

# MOZAMBIQUE

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

### **Volume II Comparison with Good Practices**

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## Diagnostic Review of Consumer Protection and Financial Literacy

### Volume II – Comparison with Good Practices

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## Abbreviations and Acronyms

AfDB	African Development Bank
AMB	Associação Moçambicana de Bancos (Mozambican Association of Banks)
AMOMIF	Mozambican Association of Micro Finance Operators
APY	Annual percentage yield
ASCA	Accumulating Savings and Credit Associations
ATM	Automatic Teller Machine
BCI	Banco Comercial de Investimentos
BdM	Banco de Moçambique (Bank of Mozambique)
BIM	Banco Internacional de Moçambique
BIS	Bank for International Settlements
BOM	Banco Oportunidade de Moçambique
BR	Boletim da República (Government Gazette)
BSD	Banking Supervision Department of the BdM
CCB	Code of Conduct for Banks of the AMB
CCR	Central Credit Registry
CI	Consumer Institute
CIFC	any credit institution or finance company over which the BdM has jurisdiction pursuant to Law 15/99
DECOM	Associação de Defesa do Consumidor (Consumer Defense Association)
DGF	Deposit Guarantee Fund (Fundo de Garantia de Depósitos)
DNAEA	Direcção Nacional de Alfabetização e Educação de Adultos (National Directorate for Literacy and Adult Education)
DNPDR	Direcção Nacional de Promoção do Desenvolvimento Rural (National Directorate for the Promotion of Rural Development)
EC	European Commission
EU	European Union
EURIBOR	Euro Interbank Offered Rate
FARE	Fundo de Apoio à Reabilitação da Economia (Economic Rehabilitation Support Fund)
FATF	Financial Action Task Force on Money Laundering
FORCOM	Fórum Nacional das Rádios Comunitárias (National Forum of Community Radios)
FSAP	Financial Sector Assessment Program
FSTAP	Financial Sector Technical Assistance Project
GPI	Gabinete de Planeamento Estratégico, Comunicação e Imagem (Office of Strategic Planning, Communication and Image) of the BdM
GDP	Gross Domestic Product
IFAD	International Fund for Agriculture Development
IFBM	Instituto de Formação Bancária de Moçambique (Banking Training Institute of Mozambique)
IGEPE	Instituto de Gestão das Participações do Estado
IMF	International Monetary Fund
INDE	Instituto Nacional de Desenvolvimento de Educação (National Institute of Educational Development)
ICS	Instituto de Comunicação Social (Social Communication Institute)
MAIBOR	Maputo Inter-Bank Offered Rate
MFI	Microfinance Institution
MFSDS	Mozambique Financial Sector Development Strategy 2012 to 2021
MFT	Micro Finance Transparency

MOF	Ministry of Finance
MAE	Ministério de Administração Estatal (Ministry of State Administration)
MZN	Meticais
NBFI	Non-bank financial institutions
NGO	Non-governmental organization
OECD	Organization for Economic Cooperation and Development
POS	Point of sale
SARPIS	Serviço de Atendimento de Reclamações, Pedidos de Informações e Sugestões (Service for Complaints, Information Requests and Suggestions)
SECCI	Standard European Consumer Credit Information (EU)
SIMO	Sociedade Interbancária de Moçambique
TILA	US Truth in Lending Act
UNDP	United Nations Development Program
USAID	United States Agency for International Development

**Currency Equivalents**

US\$1 = 29.46 MZN (November 8 2012)

## CONSUMER PROTECTION IN THE BANKING SECTOR

### Overview

**Banks account for the vast majority of assets of Mozambique’s financial system (97 percent of credit volume), with all but one bank being majority foreign-owned** (see Table 1). There are 18 registered banks in Mozambique, three of which, namely Millennium-BIM, Banco Nacional de Investimento (BNI) and Banco Unico, maintain minority government participation.<sup>1</sup> With the exception of BNI which does not service retail consumers, all banks provide a range of retail banking services, including acceptance of demand, savings and time deposits, foreign exchange services, and the provision of short- and medium-term loan facilities to consumers. Four banks, namely Banco ProCredit, Banco Oportunidade, Socremo and Banco Tchuma, are devoted to microfinance.

**Table 1: Ownership of Banks in Mozambique and share of Total Banking Sector Assets**

Bank	Major Shareholder	% of Total Sector Assets	
		Since	in 2012
Banco Internacional de Moçambique (BIM)	Banco Comercial Português (Portugal)	2001	32.01
Banco Comercial de Investimentos (BCI)	Parbanca SGPS (Portugal)	1997	27.25
Standard Bank Mozambique	Standard Bank of South Africa Limited (South Africa)	na	16.51
Barclays Bank Moçambique, SA	Absa Group Limited (South Africa)	1997	6.57
Moza Banco, SA	Mocambique Capitais (Mozambique)	2008	3.78
Banco Unico, SA	Corticeira Amorim and VisaBeira Group (Portugal)	2011	2.65
BancABC	BancABC (Botswana)	1999	2.48
FNB Mozambique S.A.	First Rand Group of South Africa	2007	2.32
Banco Nacional de Investimento, (BNI) SA	Grupo Caixa Geral de Depósitos (CGD) (Portugal)	2011	1.07
International Commercial Bank (Mozambique) SA	International Commercial Bank (ICB) Financial Group Holdings AG (Switzerland)	na	<1
The Mauritius Commercial Bank	The Mauritius Commercial Bank Limited (Mauritius)	1999	<1
Banco ProCredit	ProCredit Holding AG (Germany)	2000	<1
Banco Mercantil e de Investimentos, SA Mozambique	Banco Mercantil e de Investimentos, SA (Brazil)	na	na
Banco Oportunidade de Moçambique, SA (BOM)	Opportunity Transformation Investments Inc. (USA)	2005	<1
Banco Terra, SA	Rabobank (Netherlands)	2008	<1
Socremo - Banco de Microfinanças, SA	AfriCap Microfinance Investment Company (Mauritius)	2008	<1
Banco Tchuma, SA	USAID, NORAD, HIVOS, Caixa Catalunya, UNDP MicroStart, Care International, Action Aid, GAPI, FARE, EMOSE (Foreign)	2010	<1
United Bank for Africa Moçambique, SA	United Bank for Africa (UBA) (Nigeria)	2011	<1

Sources: BdM, banks’ websites, KPMG, The Top 100 Companies in Mozambique 13<sup>th</sup> Edition, 2011, at page 81

<sup>1</sup> As of 2010, the State held a 17.12% interest in Millennium-BIM and a 49.5 % interest in BNI, and as of 2012, a 3 % interest, through the INSS, in Banco Unico.

**Mozambique's banking sector has come through the recent global financial crisis relatively unscathed and has been significantly expanding its asset base over the last 5 years.** The total assets of banks have risen around 3.18 times in the last 5 years, while total bank assets as a percentage of Mozambique's Gross Domestic Product grew around 40% (from 39.0 % to 54.6%) in the four years to 2011. The significant increase in assets has, in large measure, been due to the sharp increase in fixed-term deposits (up some 25 percent from 2009 to 2010 alone). In parallel, there has been a significant expansion of bank branches and bank advertising, to attract fixed-term deposits.<sup>2</sup>

**Table 2: The Size of the Banking Sector**

	Dec-07	Dec-08	Dec-09	Dec-10	Dec-11	Dec-12
Banks (millions MZN)	81,056.60	84,598.00	140,119.90	175,351.20	199,368.60	257,556.6
GDP (millions MZN)	207,644	240,358	266,213	314,961	365,334	N/A
Total bank assets as % of GDP	39.0	35.2	52.6	55.7	54.6	N/A

Source: BdM 2012, IMF World Economic Outlook Database 2012

**Retail lending to households more than tripled between 2007 and 2011.** The two leading banks – Millennium-BIM and BCI – have been expanding into the consumer lending market with bank accounts and credit cards (set at a low maximum limit) being provided to individuals on the payroll of public sector entities. The number of districts serviced by banks in Mozambique increased from 28 in 2004 to 58 in 2011, although this still leaves 70 districts without any bank branch. Electronic money products are becoming widely available, with the potential to bring many new individuals into the formal financial system for the first time.

**The number of bank branches generally, and especially in non-urban areas, has been expanding significantly.** As of May 2012, there were 463 bank branches throughout the country, with 117 branches or about 25 percent located in non-urban areas<sup>3</sup>. Twenty-eight new bank branch openings occurred in 2009, 64 in 2010 and 128 between January 2011 and March 2012. This expansion has been led by Millennium-BIM and BCI. In addition, by year end 2009, there were 622 ATMs throughout the country, of which 289 or 46% were owned by Millennium-BIM. As of December 2011, the number of ATMs had increased significantly to 853, with 345 or some 40% of all ATM's owned by Millennium-BIM.

**Even though there have been new entrants in the banking sector in recent years,<sup>4</sup> the banking system remains characterized by its lack of competition.** In 2012, the combined assets of the top three banks amounted to around 76% of all assets in the banking sector, while their combined deposits and loans were 78.2% and 75.7% respectively, of all deposits and loans in this sector (see Table 3). In 2010, the top three banks accounted for 74% of all sector revenues, while the total of the revenues of

<sup>2</sup> See: *The Top 100 Companies in Mozambique*, 13<sup>th</sup> Edition – 2011, KPMG Mozambique at page 78

<sup>3</sup> Non-urban areas as defined by the Mozambican National Statistic Institute (Instituto Nacional de Estatística, INE) according to population density. Note that the data on bank branches is available at the district level, while the definition of rural and urban areas is done by INE at a more disaggregated level ("localidade"). Districts that were not comprised exclusively of urban "localidades" have been defined as non-urban here.

