pamphlets are no substitute for Key Facts Statements.
Recommendation	As a matter of high priority in the near-term, the BoM should require Key Facts Statements to be prepared and made widely available for all basic consumer finance products, after testing consumers understanding of proposed mandatory disclosure.

[56] Superintendence of Banking, Insurance and Private Pension Funds of Peru found that online publication of consumer loan rates reduced the average consumer lending rate by 1000 basis points (or ten percentage points) at the time of stable interest rates – see: http://www.sbs.gob.pe

	A Key Facts Statement[57] should provide consumers with simple and standard disclosure of key contractual information of a banking product or service, contributing to the consumers' better understanding of the product or service. Key Facts Statements should also allow consumers to compare offers provided by different banks before they purchase a banking product or service and provide a useful summary for later reference during the life of the banking product or service. For credit products, Key Facts Statements would constitute an efficient way to inform consumers about their basic rights, the credit reporting systems and the existing possibilities for disputing information. A BoM Regulation could be introduced to require banks to provide consumers with simple, easily read, readily understandable and comparable Key Facts Statement for each product or service they offer. These Statements should concisely (on no more than one or two pages) describe the total cost of each product being offered, in particular all loans, and the main terms and conditions of the product, including, for example, any requirement for compulsory insurance. Also, prior to a consumer opening any account at, or signing any loan agreement with, a bank, the consumer should have delivered a signed statement to the bank to the effect that he or she has duly received a copy of the relevant Key Facts Statement from the bank. The BoM should determine what information should be included in any Key Facts Statement; including formulas and key terminology, as well as the format these need to take in order to ensure comparability in respect of price and other factors among different banks. For example, there should be explicit BoM instructions as to how interest rates and monthly minimum balances must be calculated and presented. A Key Facts Statement should also be required for all other products offered by banks, including savings accounts. Loan officers and other staff within all bank branches should be able to explain such information to all potential and actual customers, including those who are illiterate. Each Key Facts Statement should clearly indicate all fees and charges related to a financial product or service, as well as the mechanisms for recourse available to the consumer in the event of any complaint. In addition to an extensive consultation with Mongolia's banking industry, these measures would undoubtedly benefit significantly from consumer pre-testing of the formats created by the BoM in order to be sure they are useful and understandable in practice. Consumer testing is a powerful step to achieving regulatory effectiveness. Such standard formats should also be published in the BoM's website, the media and other means in order to increase public awareness.
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)**

[57] There are several examples of Key Facts Statements, such as the UK FSA's initial disclosure documents applicable to housing credit products, the EU's Standard European Consumer Credit Information (SECCI) form, the US Truth in Lending Act's "Schumer Box" for credit cards, Peru's "Hoja Resumen" (Summary Sheet), South Africa's Pre-Agreement Statement & Quotation for Small Credit Agreements, and Ghana's Pre-Agreement Truth in Lending Disclosure Statement.

Description	By the terms of the Banking Law, banks are required to ensure that their advertising, sales materials and general procedures do not mislead customers.[58] And banks are legally responsible for all statements made in their advertising and sales materials.[59] In addition, by the terms of the Law on Advertising, among other things, any advertisement will be illegal if it: a) imitates another's product; b) leaves out concrete information or misleads consumers by taking advantage of their lack of knowledge, practical experience or trusting nature;[60] or c) misleads the consumer regarding the characteristics or cost of a product or regarding any additional payment conditions.[61] Apart from these general provisions, the Law on Advertising deals explicitly with advertisements by a bank[62] of any product or service.[63] In particular, any such advertisement must: (a) be "true"; (b) be based on the actual indicator of the bank's "liquidity and other indicators provided by the banking law"; and (c) include "the main terms and conditions of the bank's deposit contract".[64] Few, if any, banks comply. Also, it is prohibited for a bank to cite any quantitative information that does not bear a direct relation to a product it is advertising.[65] If a bank commits any breach of the above-mentioned provisions of the Law on Advertising, it is liable to incur a fine of between MNT 50,000 and 250,000, as imposed by the AFCCR, with any responsible bank official being subject to a fine of between MNT 25,000 and 60,000.[66] With fines fixed at such modest levels, however, one has to wonder whether they can possibly act as a deterrent. Furthermore, by the Competition Law, all business entities are prohibited from the following activities provided, however, that they are aimed at restricting competition: a) slandering the reputation of the competitor and its products and disseminating false, contradictory or distorted information leading the competitor to losses; b) distributing false or contradictory information about own products or confusing others with distortion of the truth; and c) launching advertisement that has negative consequences for competition.[67] And finally, by the terms of the CCB, banks are required to ensure that their advertising is true.[68] A potential conflict arises by reason of the fact that the Banking Law, on the one hand, and the Law on Advertising and the Competition Law, on the other, each contain provisions on misleading advertising, with the BoM being the enforcement authority for purposes of the Banking Law, while the AFCCR serves this role under the latter two statutes.
Recommendation	The statutory obligations on financial service providers in respect of their advertisements should be restricted to provisions contained in an expanded and amended Banking Law, with the BoM thereby becoming the monitoring and enforcement authority in these respects.
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**

[58] See the Banking Law, Articles 7.4. and 8.
[59] *Ibid*, Articles 68.1.10 and 68.1.11.
[60] Law on Advertising, Article 7.2.
[61] *Ibid*, Article 7.3.
[62] as well as by any non-bank financial institution, investment fund, insurance company or securities broker or dealer.
[63] Law on Advertising, Article 17.
[64] *Ibid*, Article 17.1.
[65] *Ibid*, Article 17.2.
[66] *Ibid*, Article 29.1.2.
[67] Competition Law, Article 12.1.
[68] CCB, Article 1.2.

	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	No Law, regulation or CCB provision deals in any way with these matters.
Recommendation	Consideration should be given to the formulation of a BoM Regulation or the amendment of the Banking Law in order to cover all aspects of this Good Practice in the event any bank seeks to advertise the fact that payment of interest on a consumer's deposit is guaranteed by a third party.
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	No statutory, regulatory or CCB requirement exists regarding the minimum level of qualification for any bank staff member who deals directly with consumers, prepares a bank's advertisements or markets its products and services to consumers, including an obligation to demonstrate even the most basic knowledge of all relevant laws, regulations and CCB guidance requirements, as well as of any of the specific features that pertain to the products and services they provide or promote. By the CCB, however, banks are required: a. to provide customers with fast and professional service[69] and any information requested as quickly as possible;[70] as well as b. to train their members of staff and agents to ensure they are competent and properly equipped to carry out customers instructions.[71]
Recommendation	The BoM and the MBA should collaborate to establish and administer minimum competency requirements for any bank staff member who: (a) deals directly with consumers; (b) prepares any advertisement for the bank; or (c) markets any of the bank's services and products. The BoM and the MBA should also develop minimum standards of information that loan officers and bank agents should pass on to consumers. Furthermore, the BoM and the MBA should, in addition, develop information standards and training materials and test how well loan officers and agents actually communicate to consumers in practice.
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,**

[69] CCB, Article 4.1.
[70] *Ibid*, Article 4.2.
[71] *Ibid*, Article 4.3.

	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 is no statutory or regulatory obligation on any bank to provide any individual customer with a monthly statement regarding each account, including a credit card account and a mortgage or other loan account, which the bank operates for the customer. As a result, the practice in these respects varies from bank to bank and according to their specific contracts with customers. Some banks provide monthly statements while others do not. Some charge fees, while others do not. And, what is contained in such statements varies from bank to bank.
Recommendation	Statements from a bank should be regarded by the bank and customer alike as the most valid record and evidence of all of the customer's transactions. Thus, statements need to be self-explanatory and clear. They should allow the customer to comprehend the financial consequences of the "number" in the statement and take necessary action based on the statement. This is particularly important in the case of any statements that carry finance charges, penalty interest and serious consequences of default or delayed payment. With access to the internet and telephone banking, some customers may opt to receive statements on a quarterly basis. The choice should be left to customers. Also, when customers choose paperless statements, the access to the statements, their format and details should be a fair substitute for paper statements. A new Disclosure Regulation should deal with all aspects of this Good Practice and banks should be required to apply each aspect of this Regulation.
Good Practice C.2	***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	By the DPSLA Law, if a bank seeks to change the interest rate payable on a non-fixed term deposit, the initial interest rate that is set out in the deposit agreement is deemed to have changed and interest at the new rate is required to be paid as of the month following the public disclosure by the bank of its new interest rate.[72] It is unclear by this formulation, though, whether notice given on the last day of a month can legitimately take effect the day after or only as of the last day of the following month. In addition, although there are no explicit rules regarding the means of "public disclosure" banks typically disclose these changes by means of announcements in newspapers and on their websites, as well as on posters in their branch offices. In case a consumer/depositor disagrees with the new rate, however, he or she is entitled to cancel the deposit agreement.[73] Furthermore, the BoM is obliged to approve the methods banks employ to calculate their interest rates on deposits.[74] That said, there is nothing by law or regulation to ensure that all banks calculate interest in the same way. While there are at least some statutory rules regarding changes in interest payable by banks on non-term deposits, there are no specific rules regarding changes in interest rates on loans, including the notice to be given to a borrower by a bank prior to, at the time of, or subsequent to, the institution of any such change. The DPSLA Law simply indicates implicitly that these matters are to be the subject of the loan agreement between a bank and a consumer.[75]
Recommendation	It would help if the DPSLA Law was amended in the medium term to require banks to indicate in their offer documents, as well as their consumer loan agreements with variable rates, not only the applicable initial rate of interest, but the terms for any future adjustment (e.g. that any adjustment will be limited to a maximum extent each adjustment period and in a maximum total throughout the term of the loan, and with each adjustment, being with explicit reference to a rate that is widely accepted and published daily). It would also be helpful if clarifications were made by means of further amendments specifying: a) what constitutes "public disclosure"; b) the need for at least 30 days advance notice of any change in interest rate, whether in respect of funds of consumers either on deposit with or borrowed from a bank; c) that penalty payments are not permitted in the event a consumer chooses to cancel his or her normal (i.e. not fixed-term) deposit agreement; d) the method by which all banks are required to calculate interest; e) that no penalty is permitted when a customer decides to exit his or her loan agreement within a reasonable period after receiving notice of a change in interest or other charges; and f) that banks be required to inform their customers of the right to exit as an integral part of the bank's notice of change.
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,**

[72] See DPSLA Law, Article 6.4.
[73] Ibid.
[74] *Ibid*, Article 6.5.
[75] *Ibid*, Articles 22.1, 22.2 and 24.

	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	As indicated in B.1 above, there are no statutory requirements regarding what information a bank must receive before opening a consumer deposit or savings account, let alone what a bank must maintain thereafter. By the terms of the DPSLA Law, however, banks are required to open and maintain a file in the name of each consumer who borrows funds. And this file needs to consist of : a) the loan application; b) the loan agreement; c) the statement of assets and their value to be offered as collateral of the loan, certificate of state registration if the pledge is immovable property and a proof of inspection of the pledge and the guarantee documentation and the records and analysis about the guarantor; d) plans for what is to be financed by the loan, reviews and confirmations of such plans by the appropriate authorities, any amendments made to those plans, any associated documentation, progress reports, contracts, and economic benefits and profitability forecasts; e) a report of an independent auditor and a client; f) financial statements; g) documents verifying the use of the loan; h) a report of the borrower and the borrower's loan file pertaining to any other bank loans held in the name of the borrower; i) any information with respect to the borrower's liability for payments to any third party; and j) information with respect to the income of the borrower.[76] While items d) and e) are clearly excessive in terms of consumer loans, the DPSLA Law offers no flexibility in these respects. Furthermore, banks may not require any documents from a borrower other than those set out above.[77] Also, there is no fixed minimum permissible period for retaining records and no statutory or regulatory provision that ensures that a customer can have free access to them.
Recommendation	All banks should be required by BoM Regulation (if not by amendment to the DPSLA Law) to maintain an up-to-date file in respect of each customer in line with this Good Practice. In addition, the same 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 either free of charge or for a modest set fee. In addition to the documents required by the DPSLA Law to be maintained in a *loan* file, the same Regulation should also require the filing of: • the decision regarding loan approval issued by the bank's authorized body, and containing the maturity date, interest rate and other conditions under which the loan has been approved;

[76] *Ibid*, Articles 23.1 and 23.2.
[77] *Ibid*, Article 23.7.

	• records, if any, with the cash amount for which the collateral has been insured with an insurance company; • a record of the changes and additions to the loan agreement, if any, after the loan approval; • documentation confirming and defining any required action; and • all correspondence and documents showing contacts between the bank and the borrower after approval of the loan agreement. Finally, the Regulation should also require banks to maintain a loan file as long as the loan in question has not been repaid or liquidated in some other manner.
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	In Mongolia, checks are used only occasionally as a payment method.[78] Banks only offer buying, selling and cashing out of foreign checks provided these are issued by internationally recognized banks. The relatively few customers for this service are typically foreigners. There is no law in Mongolia dealing with paper checks. Furthermore, no law or regulation exists regarding electronic or credit card checks. Banks, therefore, regulate and manage issues related to paper, electronic or credit card checks in accordance with their own internal regulations.
Recommendation	None.

[78] See http://www.mongolbank.mn/documents/paymentsystems/paymentsystemeng.pdf.

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	An Interbank Payment Card Centralized Network (IPCCN) was officially opened in January 2010 with the aim of developing payment card services in Mongolia. Its main initial members were the Switch and Clearing Center (SCC) of the BoM (established in 2006), Khan Bank and the Trade & Development Bank.[79] In the interim, however, most other banks have since associated themselves with this Network. The BoM Card Clearing Regulation[80] regulates issues related to the card clearing and settlement system, and the issuance and refusal of participants' licenses on issuing and acquiring payment cards. The BoM's so-called "Payment Card Regulation"[81] provides the guidelines for the operation of the IPCCN. In addition, the SCC has established "Partnership Agreements" with IPCCN member banks which include the following guidelines to be adhered to by the participants: · "The Formulation on Interbank Payment Card Settlements", · "The Distribution of Cards seized by ATMs", · "Interbank Payment Card Transaction Related Conflict Management", · "Continuous and Regular Operation of Interbank Payment Card Network", and

[79] See the undated article entitled Payment System of Mongolia authored recently by the Payment Policy and Regulation Division of the BoM, found at http://www.mongolbank.mn/documents/paymentsystems/paymentsystemeng.pdf
[80] As approved by Resolution No. 440 of the Governor of the BoM dated August 6, 2009.
[81] See the Annex to Order 553 of the Governor of the BoM dated September 29, 2011.