<sup>4</sup> The four new entrants to the banking sector since 2008 are Banco Tchuma, United Bank for Africa Moçambique, Banco Nacional de Investimento (BNI) and Banco Único.

Millennium-BIM, BCI, Standard Bank and Barclays amounted to 83% of the total.<sup>5</sup>

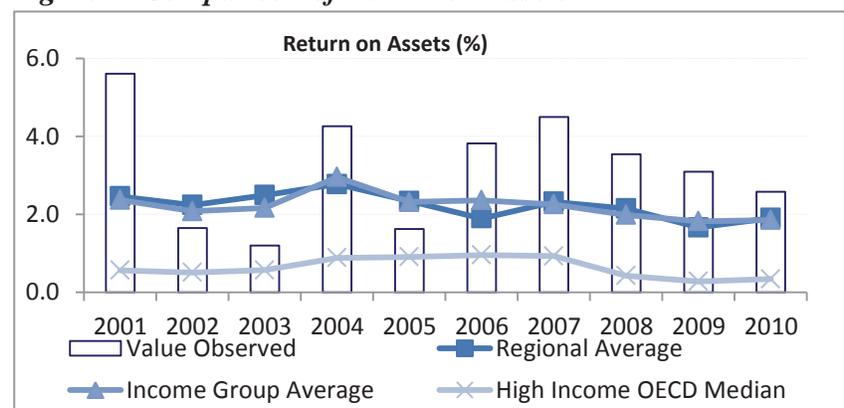
**Table 3: Mozambique's Leading Five Banks (as of December 2012)**

Bank	Share of total assets (%)	Share of total deposits (%)	Share of total loans (%)
Millennium BIM	32.01%	30.59%	33.13%
BCI	27.25%	28.18%	30.22%
Standard Bank	16.51%	19.37%	12.38%
<b>Above three banks combined</b>	<b>75.77%</b>	<b>78.15%</b>	<b>75.73%</b>
Barclays Bank Mozambique	6.57%	6.25%	6.01%
Moza Banco, SA	3.78%	3.45%	4.14%
<b>Above five banks combined</b>	<b>86.12%</b>	<b>87.85%</b>	<b>85.88%</b>

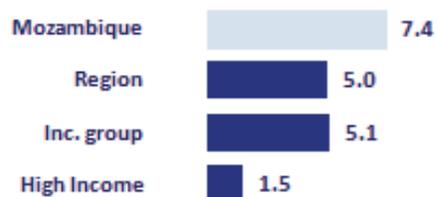
Source: BdM 2012

This high degree of concentration may be linked to the relatively high bank profitability and banking commissions, fees and other charges. Although bank profitability has been decreasing since 2008, it is still high compared to banking systems elsewhere (see Figure 1). Likewise, as is shown in Figure 2, the average spread between savings and lending rates in Mozambique's banks in 2010 was higher than in most low income countries ('Inc. Group' as in figure 2)

**Figure 1: Comparison of Return on Assets**



<sup>5</sup> Of the 16 banks licensed to do business in 2010, the revenues of Millennium-BIM ranked first at 6,560 million MZN (US\$234 million) followed, in order, by BCI with 3,220 million MZN (US\$115 million), Standard Bank with 2,857 million MZN (US\$102 million) and Barclays with 1,549 MZN, (US\$55 million). The combined revenue of the entire remainder of the banking sector in 2010 was 2,905 million MZN (approx. US\$104 million).<sup>5</sup> Thus, for 2010, the revenues of Millennium-BIM represented 38% of the total and its revenues combined with those of BCI were 57% of the total.

**Figure 2: Net interest margin (%) in 2010**

Source: FINSTATS<sup>6</sup>

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<sup>6</sup> Mozambique is classified as a low income country with a GDP per capita of USD 390

## Comparison with Good Practices for the Banking Sector

PARAGRAPH A	CONSUMER PROTECTION INSTITUTIONS
Good Practice A.1	<p><i>Consumer Protection Regime</i><sup>7</sup></p> <p>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.</p> <ol style="list-style-type: none"> <li>a. Specific statutory provisions should create an effective regime for the protection of a consumer of any banking product or service.</li> <li>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).</li> <li>c. The designated agency should be funded adequately to enable it to carry out its mandates efficiently and effectively.</li> <li>d. The work of the designated agency should be carried out with transparency, accountability and integrity.</li> <li>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.</li> <li>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.</li> </ol>
Description	<p>Mozambican law provides a wide range of consumer protection rules regarding banking products and services. Important rights of all consumers of financial products and services are set forth in the Constitution of 2004 and Law on Consumer Protection (Law 22/2009).</p> <p>Although the Law is general in nature, it places a wide range of obligations upon financial institutions when they deal with consumers, including when granting credit and collecting debts. Even though numerous provisions in this Law are applicable to all sectors of Mozambique’s financial system, the Consumer Protection Law is not well known in the financial industry.</p> <p>Specific obligations are placed upon banks and all other providers of financial products and services to consumers in Chapter VI of Law on Credit Institutions and Finance Companies (Law 15/99) and Decree 56/04 (both dealing with Credit Institutions and Finance Companies (CIFCs)),<sup>8</sup> the Commercial Code (2/2005), and Notices 4 and 5 of 2009. Dealing with certain obligations of banks and other CIFCs in terms of consumer complaints, suggestions and inquiries, Notice 4/2009 has apparently been easily understood and universally applied by banks.</p> <p>The regime, however, is not effective given the fact that, with few exceptions, pertinent</p>

<sup>7</sup> International and national guidelines have been consulted for the development of this good practice. They include: EU Directive on Credit Agreements for Consumers, 2008/48/EC, repealing Directive 87/102/EEC; EU Directive on Consumer Protection in the Indication of the Prices of Products offered to Consumers, 1998/6/EC; EU Directive on the Distance Marketing of Consumer Financial Services, 2002/65/EC; the US Truth in Lending and Truth in Savings Acts; and the UK Financial Services and Markets Act of 2000 (which set up the Financial Services Authority).

<sup>8</sup> By Article 2 of Decree 56/04, all CIFCs are governed by Law 15/99, Decree 56/04, and the remaining norms that regulate the activities of all CIFCs and by “any other legal norms that may be applicable”. The “norms” in the Commercial Code and Law 22/09 are clearly relevant and therefore applicable.

	<p>statutory rights and obligations are ignored by most, if not all, stakeholders. There is a prevailing lack of capacity to ensure that rights of financial consumers are respected and that financial service providers comply with their obligations towards consumers. In addition, banks take comfort in the fact that no law suit has ever been brought against any of them by a Mozambican consumer, or by a class of consumers, complaining of a banks' lack of respect of their rights or of its failure to comply with any obligation that its owes towards them.</p> <p>Mozambique has no general consumer agency or specialized financial consumer agency. Rather, responsibility for implementing, overseeing and enforcing consumer protection regarding banking products and services lies within the BdM.</p> <p>As an important step, BdM has set up a team inside the Department for Strategic Planning, Communication and Image (Gabinete de Planeamento Estratégico, Comunicação e Imagem - GPI) in charge of consumer complaint handling and financial education.</p> <p>The BdM, however, has yet to carry out supervision of banks in terms of their compliance with statutory business conduct requirements, whether in Chapter VI of Law 15/99, the Commercial Code, Law 22/09, Notice 5/2009<sup>9</sup> or in any other law of regulation.</p> <p>Annex 3 has a detailed description of the prevailing legal and institutional frameworks.</p> <p>The law entitles consumer associations<sup>10</sup> to operate on a national or local scale, and these associations may deal with the protection of consumer rights in general or with consumers of specific kinds of goods and services.<sup>11</sup> Mozambique provides an array of legal rights to consumer associations starting with the Constitution and continuing with Law 22/09. In addition, the State and Local Municipalities owe many obligations to consumer associations.</p> <p>Such obligations of the State and Local Municipalities<sup>12</sup> include to:</p> <ol style="list-style-type: none"> <li>1) take measures to approve norms and regulations under Law 22/09;<sup>13</sup></li> <li>2) prepare effective technical standards;<sup>14</sup></li> <li>3) ensure consumers have access to justice and to the courts;<sup>15</sup></li> <li>4) create consumer education centers or services and to support these centers and services;<sup>16</sup></li> <li>5) create national, accessible, digital records regarding consumer rights;<sup>17</sup></li> <li>6) develop initiatives and adopt consumer training and education measures by: (a) implementing programs and activities in class rooms (particularly at elementary and secondary levels); (b) supporting relevant initiatives of consumer associations; (c) promoting consumer education initiatives involving training and awareness for consumers in general; and (d) promoting and national training policy for specialized trainers and technicians;<sup>18</sup> and</li> <li>7) develop initiatives and adopt measures directed at informing consumers, by means of:</li> </ol>
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<sup>9</sup> While it appears from Notice 5 that BdM's Banking Supervision Department (BSD) is ostensibly responsible for overseeing its application, BSD seems to see this responsibility as of particularly low priority.