	· "Troubleshooting of Network Problems and Damages". According to the Payment Card Regulation, banks are required to ensure that personalized disclosure requirements are made in all credit card offers, including the required fees and charges, authorized credit limit, applicable penalty rates and the method of calculating the minimum monthly payment. Also, the Payment Card Regulation defines the rules on error resolution, and reporting requirements in respect of unauthorized transactions and stolen cards. Problems do, however, arise with the wording of this Regulation. These include requirements that: a) issuers and acquirers of cards must "have units and departments to provide payment card related services comprising competent professional staff in full capacity";[82] b) issuers of cards must "enter into an agreement with the cardholder clearly specifying the payment card service terms and conditions";[83] c) the activation of a payment card can occur "when the cardholder has received - or has notified about the receipt of - the payment card";[84] d) issuers of cards - and banks as the acquirers of cards – have the right to provide no less than 30 days notice in advance to cardholders of any change they may seek unilateraly to make to the terms and contitions of their cardholder ageement, with the cardholders then being bound by the amended terms and conditions on the expiry of the notice period;[85] and e) an interest rate applicable to the use of a payment card can be changed unilaterally by the issuer and the new rate is then valid from the date of its public announcement, with the only further obligation on the issuer in these circumstances being immediately to notify the cardholder of this change.[86] In addition, the Payment Card Regulation unfairly provides power to issuers of payment cards to charge cardholders undefined commissions which are not subject to BoM approval.[87] Furthermore, banks are not prevented from imposing charges or fees on pre-approved credit cards that have not been accepted by the customer. Although some banks do give consumers personalized minimum payment warnings and the total interest costs that will accrue if the cardholder makes only the requested minimum payment, there is no legal or regulatory obligation to do so. Finally, although at least some card issuing banks have modest consumer awareness programs regarding payment cards, no such programs apparently focus on credit cards.
Recommendation	In the medium term and of some significant priority either by law or BoM Regulation, all credit card issuers and banks, as credit card acquirers, should be: 1. obliged: a) to ensure that personalized disclosures are made in all credit card offers and credit card billing statements to customers, including the fees and charges (including finance charges), credit limit, penalty interest rates and method of calculating the minimum monthly payment;

[82] Payment Card Regulation, Articles 4.1.4 and 5.1.4 But, there is no indication as to what competency means in this context or at what point capacity can rightly be deemed to be "full".
[83] *Ibid*, Article 4.2.3. a) But, there is no indication as to what constitutes an "unclear" term or condition.
[84] *Ibid*, Article 4.2.3. f) But, no card should be activated without the cardholder giving notice of receipt.
[85] *Ibid*, Article 4.4.7 But, there is no indication: (i) that the notice must be in writing; (ii) how the notice is to be delivered to cardholders in an assured fashion and on a timely basis; (iii) that the changes being proposed must be in capital letters and in at least a 12 point font size; and (iv) what the cardholder's options are in the event he or she disagrees with any proposed change.
[86] *Ibid*, Article 4.4.8. But, there is no indication as to how the cardholder is to be informed and whether a proven lack of such information to a cardholder would have any bearing on the validity of the change in rate at least for that cardholder.
[87] *Ibid*, Article 9.1.4. Compare Article 9.5 by which maximum and minimum commissions charged to cardholders by acquirers must be approved by the Governor of the BoM.

	b) to provide personalized minimum payment warnings to consumers on each monthly statement, as well as the total interest cost that will accrue if the cardholder makes only the requested minimum payment; c) to provide cardholders reasonable notice of changes in fees and interest rates increases; d) to limit up-front fees charged on sub-prime credit cards issued to individuals with bad credit; e) to provide each customer with a statement of the 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; and f) to limit the extent of any fee that can be imposed by credit card issuers, such as those charged when a consumer exceeds his or her credit limit; and 2. prohited from: g) imposing charges or fees on pre-approved credit cards that have not been accepted by the customer; h) issuing and marketing credit cards to young adults (i.e. below the age of 21) who have no independent means of income; i) applying a new higher penalty interest rate to the entire existing balance, including past purchases made at any lower interest rate; j) employing a practice called "double-cycle billing" by which a card issuer charges interest over two billing cycles rather than one; and k) allocating monthly payments in ways that maximize interest charges to consumers. In addition, each of the problems outlined in the Description above regarding the wording of the Payment Card Regulation should likewise be addressed by way of a BoM Regulation. Furthermore, banks - as card issuers - should conduct consumer awareness programs on the misuse of credit cards, credit card over-indebtedness and the prevention of fraud.
Good Practice C.6	***Internet Banking and Mobile Phone Banking*** **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	So far, there exists no legislation/regulation on internet banking or mobile phone banking in Mongolia. Given Mongolia's low population density, mobile phone banking is very promising,

	offering wide access and low costs, as well as increased speed. As of end-2011, the number of mobile phone users increased to 2.75 million with a penetration rate of 98 percent.[88] While being used country-wide, mobile banking services target clients living in remote and rural areas. In the past few years, the mobile banking service has greatly expanded with nine banks providing mobile services. The BoM has established a working group of various stakeholders to develop a Mobile Banking and E-Money Policy which is in the process of being formally approved.
Recommendation	As a matter of high priority in the medium-term, the BoM, together with the regulatory authority responsible for telecommunications, should devise and promulgate a clear regulatory framework for mobile phone banking services, as well as for electronic fund transfers and e-money services. A specific regulation on e-money should be issued in order to provide a level-playing field between branchless banking providers that encourages healthy competition, but also sets minimum operational and conduct standards that protect customers, particularly low-income consumers. A clear regulatory framework for the use of nonbank retail agents would be the first step to allow the expansion of financial services into rural areas on a sound basis. Such regulation should also ensure that basic business conduct standards are established for banks and nonbanks operating through agents and offering e-money so as to protect current and potential branchless banking consumers. A secure regulatory environment would also reduce the possibility of unscrupulous providers reaching out to unprotected consumers.
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, electronic fund transfers are not regulated in Mongolia. The BoM is planning to prepare and approve an "Electronic Funds Policy".
Recommendation	The BoM should urgently adopt rules regarding the rights, liabilities and responsibilities of the parties involved in any electronic fund transfer. There should be specific legal or regulatory provisions covering each of the elements included in this Good Practice. All banks

[88] Clients can make account transfers within their banks (for example, pay for goods and services) using their cell phone; make deposits and withdrawals without going to the bank branch through the authorized agents; and send SMS messages to their bank in order to access their accounts for transactions.

	should be required by BoM Regulation to provide information to consumers on prices and service features of electronic fund transfers and remittances in easily accessible and understandable format. In addition, at least to the extent possible, this information should include each of the matters referred to in i. through iv. of item b. of this Good Practice. Furthermore, if the price or any other aspect of the service varies according to different circumstances, banks should be obliged to disclose this information without imposing any requirement on the consumer.
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	There are no specific rules, whether in a law or regulation that are aimed at preventing abusive debt collection practices against any customer of a bank, including the use of false statements, unfair practices or the giving of false credit information to others. All that exists is a provision in the Civil Code to the effect that "the laws [and] internationally applicable common regulations and customs, accepted in business routine"[89] are to apply in respect of debt collection practices. There is, though, no indication as to what laws and internationally accepted regulations and customs are relevant, much less what these specifically provide. Furthermore, when a credit agreement is signed in Mongolia, there are no requirements regarding what information must be given by the lender bank to its borrower regarding the type of debt that can be collected on behalf of the bank, the person who can collect the debt and the manner in which the debt can be collected.
Recommendation	In the long-term, consideration should be given to the drafting and enactment of a Law on Debt Collection Operations that would, among other things, require: a. the licensing and oversight of all properly registered collection agencies by an appropriate regulatory authority; b. the provision of services in accordance with stated parameters on the basis of generally acceptable fair and reasonable behavior; and c. the provision of statistics by each licensed agency to the regulatory authority on a regular basis for annual consolidation and wide-spread public dissemination. In addition, the law of Mongolia should explicitly permit all consumers and their banks the right to re-schedule debts.
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.**

[89]Civil Code, Article 450.2.

	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	There is no law or regulation that requires a bank to disclose at any time to the consumer the steps that the bank will take in the event that it must resort to procedures to foreclose on the consumer's mortgaged property and the consequences for borrowers in the event a bank chooses to exercise its right to foreclose. There is also no requirement for banks to inform borrowers of the legal remedies and options available to them in respect of the process of foreclosure. Also, no mortgage or charge agreement may permit a bank as creditor to enforce the agreement without first obtaining a court order. And there is, therefore, no requirement on banks to employ professional and legal means to foreclose on consumer's mortgaged property.
Recommendation	Consideration should be given to formulating a BoM Regulation that requires every bank to have a debt re-scheduling service in place so to avoid - to the greatest extent possible - the need to instigate costly and time-consuming judicial proceedings required to foreclose on property held as security.
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	There is no law or regulation that deals with the bankruptcy of individuals. It follows, therefore, that banks are not required to inform their customers in writing on what basis the bank will seek to render them bankrupt, the steps it will take in this respect and the consequences of any individual's bankruptcy. In addition, no bank, directly or through the MBA, makes counseling services available to its customers who are unable to pay their debts as they come due or who are likely to find themselves in this situation.
Recommendation	Borrowers should have the statutory right to propose debt agreements with their banks. Subject to certain criteria, including: (i) the inability to pay debts as and when they fall due; (ii) regular employment; and (iii) unsecured debts and equity in assets below a specified

	statutory minimum. The benefit of a debt agreement to an insolvent consumer would potentially include: (a) making affordable regular payments over a fixed period and having these payments tailored to the consumer's budget; (b) unpaid debt being legally written off (including interest); and (c) arrangements being binding on all of the consumer's creditors.
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	The Law on Personal Privacy[90] (the Privacy Law) applies, among other things, to information and documents that: (a) are classified as confidential in compliance with the laws and regulations of Mongolia; and (b) may cause damage to any legal interest or the name and reputation of any individual in the event of disclosure.[91] By this same Law, three types of personal privacy are relevant for present purposes. These are privacy of: i) *correspondence*, which comprises information and documents such as letters, faxes, parcels, applications and physical items exchanged between people and organizations; ii) *property*, which comprises information, documents, data, contracts and physical items of which an authorized organization and official has knowledge in compliance with their duties, as well as property, including intellectual property, that only the owner and anyone authorized by the owner has knowledge; and iii) *family*, which comprises information the disclosure of which would be contrary to the interests, name and reputation of the individual or any member of the individual's family.[92] In addition, the Privacy Law provides that archives, notes and relevant images and records may also be subject to the regime of personal privacy.[93] This Law, however, does not indicate either who is to decide these matters or the basis upon which such decision is to be taken. Article 5.2 of the Privacy Law requires the State "and organization" to take responsibility in these respects only in *cases of necessity*. What constitutes "necessity" and who is to decide are, however, matters left unstated. If there is no perceived "necessity", however, the State is apparently free to divulge whatever it wants in these respects. Unless the meaning of "organization" is to include all banks (which seems unlikely), there is nothing in the Privacy Act of direct relevance to banks and their directors, officers and employees. The Privacy Law does, however, require an "authorized official from the [authorized state] organization with special legal authority" to be familiar with matters of personal privacy "on the basis of laws and regulations".[94] And furthermore, any authorized official "who has obtained personal privacy [information] based on laws and regulations" is prohibited from disclosing that information to other parties.[95] The Privacy Law does not, however, explicitly prohibit an unauthorized official of a state organization from disclosing any such information.

[90] Privacy Law dated 21 April 1995.
[91] *Ibid*, Article 2.
[92] *Ibid*, Article 4.1.
[93] *Ibid*, Article 4.3.
[94] *Ibid*, Article 5.3.
[95] *Ibid*, Article 5.4.

	As an exception to the rule prohibiting disclosure by an authorized official of a state organization, disclosure may be made in cases of necessity, as reflected by a resolution of the organization or an authorized civil servant provided, however, that the disclosure would neither cause damage to the legal rights of a citizen nor violate interests of national security and the defense of Mongolia.[96] Again, though, what constitutes "necessity" and who defines it are left unsettled. Finally, if any individual believes that his or her personal privacy information has been "disclosed to other parties or misappropriated," he or she can complain to the Court.[97] What remedies there may be for the successful individual plaintiff are, however, left unstated. While a party that has committed a disclosure of a consumer's confidential information in violation of the Privacy Law is subject to a fine of between 20,000 and 50,000 MNT (i.e. between some US $15 and $37),[98] this meager range of fines sum can be of very little comfort to any consumer. Rather, it amounts merely to a remarkably inexpensive potential fee for having divulged confidential information. Furthermore, the DPSLA Law requires banks to "keep the details of the account of the depositor confidential".[99] Otherwise, however, the DPSLA Law is silent on matters of confidentiality, including in respect of any materials filed by banks in connection with consumer loans. The Banking Law does, however, prohibit the shareholders, chairman and members of the board of directors, the executive director and officers of a bank from releasing and disclosing to others, or from "using", any information which is *considered* by the bank, a customer and/or a third party as confidential.[100] Exceptions to this general rule that allow disclosure of information notwithstanding that it is *considered* to be confidential by the bank, a customer and/or a third party include cases in which: a) the person to whom the confidential information relates has provided written consent;[101] b) the BoM and its inspectors have made a demand in relation to the implementation of their functions as specified by law;[102] c) the investigative procedures of the 'Anti-corruption Agency' and the police require the information *and* the prosecutor has approved the request submitted from the governing authorities of this Agency and the police;[103] and d) the information has been exchanged between banks on loans or has been provided in accordance with any law dealing with a credit information bureau.[104] There is also a provision in the BoM Regulation dealing with the ethics of banking employees to the effect that no such employee shall disclose to previous employers, make personal use of, or permit others to make use of, any information obtained as a result of his or her relationship with a bank, which information is not generally available to the public or is otherwise confidential.[105]
Recommendation	The Privacy Law is badly out of date and, in the medium term it deserves to be thoroughly overhauled in order to deal with the issues addressed above. Also in the medium term, the

[96] *Ibid*, Article 6.
[97] *Ibid*, Article 7.
[98] *Ibid*, Article 8.
[99] DPSLA Law, Article 7.2.5.
[100] Banking Law, Article 7.2.
[101] *Ibid*, Article 7.2.1.
[102] *Ibid*, Article 7.2.2.
[103] *Ibid*, Article 7.2.3.
[104] *Ibid*, Article 7.3.
[105] See undated BoM Regulation regarding the Conduct Database for Banking Employees, Article 1.5.2.

	BoM, with assistance from the MBA and MCA, should devise amendments to the Banking Law to deal with each of the additional issues referred to above. In the longer term, consideration could then be given to drafting and enacting a Personal Data Protection Law that would require all entities, including banks, to protect the confidentiality and security of all personal data in respect of their customers, including all data stored electronically, against unauthorized access and any anticipated threats or hazards to the security or integrity of such information. This law should also apply generally to all personal information. The recommendation is made, given: a) the sensitivity of the personal information held and used in financial services; b) the extensive information flows which can take place (such as between intermediaries and agents and between members of a corporate group); c) the increasing potential for information to be received and held electronically with a corresponding increase in the risk of unauthorized access as well as the volume of information which can be easily transmitted; d) the uncertainty which presently exists in at least some financial institutions as to the extent to which information can be used for purposes such as marketing and shared with corporate group members; and e) the fact that privacy is treated as a fundamental human right deserving of protection in various international instruments to which many countries are signatories. The *OECD Guidelines on the Protection and Privacy and Trans-border Flows of Personal Data*, 1980, have been used as the basis for developing many such data protection laws. In summary, the relevant principles in the *OECD Guidelines* are those dealing with: • Collection: Information should be collected by lawful and fair means and "*where appropriate, with the knowledge or consent of the data subject*". • Data Quality: Data collected should be relevant to the purposes for which it is to be used and should be kept "*accurate, complete and … up-to-date*". • Purpose and Use: Other than with consent, data should only be used for the purposes specified at the time of collection or as required by law. • Security: Data must be "*protected by reasonable security*" safeguards against events such as unauthorized destruction, use and disclosure. • Openness: There should be a general policy of openness about practices in dealing with data. • Access: Individuals should have a reasonable right to access all information relating to them. • Trans-border Data Flows: There should be restrictions on trans-border data flows to a country which does not substantially comply with the OECD Guidelines.
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	By the DPSLA Law, banks owe consumers the statutory obligation to keep the details of their accounts confidential.[106] In addition, by the Law on Credit Information, (the CI Law) credit information requires, among other things, the application of basic principles, including the mandatory approval of the borrower and the privacy of information.[107] Otherwise, however, the law is silent on each of the matters referred to in this Good Practice.
Recommendation	By means of amendments to the banking legislation in the medium to long term: a) all banks should be required to inform their customers in writing as to how they will use and share their customers' personal information; b) without the customer's prior written consent, a bank should be prohibited from selling or sharing account or personal information regarding a customer to or with any party not affiliated with the bank for the purpose of telemarketing or direct mail marketing; c) a customer of a bank should be permitted 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; and d) the disclosure by a third party of any banking-specific information regarding a customer of a bank should be prohibited.
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	By the BoM Law, BoM employees are prohibited from "disclosing to others official information relating to accounts, account transactions or payments of any bank, legal person or individual, or relating to any agreement or contract on banking activities, unless the law provides otherwise"[108] And, in addition, "unless the law provides otherwise, employees of the Bank of Mongolia [must] maintain the confidentiality of documents and information obtained during the course of their duty as well as for a period of one year after being discharged from duty."[109] Except in the exceptional event that any breach of these rules constitutes a criminal offence, responsibility lies with the supervisor appointed by the BoM to determine "guilt" and to impose "administrative sanctions in accordance with legislation."[110] Problems arise given the fact that: a) the law does not provide specific rules and procedures concerning the release to *any* government authority of the records of any customer of a bank; b) there are no rules regarding what the BoM or any other government authority may and may not do with any such records; c) no procedures are indicated for providing records of any customer of a bank or for making a finding of wrong-doing at all, let alone fairly; d) no statutory mention is made of any exceptions to applicable rules and procedures and the reasons for them; e) sanctions apply only in respect of individuals employed or formerly employed by the BoM and neither the BoM itself nor any other Government authority;

[106] See the DPSLA Law, Article 7.2.5.
[107] CI Law, Article 5.
[108] BoM Law, Article 29.1.
[109] *Ibid*, Article 29.2.
[110] *Ibid*, Article 42.