<sup>10</sup> "Consumer associations" are defined as "non-profit legal entities whose main objective is the protection of the rights and interests of consumers in general or of the consumers that are associated with them". See Law 22/09, Article 34, paragraph 1.

<sup>11</sup> Whether a consumer association is focused on matters of general or specific interest, its governing body must be freely elected via universal secret ballot cast by all of its members. See *Ibid.*, paragraph 3

<sup>12</sup> Law No. 2/97, known as the 'municipalities law', established municipalities in Maputo City and the capital cities of Mozambique's ten Provinces and Law No. 10/97 established a further 22 cities and towns as local municipalities, as indicated in the table above. Not all of Mozambique's population is served by Local Government.

<sup>13</sup> See Law 22/09, Article 4, paragraph 2 a)

<sup>14</sup> *Ibid.*, paragraph 2 b)

<sup>15</sup> *Ibid.*, paragraph 2 c)

<sup>16</sup> *Ibid.*, paragraph 2 d)

<sup>17</sup> *Ibid.*, paragraph 2 f)

<sup>18</sup> *Ibid.*, Article 8, paragraph 2

	<p>(a) supporting the information initiatives promoted by consumer associations; (b) creating municipal consumer information services; (c) establishing municipal consumer councils that include representatives from associations that represent economic and consumer interests; (d) creating databases and digital archives accessible on a national scale dealing with consumer rights, with view to dissemination of general and specific consumer-related information; and (e) creating databases and digital archives that are unconditionally accessible and contain information on consumer rights.<sup>19</sup></p> <p>In addition, the State and local municipalities have obligations to provide support to consumer organizations. The Constitution of the Republic requires the State to provide assistance to consumer associations, within the terms of the law.<sup>20</sup> Also, as required by Law 22/09, the State must support the initiatives of consumer associations in respect of consumer training and education.<sup>21</sup> Furthermore, the State must provide support to consumer associations via the central and local public administrations to allow them to execute their objectives, including those in respect of training, informing and representing consumers.<sup>22</sup> Finally, the State and all local municipalities are obliged to:</p> <ul style="list-style-type: none"> <li>a) support the information initiatives promoted by consumer associations;<sup>23</sup> and</li> <li>b) establish municipal consumer councils that include representatives of consumer associations.<sup>24</sup></li> </ul> <p>With few exceptions, however, these rights and obligations are not honored.</p>
<b>Recommendation</b>	<p><i>Institutional arrangements</i></p> <p>It is of critical importance to further strengthen the capacity of the BdM to monitor and enforce any law requiring standards of business conduct to be met by financial institutions in their dealings with consumers. A practical way forward would be to establish a new financial consumer protection unit within the BdM in charge of monitoring, supervising and enforcing consumer protection provisions as well as the handling of complaints. The unit should be separate from prudential supervision in order to ensure that adequate attention is given to market conduct issues. The responsibilities for financial literacy and education would stay with GPI.</p> <p>As an interim step, the roles of BSD responsible for misleading advertisements as well as fees and charges and GPI in charge of financial education and consumer complaints should be further strengthened. A designated team within each supervisory division (banking and NBFi divisions) of BSD responsible for financial consumer protection would be helpful. Having in mind budgetary and human resource constraints, initially these teams might be established with a limited number of staff and gradually expanded. In addition, the capacity of BdM's GPI team responsible for consumer complaints and financial education should be built further. All staff involved in consumer protection and financial literacy would benefit from training and increased resources in order to fulfill their respective roles more effectively.</p> <p>A consumer protection and business conduct task force could be established consisting of the Heads of Department of GPI and BSD as well as GPI staff in charge of financial consumer protection and representatives of BSD. Further clarity would be beneficial on whether BSD (which has a principal focus on the prudential supervision of deposit-taking financial institutions) should lead on supervision of financial consumer protection laws and regulations</p>

<sup>19</sup> *Ibid.*, Article 9, paragraph 1

<sup>20</sup> The Constitution, Article 92, paragraph 3

<sup>21</sup> See Law 22/09, Article 8, paragraph 2 b)

<sup>22</sup> *Ibid.*, Article 35, paragraph 1 n)

<sup>23</sup> *Ibid.*, Article 9, paragraph 1 a)

<sup>24</sup> *Ibid.*, paragraph 1 c)

	<p>as well, or whether this responsibility should rest with GPI.</p> <p>However, international experience indicates that, if central banks adopt consumer protection as part of their mandate, business conduct supervision should be separated from prudential supervision and have adequate specialized staff and resources to perform its specialized responsibilities effectively in order to avoid conflicts of interest.</p> <p>It is recognized, however, that it will take time and support for the BdM to build the required capacity to handle these various responsibilities.</p> <p><b>Consideration should also be given to:</b></p> <ol style="list-style-type: none"> <li>a) funding from the financial system to support the expansion and strengthening of the BdM's role as outlined above;</li> <li>b) requiring all relevant institutions, including AMB, AMOMIF, relevant consumer associations and any future office of Banking (or Financial Services) Ombudsman to meet regularly with the designated 'consumer protection department' (see options outlined above) in an effective consultative council in order to address and solve issues of consumer protection in banking services in a coordinated fashion;<sup>25</sup></li> <li>c) improving the transparency, availability and quality of data of relevance to consumer protection in banking services, including consumer complaints and their treatment, as well as relevant recommendations made, and decisions taken.</li> </ol> <p><i>Legal reform</i></p> <p>A potential clash should be avoided between the potential role of the Consumer Institute (CI) in respect of the application and enforcement of the Law 22/09 and the future work of the BdM regarding financial consumer protection. Otherwise, any Notice issued by the BdM that deals with matters of consumer protection runs the risk of being declared invalid if it contravenes Law 22/09.</p> <p>Consideration should, therefore, be given to carrying out a careful review of Law 22/09 as it applies to financial products and services and the ways these are supplied to consumers with a view to incorporating all <i>relevant and non-contradictory</i> provisions in an expanded version of Law 15/99, whether in its Chapter VI or elsewhere. The purpose would be to ensure a more complete and appropriate framework for the work of the BdM in terms of setting applicable rules regarding financial consumer protection, supervising the application of these rules and assisting in ensuring that these rules are enforced.</p> <p>At the same time, Law 22/09 would have to be reviewed so as to be made inapplicable to consumers of financial goods and services and to the providers of financial goods and services to consumers. Consumer protection in respect of financial services would then clearly be the responsibility firstly of the BdM.</p> <p>An alternative would be to draft and enact a new statute dealing exclusively with financial consumer protection.</p> <p>In time, Law 1/92 (BdM's Organic Law) should be amended to include a further core purpose of the BdM, namely ensuring financial consumer protection and education.</p> <p><i>Consumer Associations</i></p>
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<sup>25</sup> Multi-stakeholder consultations would encourage all with any interest in financial consumer protection to voice their views on policy formulations, as well as on all draft legislation and Notices that have any relevance to financial consumer protection and the market conduct of banks and other CIFCs.

	<p>Consumer organizations<sup>26</sup> need to be strengthened so that they can play a more effective role in financial consumer protection. Due to their wide focus and a lack of resources and specialized training, consumer organizations are not yet effective in supporting proper financial consumer protection environment in Mozambique. At the moment, consumer organizations do not yet have the capacity or interest to play an effective role in financial consumer protection. However, consumer associations should play an important role in raising awareness of financial consumers' rights, monitoring business practices by mystery shopping<sup>27</sup>, and giving advice to consumers, among other tasks. Grant funding and technical assistance could be provided to develop a more effective consumer protection role, and set of activities, for consumer organizations.<sup>28</sup> These organizations should be involved in consultative processes, for example on regulations and Notices, 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.</p>
<b>Good Practice A.2</b>	<p><b><i>Code of Conduct for Banks</i></b></p> <p><b>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></p> <p><b>b. If a principles-based code of conduct exists, it should be publicized and disseminated to the general public.</b></p> <p><b>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.</b></p> <p><b>d. Every such voluntary code should likewise be publicized and disseminated.</b></p>
<b>Description</b>	<p>Power is granted to the BdM to issue Notices establishing <i>rules of conduct</i> that it considers necessary to supplement and further develop the rules of conduct laid out in the law.<sup>29</sup> No principles-based statutory code of conduct, as such, however, exists for commercial banks in Mozambique.</p> <p>With the involvement and support of some existing members of the Mozambican Association of Banks (AMB)<sup>30</sup>, however, the AMB developed a voluntary Code of Conduct for Banks (CCB) which it published in late 2006.<sup>31</sup> Seventeen<sup>32</sup> out of 18 banks in Mozambique are members of AMB with all of them automatically subscribing to the CCB. All AMB member banks have agreed to commit themselves to upholding a wide range of voluntarily accepted CCB obligations in their dealings with consumers.</p> <p>For the AMB at least, adoption of the CCB was meant to ensure that signatory banks would deliver to their customers "high standards of honesty, diligence, integrity and competence."</p>

<sup>26</sup> ProConsumers and DECOM in particular, among others

<sup>27</sup> Mystery shopping is a tool used externally by market research companies or watchdog organizations or internally by banks or other CIFCs themselves to measure the quality of service or compliance with regulation, or to gather specific information about products and services. The mystery shopper's identity is generally not known by the bank or other CIFC being evaluated.