	f) the application of sanctions falls to a colleague or former colleague in the BoM who inevitably, therefore, must suffer for the perception of bias; and g) no mention is made of the legislation with which an administrative sanction against an employee or former employee of the BoM must accord. In addition, by the terms of Article 7.2 of the Banking Law, the shareholders, chairman and members of the board of directors, the executive director and all officers of a bank are under an obligation not to release and disclose to others, or use any information which is considered by the bank, its customers, and/or third parties as confidential, unless: a) written consent has been provided to the bank by the person to whom the confidential information relates; b) it has been demanded by the BoM and its inspectors in relation to the implementation of functions specified in the law; c) it is required in accordance with investigative procedures of the National Anti-Corruption Agency and the police and prosecutor have approved the request; d) it is requested by an international legal organization or Government of a foreign country which has concluded an agreement with Mongolia on legal assistance, provided, however that a violation of Mongolian law has been proven; or e) it has been demanded by the FRC for the purpose of imposing supervision on any licensed activity and where a foreign financial regulatory institution has issued a request based on the obligation undertaken by the FRC through an international agreement. The confidentially requirement referred to above, however, does not apply to inter-bank exchanged information on loans extended by a bank nor to information provided according to the legislation on credit information.[111] By the Banking Law, any bank or bank holding affiliate that fails to comply with the requirements set out in Article 7.2 is subject to a fine, imposed by the BoM, of between 20 and 150 times the minimum wage. And, if a bank employee or official fails to comply, the potential fine imposed on the individual is between 2 and 15 times the minimum wage, again as determined by the BoM.[112] In addition, however, the Banking Law provides for the possible imposition of a fine of between 5 and 45 times the minimum wage on "a body who disclosed confidential information other than authorized".[113] Problems arising from these Banking Law provisions are as follows. The obligation not to release or use any information applies only in the event that the information is *considered* by the bank, its customers, and/or third parties as confidential but it is not clear that this inevitably means 'all records of a customer of a bank' and, if not, what is to happen in the event that a customer considers information to be confidential but his or her bank does not. Secondly, although sanctions are apparently potentially to apply to banks and bank holding affiliates, Article 7.2 makes no mention of these institutions, as such. Thirdly, whereas sanctions are also apparently to apply, at least potentially, to employees or officials of banks, Article 7.2 refers only to officials and not the far broader category of employees. And, finally, if bank employees are free to divulge with impunity whatever customer information comes their way, whether deemed confidential or not by the bank or its customer, consumers are obviously afforded no protection whatsoever in these respects. Finally, as indicated in the Descriptive Section regarding Good Practice D.2, by the DPSLA Law, banks owe consumers the statutory obligation to keep the details of their accounts confidential.
Recommendation	The BoM should require each bank to inform its customers - in plain, written and understandable language - what information it can disclose before any agreement is

[111] Banking Law, Article 7.3.
[112] *Ibid*, Article 68.1.3.
[113] *Ibid*, Article 68.1.12.

	concluded between the customer and the bank. And this should be the case as well for every co-borrower and personal guarantor. While the BoM should have access to aggregated data on consumers, there should be a clear statutory prohibition on allowing the BoM access to any individual file or files. In addition, amendments to the Banking Law - or at least a BoM Regulation – in the medium-term should (as set out in the Good Practice): • state specific rules and procedures concerning the release to any government authority, including the Governor of the BoM, of the records of any customer of a bank; • state what the government authority may and may not do with any such records; • state what exceptions, if any, apply to these rules and procedures; and • provide for penalties for the bank, any credit bureau and *any* government authority for any breach of these rules and procedures.
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 registry at the BOM has broadened its database on credit information and improved data collection and reporting. The registry currently collects information on 1 million individuals and 10,000 legal entities, which reportedly covers all Mongolian borrowers. A private credit information bureau (CIB) has been established by commercial

	banks but is not yet operational. The private credit bureau is preparing to start operations and is addressing staffing and information technology-related requirements. According to the new Credit Information Law (enacted in December 2011), the private CIB will need to receive an operating license from the BOM. The new law does not oblige lending institutions and state agencies to report to the private CIB, and the information will be included in the database only with borrowers' consent. At the same time, it is now mandatory for all lending institutions and state agencies to report to the BOM credit registry, without borrower consent. According to the new law, the BOM will share information in its public registry with private CIB based on regulations on exchange of information (to be developed). The Credit Information (CI) Law[114] does a commendable job of addressing most, if not all, of the issues outlined in Good Practice D.4. Although this Law came into force on January 1, 2012, it remains inoperable, however, for a number of reasons, including, most importantly, the fact that two essential BoM regulations remain to be issued. The first of these is to provide detailed rules for the granting of credit bureau licenses by the BoM. [115] And the second awaited regulation is to provide the rules applicable to the exchange of information between the BoM's credit information database and any licensed private credit information bureau. While the law provides an explicit right to the consumer/borrower to demand compensation for damages where wrong information has caused him or her losses,[116] the Law is silent on the matter of a consumer's right: a) to consent to information-sharing based upon the knowledge of the institution's information-sharing practices; b) to know about adverse action in credit decisions or less-than-optimal conditions/prices due to credit report information; and c) to reasonable retention periods of credit history, for instance two years for positive information and 5-7 years for negative information. Furthermore, although the consumer has the right to be informed about inquiries, no time period is stated within which this right must be honored. Finally, although, with the enactment of the CI Law in October of 2011, the BoM and Parliament briefly broadcast the fact and provided a succinct summary, there has been relatively little effort by the BoM and the MBA since then to inform and educate the public on the still future rights of consumers in the above respects, as well as the personal consequences of a negative personal credit history.
Recommendation	In the medium term, the BoM should give attention to the matters referred to above.
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**

[114] Law on Credit Information, dated October 20, 2011.
[115] I*bid*, Article 23.4.
[116] *Ibid*, Article 21.1.3.

	(i) provide the complainant with the name of one or more individuals appointed by the bank to deal with the complaint until either the complaint is resolved or cannot be processed further within the bank. **c. The bank should provide the complainant with a regular written update on the progress of the investigation of the complaint at reasonable intervals of time.** **d. Within a few business days of its completion of the investigation of the complaint, the bank should inform the customer/complainant in writing of the outcome of the investigation and, where applicable, explain the terms of any offer or settlement being made to the customer/complainant.** **e. When a bank receives a verbal complaint, it should offer the customer/complainant the opportunity to have the complaint treated by the bank as a written complaint in accordance with the above. A bank should not require, however, that a complaint be in writing.** **f. A bank should maintain an up-to-date record of all complaints it has received and the action it has taken in dealing with them.** **g. The record should contain the details of the complainant, the nature of the complaint, a copy of the bank's response(s), a copy of all other relevant correspondence or records, the action taken to resolve the complaint and whether resolution was achieved and, if so, on what basis.** **h. The bank should make these records available for review by the banking supervisor or regulator when requested.**
Description	By the terms of Article 10.4 of the CP Law, any seller (i.e. a bank) is responsible for exercising good faith and diligence in reversing any defects detected in any of its products or services within a "reasonable amount of time". What constitutes such time and what remedial terms may be available are, however, as reflected in the terms of the contract between the consumer and the bank. If a seller (i.e. a bank) does not remedy an established defect in any of its products or services in a timely manner, the seller (i.e. the bank) has the responsibility to submit reimbursement.[117] Also, by the terms of the CCB, a. banks pledge: • to heed a consumer's comments and criticisms, with a view to the possibility of improving their services;[118] • to resolve problems through constructive dialogue and to reply to any request for an explanation or to any complaint as quickly as possible;[119] • to have quick and simple procedures in place for dealing with a consumer's requests and complaints and to inform consumers of the person or department within the bank who is able to assist with any particular request or complaint;[120] • to provide a clear and reasoned response to all requests or complaints;[121] and • to handle consumer "complaints objectively, with a view to seeking the most satisfactory solution";[122] and, in addition, b. a consumer is entitled to submit to the MBA any problems which his or her bank has been unable to resolve satisfactorily.[123] Although these provisions do not go far enough, they are a good beginning.

[117] See the CP Law, Article 10.4.
[118] CCB, Article 7.2.
[119] *Ibid*, Article 7.3.
[120] *Ibid*, Article 7.4.
[121] *Ibid*, Article 7.5.
[122] *Ibid*, Article 7.6.
[123] *Ibid*, Article 7.7.

	While Mongolian banks unfailingly seek to resolve any disputes they have with their individual customers as quickly and as harmoniously as possible and, to this effect, typically provide in their standard form agreements with consumers the requirement that both parties are to endeavor to resolve their disputes amicably, customers are invariably provided little, or nothing, by banks regarding their internal complaints procedures. Although all banks have internal complaints procedures there is no obligation that these be written and provided to consumers. Typically, a bank's Terms and Condition (referred to in B.7 above) contains neither the contact point for the handling of any complaint nor a summary of the procedures, with an indication as to how a consumer can easily obtain the complete statement of the procedures. There is no BoM regulatory requirement or even a guideline for banks that deals with any aspect of this Good Practice, including the requirement that all banks: a) maintain complaints, information and suggestion service facilities; b) designate - and inform the public of - the contact point for the handling of consumer complaints; c) strictly follow written procedures (approved by the BoM) when receiving, processing and deciding on a consumer complaint; d) make these written procedures readily available to anyone who is interested; e) have the procedures summarized in their general terms and conditions; f) maintain up-to-date records of all complaints they receive and the action taken in dealing with them; g) ensure that the record contains 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; and h) make these records available for review by the BoM either on a regular basis or when requested. Since banks are not required to have written complaints' procedures for the proper handling of complaints from customers, typically, no summary of these procedures can be supplied to customers. Invariably, therefore, consumers neither know who within their banks is authorized to deal with complaints nor the procedures which will be followed. These realities place all consumers at significant and unwarranted disadvantage. Furthermore, banks are not obliged to maintain up-to-date records of any complaints they have received and, thus, no requirements exist as to what any such record must contain. Although no reliable statistics are available, apparently only very few Mongolian consumers are currently complaining to their banks regarding the products and services they supply. This is likely related to a general lack of awareness - let alone understanding - on the part of the vast majority of consumers of their statutory rights in their dealings with banks, as well as of the legal obligations banks have towards them. In addition, standard contracts entered into between banks and consumers do not specify what consumers should do in the event they have a complaint and the considerations appropriate for a consumer to consider in the event that a complaint is not resolved satisfactorily following completion of the bank's internal procedures.
Recommendation	BoM should require all banks to have a contact person or unit in charge of receiving and handling complaints, and to ensure that the identity of this person or unit is given to every consumer. BoM should also establish guidelines on the internal procedure for banks in their handling of complaints. All banks should be required to centralize data on complaints and share the data with the BoM. Based on the analysis of complaint statistics, the BoM could also propose guidelines, instructions, or awareness campaigns that address the problems identified in the complaint reports.

	As a matter of relatively high priority in the short-term, banks should be obliged by BoM Regulation to inform consumers proactively of the right to complain, as well as how to proceed in the event of a dispute. In addition, that same Regulation should require all banks: 1) to have in place a written complaints procedure for the proper handling of any complaint from a customer, with a summary of this procedure forming part of the bank's General Terms and Conditions for any agreement with the customer; 2) to provide the customer with the name and address of an individual appointed by the bank to deal with the complaint until either the complaint is resolved or cannot be processed further within the bank; 3) to provide the complainant with a regular written update on the progress of the investigation of the complaint; 4) to inform the customer/complainant in writing of the outcome of the investigation within a short, defined delay after first receiving the complaint; 5) to explain in simple terms the nature of any offer of settlement being made to the customer/complainant; 6) to offer to have any verbal complaint of a customer treated by the bank as a written complaint in accordance with the above; 7) to maintain – in a standardized format as devised by the BoM - up-to-date records of all complaints it receives, including in respect of 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; and 8) to make these records regularly available for review by the BoM. This same future BoM Regulation might also be informed by international standards regarding internal dispute resolution schemes such as those in ISO 10002-2006.
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	By the CP Law, a so-called "guiding principle" for the protection of consumer rights is the provision of the means to remedy any harm to the material and non-material interests of consumers, rectifying any violation of consumer rights and ensuring that appropriate restitution is paid to consumers whose rights have been violated.[124] The application of this principle, however, presupposes, among other things, that: a) consumers have ready access to - and understand - the complete statement of their rights and are ready to complain when any of these rights are not honored; b) consumers have ready access to - and understand - the complete statement of the obligations that banks owe to them and are ready to complain when banks fail to abide by any of these obligations;

[124] CP Law, Article 4.

	c) consumer know how - and within what timeframe - formal complaints must be lodged with courts; and d) consumers understand the financial and other consequences of their proceeding to court. These basic requirements are, however, far from the Mongolian reality. By the Constitution of Mongolia,[125] all citizens have the guaranteed right to submit petitions or complaints to State bodies and officials,[126] to appeal to the court to protect their rights if they consider that any right expounded by Mongolian law has been violated,[127] to be compensated for damage illegally caused by others, and[128] to receive legal assistance.[129] By the Constitution, it is also the duty of the State to restore the rights of consumers that have been infringed.[130] In the event a complaint of a customer is not resolved with his or her bank by means of the bank's own internal procedures, the customer has, at present, four possible options. One is to turn to the BoM, the second is to contact the AFCCR, the third is to contact the MCA and the fourth is to proceed to court. In the first place, in accordance with the DPSLA Law, the consumer is entitled to make a claim for compensation to the BoM for any loss incurred as a result of the failure of his or her bank to fulfill its duties properly.[131] Helping to resolve complaints individual consumers have with their banks is, however, not one that the BoM is currently staffed to handle. And, indeed, there is no explicit power given to the BoM by the BoM Law to take on this role. Rather, the power to do so comes from the Constitution which guarantees the right of all citizens to submit petitions or complaints to State bodies and officials.[132] Although the CP Law itself gives no power to the AFCCR to deal with consumer complaints, the AFCCR is empowered by the Competition Law to "accept and resolve any requests and complaints within the scope of its powers".[133] The AFCCR is, however, also not staffed to handle consumer complaints. Thirdly, the CP Law grants the explicit right to consumers to have his or her rights affected by defective goods and services "be protected by a non-governmental organization specialized in protecting consumer rights."[134] This means, in effect, the MCA and any of its various city and regional offices. Banks, however, are not required to make public the fact of the potential roles of the BoM, the AFFCP or the MCA in these respects or to provide contact information to consumers in respect of any of them or to include relevant information about any such service in their Terms and Conditions. Nor do the BoM, the AFCCR and the MCA, themselves, publicize their services in these respects. Also, in all instances, no written procedures which need to be followed by the consumer and the BoM, the AFCCR or the MCA, as the case may be, are available for the public. Although informal efforts are made by these institutions in many, if not all cases, to assist consumers by re-visiting the issues raised initially by the consumer with his or her bank, nothing any of these institutions can do can possibly be binding on the bank in question. At

[125] The Constitution of Mongolia dated January 13, 1992.
[126] *Ibid*, Article 16.12.
[127] *Ibid*, Article 16.14.
[128] Ibid.
[129] Ibid.
[130] *Ibid*, Article 19 1.
[131] See the DPSLA Law, Article 7.1.7.
[132] The Constitution of Mongolia, Article 16.12.
[133] Competition Law, Article 15.1.12.
[134] CP Law, Article 5.5.

	bottom, all any one of them can do is suggest a possible solution. As a result, the consumer who still remains aggrieved must, then, either give up or seek the possibility of redress by turning to the court. It will also be small comfort to any individual consumer to know that, as a result of the case, his or her bank may be subject to sanctions imposed by the BoM or the AFCCR. By the Constitution, all citizens have the right to appeal to the court to protect their rights if they consider that any right expounded by Mongolian law has been violated.[135] In addition, by the DPSLA and CP Laws, consumers also have the statutory right to initiate litigation,[136] in the first instance, for any loss incurred as a result of the failure of their banks to fulfill their duties properly, and in the second in the event the consumer receives no response from the seller to a claim made by the consumer to remedy any loss incurred by the latter as a result of a "faulty action" on the part of the seller. With or without having first sought the assistance of the BoM, the AFCCR or the MCA, at least in theory, the consumer can proceed to the closest court of first instance. By the Constitution, Mongolia's judicial system consists of the Supreme Court, Aimag and capital city courts, Soum, inter-soum and District courts.[137] These latter courts have first instance jurisdiction over any cases consumers might bring against any suppliers of goods and services, including banks. Although the courts of first instance allow "representatives of citizens" to participate in the proceedings,[138] the Constitution does not authorize a citizen to represent himself or herself. This and the lack of expertise in lower courts in matters of consumer-related rights and obligations generally, let alone in terms of banking products and services, as well as the costs involved (at least as measured against what are typically the modest amounts being claimed) are all matters of legitimate concern.
Recommendation	In the long term, consideration should be given to the establishment of a financial services ombudsman, based on an assessment of the most appropriate institutional set-up for Mongolia. The analysis should take into account issues of independence, sustainability, accessibility for consumers, and capacity to make binding decisions to ensure the effectiveness of the system. Several institutional options can be evaluated, following on successful international experiences, for example a scheme established by law to function as an independent institution (UK), or a requirement for financial institutions to join a central bank-approved ombudsman scheme with binding rules for all member institutions (Armenia). Regardless of how the service is established, it should be developed by the BoM in close consultation with all relevant stakeholders, including relevant Ministries, FRC, the financial services industry, the MBA and the MCA. The funding for the Office could be shared between banks and other financial institutions on a sliding scale, with the Government perhaps making a modest contribution. The purpose in doing so would be to ensure the expeditious, independent, professional and inexpensive handling of consumer disputes that are not resolved internally by banks or other financial institutions. And, the legal foundation would spring from Article 16.12 of the Constitution which provides all citizens the right to submit petitions or complaints to State bodies and officials. An Ombudsman would also identify complaints that are high in importance for consumer confidence in the banking sector, thereby enabling banks, the BoM and any other relevant authority to take measures to curtail the repetition of problem cases.