<sup>28</sup> In this respect, guidance from the EU may prove helpful. Provided specific criteria are fulfilled (as per Article 7 of Decision No. 20/2004/EC), a consumer organization may be supported financially by the EU. Furthermore, the EC has created several consultative bodies, such as the Financial Services Consumer Group, and its permanent committees include representatives of consumer organizations from each of the EU Member States. These bodies are specifically asked to ensure that consumer interests are properly taken into account in the formulation of EU financial services policy.

<sup>29</sup> See Law 15/99, Article 47

<sup>30</sup> The AMB was formally established in Maputo in 1999.

<sup>31</sup> See the Code of Conduct of Banks, AMB, 30 October 2006, [www.standardbank.co.mz/en/content/download/300/1459/file/C](http://www.standardbank.co.mz/en/content/download/300/1459/file/C).

<sup>32</sup> With the exception of United Bank for Africa Moçambique

	<p>The stated purpose of the CCB is to establish and maintain a climate of trust between banks and their clients in their day-to-day dealings. The CCB is explicitly aimed at ensuring banking transparency and reliability by: (a) providing clients an instrument to protect their interests; and (b) promoting a competitive environment for the benefit of all.</p> <p>For purposes of sanctioning banks that have agreed to be bound by the CCB's requirements but which fail to do so, reference is made to the role of the AMB's so-called "Board of Ethics" and to the Rules for its operation. Neither the Board nor its Rules, however, have been established. In the circumstances, it appears that signatory banks to the CCB are supposed to rely on consumers to sanction conduct which does not accord with CCB commitments by raising complaints and by transferring their accounts to another bank.<sup>33</sup> This presupposes, however, that all bank staff and customers know the contents of the CCB. Contrary to explicitly stated CCB requirements, though, the CCB has not been made available to customers as an instrument to defend their interests and no bank branch throughout the country apparently has copies of the CCB. Thus, bank staff and consumers are uniformly unaware of its terms. If consumers are not aware of the CCB, then banks are not directly accountable to consumers for complying with the CCB.</p> <p>It is clear, therefore, that the provisions of the CCB do not create meaningful obligations for any bank in practice. In addition, the application by any bank of its CCB "commitments" is not monitored by the AMB, the BdM, or other public office. Thus, the AMB cannot be considered a "self-regulatory agency" in these respects.</p> <p>Problems with CCB commitments include the following:</p> <ol style="list-style-type: none"> <li>1) some are vague, such as commitments to "avoid harmful behavior",<sup>34</sup> "proceed fairly" in all transactions;<sup>35</sup> and ensure conformity with "proper principles as well as good" banking practices",<sup>36</sup></li> <li>2) many are not followed in practice, in particular with regard to providing information in a consistent and easily understandable form to consumers, disclosing all charges, communicating complaints and redress procedures, and informing consumers of changes in charges and terms.</li> <li>3) others seem to be less than fair to the consumer, such as:       <ol style="list-style-type: none"> <li>a) informing clients, <i>after the fact</i>, of the consequences of: i) overdrafts without notice; ii) overdrafts above the authorized limit; iii) debts in arrears; and iv) the prepayment of loans;<sup>37</sup></li> <li>b) exchanging, <i>at their discretion</i>, between themselves and within inter-bank relations, trade information<sup>38</sup> relating to their customers;<sup>39</sup></li> <li>c) providing information to their clients (through bank statements, letter or other means) about the commissions involved in ATM and POS transactions but only <i>when they ask for it</i>;<sup>40</sup></li> </ol> </li> <li>4) one is unhelpful for healthy consumer credit expansion, namely keeping confidential all details regarding the guarantees offered by customers to secure their loans as required by law;<sup>41</sup></li> <li>5) one seems unrealistic, namely ensuring that the procedures used by staff are consistent with all commitments made under the CCB;<sup>42</sup> and</li> </ol>
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<sup>33</sup> From the second paragraph of the Introductory Note to the CCB

<sup>34</sup> Article 1

<sup>35</sup> Article 2 a)

<sup>36</sup> Ibid

<sup>37</sup> Article 7

<sup>38</sup> The term "trade information" is undefined.

<sup>39</sup> Article 13

<sup>40</sup> Article 22, paragraphs 1 and 2

<sup>41</sup> Article 10

<sup>42</sup> Article 2., f)

	6) one is contrary to law, namely ensuring that banks will not give any information about their customers <i>other than as provided in the CCB</i> . <sup>43</sup>
<b>Recommendation</b>	<p>The AMB 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 the requirements of Law 15/99, Law 22/09 and the Code of Advertising, as well as all pertinent Decrees and BdM Notices. After a consultation process with all relevant stakeholders, including consumers' associations representing consumers, the revised CCB should then be shared with BdM 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.</p> <p>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 BdM and every bank.<sup>44</sup> Regardless of the means of publication, there should be a clear indication of every signatory bank's agreement to comply with all of its CCB commitments and of its willingness to be held accountable by the AMB, the BdM and consumers for any failure to do so.</p> <p>In revising and up-dating the CCB, in addition to the problems in existing commitments indicated above, the following could be considered, although with recognition of AMB's capacity and expertise constraints:</p> <ul style="list-style-type: none"> <li>• facilitating the easy switching of consumers' current accounts;</li> <li>• establishing precise, common terminology in the banking industry for the description of banks' charges, services and products;</li> <li>• setting minimum standards regarding the information to be provided in any banking advertisement;</li> <li>• establishing uniform standards in respect of various matters, including the marketing and advertising of services, the handling of delinquent debt, and the training of a lender's employees;</li> <li>• establishing an effective and clear procedure to deal with customer complaints, which has to be observed and disclosed, up-front, to the consumer;</li> <li>• notifying consumers of their rights when their disputes with their banks are not resolved by their banks to their satisfaction;</li> <li>• providing explicitly for how the revised Code must be published and disseminated;</li> <li>• requiring the provision to the consumer of a standard package of necessary information on consumer credit before the granting of any consumer credit;</li> <li>• requiring a minimum of 11 point font size in all information materials and contracts;</li> <li>• requiring the provision of the form of typical contracts at the request of any consumer;</li> <li>• establishing uniform standards regarding information to be provided to the consumer on specific contractual terms, including those dealing with interest rate adjustments, general conditions in respect of any account or consumer credit and the overall cost of credit;</li> <li>• ensuring that all information regarding pricing and terms of services (including interest rates, maturity periods and commissions) are available at all of the offices of any bank and submitted on a regular basis to the BdM and the AMB;</li> <li>• providing information regarding floating rate adjustment risk<sup>45</sup>;</li> <li>• providing information regarding any possible foreign currency risks;</li> <li>• permitting the AMB to suspend a bank's AMB membership and to widely publicize this fact whenever a bank consistently fails to conform to the Code of Conduct.</li> </ul>

<sup>43</sup> Article 26

<sup>44</sup> It should also, of course, be published on the AMB's website

<sup>45</sup> The floating rate adjustment risk refers to the risk that a floating interest rate could significantly vary due to market movements over time.

	<p>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.<sup>46</sup></p> <p>Consideration could also be given to a principles-based, statutory Code of Conduct for banks that is devised in consultation with the AMB and with relevant consumers’ associations, if the CCB, in its current form, does not become more effective and widely applied.</p>															
<b>Good Practice A.3</b>	<p><i>Appropriate allocation between Prudential Supervision and Consumer Protection</i></p> <p><b>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.</b></p>															
<b>Description</b>	<p>The BdM accepts the importance of oversight of the provisions of Chapter VI of Law 15/99 and of related matters of financial consumer protection. However Laws 1/92, 15/99 and 22/09, as well as the Code of Advertisement, contain no explicit reference to financial consumer protection as a function of the BdM, as previously covered.</p> <p>The BdM’s Banking Supervision Department (BSD) is responsible for the prudential supervision of all banks. GPI and BSD are headed by different Directors, with GPI reporting directly to BdM’s Governor while the BSD reports to a BdM Board Member.</p> <p>The BdM’s GPI and BSD currently conduct the following functions relevant to consumer protection and financial literacy:</p> <table border="1"> <thead> <tr> <th>Type of responsibility</th> <th>Law/Regulation outlining responsibility</th> <th>Department</th> </tr> </thead> <tbody> <tr> <td>Consumer complaint handling</td> <td>Notice 4/2009</td> <td>GPI</td> </tr> <tr> <td>Regulation and supervision of charges and commissions</td> <td>Notice 5/2009</td> <td>BSD</td> </tr> <tr> <td>Misleading advertisement</td> <td>Notice 5/2009</td> <td>BSD</td> </tr> <tr> <td>Financial education</td> <td>no formal provision/mandate</td> <td>GPI</td> </tr> </tbody> </table> <p>The BSD has a total staff of some 60 professionals, whereas there are, at present, only 13 staff members in GPI, four of whom are focusing their efforts on matters of financial education and three on unresolved disputes that consumers have with their banks.</p> <p>At present, the allocation of resources to the BdM’s program of consumer protection regarding banking products and services is still inadequate to enable its effective formulation, application and implementation.</p>	Type of responsibility	Law/Regulation outlining responsibility	Department	Consumer complaint handling	Notice 4/2009	GPI	Regulation and supervision of charges and commissions	Notice 5/2009	BSD	Misleading advertisement	Notice 5/2009	BSD	Financial education	no formal provision/mandate	GPI
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Misleading advertisement	Notice 5/2009	BSD														
Financial education	no formal provision/mandate	GPI														
<b>Recommendation</b>	<p>Financial consumer protection matters should be embraced by BdM, with a separate unit of dedicated specialized staff that benefits from a sufficient annual allocation of resources (which may imply donor support for initial capacity-building in the short term).</p> <p>As noted, international experience indicates that, if central banks adopt consumer protection as part of their mandate, business conduct supervision should be separated from prudential supervision and have adequate specialized staff and resources to perform its specialized responsibilities effectively in order to avoid conflicts of interest.</p>															