[135] Constitution, Article 16.4. This clearly includes any statutory rights of consumers in respect of banking products and services, as well as how these are provided.
[136] See the DPSLA Law, Article 7.1.7 and the CP Law Article 8.
[137] Constitution, Article 48.1.
[138] *Ibid*, Article 52.2.

	The rules of an Ombudsman service would need to cover: 1) the institutions which would be members (i.e. the institutions with unresolved consumer disputes which would be required to submit to the Ombudsman service's jurisdiction); 2) the nature of disputes which could be dealt with by the Ombudsman and any applicable claims' limits (bearing in mind that the service would be for consumers); 3) compensation caps; 4) the fees for membership and for dealing with disputes (which should be paid by the financial institutions and not by consumers); 5) how the service would be resourced so as to discharge its functions impartially; 6) how the office would operate throughout the country; 7) the fact that decisions are binding on financial institutions; 8) the confidentiality of complainant information; 9) the circumstances in which legal action could be launched in court while a matter is with the Ombudsman (for example, if a statutory limitation period is about to expire); 10) record keeping and publication of information about caseloads, processing times, systemic issues and cases of serious misconduct such as fraud; 11) wide-ranging publication of the existence of the service, including in every bank's Terms and Conditions referred to in B.7 above; and 12) the requirement that, at any customer's request, every bank make available to the customer the details of the ombudsman service and its applicable processes and procedures, including the binding nature of decisions and the mechanisms to ensure the enforcement of decisions. In developing a Banking Ombudsman Service, appropriate reference should also be made to relevant international standards on complaints handling processes, such as those in ISO 10002-2004.
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	Although banks may, themselves, choose to compile statistics and data of customer complaints, they are under no regulatory obligation to do so. Nor is there any requirement to provide any such statistics to the BoM. While the BoM reportedly receives up to 1000 such complaints per year, with its Supervision Department providing these consumers with a response/advice letter, consumers are always encouraged at least to attempt to resolve their disputes on an amicable basis internally within their banks. Both the BoM and AFCCR are in a position to reflect (in various of the reports they publish) the statistics and data, as well as their analyses of them, at least as related to the complaints they happen, themselves, to receive from consumers in respect of banking products and services, neither the BoM nor the AFCCR has so far done so. Even if they chose to do so, however, the data in question would necessarily be incomplete. Furthermore, to date, the MBA has not received complaints data from any banks and is, therefore, not in a position to analyze and publish any complaint statistics and data with

	proposals to reduce the sources of systemic consumer complaints and to propose measures aimed at ensuring that recurrences of systemic consumer complaints do not occur.
Recommendation	The BoM should give close consideration in the near-term to requiring all banks to centralize all data on the complaints they receive, to analyze these data periodically and to share them with the BoM (as well as with the AFCCR, at least until such time as its role in terms of financial consumer protection is formally terminated). The purpose of the internal analysis performed by each bank would be to identify the most common reasons for consumer complaints, and to change business practices so as to avoid these, to the extent feasible, in the future. The complaint data analysis showing categories of complaints, time to resolve, unresolved complaints, etc., should be sent periodically to the BoM so as to permit the BoM to analyze and publish aggregate data on its website on a regular basis. Reviewing and checking such reports should be part of BoM's on-site/off-site supervision activity in respect of the business conduct of banks towards consumers. Publication of the statistics and data should be required in order to inform the public of common problems affecting consumers and to increase the relevant awareness of consumers. By analyzing the statistics and data, the BoM will be able to identify recurring problems and areas of weakness in banking practices. Steps can then be taken to deal with the source of these problems. The analyses in time may also be critical for identifying correlations between issues raised in complaints and systemic issues or weaknesses that may affect the soundness of the Mongolian banking system itself.
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	By the terms of the Deposit Guarantee Fund (DGF) Law of November 25, 2008, in the event of the insolvency of any commercial bank licensed to carry on savings activity in Mongolia,

	all monetary deposits placed by a citizen in any current or deposit account in that bank are guaranteed by the State to be re-paid to the citizen, regardless of the extent of the funds on deposit. The DGF Law was amended in June 2010 to eliminate coverage for interbank deposits and to expand the restriction on the coverage of deposits of related parties. Although the DGF Law is set to expire in accordance with its terms on its fourth anniversary (i.e. on November 25, 2012), the current plan is for the government to replace the guarantee with a limited deposit insurance scheme. The BoM and the MoF have established a working group to discuss the appropriate design and level of coverage for the new deposit insurance system.
Recommendation	The BOM and MOF should develop enabling legislation and regulations to establish a new well-defined deposit insurance system. Consideration should be given to limiting the extent of coverage to a reasonable limit which will still ensure full protection to the vast majority of depositors. In order to have a successful transition, the authorities should prepare a plan that includes a clear timeline for the transition as well as a strong public relations campaign informing the public about the new deposit insurance scheme.
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	By the terms of the DPSLA Law, in the event of a bank's insolvency, the repayment of deposits must be in accordance with paragraph 5 of Article 32 of the Civil Code and Article 45 of the Banking Law.[139] A bankruptcy of a bank is declared by the court based upon "the principles set out in [the Banking] law and in accordance with the law on Bankruptcy".[140] In addition, by paragraph 5 of Article 32 of the Civil Code, claims against any legal person (including any bank) in liquidation are to be satisfied in the following order: a) payments to recorer (or remedy) damages caused to the life and health of others and other payments made by a decision of the Court; b) operational expenses born by the executor, Liquidation Commission, or other similar persons within their competence; c) claims arising out of contracts and transactions concluded in the process of re-capitalization of the legal entity during its bankruptcy; d) capital of depositors; e) payment of due to workers under labor contracts; and f) payments to other claimants in accordance with law. Thus, in accordance with the Banking Law and the Civil Code, depositors enjoy higher priority than unsecured creditors in the liquidation process of a bank.[141] These provisions are, however, inconsequential in practice due to the overriding terms of the DGF Law. This more recent Law provides that all deposits of whatever amount are to be fully reimbursed to depositors in any licensed bank in the event of the bank undergoes a liquidation process. To date, however, there has been no occasion to test the operation of the DGF Law in practice and, thus, to be assured that the refund of deposits to depositors will prove to be

[139] DPSLA Law, Article 9.
[140] *Ibid*, Article 67.
[141] Note that, in dealing with the order of priority of payments, Article 9 of the DPSLA Law refers to Article 32, paragraph 5 of the Civil Code and to Article 45 of the Banking Law. Article 45 of the Banking Law, however, deals with possible exclusions in respect of consolidated supervision.

	expeditious. As for being cost effective, many would argue that, by covering all deposits of whatever monetary value, Mongolia is guaranteeing more than it should reasonably be called upon to afford.
Recommendation	See Recommendation for Good Practice F.1.
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	By the Constitution of Mongolia,[142] all citizens have a "guaranteed" right to education and the State is responsible for providing basic general education free of charge.[143] In terms of financial education, however, the State has yet to fulfill its duty in this respect. In addition, by the CP Law, all citizens are afforded the right "to acquire knowledge and have access to any training on the subject of consumer skills".[144] So far, modest efforts have been made by a few non-governmental and private institutions, including some banks, to educate certain segments of the population in matters of basic financial literacy (most notably, relatively young school children). That said, there has been little or no follow-up to ascertain the extent to which such efforts have been at all successful and if so why and, therefore, to apply the lessons learned as a result in future. Furthermore, no broadly-based program of financial education or information has been developed to date. And no single, widely available, text of generally employed financial terms and their meanings has been developed in order to serve as the basis for improving levels of financial capability. In addition, no consolidated statement exists of the rights and obligations of consumers and their financial institutions.
Recommendation	Age, income level and educational attainment are some of the critically important factors which must be considered when devising and implementing a financial literacy program. Approaches will inevitably need to differ depending upon people's needs and aptitudes. While stressing financial education, information and skills, these approaches should also focus on attitudes. By way of example, Mongolians need to know how to save but they must also *understand* the benefits savings will bring, *recognize* that deferring current expenditures makes good sense, and *be motivated* to set aside money on a regular basis. It will also be important to cover basic issues such as financial system vocabulary, budgeting, saving, planning ahead and choosing products, rather than merely providing information about types of financial products and services. A coordinated approach among all relevant stakeholders would, ideally, help to ensure strategic perspectives, the monitoring of progress, and greatly reduce the likelihood of any duplication of efforts. A coordinated approach would ideally integrate different initiatives into long-term strategic perspectives, including in respect of in-school curricula and specific programs for other groups of citizens.

[142] The Constitution of Mongolia dated January 13, 1992.
[143] *Ibid*, Article 16.7.
[144] CP Law, Article 9.

	Of high priority in the near-term, therefore, the MoF, MoE, BoM, FRC, AFCCR, MBA, MCA and other stakeholders should communicate and coordinate their efforts by e.g. setting up a financial education working group under the leadership of the MoF to improve the extent of financial literacy in Mongolia. And then, of significant priority in the medium-term, these same stakeholders and others should together develop a sustainable national program on financial education. Such a program should, in turn, include tailored, ancillary, financial education programs that focus on reaching low income and rural populations, including those with low levels of literacy. Basic to all efforts to improve financial literacy and capability will be the authorship, publication and wide distribution of a text of generally used financial terms and their meanings. In addition, the obvious *sine qua non* for all consumer understanding of their rights and obligations dealing with banks and other financial institutions, as well as the rights and obligations of banks and other financial institutions in their dealings with them, is the formulation and wide distribution of a consolidated written statement of all of these rights and obligations.
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	The Government of Mongolia and its agencies and the FRC in particular are making some modest use of the mass media (such as television programs and websites) with a view to educating the population about financial sector and its products and services. There is little Government budget, however, that is earmarked for these purposes and mass media outlets are not noted for their public service functions, providing any education programming or articles free of charge. Thus, it is not surprising that the Government is providing little, if any, incentives to encourage collaboration among governmental agencies, the BoM, the FRC, the AFCCR, the MBA and the MCA in the provision of education, information and guidance regarding banking or other financial products and services.
Recommendation	A range of initiatives should be undertaken by the MoE, the BoM, the MBA and the MCA alone and together to improve the financial capability of Mongolians regarding banking products and services. In addition, the mass media should be encouraged by Government to provide financial education, information and guidance to the public regarding banking products and services. And finally, the Government should provide appropriate incentives and encourage collaboration among governmental agencies, banking regulators, the banking industry and consumer associations in the provision of financial education, information and guidance regarding banking products and services.
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	Neither the BoM nor the MCA provides, via the internet or in printed publications, any independent information on the key features, benefits and risks - and where practicable the costs - of the main types of available banking products and services in Mongolia. Likewise, the BoM has undertaken few, if any, efforts to enable consumers to better understand the products and services being offered to consumers by banking institutions.
Recommendation	As well as undertaking – and measuring the effect of – financial education campaigns, the BoM should provide comparative price information in respect of all licensed banks, as is recommended in respect of Good Practice B. 7 above.
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	To date, there has been very little, if any, consultation on the part of the BoM, FRC and AFCCR with the MCA, the MBA and financial institutions in order to develop financial capability programs that meet the needs and expectations of consumers of financial products and services. It is not surprising, therefore, that there has not yet been any consumer testing undertaken in Mongolia in respect of any product or service supplied by banks or any other financial institutions.
Recommendation	The BoM and the FRC, together with the AFCCR (at least until such time as the AFCCR's statutory responsibilities for financial consumer protection are repealed), should work closely together and with the MCA and the MBA, as well as financial institutions in order to develop financial capability programs that meet the needs and expectations of consumers of financial products and services. And the BoM and FRC should also undertake consumer testing with a view to ensuring that proposed initiatives have their intended outcomes.
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	While mystery shopping trips to banks and other financial institutions have apparently never taken place with a view to assessing the extent to which financial products and services are consumer-friendly, the financial capability of Mongolian consumers is now being measured by a broadly-based household survey conducted by the World Bank. Results of the survey are expected to be disclosed to the public by late 2012. It is, however, the first survey of its kind in Mongolia.
Recommendation	Of some priority in the long-term, Government should devise and implement surveys and other means of regular evaluations in order to assess the impact of financial literacy initiatives with a view to applying the lessons learned as a result for the purpose of making any appropriate adjustments in respect of future initiatives.
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	By the terms of the Competition Law, the AFCCR has the unequivocal mandate to enquire into and monitor,[145] as well as to penalize,[146] any anti–competitive practices within Mongolia's entire economy, including its financial system. There is, however, no statutory requirement for the AFCCR and the BoM to consult one another, whether in order to ensure consistent policies regarding banking products and services or to conduct joint studies on competition issues, including assessing the impact of banking regulations on competition. That said, there have been at least a few instances of informal cooperation between the AFCCR and the BoM. By the Competition Law, a bank has a dominant position in the market where it, jointly with other entities (i.e. other banks), operates with a "certain product" and occupies one third or more of the production and sale of that product.[147] However, suspicions, if any, of such dominance have never been investigated.
Recommendation	The BoM and the AFCCR should coordinate to ensure the establishment, application and enforcement of consistent policies to ensure a consistently high level of competition in the delivery of all banking products and services to Mongolians.
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	The Competition Law empowers the AFCCR to inspect any business entities, including banks, in order to monitor the application of competition legislation and to produce conclusions as a result.[148] In addition the AFCCR is authorized to publicize its work, including its decisions.[149] Given severe resource constraints, however, the AFCCR has yet to carry out any in-depth, well-researched and highly respected monitoring or assessment of the state of competition in the banking sector. Nor has the AFCCR published any assessment, however modest, of the state of competition in Mongolian banking.
Recommendation	The AFCCR should be staffed, equipped and funded so as to permit it to carry out effective monitoring of competition in retail banking (such as the range of interest rates, fees and charges across banks for specific products) on a periodic basis, with the results being made widely available to the general public. The AFCCR should inform BoM when taking action on competition issues in retail banking. Information sharing agreements between BoM and AFCCR are crucial for the purpose of ensuring the establishment, application and enforcement of consistent policies regarding the regulation of financial services.
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	To date, neither the AFCCR nor the BoM has evaluated the impact of any competition policy on consumer welfare, especially regarding any limitations on customer choice and collusion regarding interest and other charges and fees.

[145] See the Competition Law, Article 15.1.
[146] *Ibid*, Article 27.
[147] *Ibid*, Article 5.2.
[148] Competition Law, Article 15.1.4.
[149] *Ibid*, Article 15.1.9.

Recommendation	Pending significant growth in capacity within the AFCCR in order to permit it effectively to monitor and evaluate any limitations on customer choice and collusion regarding interest and other bank charges and fees, competition in the banking system should be promoted by means of the Disclosure Regulation. Among other things, this Regulation should require greater transparency regarding bank interest, commissions, fees and other charges. To the extent that bank fees, commissions, interest and all other charges required to be paid by consumers - as well as the interest paid to consumers on their deposits - are reasonable, clearly stated, readily available and easily comparable, the well-being of Mongolia's consumers is obviously enhanced. By means of a future Regulation, the BoM should collect and tabulate this information on a regular basis at the very least by benchmarking the average of all consumer costs and income earned across all banks for the same or similar products. This information should then be widely disseminated by the BoM at least every quarter by means of its website, in widely read newspapers and on radio and television spots.

CONSUMER PROTECTION IN THE SECURITIES SECTOR

Overview

The capital market in Mongolia is a Frontier Market with potential for rapid growth. The stock market capitalization has been growing by MNT 794.6 billion or by 58 percent compared to 2010, reaching MNT 2.2 trillion by end-2011. However, its size is still a fraction of regional markets with a ratio of stock market capitalization to GDP of merely 16 percent at its peak in 2010.[150]

The Mongolian Stock Exchange (MSE) has partnered with the London Stock Exchange (LSE) and has significantly upgraded its trading system and operations. The MSE had a large number of inactive companies listed on the exchange that were holdovers from the mass privatization program of the 1990s. As part of the introduction of Millennium Exchange, the new trading platform introduced by the LSE, the number of shares on the MSE were reduced and placed onto two Boards with differing listing requirements (see Table 2).

Table 2: Shares and Bonds listed on the Mongolian Stock Exchange

Instrument	2007	2008	2009	2010	2011	As of August 22, 2011
Listed Equities	383	376	358	336	330	A Board 36 B Board 152

Source: FRC Annual Reports 2007, 2008, 2009, 2010, and 2011

Retail participation in the stock market is given a significant boost as the Government of Mongolia privatizes a tranche of shares in Erdenes Tavan Tolgoi (ETT) by transferring shares to citizens. In mid-February the Mongolian parliament approved the distribution of a total of 20 percent of the ETT[151] shares for free to the citizens of Mongolia, leaving them with the choice of either taking MNT 1 million or keeping the shares. Each citizen will receive 1072 shares in the company.