<sup>46</sup> 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](http://www.banking.org.za/consumer_info/code_of_banking/code_of_banking.aspx)

<p><b>Good Practice A.4</b></p>	<p><i>Other Institutional Arrangements</i></p> <p><b>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></p> <p><b>b. The media and consumer associations should play an active role in promoting banking consumer protection.</b></p>
<p><b>Description</b></p>	<p><i>Judicial system</i></p> <p>Although important measures are being taken to improve Mozambique's judicial system,<sup>47</sup> the courts are not yet able to ensure that the ultimate resolution of any dispute involving a consumer protection matter (whether in respect of a banking product or service or otherwise) is affordable and is rendered on a timely and professional basis.<sup>48</sup></p> <p>In the first place, the costs involved in going to court far exceed the typically modest sums in question in financial consumers' disputes. As an indicator, the cost involved in enforcing a contract in court typically exceeds the amount being claimed, with the cost of legal representation as high as 98.5%, court fees as high as 24% and enforcement costs some 20%, respectively, of that amount.<sup>49</sup></p> <p>Secondly, procedural delays, and what are the usual backlog of cases, means that the time from the date a plaintiff files a claim with a court to the date of the execution of a court judgment is typically at least two years.<sup>50</sup></p> <p>And thirdly, most (if not all) judges in first instance courts are not familiar with banking products and services and the prevailing rights and obligations in respect of them.</p> <p><i>Media</i></p> <p>While the media are not prohibited from promoting banking consumer protection, they are given little encouragement to do so by the Government. At least in some instances, the Mozambican press has published articles regarding consumer protection, but these tend to deal with general issues rather than those specifically in respect of banking and other financial products and services.</p> <p><i>Consumer Associations</i></p> <p>As indicated above, DECOM and ProConsumers only play minor roles in promoting banking consumer protection and neither is supported in this respect by the Government.</p> <p>Law 22/09 defines consumer associations, allows them to operate on a national or local scale as they choose and permits them to be either of so-called general or specific interest. For purposes of the Law, consumer cooperatives are treated similarly to consumer associations.</p> <p>Law 22/09 grants every consumer association a host of statutory rights. But it is important to</p>

<sup>47</sup> Among other things, more judges are receiving continual formal training, stricter performance management measures are being applied, and greater administrative support is being made available. See: Doing Business Mozambique 2012, The World Bank at <http://www.doingbusiness.org/reforms/overview/economy/mozambique>

<sup>48</sup> See: *Mozambique - Justice Sector and the Rule of Law*, The Open Society Initiative for Southern Africa, 2006, 156 pages, at <http://a5i.org/wp-content/uploads/2011/12/3.-OSF-Mozambique-Justice-report.pdf>.

And see also: Brinks, Daniel M, and Gauri, Varun: *The Law's Majestic Equality? The Distributive Impact of Litigating Social and Economic Rights*, World Bank: Policy Research Paper 5999, March 2012

<sup>49</sup> See Doing Business Mozambique 2012, *op. cit.* at: <http://www.doingbusiness.org/data/exploreeconomies/mozambique/#enforcing-contracts>

<sup>50</sup> *Ibid.*

<b>Recommendation</b>	<p>note that many of these rights do not appear to have been exercised or respected, including the rights:</p> <ul style="list-style-type: none"> <li>a) to participate, in accordance with the law, as a representative of consumers in hearings or consultations within the BdM (as a regulatory entity);<sup>51</sup></li> <li>b) to enjoy “social partner status”<sup>52</sup> in matters dealing with financial consumer policies, and thus to the appointment of representatives to consultative or cooperative bodies that deal with policies affecting consumers of financial products and services;<sup>53</sup></li> <li>c) to represent consumers during the public consultative and hearing process to be held (by the BdM and any other State institution) as part of decision-making in matters affecting financial consumers;<sup>54</sup></li> <li>d) to solicit, from the BdM or other appropriate body, the seizing and removal of any banking product or the prohibition of any banking service that is harmful to the rights and interests of financial consumers;<sup>55</sup></li> <li>e) to request and receive clarification regarding the pricing of any goods or services provided by a bank or other CIFC;<sup>56</sup></li> <li>f) to receive support from the State via central and local public administrations so as to permit the carrying of their activities in training, informing and representing consumers;<sup>57</sup> and</li> <li>g) to negotiate with the AMB or with individual banks codes of good conduct aimed at governing the relationships between banks and consumers.<sup>58</sup></li> </ul> <p>A lack of expertise and capacity prevents significant promotion of financial consumer protection measures. In summary, while the media and consumer associations play some role in raising consumer protection issues in Mozambique, there has yet to be more focus on issues relevant to the rights of consumers in dealing with banks and other CIFCs, as well as the obligations of banks and other CIFCs when they provide products and services to consumers.</p> <p><i>Judicial system</i></p> <p>The capacity of the judiciary to deal with complaints by consumers of financial products and services needs to be reviewed, as does the practicality of requiring courts to adjudicate on any such matters, in particular for district courts.</p> <p>The recommendations concerning the Financial Services Ombudsman set out in Good Practice E.2 below are relevant in this context.</p> <p><i>Media and consumer associations</i></p> <p>There should be a general public awareness campaign in relation to consumers’ rights generally and in respect of financial products and services in particular and the rights of consumer associations, as well as regarding the statutory and other obligations banks and other CIFCs, BdM, the State and Local Municipalities have towards consumers.</p> <p>Media and consumer associations should play an active role in promoting financial consumer protection. Proper media coverage of consumer mistreatment by financial institutions can be an effective tool in promoting consumer protection through reporting and disclosure of</p>
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<sup>51</sup> *Ibid.*, paragraph 2

<sup>52</sup> The term “social partner status” is undefined.

<sup>53</sup> See Law 22/09, Article 35, paragraph 1, a). By Article 35, paragraph 2, this right is exclusively granted to national-scale consumer associations of general interest.

<sup>54</sup> *Ibid.*, c)

<sup>55</sup> *Ibid.*, d)

<sup>56</sup> *Ibid.*, g)

<sup>57</sup> *Ibid.*, n)

<sup>58</sup> See Law 22/09, Article 36

	<p>harmful industry practices.</p> <p>To promote the participation of consumer associations in financial services in general, and in banking services in particular, consideration should be given to providing (or channeling) funding mechanisms to associations that fulfill specific criteria. It is also important to promote the participation of consumer organizations in working groups or consultative bodies, in order to ensure that consumers are properly represented during the formulation of future financial services policies and the drafting of the revised CCB, as well as all future pertinent laws, regulations and Notices.</p>
<b>Good Practice A.5</b>	<p><b><i>Licensing</i></b></p> <p><b>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.</b></p>
<b>Description</b>	<p>By Law 15/99, all CIFCs that provide financial services to consumers must be registered by the BdM.<sup>59</sup> They are also subject to a regulatory regime that seeks to ensure their financial safety and soundness. Banks are, however, only just beginning to be subject to a regulatory regime aimed at ensuring they deliver products and services fairly and properly to consumers. The ultimate role BdM should play in terms of consumer protection in financial services (whether ideally or in practical terms) is still being defined in the face of human and financial resource constraints.</p>
<b>Recommendation</b>	<p>This good practice forms the basis and foundation for the enforcement of consumer protection in the banking system (see Basel Core Principle 3). BdM should have explicit power to set criteria for good business conduct and to reject applications for the registration as a bank of any companies that manifestly do not – or are unlikely to - meet each of these standards.</p>
<b>PARAGRAPH B</b>	<b>DISCLOSURE AND SALES PRACTICES</b>
<b>Good Practice B.1</b>	<p><b><i>Information on customers</i></b></p> <p><b>a. When making a recommendation to a consumer, a bank should gather, file and record sufficient information from the consumer to enable the bank to render an appropriate product or service to that consumer.</b></p> <p><b>b. The extent of information the bank gathers regarding a consumer should:</b></p> <ul style="list-style-type: none"> <li><b>i. be commensurate with the nature and complexity of the product or service either being proposed to or sought by the consumer; and</b></li> <li><b>ii. enable the bank to provide a professional service to the consumer in accordance with that consumer’s capacity.</b></li> </ul>
<b>Description</b>	<p>By its terms, banks that are members of AMB and have subscribed to the CCB and are thereby ostensibly committed to:</p> <ol style="list-style-type: none"> <li>1) respecting the current regulations regarding customer identification for the purpose of opening accounts;</li> <li>2) helping customers choose the products and services that best meet their needs;<sup>60</sup> and</li> <li>3) informing customers of other products and services available to them which may be of interest.<sup>61</sup></li> </ol> <p>However, as indicated, it is apparent that the CCB is not made available, understood or applied.</p> <p>In addition, FATF-related rules require adherence to identification client requirements.</p>