The general public has become significantly involved in capital markets with over 100,000 new securities accounts opened in 2011 (see Figure 2). A large part of this has been attributed to the upcoming IPO of ETT. The strengthening of the regulatory framework for the market has also helped in allying investor concerns about the fairness of the markets.

[150] For comparison, Sri Lanka's market capitalization is 40 percent of GDP and Indonesia's market capitalization is 50 percent of GDP.
[151] Second largest undeveloped coal deposit in the world.

Figure 2: Number of securities accounts between 2003-2011

	Citizens		Legal Entities		
Year	Mongolian	Foreign	Mongolian	Foreign	Total
2003	4738	3	2	2	14605
2004	6786	9	10	-	44409
2005	4894	19	12	2	6780
2006	16158	32	18	4	18435
2007	70432	326	25	17	75290
2008	21538	121	50	22	25320
2009	8803	74	25	9	10031
2010	5884	203	46	23	9753
2011	113253	501	685	39	129138

Source: FRC

The number of entities and persons that deal with retail customers directly or indirectly has also increased dramatically in 2011. The increase in the number of broker dealers has generally been attributed to the upcoming ETT privatization (see Table 3). For the same reason, there has also been a sharp rise in the number of natural persons who have qualified to act as representatives of registered entities from 63 in 2010 to 533 by end 2011.

Table 3: Entities Registered to Act as Dealers, Advisors, Underwrites and Rating Companies

Year	Brokers And Dealers	Underwriters	Rating Companies	Investment Consulting	Total
2007	36	8	0	8	52
2008	46	17	0	4	67
2009	48	15	0	5	68
2010	50	16	1	8	75
2011	90	22	1	17	130

Source: FRC Annual Report 2010 and 2011

Comparison with Good Practices for the Securities Sector

<table>
<tr><td>SECTION A</td><td>INVESTOR PROTECTION INSTITUTIONS</td></tr>
<tr><td>Good Practice A.1</td><td>Consumer Protection Regime
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.
a. There should be specific legal provisions that create an effective regime for the protection of investors in securities.
b. 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.</td></tr>
<tr><td>Description</td><td>a. Investor protection is currently organized under the Securities Markets Law of 2002 (SML). The law contains a number of investor protection provisions in Chapter 3 such as the disclosure of licenses of the broker, the disciplinary history of the broker and its officers and its financial condition. In addition, the broker cannot give out false and misleading information or engage in manipulative activities. The Rules on Brokerage and Dealer Activities (Broker/Dealer Rules) issued by the FRC also set out rules for the protection of investors.

b. The FRC has the authority to issue regulations setting forth investor protection provisions in furtherance of these statutory duties. The current legal regulatory system is somewhat basic and not well developed which is generally recognized by market participants. Article 25 of the draft securities law provides for a series of principles that should govern licensed entities. Article 26 provides for the regulations to implement these principles. In general these principles and proposed regulations are excellent and will go a long way to providing a modern regulatory framework. Specific areas that need additional consideration will be discussed below.

In order to further improve customer/investor protection, the FRC has taken regulatory actions to deal with violations of the securities laws and uses the Warning with Instruction as its primary regulatory sanction (see Table below). The regulatory powers of the FRC are still considered to be weak. The FRC will obtain greater powers under the new draft Securities Markets Law (draft SML) and will need to use them vigorously if the trust of the investing public, which seems to be returning to the market, is to be maintained. Additional powers, such as obtaining information from non-licensed entities, also need to be granted to the FRC.

Regulatory Activity by the FRC:
<table>
<tr><th>Subject Matter</th><th>2007</th><th>2008</th><th>2009</th><th>2010</th><th>2011</th></tr>
<tr><td>Examinations</td><td></td><td></td><td></td><td></td><td></td></tr>
<tr><td>Broker Dealers</td><td>25</td><td>25</td><td>41</td><td>49</td><td>64</td></tr>
<tr><td>Corporations</td><td>309</td><td>5</td><td>38</td><td>51</td><td>63</td></tr>
<tr><td>Types of Violations</td><td></td><td></td><td></td><td></td><td></td></tr>
<tr><td>Inadequate Disclosure</td><td>11</td><td>20</td><td>21</td><td>17</td><td>16</td></tr>
<tr><td>Unauthorized Trading</td><td>31</td><td>15</td><td>10</td><td>5</td><td>2</td></tr>
<tr><td>Actions Taken</td><td></td><td></td><td></td><td></td><td></td></tr>
<tr><td>Warning with</td><td>37</td><td>32</td><td>27</td><td>17</td><td>10</td></tr>
</table></td></tr>
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	Instructions Fines: 2.78 million MNT; 5.06 million MNT; 3.33 million MNT; 7 entities; 710,000 mil MNT; 13 entities; 1.75 million MNT Suspension of Licenses: "Several"; 1; 5; 5; n/a Revocation of Licenses: 0; 3; 2; 2; n/a Administrative Penalties: 15; 50; 23; 7; n/a Recall of Trade No. of shares: 3914715; 3310551; 70; 2716; n/a Participation in court protecting investors/customers: 2; 20; 19; 21; n/a Criminal Referrals: 2 (started in 2006); 0; 0; 1; 0 Source: FRC Annual Reports 2007-2011
Recommendation	The role of FRC in financial consumer protection should be strengthened in order to ensure improved monitoring of securities companies' compliance with legal requirements and enforcement in case of violations of market conduct regulations. A sustainable and practical way to ensure proper market conduct oversight within the securities sector would be to establish a separate consumer protection unit within FRC. Considering the broad range of supervisory responsibilities of FRC and the capacity constraints, a designated team within securities supervision department responsible for financial consumer protection would be helpful as an intermediate step.
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 Mongolian Association of Securities Dealers (MASD) has developed a Code of Conduct that is mandatory for members. However, membership itself is not mandatory. b. The Code is on the website of the MASD, but does not appear to be publicized or made public in any other way. c. Due to the voluntary membership in the MASD, the only incentive to meet the Code would be the threat of expulsion from the MASD. This could result in some reputational damage but would not prevent a broker from continuing operations in violation of the Code. The draft SML in Articles 68 et seq provides for the extensive regulation, establishment and development of SROs to assist in the regulation of the securities markets and to provide for ethical codes, training and investor education. In line with this, the new draft SML would transform the MASD into an SRO with mandatory membership and disciplinary powers for violation of the Code and securities laws and regulations.
Recommendation	The provisions of the new SML should be enacted. The development of the SROs should be

	given significant support.
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 legal system is the primary means for dispute resolution. Due to high costs it is not often used for cases involving retail investors/customers. b. The media is active in certain areas particularly in the coming privatization of ETT. The Mongolian population is highly literate. c. Under the current law, investor protection by other institutions in the capital markets is limited. The MASD has developed a Code of Conduct for members but membership is not mandatory. In addition, there is no dispute resolution mechanism at MASD. The MSE has rules regarding trading on the market but does not have a Code of Ethics or arbitration system for broker-customer disputes. The Mongolian Securities Clearing House and Central Depository (MSCH&CD) does not resolve disputes between customers over ownership of securities which is handled by the FRC. The new draft SML would create the MASD as an SRO which could handle basic consumer complaints.
Recommendation	The Mongolian government should give a stronger role to MASD and other SROs in promoting consumer protection as provided for in the new draft SML.
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. Entities must be licensed to act as professional institutions in the securities markets (Art. 20.1 SML). The SML only allows legal persons to obtain a license (Art. 3.1.6 SML). In addition, investment funds must be licensed to offer and sell securities to the public (Art. 26.5 SML). The draft SML provides for a simplified licensing regime for all entities, including professionals who work in the market. It significantly improves the current system. b. Under SML Articles 19.1, 20.1 and 30, securities investment consulting companies must also obtain a license to provide investment advice. 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 provision in the SML or Rules on Brokerage and Dealers requiring a description of the choices available. (ii) There is no provision in the SML or Rules on Brokerage and Dealers requiring a description of all services that are offered. (iii) Art. 11.1.2 of the Rules on Brokerage and Dealers provides that before entering into a contract, a broker or dealer must disclose the risks of the investment. (iv) There is no margin trading allowed, although this may change with the new trading system. (v) There are no derivatives currently traded in Mongolia. b. SML Articles 14.1, 14.2 and 15.1 (obligation to follow regulations) and Art. 12.6 of the Broker/dealer Rules provide liability for false advertising and sales practices. c. SML Article 14.2.1 provides that a professional institution involved in the securities market shall disclose to investors at their request documents related to special licenses to carry out professional activities in the securities market and the certificate of state registration. d. SML Article 14.2 does not require disclosure of all entities to which it has outsourced activity. It must disclose pursuant to Article 14.2.2 information on own capital, debt, loans and the financial situation of the institution carrying out the professional activities, which might contain some of such information. In addition, under Article 14.4, an investor has right during the process of purchasing and selling of securities to request any information specified in the law from an issuer or from the professional participant institution in the securities market. However, the investor must initiate this inquiry to obtain the information, the broker or dealer is not obligated to disclose it.
Recommendation	The Rules on Brokerage and Dealers should be amended to require more extensive disclosure to investors regarding the choice of services offered and entities that the broker

	will use in conducting the investors business. The broker or dealer should provide these disclosures regardless of whether the customer/investor requests them.
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** **(ix) the procedures for closing an account.**
Description	a. There is no obligation in the SML or Rules on Brokerage and Dealers requiring that a copy of the general terms and conditions be given to a client prior to commencing a relationship. Article 36 of the draft SML provides for these areas in general. Specific regulations will need to be enacted to fully implement the contractual relationship between the broker and customer. b. See a. c. (i) There is no obligation in the SML or Rules on Brokerage and Dealers requiring that the details of the general charges be given to a client. (ii) There is no obligation in the SML or Rules on Brokerage and Dealers requiring that the complaint procedure be given to a client. (iii)-(vi) There is no obligation in the SML or Rules on Brokerage and Dealers requiring that the fees be given to a client prior to commencing the relationship. (vii) There is no margin or securities leverage permitted in Mongolia. (viii) There is no obligation in the SML or Rules on Brokerage and Dealers requiring that restrictions on account transfer be given to a client. (ix) There is no obligation in the SML or Rules on Brokerage and Dealers requiring that the procedures for closing an account be given to a client prior to entering into a relationship.
Recommendation	The Rules on Brokerage and Dealers should contain a requirement that the general terms and conditions be given to the prospective client prior to commencing the relationship.
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	Article 2.1.4 of the Procedure for Special Permission on Professional Transactions in the Securities Market (Licensing Rules) requires that specialists in professional participant institutions have a certificate to act in the market. Article 3.9.4 of the Licensing Rules requires that securities investment consultants who work for Investment Consulting Companies must have a certificate of foreign and domestic training in the field of

	investment consulting. However, there is no explanation as to what constitutes adequate training. The FRC states that employees of securities market participants must have accreditation from training and the FRC provides periodic training for natural persons to obtain a certification to work for a professional institution. It is not clear from the law or FRC website if these requirements extend to sales persons for brokers and dealers, however presumably it does.
Recommendation	Sales staff of securities market participants should be required to take a competency examination that is administered either by the FRC or an SRO (if there is one). The new draft SML and related regulations should contain a detailed provision as to the procedures for sales people to take an examination.
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	There is no KYC rule in Mongolia. The draft SML provides for the implementation of a suitability requirement.
Recommendation	Mongolia should implement the KYC rule in the draft SML.
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	There is no suitability rule in Mongolia.
Recommendation	Mongolia should implement a suitability rule and the SML or Rules should be amended to require it.
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 SML or Rules on Brokerage and Dealers that deals with high-pressure sales tactics. (ii) Article 16.1.1 of the SML provides that a securities market professional shall not disclose false information to and mislead the public during securities trading and during initial public offering. (iii) Art. 11.1.2 of the Rules on Brokerage and Dealers provides that before entering into a contract, a broker or dealer must disclose the risks of the investment.

	(iv) There is no provision in the SML or Rules that prohibits the discounting or disparagement of warnings in the written sales literature. (v) Article 4.3 of the Rules on Brokerage and Dealers provides that the contract between and investor and securities market professional cannot exclude or restrict liability or duty of care. While there are various provisions throughout the draft SML dealing with misleading and false information, particularly for market information and insider trading, there is no provision that is dedicated to fraudulent sales conduct. The draft SML needs a clear stand alone provision which deals with fraudulent misrepresentation, sales practices; misleading and incomplete disclosure, and false advertising. Such a provision that would include clear definitions of fraudulent conduct would significantly improve investor protection in the securities sector. b. Article 38 of the SML provides for monetary penalties for violations of the sales practice rules. Violations can also result in the suspension or revocation of licenses and the halting of activity on the recommendation of a state inspector. c. The state inspectors have strong authority to inspect market professionals, however it does not appear that this extends to non-licensed entities. The draft SML (Article 81) does not appear to give the FRC the authority to obtain information from non-licensed entities. A bank can only be required to give information if the bank is a related person of the regulated entity. Banks that are not related persons to the regulated entity may contain considerable amounts of information regarding the flow of funds from fraudulent activity and their information should be available during the course of the investigation.
Recommendation	The sections of the SML that deal with fraudulent sales practices need to be strengthened and the powers of the FRC and the state inspectors needs to be increased so that they can obtain information from non-licensed individuals. The draft SML should contain a stand-alone fraud provision.
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. Article 12.3 of the Rules on Brokerage and Dealers states that the advertisements should be understandable in light of their target entities' general knowledge and understanding. b. Article 16.1.1 of the SML provides that a securities market professional shall not disclose false information to and mislead the public during securities trading and during initial public offering. Further Article 12.2 of the Rules on Brokerage and Dealers states that the advertisements should not be misleading. Article 17 of the Law on Advertising prohibits giving guarantees as to dividends and performance as well as misleading statistical data. c. There is no requirement that all advertising contain licensing information.
Recommendation	Advertising should contain the information about the advertisers licensing status.
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 that disclosure be made of all entities that could have an impact on a client's account. b. Article 27.3.4. of the SML provides that if there is conflict of interest among the clients, broker, dealer and the affiliated group during the completion of the order, the company is required to inform the client about the conflict immediately.
Recommendation	Intermediaries, investment advisors and CIUs should disclose the identity of all entities that could have an impact on a customer's account.
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 is no provision in the SML or Rules on Brokerage and Dealers that deals with disclosure of CIU frequent trading practices or soft money. A new draft mutual fund law is being considered which will fully develop the regulatory structure for investment funds. b. There is no provision in the SML or Rules on Brokerage and Dealers related to disclosures by CIUs in the form of a Key Facts Statements.
Recommendation	The development of an investment fund industry would be very helpful for the development of the capital markets. The finalization of the investment fund law should proceed as rapidly as possible.
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	a. (i) There is no provision in the SML related to disclosure by an entity that has a license as

	an investment consulting company as to whether it is registered in another capacity. (ii) There is no provision in the SML requiring disclosure by an investment consulting company as to whether the securities it has recommended are held by the investment consulting company or a related party. b. There is no provision in the SML requiring an investment consulting company to provide a Key Facts Statement to customers or potential customers.
Recommendation	There should be regulations requiring disclosure by an investment consulting company as to its registration status and whether it or a related entity holds securities that it is recommending.
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	Under the current trading and custodial system based on cash settlement, customer assets are well segregated. However, with the introduction of the new trading system supplied by LSE and a T+3 settlement timeframe, the system will radically change. Settlement banks will hold the cash for customers in the brokers' accounts. Article 26 of the draft securities law does not contain a specific provision requiring a regulation on segregation of customer assets. This is very important for investor protection and should be included in the draft law.
Recommendation	The segregation rules and legal framework in the draft SML should clearly provide that customer funds cannot be used by the broker or settlement bank for their own activities and that the funds are not part of the bankruptcy estate of the broker or settlement bank in the event of their insolvency.
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. Article 11.2 of the Rules of Brokerage and Dealers requires the intermediary to send a contract note to the client immediately on the fulfillment of the client's order. Article 413.3 of the Civil Code also requires the delivery of a contract note for a brokerage transaction in securities. b. Article 11.2 of the Rules of Brokerage and Dealers requires the intermediary to include fee and tax information in the contract note. c. There is no provision in the SML or Rules on Brokerage and Dealers that requires a disclosure of the venue probably because there is only one venue – the MSE. There is also no provision requiring disclosure of whether the broker acted as a dealer or if the trade was internal in the brokerage house.