<sup>59</sup> Law 15/99, Article 40, Paragraph 1

<sup>60</sup> *Ibid.*, Article 2, c)

<sup>61</sup> *Ibid.*, Article 12

	<p>No Law or Notice requires a bank to gather information regarding any customer/consumer for the purpose of offering the consumer <i>only</i> products or services that are appropriate in his or her circumstances.</p> <p>Without BdM guidance in these respects, policies and practices inevitably differ from bank to bank.</p>
<b>Recommendation</b>	<p>This is a basic requirement not only for the delivery of services but also for the purposes of complying with the Basel Core Principle 18 issued by the BIS and with the standards issued by FATF on money laundering and terrorist financing. Therefore, the BdM should prepare and circulate a draft of a Notice for comment that would require 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.</p> <p>That same Notice 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.</p>
<b>Good Practice B.2</b>	<p><b><i>Affordability</i></b></p> <p><b>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></p> <p><b>b. The consumer should be given a range of options to choose from to meet his or her requirements.</b></p> <p><b>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.</b></p> <p><b>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.</b></p>
<b>Description</b>	<p>Banks that have agreed to the terms of the CCB are thereby ostensibly committed to:</p> <ol style="list-style-type: none"> <li>1) assessing the economic viability of customers and their credit risk and/or debt capacity, as well as their management capabilities prior to offering credit so as to ensure repayment of the loan plus the payment of interest;<sup>62</sup></li> <li>2) granting credit to their customers as far as possible within their financial means and debt capacity;<sup>63</sup> and</li> <li>3) providing appropriate information to customers on the different forms of savings accounts and investments so they can choose the product that best suits them.<sup>64</sup></li> </ol> <p>Besides these general statements in the CCB, however, there is no law, regulation or Notice that deals in any way with the various aspects of this Good Practice. Also, the current lack of a credit bureau constrains the ability of banks to assess consumers' credit worthiness.</p> <p>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</p>

<sup>62</sup> *Ibid.*, Article 9

<sup>63</sup> *Ibid.*, Article 14, paragraph 1 Responsibility is denied, however, in the event a customer cannot provide reliable and updated information on all of his or her financial obligations to other creditors. See paragraph 2

<sup>64</sup> Article 15, paragraph 1. Customers are explicitly required, however, to ensure the proper management of their savings and investments in order to meet their financial needs and to inform themselves of savings and investment opportunities in the financial market. See paragraph 2

<b>Recommendation</b>	<p>capability, most front-line bank staff lack awareness and capacity to convey relevant information effectively to customers.</p> <p>Questions of affordability should be dealt with in a future draft BdM Notice that deals with the disclosure of information to customers of CIFCs (hereinafter the “Disclosure Notice”) and this draft should then be circulated widely for review and comment before being revised, as appropriate, and promulgated.<sup>65</sup></p>
<b>Good Practice B.3</b>	<p><b><i>Cooling-off Period</i></b></p> <p><b>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></p> <p><b>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.</b></p>
<b>Description</b>	<p>Consumers may rush into financial arrangements with their banks that provide them seemingly attractive terms or returns without the benefit of shopping around. This is a particular risk as terms of services and products are not readily available and cannot be compared.</p> <p>While banks are free to introduce cooling-off periods of any length for their customers by the terms of their own loan agreements, there is no statutory or CCB requirement to do so.</p> <p>Article 10 of Law 22/09 does, however, allow a consumer the right to retract his or her contract for the acquisition or supply of any product or service within seven business days from the date of receipt of the product or the date the contract for services was signed, provided there is a lack of information or insufficient, illegible or ambiguous information that may compromise the proper usage of the product or service. It is unclear, though, who decides whether there is an adequate lack of information or insufficient, illegible or ambiguous information and what is to happen if the parties fail to agree.</p> <p>Otherwise, there is no legal provision that deals with cooling-off, as such.</p> <p>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. Cooling-off periods as described in this Good Practice are not offered. Rather, if a consumer wishes to terminate a loan after he or she has received all or a portion of the principal sum, the consumer is invariably required to forfeit all up-front fees and to pay interest on the outstanding sum no matter how soon notice to terminate has been lodged with his or her bank. In addition, in many cases, a penalty fee will also be charged.</p> <p>There is, however, no obligation on banks to disclose the above to any consumer when he or she takes out a loan and the practice is to keep silent about these matters.</p> <p>Individuals 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 Mozambique where essential terms of consumer loans, including a clear statement of when, the precise basis upon which, and the extent that, interest charges will vary over the</p>

<sup>65</sup> The following may be useful references in this regard: the EU Directive on Unfair Terms in Consumer Contracts, 1993/13/EEC (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:1993:095:0029:0034:EN:PDF>); EU Directive on Credit Agreements for Consumers, 2008/48/EC (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:133:0066:0092:EN:PDF>); 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.

	life of the loan, are routinely not provided.
<b>Recommendation</b>	<p>Banks should be required to provide their consumers a cooling-off period<sup>66</sup> of a reasonable number of 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.<sup>67</sup></p> <p>If this topic is not dealt with in an appropriate future revision of a well-publicized CCB among <i>all</i> Mozambique's retail banks, it could be provided for in a new Disclosure Notice, with the obligation accruing to all banks to advise their customers of their rights in this regard when they take out their loans.</p>
<b>Good Practice B.4</b>	<p><b><i>Bundling and Tying Clauses</i></b></p> <p><b>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></p> <p><b>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.</b></p>
<b>Description</b>	<p>Tying occurs when two or more products are sold together in a package and at least one of these products is not sold separately. Bundling occurs when two or more products are sold together in a package, although each of the products can also be purchased separately on the market.</p> <p>In some cases banks require a life insurance policy in addition to more standard forms of collateral.</p> <p>Bundling or tying is not an issue for a bank that has no insurance company affiliate or an exclusive or preferential program of insurance cover from an otherwise unaffiliated insurance company, but, in cases where an insurance affiliate exists by law, as in the case of one of the largest banks, or by contract, consumer choice may be restricted in practice.</p> <p>That said, Law 22/09 states that a supplier of goods and services is prevented from making the supply of any good or service dependent on the acquisition or supply of another good or service.<sup>68</sup> This, though, would seem too broad as it would prevent any bank in making a loan to a consumer to require the borrower, say, to obtain insurance in respect of that loan.</p> <p>Also, Law 15/99 states that CIFCs are prohibited from requiring their clients, as a condition for enjoying their services, to use the services of another company that is their subsidiary or in which they own a qualifying holding.<sup>69</sup></p> <p>There is, however, no obligation on the part of any bank to inform its customers of the nature of any relationship that may exist between it and any seller of a tied product.</p>
<b>Recommendation</b>	Whenever borrowers are obliged by their banks to purchase any product, including an insurance policy, as a pre-condition for receiving a loan, a BdM Notice should oblige all banks to allow the borrower complete freedom to choose the provider of the product. That freedom should be communicated to the prospective borrower orally and in writing prior to the signing

<sup>66</sup> 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.

<sup>67</sup> 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.

<sup>68</sup> See Law 22/09, Article 11, paragraph 6

<sup>69</sup> See Law 15/99, Article 46, paragraph 2

	of the loan agreement.
<b>Good Practice B.5</b>	<p><b><i>Preservation of Rights</i></b></p> <p><b>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:</b></p> <p><b>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</b></p> <p><b>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.</b></p>
<b>Description</b>	<p>This Good Practice concerns the obligation to deal fairly and honestly with customers. This standard requires that consumers cannot be forced to accept contractual clauses that would reduce their rights.</p> <p>In this respect, it is important to note that contractual clauses concerning the supply of products and services are deemed to be void when they prevent, exempt or reduce a suppliers' liability for defects of any nature in products and services or imply a renunciation or a waiver of rights.<sup>70</sup> Likewise, any contractual clause is deemed to be void if it establishes obligations generally regarded as unfair or abusive or results in the consumer experiencing an unreasonable disadvantage or is inconsistent with good faith or equity.<sup>71</sup> Furthermore, a contractual clause is accepted as being unreasonably disadvantageous to a consumer if it is “excessively burdensome to the consumer, considering the nature and scope of the contract, as well as the interests of the parties involved”.<sup>72</sup> Thus, any communication or agreement with a consumer that purports to exclude or restrict or seeks to exclude or restrict any duty or liability referred to in this Good Practice is likely to be treated as void.</p> <p>Of some relevance, in addition, are provisions of the Commercial Code that deal with abusive contractual clauses.<sup>73</sup> All such clauses are prohibited by the Commercial Code which illustrates numerous examples. Among these are any clauses that:</p> <ol style="list-style-type: none"> <li>1) are not in accord with the “system of consumer protection”;<sup>74</sup></li> <li>2) exclude or limit directly or indirectly liability for non-contractual property damage caused to the counterparty or to any third party;</li> <li>3) exclude or limit directly or indirectly liability for final non-compliance, delay or defective compliance in case of wilful or gross negligence;</li> <li>4) exclude or limit directly or indirectly liability for acts of representatives or assistants, in the case of wilful or gross negligence;</li> <li>5) exclude the right to compensation as provided by law; or</li> <li>6) establish obligations considered unfair or abusive that place the contracting party at an exaggerated disadvantage or that are inconsistent with the principles of good faith and equity.<sup>75</sup></li> </ol> <p>It is important to note, though, that Mozambique’s Civil Code exonerates anyone who provides any so-called “simple” advice, recommendation or information to anyone else, even if the one advising, recommending or informing has done so negligently.<sup>76</sup></p>

<sup>70</sup> See Law 22/09, Article 22, paragraph 1 a)

<sup>71</sup> *Ibid.*, paragraph 1 d)

<sup>72</sup> *Ibid.*, paragraph 2 c)

<sup>73</sup> See the Commercial Code, Article 443

<sup>74</sup> From March 2010 (when Law 22/09 entered into force), presumably Mozambique’s “system” of consumer protection has included Law 22/09, being Mozambique’s Law on Consumer Protection.