Recommendation	The contract note needs to include whether the broker acted as a dealer on the trade and, if the price is based on a mark-up, there should be no brokerage fee.
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. (i) Article 11.3 of the Rules on Brokerage and Dealers provides that a broker or dealer should send a monthly account statement at the end of the month to all clients. (ii) There is no provision in the SML or Rules on Brokerage and Dealers regarding a mechanism for disputing the accuracy of the account. (iii) Article 11.3 provides that the monthly information can be provided to clients on a website which is accessible to the client with a password. b. There is no provision in the SML or Rules on Brokerage and Dealers regarding a mechanism for a custodian to hold assets and send out statements. The Central Depository, from which clients can information on request, currently holds all assets in a brokerage account.
Recommendation	As to future custodial arrangements, the law should provide that banks acting as custodians should provide information to customers for assets held by an investment consulting company for the clients.
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 SML or Rules on Brokerage and Dealers requiring prompt transfer of funds.
Recommendation	A rule on prompt payment and transfer of funds should be enacted.
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. Section 14.1.1 of the Rules on Brokerage and Dealers requires that brokers and dealers keep almost all of these records. Video recordings of telephone calls with clients and general advertisements for clients are also required. However, specific written advice and correspondence with a client as required under parts (iv)-(vi) are not specifically required in the rule. b. Under Section 14.1 of the Rules on Brokerage and Dealers brokers and dealers must keep records for five years.
Recommendation	The next amendment to the Rules on Brokerage and Dealers should include the requirement to keep any written advice or communication with the clients.
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	Article 13 of the SML provides that the disclosure of information on the number of securities owned by an investor, related information, which has not been disclosed for the public and the offer to sell such securities to a party without the owner's permission shall be prohibited. In addition, the Law on Personal Privacy, states that persons have a right to privacy in confidential matters, which includes financial information. Other persons may not disclose this information and if they do so, they are liable for damages. Governmental officials who obtain confidential information shall not disclose the information to other parties.
Recommendation	The Law on Privacy is not well drafted and should be rewritten to clearly set out the rights of persons to privacy and their rights if their privacy is violated.
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 is no provision in the SML, Rules on Brokerage and Dealers or Law on Privacy that require that a professional institution inform a client as to information sharing requirements and the right to opt out.
Recommendation	The rules on information sharing should be redrafted along with the Law on Privacy and privacy provisions in the SML to provide a clear set of rights for investors regarding the sharing of information and their right to opt out of any sharing agreements.
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. The government's right to obtain information is set forth in the Law on Personal Privacy and it can be released pursuant to legal requirements. b. The Law on Personal Privacy provides for monetary damages in Articles 7 and 8. Article 13 of the SML provides that a professional institution that violates the privacy provisions can have its license suspended or revoked but there are no monetary penalties.
Recommendation	The sanctions for violations of the Law on Personal Privacy and SML should be increased to provide for an adequate deterrent for violations of the law.
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. There is no provision in the SML or Rules on Brokerage and Dealers regarding the requirement of an internal review and dispute resolution mechanism in a broker or dealer. The FRC states that it requires an internal review system. b. See a. c. There is no provision in the SML or Rules on Brokerage and Dealers that requires a broker or dealer to disclose an internal dispute resolution mechanism. d. There is no provision in the SML or Rules on Brokerage and Dealers regarding oversight of internal dispute resolution mechanisms.
Recommendation	The next amendment to the Rules on Brokerage and Dealers should include an explicit and detailed requirement for the establishment of, and disclosure of, internal dispute resolution procedures.
Good Practice E.2	***Formal Dispute Settlement Mechanisms*** **There should be an independent dispute resolution system for resolving disputes**

<table>
<tr><td></td><td>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.</td></tr>
<tr><td>Description</td><td>As part of its duties for investor protection, under the SML, the FRC is responsible for receiving and handling investor/customer complaints. The number complaints have remained stable over the last five years. The primary complaint relates to a holdover problem from the era of mass privatization where brokers sold securities in their customers accounts without their knowledge or permission. Other complaints were for failure to disclose the nature, risk and financial condition of the companies issuing the securities and the financial condition of the broker. The FRC was able to resolve many of these prior to formal actions.
Securities Customer Complaints Made to the FRC[152]
<table><tr><td>Year</td><td>2007</td><td>2008</td><td>2009</td><td>2010</td><td>2011</td></tr><tr><td>Complaints</td><td>680</td><td>316</td><td>341</td><td>322</td><td>316</td></tr></table>
The draft SML provides in Article 86 that the FRC shall establish a Dispute Review Board which shall "settle disputes between the regulated persons, issuers, investors and clients" pursuant to procedures to be established by the FRC. In this regard, the FRC has the power to act as an Ombudsman for investors under the new law and a more formal procedure should be put in place under the new draft SML.</td></tr>
<tr><td>Recommendation</td><td>The Dispute Review Board should be supported in order to create an inexpensive retail investor dispute mechanism.</td></tr>
<tr><td>SECTION F</td><td>GUARANTEE SCHEMES AND INSOLVENCY</td></tr>
<tr><td>Good Practice F.1</td><td>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.</td></tr>
<tr><td>Description</td><td>a. There is no provision in the SML or Rules on Brokerage and Dealers or Law on the FRC that provides for the taking of prompt action to protect investors in the event that a broker</td></tr>
</table>

[152] FRC Annual Reports 2007-2011

	or dealer is in financial distress. The FRC says that it can transfer account to a solvent broker or dealer. b. There is no investors guarantee fund in Mongolia. Article 19.2.11 of the SML states that each broker or dealer shall have an internal risk protection fund. Section 2.1.1 of Procedure on special permission for professional transactions in securities market requires that the broker or dealer shall set up the fund with capital equivalent to not less than 3 percent of their share capital and deposit in "SCHCD" LLC special account and "SCHCD" LLC shall deposit the capital in high-rate commercial bank. The sources of the fund shall come from shareholders' capital and company profits and it shall be used to pay for adverse events in the market. c. There is no investors guarantee fund in Mongolia. The use of a guarantee fund is a powerful way of building investors' confidence that their assets are safe if a broker or dealer misappropriates their assets or becomes bankrupt. It is mandatory in the EU and exists for equity transactions in the US. Due to the fact that a large part of the investor complaints in Mongolia concern improper and illegal activity and to the fact that there are a large number of older and newly licensed brokers and dealers that appear to be thinly capitalized, such a fund would assist in establishing more investor confidence and thus willingness to use the capital markets. Unfortunately, due to the fact that the cost of the fund is ordinarily borne by the brokerage industry, countries with smaller capital markets frequently don't have such a fund, since the brokers do not want to incur the costs. In that instance, the government may want to consider initiating such a fund that is partially funded from government resources or from other resources such as a securities transactions tax. The government would need to weigh the cost/benefits of such a fund in creating increased investor confidence in the market. d. There is no provision in the SML or Rules on Brokerage and Dealers to handle the quick payout of funds by an insolvency trustee of a broker or dealer.
Recommendation	Due to the prevalence of complaints about fraud and the untried character and possible financial weakness of a number of the new brokers, the government should conduct a cost/benefit analysis of the creation and funding of an investor protection fund which, in the event of misconduct regarding the investors funds or the insolvency of the broker, would be available to restore the investor's assets. The benefits of securing the assets of investors in the event of a broker's insolvency and fraudulent conduct would be weighed against the likelihood that brokers will default, the costs of the fund and the impact of the creation of the fund would have on brokers' competitiveness and willingness to work in the market.
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 existing programs for financial education have been developed by individual market participants and have been oriented towards their members or client groups. These programs have mainly been carried out in Ulaanbaatar and several other major cities in Mongolia and have made financial education regarding the securities markets generally

	available. However, there is general agreement that extending this education to the rural areas has been very difficult. b. A large number of securities market institutions, such as the FRC, MSE, and market participants, have developed and put into practice financial education programs regarding the securities market for Mongolian citizens. b. No institution has been named as the lead institution for a national financial capability program.
Recommendation	The government of Mongolia should consider putting together a national program under the leadership of MoF that brings together these various programs into a coordinated program that has resources to extend to the rural areas. The partial privatization of ETT will require a special and extensive investor education program. Although many citizens are aware of the ongoing privatization through government announcements and the media, it is not clear that there is wide spread knowledge as to what their options are in the privatization and the pros and cons of each option. In order to avoid recriminations against the government after the privatization, an extensive investor education program will be needed.
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. The various programs that have been used so far mainly rely on lectures and classes. However, new mechanisms such as thematic picture books or "bandes dessinees" have been developed by the MSE as a way of reaching more people. b. Due to the high literacy rate in Mongolia, the mass media does cover financial matters that are most important. Since the stock market has not been active, there has not been much coverage recently, but with the privatization of ETT, more coverage can be expected.
Recommendation	A variety of mechanisms should be explored such as TV ads, community presentations and the like to increase investor awareness. This is being done and should be encouraged.
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. The FRC provides some information on its website but does cover the key features, benefits, risks and costs of the main types of financial products. b. MASD has provided some investor education and intends to do more if it is made a full SRO.
Recommendation	The FRC should consider developing an investor awareness page for its website to provide additional information to investors.
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 broad based investor survey currently being undertaken in Mongolia.

	b. There is no evaluation of investor awareness efforts currently being done.
Recommendation	A survey of financial literacy and investor awareness should be undertaken and is currently underway with World Bank support. The effectiveness of these efforts should be evaluated when they are completed.

CONSUMER PROTECTION IN THE INSURANCE SECTOR

Overview

The Mongolian insurance sector has shown substantial growth in recent years but remains a very small part of general economy. Within the year of 2011, the total premium income in the insurance sector reached to 47,997.3 mn. MNT, which is 1.5 times higher than in 2010. However, the insurance penetration ratio for Mongolia, which measures premiums written as a share of GDP, accounted for only 0.44 percent in 2011 which is considered low compared to international standards.

Based on regional comparisons the sector is underdeveloped relative to several of its neighbors. In terms of insurance penetration Mongolia ranks 8th out of 12 counties in the region and in terms of insurance density (premiums per capita) it ranks 7th.

Table 3: Insurance Penetration and Density

2010	Insurance Penetration %	Insurance Density ($US)
India	3.67	60.58
China	3.65	163.49
Russia	2.27	245.04
Afghanistan	1.40	7.39
Kazakhstan	0.68	71.80
Azerbaijan	0.46	29.62
Tajikistan	0.44	3.47
Mongolia	0.38	8.49
Pakistan	0.36	4.26
Turkmenistan	0.31	10.62
Uzbekistan	0.30	4.70
Kyrgyzstan	0.25	2.08

Source: Axco Global Statitics

The private insurance sector in Mongolia does not have a long tradition. Private insurers were not permitted until the early 1990s and the first law on insurance was not introduced until 1997. State insurers were privatized in 2003, ending government involvement in the provision of insurance services. The market is presently comprised of 16 non-life insurers and 1 life insurer. The life insurance sector is in its infancy and writes less than one percent of premiums including its portion of the personal accident and sickness business. The reinsurance market is in its early stages of development.

Motor Third Party Liability (MPTL) insurance first became compulsory in the 1990s but in 2005 a law repealed this obligation. In 2012 a new law reestablished the obligation to have minimum liability insurance of at least MTN 5 mn. ($3,600 US) on regular vehicles, and MTN 10 mn. ($7,300 US) on public transport and special purpose vehicles. Employers were required to insure workers compensation liabilities as part of labor law changes in 2001. There has been a high rate of non-compliance with this obligation, however, as well as with the MPTL obligation.

Insurance is sold by agents, through direct sales by company employees, and through brokers. Agents are the most important distribution channel and account for more than two thirds of total sales. There are approximately 2000 insurance agents in Mongolia. They are remunerated through commission and must be licensed with the FRC. Average non-life commissions are in the 10 percent range. Agents generally represent only one insurer rather than several.

Direct sales by insurers comprise the second largest distribution channel. Direct sales tend to include larger and more complex insurance risks and exceed 30 percent of premiums. Employees are remunerated through a combination of salary and commission.

Brokers comprise only a small portion of the market (less than 2 percent). Brokers must be licensed with the FRC and meet minimum capital requirements of MNT 10 mn. ($7,300 US). There are currently eight licensed insurance brokerages. Since 2010, Banks may also act as insurance brokers with the approval of the central bank and several banks are looking to implement Bancassurance models.

Comparison with Good Practices for the Insurance Sector

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	Mongolian Law does not adequately address consumer protection issues in insurance. The Consumer Protection Law is an overarching Act governing consumer protection but it does not appear to specifically deal with insurance services. The Law on Insurance of 2004 establishes "protection of the interests of insureds and other persons engaged in insurance business …from malpractice or dishonest actions" as a responsibility of the regulator. However, there do not appear to be a large number of provisions dealing with market conduct/consumer protection issues. Article 58 of the Law on Insurance establishes a prohibition against misleading advertising and Article 59 empowers the regulator to establish rules for market conduct that are binding on the insurer, but there do not appear to be many specific rules covering areas of consumer protection. A provision similar to Article 59 also exists in the Law on Insurance Intermediaries which sets out licensing requirements and other provisions related to the activities of insurance intermediaries." The "*Code of Ethics To ensure Prudent Operations of Insurers and Insurance Intermediaries*" is a regulation that establishes some principles and requirements to be followed by insurers, their employees, loss adjusters, and agents in the conduct of their business but it is very general and does not address many areas affecting consumers. For example, the "*Code of Ethics To ensure Prudent Operations of Insurers and Insurance Intermediaries*" does to establish an obligation on agents or company sales people to take reasonable steps to know their clients interests in an insurance transaction, and to place the client's interest above their own interest in the transaction. It also does not establish an obligation on agents or sales people to disclose their relationship with the insurer or how they are remunerated to the client. Similarly, it does not establish obligations for safeguarding client money. The Civil Code establishes some rudimentary requirements for contracts of insurance but provides little guidance on acceptable contractual provisions for consumer protection. The policies of insurers are not reviewed or approved by the FRC. The FRC does not oblige insurers to have a consumer protection system that requires policies, procedures and controls to ensure consumer protection including those covering: The handling of conflicts of interest; Mechanisms for proper consumer information disclosure; The handling of complaints within insurance companies and Requirements for producing statistical data on consumer complaints. There is no financial services ombudsman in Mongolia. There does not appear to be an

	established means of mediating insurance disputes under the law or requirements to address claims issues within specific timeframes. Article 33 of the Law on the Legal Status of the Financial Regulatory Commission (FRC) of 2005 gives the FRC Dispute Resolution powers between license holders and clients. FRC officials advise that this power has been used approximately 31 times within the last year. Complaints about insurers not honoring claims and about misleading advertising in insurance are common in Mongolia and many consumers view compulsory insurance products as a tax rather than a financial service.
Recommendation	The responsibility for consumer protection in insurance law should be more clearly delineated and the regulatory requirements and powers for dealing with consumer protection issues should be enhanced to ensure that they provide adequate levels of protection for consumers purchasing insurance. If this does not occur consumer confidence in insurance markets will continue to remain low. The role of FRC in financial consumer protection should be strengthened in order to ensure improved monitoring of insurance companies' compliance with legal requirements and enforcement in case of violations of market conduct regulations. A sustainable and practical way to ensure proper market conduct oversight within the insurance sector would be to establish a separate consumer protection unit within FRC. Considering the broad range of supervisory responsibilities of FRC and the capacity constraints, a designated team within insurance supervision department responsible for financial consumer protection would be helpful as an intermediate step. The recently endorsed G20 principles for market conduct regulation and supervision may provide guidance in undertaking such as task. In addition ICP 18 and 19 of the October 2011, IAIS core principles for insurance supervision could provide guidance. In the short term some changes could be implemented through the use of existing regulatory powers under the Law on Insurance and the Law on Insurance Intermediaries. Other changes (e.g. a Financial Services Ombudsman) would likely require new legislation. Changes to the Civil Code to enhance requirements for contracts of insurance would also be advisable but could likely be accomplished in the short term through the review of retail insurance contracts by the FRC against clearer publicly available consumer protection criteria.
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	There are currently few provisions which deal with insurance contracts in the insurance law and the rights and duties of parties are not well defined in the legislation. The law appears to defer many of the requirements for an insurance contract to the contract itself. Given the asymmetric information relationship of insurers dealing with retail consumers, this can result in consumers with low levels of financial literacy being taken advantage of. Most developed countries define many more minimum contractual requirements in legislation. These provisions are often tailored to specific classes of insurance adopted by the jurisdiction and generally relate to the type of risks being insured (e.g. fire, surety, accident, sickness). Mongolian officials advise that they review standard retail insurance contracts before they are introduced to the market. The criteria for these reviews do not appear to be publicly available.