<sup>75</sup> From the Commercial Code, Article 443

<sup>76</sup> See the Civil Code (being the Civil Code of Portugal of 1867), Article 485. The Civil Code, however, does not define “simple” in this context and, therefore, the consequences for providing negligent advice, etc., in more complex cases are unclear.

<b>Recommendation</b>	<p>It would appear, therefore, that the liability, if any, that can possibly arise from the failure of a bank to exercise the degree of skill, care and diligence that may reasonably be expected of it in the provision of any banking service or product to a consumer, arises entirely on the basis of contractual language agreed between the bank and the consumer. And this agreement can, in fact, restrict potential responsibility of the bank for damages based on a failure to exercise skill, care and diligence, provided the failure resulted from simple negligence. It would appear, however, that if a bank acts with intent or gross negligence in this respect, then any agreed exclusion of liability would not apply.</p> <p>These matters should be considered as part of forthcoming amendments to Law 15/99. In this respect, the amendments should ensure that:</p> <ol style="list-style-type: none"> <li>1. a bank must act with skill, care and diligence toward consumers in connection with its provision of any service or product to consumers;</li> <li>2. appropriate liability is incurred by a bank that fails to do so; and</li> <li>3. in any of its communications or agreements with consumers, a bank is prohibited from excluding or restricting, or from seeking to exclude or restrict: <ol style="list-style-type: none"> <li>a) its obligation to act with skill, care and diligence toward consumers in connection with its provision of any service or product; or</li> <li>b) any liability arising from its failure to exercise its duty to act with skill, care and diligence in the provision of any service or product to consumers.</li> </ol> </li> </ol>
<b>Good Practice B.6</b>	<p><b><i>Regulatory Status Disclosure</i></b></p> <p><b>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.</b></p>
<b>Description</b>	<p>This Good Practice is in line with responsible and fair advertisement practices. The consumer should be able to verify the claims made by the advertiser.<sup>77</sup> There is, however, no legal requirement to do this in Mozambique. Nor does this appear to be the current practice of banks in Mozambique.</p> <p>Decree 56/04 requires that <i>only</i> banks “may use the expressions “bank”, “banker” or any other that suggests the conduct of banking business”.<sup>78</sup> There is, however, no requirement to disclose that a company authorized to carry on banking business is regulated by the BdM. Nor is there any provision in this respect in the CCB.</p>
<b>Recommendation</b>	<p>Consideration should be given to amending Decree 56/04 or issuing a Notice to require all banks authorized to do business by the BdM to disclose in any of their advertisements (whether by print, television, radio or otherwise) that they are regulated entities, as well as the name and contact details of the BdM.</p>
<b>Good Practice B.7</b>	<p><b><i>Terms and Conditions</i></b><sup>79</sup></p> <p><b>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:</b></p>

<sup>77</sup> For example, see the UK Financial Services and Markets Act 2000 or the UK Consumer Credit Act 1974.

<sup>78</sup> Decree 56/04, Article 32. See also Article 9 of Law 15/99 to the same effect.

<sup>79</sup> A number of international guidelines provide the background for this Good Practice, including the EU Directive on Credit Agreements for Consumers 2008/48/EC, the EU Directive concerning Unfair Business-to-Consumer Commercial Practices in the Internal Market 2005/29/EC, the US Truth in Lending Act (TILA) and the US Truth in Savings Act. The purpose of TILA is to promote the informed use of consumer credit by requiring disclosures about its terms and by standardizing the manner in which costs associated with borrowing are calculated and disclosed. The Truth in Savings Act requires clear and uniform disclosure of the annual percentage yield (APY) and fees that are associated with a savings account, so that the consumer is able to make a meaningful comparison between potential accounts.

	<p><b>i. disclosure of details of the bank’s general charges;</b>  <b>ii. a summary of the bank’s complaints procedures;</b>  <b>iii. a statement regarding the existence of the office of banking ombudsman or equivalent institution and basic information relating to its process and procedures;</b>  <b>iv. information about any compensation scheme that the bank is a member of;</b>  <b>v. an outline of the action and remedies which the bank may take in the event of a default by the consumer;</b>  <b>vi. the principles-based code of conduct, if any, referred to in A.2 above;</b>  <b>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;</b>  <b>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</b>  <b>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></p> <p><b>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.</b></p>
<p><b>Description</b></p>	<p>Before a client opens a deposit, current (checking) or loan account at any bank, the bank provides the consumer with a copy of its general terms and conditions which includes the terms and conditions applicable to the account to be opened. This document takes the form of an adhesion contract<sup>80</sup> which must be signed by the client indicating his or her acceptance of it. The client then receives a copy of the signed contract.</p> <p>The contract, however, does not need: (a) to disclose any details of the bank’s general charges, any relevant non-interest charges or fees related to the product offered to the consumer or any service charges to be paid by the consumer; or (b) to inform the client of the method of computing the interest rate paid by or charged to the client. In respect of interest charges, a standard statement typically appears in general terms and conditions, as well as in all consumer loan agreements, to the effect that the client’s interest rate will vary, whenever and to the extent management of the bank deems appropriate. Also, the limit on the extent of possible future rate adjustments is not typically fixed.<sup>81</sup></p> <p>Furthermore, the documents in question tend to be dense and printed in small scale font which makes them particularly daunting for the vast majority of clients who, partly as a result, likely do not read them before signing.</p> <p>In addition, no bank is required in its terms and conditions (or anywhere else) to provide any of the other information set out in this Good Practice.</p> <p>Banks’ duty to inform “extends to clarifications on general banking clauses and information about bank account statements <i>when requested</i> by clients.”<sup>82</sup></p> <p>In addition, all banks and other CIFCs are obliged to inform the public about the rates to be</p>

<sup>80</sup> By Article 27 of Law 22/09, an adhesion contract includes one that has been established unilaterally by a bank without a consumer being able to discuss or substantially alter its contents.

<sup>81</sup> Although never stated, notwithstanding the provisions of the law on usury, there is, in theory, no limit on the extent to which interest on a loan account can increase. Also, there is an unmentioned possibility, again in theory at least, that the interest rate on a savings account could decrease to zero. The law on usury is contained in Article 1146 of the Civil Code (which reflects the provisions in the Portuguese Civil Code of 1867). By its terms, an annual interest rate of more than 10% stipulated in any loan agreement is considered usurious. Also, any penalty annual interest rate greater than 14% that applies to a principal sum in default is likewise considered usurious. And, if any contract stipulates an interest rate that is greater than these rates, the rate is deemed to have been reduced to the maximum amount, even in the event that the contracting parties clearly intend otherwise. These provisions are, however, systematically ignored by all concerned.

<sup>82</sup> See Law 15/99, Article 45, paragraph 3. See also the CCB to the same effect.

<p><b>Recommendation</b></p>	<p>applied for the credit and debit operations they are authorized to execute, as well as the prices and other charges for services provided.<sup>83</sup> In other words, banks and all other CIFCs must inform the public about the costs and benefits of the financial products and services they make available.<sup>84</sup> Furthermore, prior to the granting of a loan to a consumer, the supplier of the loan must inform the borrower of:</p> <ol style="list-style-type: none"> <li>a) “the price in local currency;</li> <li>b) the amount of interest for payment in arrears and the actual annual interest rate;</li> <li>c) any legal additional cost;</li> <li>d) the number and periodicity of installments; and</li> <li>e) the total to be paid, with and without financing.”<sup>85</sup></li> </ol> <p>Banks appear to routinely ignore these requirements however. It is obvious that any bank which leaves open when and to what extent interest rates will adjust is incapable of informing any consumer in advance what the maximum total to be paid on a consumer loan can prove to be.</p> <p>In the event that a consumer fails to pay any loan installment on time, the penalty must not be greater than 2% of the installment amount.<sup>86</sup> This provision likewise, however, is seemingly ignored by banks.</p> <p>Although banks and other CIFCs apparently do honor their requirement to send this list with its corresponding commissions and other charges to the BdM electronically every quarter<sup>87</sup> and to publish an up-dated table with this information every half-year in at least one of Mozambique’s most-widely circulating newspapers,<sup>88</sup> few if any branches of banks manage to post a complete list of their commissions and other charges in a readable form and in a visible place with easy public access.</p> <p>Notice 5 makes the suggestion that “the collection of commissions and other charges for services provided by the institutions subject to BdM supervision <i>should be</i> included in the contract signed between the institution and the client” or else “the respective service <i>should have been</i> authorized or requested <i>previously</i> by the client in a document equivalent to such a contract, as formulated by the institution according to the type of operation in question”.<sup>89</sup> Unlike the obligatory language used elsewhere in Notice 5, these are proposals which banks appear to routinely ignore.</p> <p>In their terms and conditions for loan accounts denominated in foreign currency, banks typically provide no warning to consumers regarding the potential negative impact resulting from any future lowering of the value of the Metical as against the currency being borrowed, whether as a result purely of market forces or of any possible BdM intervention.<sup>90</sup> Given the significant extent to which household debt is incurred in foreign currency,<sup>91</sup> this matter deserves attention.</p> <p>Although the BdM is required to regulate the minimum requirements for compliance by banks</p>
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<sup>83</sup> *Ibid.*, paragraph 1

<sup>84</sup> See Notice 5, Article 6, paragraph 1

<sup>85</sup> Law 22/09, Article 25, paragraph 1

<sup>86</sup> *Ibid.*, paragraph 2

<sup>87</sup> *Ibid.*, Article 9, paragraph 1

<sup>88</sup> *Ibid.*, paragraph 3

<sup>89</sup> Notice 5, Article 3

<sup>90</sup> While continuing to allow the exchange rate to adjust freely to evolving patterns of trade and financial flows, the BdM can intervene to devalue the Metical, on no notice, if, in its view, the circumstances so require.