Recommendation	The body of the insurance law should be amended to establish more modern insurance contract provisions that clearly define the minimum rights and obligations of the parties. This should be accomplished through a comprehensive review of the current Civil Code requirements or perhaps a separate law on insurance contracts. At a minimum the law should provide better guidance on information exchange and disclosure obligations, claims procedures and proof of loss requirements, the process of appraisal to be used in assessing claims and the timeframe for taking legal action. Drawing on the expertise of other civil code jurisdictions (e.g. from the European Union) may help speed drafting and take advantage of skills and experience of other jurisdictions. Until the Civil Code can be amended, more rigerous provisions could be published and introduced through FRC review of retail insurance contracts.
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	The "*Code of Ethics To ensure Prudent Operations of Insurers and Insurance Intermediaries*" is a regulation that establishes some principles and requirements to be followed by insurers, their employees, loss adjusters, and agents but it is very general and does not address many areas of concern to consumers (e.g. claims handling). The "*Code of Ethics To ensure Prudent Operations of Insurers and Insurance Intermediaries*" e is a government regulation developed with the industry and publicized on the FRC Website and in newspapers. The FRC assesses compliance with the code as part of its on-sight review process for insurers. In 2009, AMI developed a voluntary Code of Conduct to establish essential professional standards, an ethical framework as well as some minimum requirements for services provided by insurance companies to consumers. However the Code of Conduct lacks detail and the stated standards are very vague. For example, while the code requires insurance professionals to inform customers of conflicts of interest little guidance is provided defining conflicts of interest.
Recommendation	The FRC, consumer groups and industry associations should be encouraged to participate in the development and implementation of a more detailed and comprehensive code. At a minimum the code should include requirements and standards for intermediaries to know their clients, that they disclose how they are remunerated and that agents as well as brokers place the clients interest before their own interest in making recommendations about insurance products. The industry should be required to implement the code, publicize its existence and disseminate information on it generally and with each specific insurance transaction including information on how to make a complaint relating to the code.
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	The Supervisory authority for insurance is the FRC. The FRC was established under the *Law on the Legal Status of the Financial Regulatory Commission* of 2006. The authority also covers securities and micro finance activities. Its activities are funded from fees placed on the premium income of insurers but its budget is approved as part of the state budget process. Its mandate includes "protection of the interests of insureds and other persons engaged in insurance business …from malpractice or dishonest actions". Most of its resources appear to be dedicated to licensing and prudential areas rather than market conduct areas. Mongolians have free access to the court system and legal fees are low, but many Mongolians do not have the funds to go to court. Few disputes reach the court system as many Mongolians prefer to settle disputes in other ways.
Recommendation	Greater consumer education on insurance products and ways and means of resolving financial services disputes as part of more general consumer education may be of benefit to consumers. As insurance transactions tend to be difficult for many consumers to understand expansion of financial education programs with respect to insurance will help to increase confidence in insurance markets.
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	There is no specific provision in insurance law that would prevent bundling of insurance products and the practice has already appeared in the sale of mortgage insurance and in automobile financing.
Recommendation	Consideration should be given to developing a prohibition against coercive tied selling. Such a prohibition would be intended to address situations where the consumer is forced to purchase a bundled product in order to receive a specific financial service.
Good Practice A.5	***Licensing*** **a. Are all types of insurers required to be licensed.** **b. Are insurance agents and brokers required to be licensed or at least specifically authorized and advised to the supervisory agency? Do they need to have specific qualifications and competencies?** **c. Are insurance adjusters licensed? Do they need to meet specific qualifications and competencies?** **d. What powers does the supervisory agency have to investigate conduct by insurance companies and their agents and brokers?** **e. What is the process and what are general criteria used by the regulator to determine the suitability of licensees (agents, brokers and insurers).** f. **Do these criteria include determination of personal suitability through criminal background checks or check for disciplinary action by other insurers or financial services regulators?**
Description	Insurers must be licensed with the FRC. Licenses are either for life or non-life insurance. Both life and non-life companies may write personal accident and sickness insurance. To obtain a license a non-life insurer must have a minimum capital of MNT 1bn, while a life

	insurer must have at least MNT 2 bn. Licenses authorize specific classes of insurance business and licensees must get approval of specific business plans describing how they are to carry out their operations. The FRC can authorize the placing of business with unlicensed insurers but only in special circumstances (e.g. inadequate capacity in the local market). Insurers, agents, brokers and adjusters are required to be licensed. As part of the licensing process intermediaries are required to be fit and proper, and to meet competency requirements (including criminal record checks). The training of agents is the responsibility of the insurer but training programs are overseen by the industry association and the FRC. The FRC is responsible for licensing and for approving the training programs of intermediaries. The FRC has broad investigatory powers including onsite inspections.
Recommendation	None. In the future consideration should be given to establishing publicly available industry wide educational standards for insurance agents.
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	The Law on Insurance establishes an obligation on the insurer to introduce the insured persons to the insurance contract terms. There is, however, no comprehensive set of consumer protection standards or processes associated with this requirement. Information on complaints suggests that insurance contracts are difficult for ordinary Mongolian consumers to understand and therefore proper disclosure of terms and conditions at point of sales is extremely important. There does not appear to be an obligation for agents to disclose to consumers the commissions they are paid by insurers. Brokers comprise a very small share of the market and it does not appear they have a large role with retail consumers.

	Bancassurance, or the distribution of insurance products through retail banks, is new to Mongolia and bancassurance proposals are currently being developed with the FRC. The FRC has a wide range of powers to sanction insurers and intermediaries including fines. Unlicensed agent activities are prohibited.
Recommendation	A more comprehensive set of consumer protection standards should be developed and established in law. These requirements should include FRC approval of policies, procedures and controls adopted by an institution to ensure consumer protection, detailed requirements on information disclosure, and procedures for handling information requests and complaints. Agents and brokers should be required to disclose commissions to consumers as part of their sales process. Bancassurance proposals should be vetted by the FRC to ensure that consumers are not left with the impression that the insurance product is a product of the bank. Broker requirements should clarify that brokers cannot act as an agent for a particular insurer or insurers.
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	Article 58 of the Law on Insurance establishes a prohibition against misleading advertising. Article 28 of the Law on Intermediaries establishes a similar provision. There are no requirements regarding plain language materials, font size or that materials be easy to read. In addition, there are no requirements regarding life insurance projections but life insurance is a very small portion of the insurance market and such products may not be prevalent in the market.
Recommendation	Provisions should be established in the insurance law that advertising and marketing materials be easy to understand. The insurance regulator should be vested with the authority to control content and dissemination of insurance advertising material and to impose penalties if parties violate this requirement.
Good Practice B.3	***Know your Customer*** **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	Article 10 of The Law on Insurance establishes an obligation on the insurer to "introduce the insured persons to insurance contract terms". The law provides little other guidance and there is no legally enforcable requirement to understand the client needs.
Recommendation	A regulation or legally enforceable code of conduct for insurance intermediaries should be developed by the FRC in consultation with the industry covering the understanding of customer needs. At a minimum such a regulation or code should require the intermediary to: • evaluate clients' needs; • disclose material information relevant to the purchasing decision; • conduct all insurance activities in a competent manner;

	• protect clients' interests and privacy; and • carry on the business of insurance in good faith - act with honesty and decency of purpose and a sincere intention to represent the client's best interest.
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	Cooling off periods for long term savings products are not required.
Recommendation	Cooling off periods should be introduced for longer term savings products so that consumers can reverse the effects of high-pressure sales practices. Typically these should apply for up to 14 days after the contract becomes effective or a shorter period after the contract is sent out.
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	The insurance legislation makes no reference to Key Facts statements.
Recommendation	Key Facts Statements should be developed and appear at the front of all retail proposal and policy documents for long term savings and investment products. Key Facts documents could be reviewed and approved as part of the FRC process of reviewing insurance policies.
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	Insurance agents and brokers are licensed and receive FRC approved training but special education requirements for those who sell long term savings and investment products are not specified. This is likely because of the early stage of development of the life insurance industry in Mongolia.
Recommendation	None at this time. However as the industry develops and long term savings products become more prevalent special education requirements for these products should be developed.
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	Advertisements do not disclose the name and address of the regulator. Proof of licensing for intermediaries is available through the internet (on the regulators website) at a minimum.
Recommendation	Intermediaries should be required to disclose that they are licensed and regulated by the FRC in every retail transaction. This should be part of a new regulation or legally enforceable industry code of conduct for intermediaries.

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	The FRC publishes a detailed annual report. The report provides a great deal of information on the health, strength and penetration of the insurance industry but most of this information addresses prudential concerns rather than market conduct information. Insurers are required to disclose detailed financial statements in annual reports. Mongolian insurers are generally not rated externally and the regulator does not publish special information on individual insurers to allow the commentator to form a view of the insurers financial strength other than that in the annual reports.
Recommendation	The FRC should consider making more information on insurers available on its website such as market conduct information (e.g. resolution of complaints) and non-confidential information on insurer financials (e.g. quarterly financials including reserving information and available capital).
Good Practice B.9	***Terms and Conditions*** **a. Is the insurer required to provide general and policy specific terms and conditions?** **b. Does a written copy of the terms and conditions for a policy need to be given?** **c. Are the terms and conditions required to be in a minimum font size and spacing to facilitate easy reading?** **d. Is there a requirement for "plain language"?** **e. Must the policy terms and conditions disclose details of:** o **The issuer of the product** o **Events covered** o **Exclusions** o **General and specific fees and charges?** o **Premiums?** o **Commissions?** o **Significant tax implications?** o **Any cooling off period?** o **Complaints procedures?** o **Compensation / dispute resolution scheme and steps to activate?** o **Procedure for cancelling a policy?** o **If insurance benefits are financed, must that be disclosed in the loan contract terms and conditions?** o **Does the supervisory authority have the power to require insurers to submit application forms and policies?** o **Does the supervisory authority have the power to require that application forms and policies be pulled from the market if they are determined to be unfair, misleading or deceptive? Are there**

	penalties for disregarding such direction?
Description	The Law on Insurance establishes an obligation on the insurer to "introduce the insured persons to insurance contract terms" and a written copy of the policy must be provided. There are no requirements regarding font size or that the requirements be in plain language. There is no requirement to disclose commissions or cooling off periods. The Civil Code sets requirements for discharge of an insurance contract. Generally, these are when its term expires, the parties to the contract consent to its discharge or the insurer has fulfilled its obligations under the contract. The FRC requires insurers to submit contracts for review and it has the power to pull applications and policies from the market. It also has the power to establish model insurance contracts (Article 16 Law on Insurance*)*
Recommendation	The body of the insurance law should be amended to establish more modern insurance contract provisions that clearly define the minimum rights and obligations of the parties. This should be accomplished through a comprehensive review of the current Civil Code requirements or perhaps a new law on insurance contracts. In the short term this might be accomplished through FRC review and acceptance of model retail insurance contracts developed between the FRC and industry. At a minimum the law should provide better guidance on information exchange and disclosure obligations, claims procedures and proof of loss requirements, the process of appraisal to be used in assessing claims and the timeframe for taking legal action.
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	Insurance savings and investment contracts are rare in Mongolia as the life insurance business is in its infancy. Therefore there are no requirements regarding statements for these products. Renewal notice requirements for non-life insurance products are required.
Recommendation	Statement requirements should be developed before the launch of retail insurance savings and investment products.
Good Practice C.2	***Segregation of Funds*** **Are funds of customers required to be segregated from other funds?**

Description	Article 51 of the Law on Insurance requires for a long term (life) insurer to maintain separate accounts and funds for each class of insurance business and that this money is not being used for any other business purpose of the insurer.
Recommendation	None.
Good Practice C.3	***Customer Records*** **a. Are detailed consumer records required to be kept including at least the following:** **o Consumer identification documents** **o Contact details** **o Contract documents** **o Periodic statements** **o Advice, product and service details** **o Information provided to the consumer in relation to advice, products and services** **o Consumer correspondence** **o Consumer completed applications / documents** **o Related documents provided by consumer** **o Other documents required by law** **o All other information obtained re the consumer** **b. For how long must such records be kept and does the period start after the relationship with the consumer ends?** **c. Are consumer records required to be complete and readily accessible?**
Description	At present there are no regulations specifying customer record requirements.
Recommendation	Detailed record keeping requirements should be established for life and non-life insurers and they should be assessed as part of the supervisory process.
Good Practice C.4	***Fair Treatment of Consumers*** **a. Is there a general obligation to treat consumers efficiently, honestly and fairly?** **b. If so, are there regulatory guidelines or a code on what is acceptable conduct?**
Description	The "*Code of Ethics To ensure Prudent Operations of Insurers and Insurance Intermediaries*" is a regulation that establishes some principles and requirements to be followed by insurers, their employees, loss adjusters, and agents in the conduct of their business. It is very general, does address only some areas affecting consumers and provides lacks specific guidance. The code requires that license holders: o Uphold the law; o Be transparent; o Honor the rights and legal interests of the insured; o Deliver fast service; o Respect fair competition; o Treat with respect the rights, interests, and reputation of the insurer; and o Raise the professional reputation of the industry. The "*Code of Ethics To ensure Prudent Operations of Insurers and Insurance Intermediaries*" does not, however, establish an obligation on agents or company sales people to take reasonable steps to know their clients interests in an insurance transaction, and to place the client's interest above their own interest in the transaction. It also does not establish an obligation on agents or sales people to disclose their relationship with the insurer or how they are remunerated by the client. Similarly, the current law does not require insurers to establish a consumer protection system within their organizations that requires policies, procedures and controls to ensure fair treatment of consumers.
Recommendation	FRC, the Association of Mongolian Insurers (AMI)and consumer groups should be encouraged to participate in the development and implementation of a more comprehensive "*Code of Ethics To ensure Prudent Operations of Insurers and Insurance*

	Intermediaries". The code should be consistent with IAIS and G20 principles on fair treatment of consumers. The code should be guided by industry best practices in this area from other jurisdictions (e.g. the European Community).
SECTION D	**PRIVACY & DATA PROTECTION**
Good Practice D.1	***Confidentiality and Security of Customers' Information*** **Customers have a right to expect that their financial transactions are kept confidential. Insurers should protect the confidentiality and security of personal data, against any anticipated threats, or hazards to the security or integrity of such information, and against unauthorized access.**
Description	Article 9 of the Law on Insurance establishes a duty for insurers not to reveal the personal information of insureds unless permitted to by law. Consumers are advised by insurers as to how their information may be used but there is no opportunity to opt out of information sharing arrangements and no obligation for the insurer to advise the insured about whether information has been shared.
Recommendation	The FRC should as part of its supervisory framework verify that personal information of consumers is properly protected.
SECTON 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	There exist no formal requirements for insurers to establish internal dispute settlement mechanisms.
Recommendation	Requirements for internal dispute settlement mechanisms should be established in the Law on Insurance and insurers should be periodically examined to determine whether or not they comply with them.
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	Mongolia does not have a Financial Services Ombudservice for complaints of insurance customers. The Law on the Legal Status of the Financial Regulatory Commission gives the FRC power

	to solve disputes among the license holders and/or between a license holder and client within its powers but this power is not used for the purposes of an ombudservice.
Recommendation	The FRC and the industry should be encouraged to develop an ombudservice proposal for review by the government. The development of such a framework should be based on international principles and best practices for such services. At a minimum the ombudservice should adhere to the principles of independence, fairness, accessibility, accountability and transparency for such services. In addition, its scope of services and methods and remedies should be clearly defined. The establishment of the ombudservice should be designed not to detract from other initiatives to improve access and functioning of the court system on insurance matters.
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	Mongolia has no guarantee schemes other than for MTPL Insurance. The assets for that fund are segregated.
Recommendation	None.
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	According to the FRC Annual Report 2010 only one fourth of total population of Mongolia uses insurance services due to lacking household savings as well as incomplete understanding of citizen's regarding insurance products. Many consumers reportedly mistake insurance for some sort of additional tax payment. At the present time there exists no broadly based program of financial education available for consumers.
Recommendation	Consideration should be given to putting together a national program under the leadership of MoF that brings together various initiatives and helps develop a better understanding of insurance.
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	Some information on laws and regulatory requirements is available on the FRC website. In addition, FRC officials participate in some consumer protection initiatives each year (e.g. press interviews and television broadcasts). These are reported on in the annual report. The AMI also organizes domestic and international professional training courses for members' employees and agents.
Recommendation	The FRC should be encouraged to expand its activities in this area.
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	Mongolia has so far not undertaken a systematical assessment of financial capability. However, a survey on financial capability is currently being undertaken with World Bank support.
Recommendation	The effectiveness of these efforts should be evaluated when they are completed.

ANNEX: LEGAL AND INSTITUTIONAL FRAMEWORK

General Legal Framework for Consumer Protection in Financial Services

CROSS-SECTORAL LAWS

While the ***Constitution*** of Mongolia[153] makes no explicit reference to consumers and the need for their protection, this most fundamental of Mongolian legal texts sets out various requirements which are of relevance to consumers. These include certain so-called "guaranteed" rights of citizens,[154] the duty of the State to restore infringed rights,[155] and various relevant roles of Government.[156]

The purpose of Mongolia's ***Civil Code***[157] is, among other things, to regulate relationships with respect to material and non-material wealth arising among citizens and legal persons.[158] This Code is founded on fundamental principles, including the equality of participants to civil legal relations, the free exercise of civil rights and obligations, and the reinstatement of rights that have been violated, as well as their protection in court.[159]

The participants in any civil legal relationship, such as a financial institution and its customer, must fairly exercise and fulfill their rights and duties - stipulated by law and in their contracts[160] - and they may, of their own volition, exercise rights and duties which are not prohibited or directly stated in the law.[161] The parties to a contract are, however, prohibited from undertaking any activities that are "harmful to others", failing which they bear responsibilities stipulated by law.[162]

The Civil Code plays an important role regarding many aspects of financial consumer protection. Among other things, it provides basic rules in respect of transfers of rights and debts, contractual rights and obligations, the basis of the law of pledges and mortgages of immoveable property, prohibited provisions in standard-form contracts, remedies for breaches of obligations, requirements for contracts for sales and purchases on credit, the law of loan contracts, credit and payment liabilities, the law of savings contracts, bank guarantees and guarantee contacts generally, as well as the law of obligations for damage and civil remedies. In addition, the Civil Code[163] deals with insurance contracts by establishing rudimentary contractual provisions and legal obligations of the parties to an insurance contract.

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[153] The Constitution of Mongolia dated January 13, 1992.
[154] These include the citizen's right: to education (see Article 16.7)); to submit a petition or a complaint to State bodies and officials (see Article 16.12)); to appeal to the court to protect his/her rights if he/she considers that any right expounded by Mongolian law has been violated; to be compensated for damage illegally caused by others; and to receive legal assistance (see Article 16.14)); and to seek and receive information (see Article 16.17)).
[155] *Ibid*, Article 19.1.
[156] These roles include: working out guidelines for economic and social development, submitting these to the State Ikh Khural and executing decisions taken thereon (see Article 38.2.2); elaborating and implementing comprehensive measures on sector and inter-sector development (see Article 38.2.3); and directing the activities of local administrations (see Article 38.2.5).
[157] Civil Code, January 10, 2002.
[158] I*bid*, Articles 1.1. and 7.1 By Article 7.2, "citizens" include Mongolian and foreign citizens.
[159] *Ibid*, Article 1.2.
[160] *Ibid*, Article 13.1.
[161] *Ibid*, Article 13.2
[162] *Ibid*, Article 13.3.
[163] *Ibid*, Articles 431 to 444.

The explicit purpose of the ***Consumer Protection Law*** (the 'CP Law') is to regulate relations arising in connection with the protection of the rights of consumers when they buy goods, works and services (collectively referred to as 'Products').

The CP Law, however, was not drafted with the country's financial system in mind and it does not deal, at least explicitly, with protections to consumers seeking any financial product or service. Rather, as is to be expected in any general law of consumer protection, much of the CP Law deals with warranties[164] and the responsibilities of contractors and manufacturers to provide goods, works and services that do not harm the well-being and health of consumers nor damage the Mongolian environment. Much of the CP Law, therefore, has nothing to do with the specialized operations of Mongolia's financial system.

That said, for the purposes of the CP Law, a "consumer" means a natural person who orders, purchases or receives consumer products or services which are primarily for personal, family, and household use[165] and the term "seller" includes any economic entity.[166] These definitions are, therefore, broad enough to cover consumers of financial products and services and the banks and other institutions that provide these to them.

However, as will be seen - and is not surprising, given its lack of attention to the particular requirements of the financial system – the CP Law conflicts in places with Mongolia's basic banking legislation.

By the CP Law, the so-called "guiding principles" for the protection of consumer rights are:

a) to require goods and services to meet requirements, among other things, of quality and usability;
b) to ensure customers have access to truthful and objective information pertaining to the goods and services being provided, as well as instructions on their use; and
c) to provide the means to remedy any harm to the material and non-material interests of consumers, rectifying any violation of consumer rights and ensuring that appropriate restitution is paid to consumers whose rights have been violated.[167]

The CP Law sets a series of explicit statutory rights of all consumers which apply generally, regardless of the nature of the product or service being offered. For an individual customer of a financial institution, these include the right:

a) to be the recipient of banking goods and services that meet specific standards set by any relevant regulatory authority (including the BoM, the FRC and the AFCCR),"as well as qualitative [and] quantitative … requirements determined in laws, regulations and contracts";[168]
b) to have his or her rights affected by any defective banking product or service "be protected by a non-governmental organization specialized in protecting consumer rights";[169]
c) to demand information from the BoM (as the relevant issuer of licenses), including any conclusions on the quality of banking products being offered, as issued by the BoM or any other authorized regulatory organization;[170]
d) to have any adverse impact caused to his or her economic interest by a deficient banking product fully remedied and to receive restitution for any such adverse impact as a result;[171]
e) to demand restitution and receipt of reimbursement from his or her bank within the time period specified in his or her contract with the bank or immediately in the event no timeframe is specified in the contract;[172]

[164] See Articles 3.1.5., 5.2., 5.3., 6.3.7., 7.2.6., 10.2., 12.5 and 13.1.
[165] *Ibid*, Article 3.1.1.
[166] *Ibid*, Article 3.1.2.
[167] *Ibid*, Article 4.
[168] *Ibid*, Article 5.1.
[169] *Ibid*, Article 5.5.
[170] *Ibid*, Article 5.6.
[171] *Ibid*, Article 6.1.

f) to deliver to his or her bank that has provided any goods or services that are defective, incomplete or otherwise do not meet requirements of quantity and quality, one of the following forms of demands to have wrongs remedied or to receive reimbursement for losses:[173]
   - the free-of-charge reversal of defects or reimbursement of the consumer's expenses or expenses related to the use of third parties incurred in the process of reversal of such defects;[174]
   - the discount in the price that is commensurate with the degree of defect in the product in question;[175]
   - the refusal to accept the product that does not meet specifications of quantity and quality;[176]
   - the replacement of the defective product with a non-defective product of the same type or the return of the product in exchange for a "proper refund";[177] or
   - the annulment of the contract;[178]

g) to have "access to objective and truthful information related to the [banking] product that should help make sound choices and informed decisions;"[179]
h) to initiate litigation on the matter in the event he or she receives no response from his or her bank to a claim made to remedy any loss incurred as a result of "faulty action" on the part of the bank;[180]
i) "to acquire knowledge and have access to any training on the subject of consumer skills";[181]
j) to submit a claim in any case involving a defect in an established banking good or service, within the deadlines specified in Articles 254 and 349 of the Civil Code; and
k) to deem any consumer contract as having no effect in the event its terms and conditions undermine those that are "*implied* by the CP Law and any other relevant laws and regulations".[182]

In addition, the CP Law places a range of obligations on all sellers of goods and services. For all licensed financial institutions these include the duty:

a) to comply with the requirements of applicable mandatory standards and technical specifications;
b) to settle claims brought by consumers regarding deficiencies in the quality of goods or services they provide;[183]
c) to notify the public immediately in the event that any potential harm to the assets of consumers is 'established to exist'; [184]
d) to accept the return of a banking product from a consumer and to provide reimbursement to the consumer as demanded by the consumer in the event the product 'does not meet requirements of quality';
e) to provide consumers "truthful information" on the goods and services they supply;[185]
f) not to supply products or services based on deceit, misleading information or intimidation or to conclude contracts with consumers that violate their rights;[186]

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[172] *Ibid*, Article 6.2.
[173] Pursuant to Article 254 of the Civil Code
[174] CP Law, Article 6.3.1.
[175] *Ibid,* Article 6.3.2.
[176] *Ibid,* Article 6.3.3.
[177] *Ibid,* Article 6.3.4.
[178] *Ibid,* Article 6.3.5.
[179] *Ibid*, Article 7.1
[180] *Ibid*, Article 8.
[181] *Ibid*, Article 9.
[182] CP Law, Article 11.2.
[183] *Ibid*, Article 12.3.
[184] *Ibid*, Article 12.4.
[185] *Ibid,* Article 12.8.

g) to remedy a 'reported and claimed' defect in a product immediately in the event the product is 'determined' to have violated the stated timeframe for its use;[187] and
h) to pay the consumer a penalty of 0.1% of the total value of the relevant good or service in the event that remedial action referred to in (g) (above) is not completed within the specified immediate timeframe.[188]

The ***Law on Advertising***[189] was enacted to regulate the production, placement, dissemination and control of advertisements, as well as the prohibition of advertisements capable of imperiling fair competition, causing confusion, or misleading consumers and harming their interests.[190] By Article 3.1.1, the term "advertisement" includes information disseminated through public mass media or otherwise by any business entity with the purpose of expanding market demand and attracting potential consumers for its goods, services, projects or operations. The Law applies to any advertisement that is produced, placed or distributed anywhere in Mongolia and explicitly to "news, information and announcements related to trade or commercial activities."[191] Thus, this Law clearly applies to any advertisement, news, information or announcement emanating from a bank.

Among other things, the Law on Advertising prohibits advertisements that are improper, unauthentic, unethical or subliminal. It also deals explicitly with advertisements produced by of for banks and gives wide-ranging institutional powers, among other things, to monitor the production and dissemination of advertisements and to sanction offenders.

Essential purposes of the ***Competition Law***[192] are to establish fair competitive conditions in the market by corporate entities, including banks, and to prevent and prohibit market monopolization or any other activities hostile to competition.[193] Importantly, for the banking sector, this Law defines "monopolization activity" as pressuring consumers and restricting competition by limiting the quantity, amount and price of any banking product sold on the market for the purpose of constraining conditions for other banks or other entities to enter the market and forcing them out of the market by means of illegal use of a dominant position.[194] A bank is considered to have a dominant position where it, jointly with other entities, operates on the market with a certain product and occupies one third or more of the production and sale of that product.[195] And any bank that is found to be dominant is thereby prohibited from setting an "unjustifiably high price" for any of its products,[196] as well as from demanding additional sale requirements when it sells any product.[197]

In addition, any financial institution, whether occupying a dominant position or not, is prohibited from carrying on various practices aimed at restricting competition, including:
a) disseminating false, contradictory or distorted information which leads a competitor to losses;[198]
b) distributing false or contradictory information about its own products or confusing others with any distortion of the truth;[199]

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[186] *Ibid*, Article 12.9.
[187] *Ibid*, Article 15.1.1.
[188] *Ibid*, Article 15.2.
[189] Dated May 30, 2002, as amended by the Law on Amendments to the Law on Advertisement as part of the Law on Competition (2010).
[190] Law on Advertisement, Article 1.
[191] *Ibid*, Article 2.
[192] The Competition Law (2010).
[193] *Ibid*, Article 1.1.
[194] *Ibid*, Article 4.1.5.
[195] *Ibid*, Article 5.2
[196] *Ibid*, Article 7.1.2.
[197] *Ibid*, Article 7.1.3.
[198] *Ibid*, Article 12.1.1.

c) launching any advertisement that has a negative impact on competition;[200]
d) concealing any deficiency in any of its products;[201] and
e) using commercial methods that are illegal and unlawfully harm consumers.[202]

BANKING SECTOR SPECIFIC LAWS

The purposes of the ***Law on Banking***[203] are: (a) to regulate the granting and revocation of banking licenses; (b) to establish general principles regarding the management, organization and activities of banks; (c) to provide for the oversight of banks and bank holding companies; and (d) to provide for enforcement actions against banks, if necessary.[204] Of relevance for consumers, as well as for all who are employed by - or involved in managing - banks, the Banking Law provides a wide range of requirements, including in respect of:

a) the maintenance of confidentiality by banks;
b) competition in the banking sector;
c) advertising by banks;
d) the taking of deposits by banks;
e) the making of loans;
f) the provision of transaction services;
g) specific obligations of banks;
h) the naming of banks;
i) the range of possible enforcement measures the BoM can take against banks;
j) the process to deal with financial distress and insolvency of banks; and
k) the liabilities for failure to comply.

A further relevant statute is the ***Law on Deposits, Payment Settlements and Loan Activities*** (the DPSLA Law), enacted initially on October 31, 1995 and amended eight times since.[205] Article 1 of the DPSLA Law defines its purpose as regulating the relations arising out of, or in connection with, the deposit of funds with banks,[206] the making of payments and settlements/transactions through banks[207] and the receipt and repayment of loans from - and to - banks[208] by citizens.[209] Importantly for present purposes, the DPSLA Law sets out numerous statutory obligations that banks owe to consumers and *vice versa*, as well as various statutory rights banks are afforded in their dealings with consumers and *vice versa*.

SECURITIES SECTOR SPECIFIC LAWS

The ***Securities Markets Law*** of 2002 contains a number of investor protection provisions in Chapter 3 such as the disclosure of licenses of the broker, the disciplinary history of the broker and its officers and its financial condition. In addition, the broker cannot give out false and misleading information or engage in manipulative activities.

The ***Rules on Brokerage and Dealers*** issued by the FRC also set out rules for the protection of investors.

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[199] *Ibid*, Article 12.1.2.
[200] *Ibid*, Article 12.1.3.
[201] *Ibid*, Article 12.1.6.
[202] *Ibid*, Article 12.1.10.
[203] The Banking Law (revised version) dated February 10, 2010
[204] *Ibid*, Article 1.
[205] See the Laws of January 9, 1997, January 16, 1997, January 15, 1998, February 2, 2001, July 4, 2002, July 7, 2005, July 9, 2009 and April 23, 2010.
[206] or other legal entities engaged in savings or depository activities.
[207] or other legal entities engaged in payment settlement activities.
[208] or other legal entities engaged in loan activities.
[209] as well as by legal entities.

INSURANCE SECTOR SPECIFIC LAWS

The ***Law on Insurance*** of 2004 is the main piece of legislation covering insurance. Among its provisions, the law defines and classifies insurance activities, establishes the rights and duties of insurers and insureds, establishes the powers and responsibilities of the insurance regulator and establishes the basic supervisory framework including:

a) Licensing, suitability and control requirements for insurers;
b) Capital, financial resources and solvency requirements;
c) Accounting, reporting and audit requirements;
d) Requirements regarding actuaries and actuarial reports;
e) Reinsurance requirements;
f) Prohibition of misleading advertising and the power of the Supervisor to establish binding market conduct rules on insurers;
g) Supervisory powers;
h) Sanctions the Supervisor may impose;
i) Administrative penalties the Supervisor may apply and
j) Provisions covering, protection of confidential information, the process for appeal of supervisory decisions; and liability protection for supervisory staff exercising their duties in good faith.

The ***Law on Insurance Intermediaries*** of 2004 regulates the licensing and operation of insurance agents, brokers, and loss adjusters. The law's articles establish the insurance supervisor as the responsible supervisory authority and establish its powers and set out the regulatory framework for intermediaries including the following:

a) A general prohibition against unlicensed activity;
b) Licensing requirements and processes for agents brokers and loss adjusters;
c) Fit and proper requirements for agents, brokers, and loss adjusters;
d) Capital, accounting and reporting requirements for brokers;
e) Limitations on the activities of intermediaries (e.g. placement of business with unauthorized insurers);
f) Prohibition of misleading advertising and the power of the Supervisor to establish binding market conduct rules on intermediaries;
g) Monitoring, onsite inspection, data collection and reporting powers;
h) Sanction and enforcement powers; and
i) Provisions covering, protection of confidential information, the process for appeal of supervisory decisions; and liability protection for supervisory staff exercising their duties in good faith.

The "***Code of Ethics To ensure Prudent Operations of Insurers and Insurance Intermediaries***" is a regulation that establishes some principles and requirements to be followed by insurers, their employees, loss adjusters, and agents in the conduct of their business but it is very general and does not address many areas affecting consumers.

Institutional Arrangements for Financial Consumer Protection

Bank of Mongolia (BoM): BoM is the regulatory and supervisory authority within the banking sector. BoM's main objective is to ensure the stability of the Tughrik, while, at the same time, promoting the balanced and sustained development of the national economy by maintaining the stability of the financial

markets and the banking sector. The Law of the Central Bank of Mongolia requires BoM to fulfill its supervisory activities for the purpose of protecting the interests of depositors and customers.[210]

Financial Regulatory Commission (FRC): The FRC is the supervisory authority for insurance and securities. The FRC was established under the *Law on the Legal Status of the Financial Regulatory Commission* of 2006. The authority also covers microfinance activities. It proposes laws to government, issues regulations and has supervisory responsibilities.

Agency for Fair Competition and Consumer Rights (AFCCR): The AFCCR established in 2005 is vested with explicit powers of enforcement over the Consumer Protection Law, the Law on Competition and the Law on Advertisement. In addition, the AFCCR is allowed to monitor the application of any provision of the Constitution and the Civil Code and any other legislative act issued in conformity with them.

The Mongolian Bankers Association (MBA): The MBA was established on 1993 but has only been active since 2005. There is no statutory requirement that all banks licensed to do business in Mongolia be members of the MBA. Nevertheless all banks are MBA members. In 2010, the MBA devised a voluntary Code of Conduct (CCB) with a view to its apparent application by MBA member banks as they would see fit.

The Association of Mongolian Insurers (AMI): This is the only insurance association in the country. Its membership is comprised of the majority of licensed insurers. The main role has been to act as a consultative body for industry on legislation and other government initiatives affecting insurers. It intends to expand its role to include professional training for the industry.

The ***Mongolian Association of Securities Dealers (MASD*)**: As of December 2011, 49 securities companies were members of MASD. However, membership is voluntary. The association has developed a Code of Conduct for members which is mandatory.

The ***Mongolian Consumers Association (MCA):*** The MCA is an independent non-government body, established in 1990 which promotes consumer rights generally through campaigns and educational programs, while also providing some consumer protection services for financial service related cases.

[210] Article 19 of the Law of the Central Bank of Mongolia.