<sup>91</sup> According to BdM data about a fourth of household loans denominated in foreign currency by end 2011. See Table 8 above

and other CIFCs in the public dissemination of their rates and commissions and with the conditions under which their services are provided,<sup>92</sup> Article 5 could usefully be further expanded.

For example, before a consumer opens a deposit, current (checking) or loan account at any bank, the bank should be required to provide the consumer with a written copy of its general terms and conditions (in the vernacular) which include each of the items referred to in this Good Practice.

For any consumer/customer who may be illiterate, alternative mechanisms of disclosure should likewise be required.

Either the existing law should be amended<sup>93</sup> so as to require that, prior to having a consumer enter into a consumer credit agreement with it, a bank must:

- 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;
- 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.

Information on financial services should be easy to understand, and should use comparable terms and measures across institutions. 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.

In the short term as a priority, the BdM should develop a methodology for financial institutions to disclose a price or cost of financial products to consumers that includes all costs and is comparable across institutions. A future BdM Notice should specify a standard methodology required to be applied by all banks and other financial institutions and the BdM should then monitor compliance in using it across all credit providers. Financial institutions should be required to disclose an effective interest rate, or an interest rate spread (that includes fees in the calculation) over a reference rate such as the BdM Reserve Rate, and to use that percentage in all 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.

In addition, BdM should establish a price comparison website to provide consumers with the

<sup>92</sup> Law 15/99, Article 45, paragraph 4

<sup>93</sup> Helpful guidance in this respect can be forthcoming from a review of relevant provisions in Europe. See Directive 2008/48/EC of the European Parliament on credit agreements for consumers; <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:133:0066:0092:EN:PDF>

	<p>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 website 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 complement to that website, price comparison tables should also be made available by means of newspapers, community leaders, consumer associations, and through suitable outlets in rural areas (such as health clinics, retail stores, the planned district-level internet centers). In time, agents for mobile money providers could use this website information and make tools available to customers for example, including those customers that are semi-literate or not able to read in Portuguese. National price comparison websites have increased competition and reduced consumer prices, for example in the case of the website established by the financial regulator in Peru.<sup>94</sup> Currently BdM already requires financial institutions to report commissions and other charges quarterly to BdM. BdM could use this requirement as a basis to elaborate on requirements to publish in a manner that is easily comparable, understandable and accessible for consumers.</p> <p>Finally, of special concern is the need to provide basic information to consumers in languages other than Portuguese that are widely spoken and written in Mozambique. Although roughly half of the population of Mozambique does not speak any Portuguese, all banking documentation is available in Portuguese only. It is, therefore, suggested that consideration be given to requiring terms and conditions and other basic banking documents, such as Key Facts Statements (see the following Good Practice), to be translated into at least two or three of the major indigenous languages, namely Swahili, Makhuwa and Sena.</p>
<p><b>Good Practice B.8</b></p>	<p><b><i>Key Facts Statement</i></b></p> <p><b>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></p> <p><b>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.</b></p> <p><b>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.</b></p> <p><b>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.</b></p>
<p><b>Description</b></p>	<p>Key Facts Statements, as such, are not required by law. Notice 5 does, however, state that CIFCs “are obliged to inform the public about the costs and benefits of the use of financial products or services made available or rendered and, for these purposes, CIFCs must have updated information permanently available about the general conditions of their operations and the services they offer, which represent costs for their clients.”<sup>95</sup></p> <p>Although the CCB admonishes banks to “provide their customers with information about the ‘key features’ of their products and services”,<sup>96</sup> as indicated under A. 2 above, the CCB has little, if any, practical impact on any bank’s practices.</p> <p>Most banks do produce small single sheet or folded glossy pamphlets regarding their major consumer products and services. These, though, are for purposes of advertising and are not a substitute for Key Facts Statements.</p>

<sup>94</sup> 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>

<sup>95</sup> See Notice 5, Article 6, paragraphs 1 and 2

<sup>96</sup> See CCB, Chapter IV, P\paragraph I, Article 4, a)

<p><b>Recommendation</b></p>	<p>A Key Facts Statement<sup>97</sup> 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.</p> <p>A Notice should 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 need concisely (on no more than a page) to 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. And, 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.</p> <p>The BdM 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 BdM instructions as to how interest rates and monthly minimum balances must be calculated and presented.</p> <p>A Key Facts Statement should also be required for all other products offered by banks, including savings accounts.</p> <p>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.</p> <p>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.</p> <p>In addition to an extensive consultation with Mozambique's banking industry, these measures would undoubtedly benefit significantly from consumer pre-testing of the formats created by the BdM 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 BdM's website, the media and other means in order to increase public awareness.</p> <p>Such disclosures should be in the major local languages. Also, where consumers are illiterate, financial institution staff should be obliged to read the text to prospective customers or at least to provide the text to community leaders or promoters.</p>
<p><b>Good Practice B.9</b></p>	<p><b><i>Advertising and Sales Materials</i></b></p> <p><b>a. Banks should ensure that their advertising and sales materials and procedures do not mislead customers.</b></p> <p><b>b. All advertising and sales materials of banks should be easily readable and understandable by the general public.</b></p>

<sup>97</sup> 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.

	<p><b>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).</b></p>
<p><b>Description</b></p>	<p>Although banks are required to ensure that their advertising and sales materials and procedures do not mislead customers, numerous provisions deal with this same subject matter. Requirements appear variously in: (i) the Code of Advertising, with the Ministry of Trade and Industry responsible for their enforcement; (ii) Law 22/09, with the relevant agency of the Public Administration responsible for its enforcement;<sup>98</sup> (iii) Notice 5 with the BSD of the BdM named as responsible, at least in taking questions; (iv) the Civil Code; as well as (v) the Constitution.</p> <p>In reverse order, the Constitution prohibits “all forms of hidden, indirect and misleading advertising.”<sup>99</sup></p> <p>By the terms of the Civil Code, banks are legally responsible for all statements made in their advertising and sales materials.<sup>100</sup></p> <p>By Notice 5, the definition of misleading advertising simply repeats the definition in the Code of Advertising,<sup>101</sup> namely the rendering of any information that leads – or is liable to lead – its receivers into error or that may prejudice a competitor.<sup>102</sup> And the promotion of misleading advertising by banks and other CIFCs about the products and services they offer to the public “is prohibited and liable to sanctions under the terms of the applicable legislation”.<sup>103</sup></p> <p>Law 22/09 bans misleading or abusive advertising. “Misleading advertising” is any kind of information or communication bearing “advertising characteristics” which is totally or partially false or for any other reason, including by omission,<sup>104</sup> may lead a consumer to error with respect to the nature, characteristics quantity, attributes price or any other feature about any product or service of a bank or other CIFC.<sup>105</sup></p> <p>In addition, all advertisements must be disseminated in such a way that consumers are able to, easily and immediately, identify them as such.<sup>106</sup></p> <p>Furthermore, in advertising any of its products or services, each bank or other CIFC must keep for the proper information of all legitimately interested parties, all of the factual and technical data that has supported the messages in all of its advertisements.<sup>107</sup> Any advertisement by bank or other financial institution that mentions a selling price of a product or service must indicate the price in MZN in a clear and legible fashion.<sup>108</sup> Also, when mentioning the selling price, any written or printed publicity must indicate the unit price, if relevant.<sup>109</sup></p> <p>Any bank or other CIFC is required:</p> <ol style="list-style-type: none"> <li>1. to accept that all “sufficiently accurate information” or advertising, announced by any means and concerning a product or service offered or presented by it is</li> </ol>

<sup>98</sup> Query whether this is the BdM

<sup>99</sup> See The Constitution, Article 92, paragraph 2

<sup>100</sup> See Civil Code, Articles 483 to 498 on civil liability

<sup>101</sup> See Decree 65/04, Article 9, paragraph 1

<sup>102</sup> Notice 5, Article 2 c)

<sup>103</sup> *Ibid.*, Article 10

<sup>104</sup> By paragraph 4 of Article 20, an advertisement is misleading by omission when it fails to provide any essential data about a product or service or by action when it indicates qualities that the product does not have.

<sup>105</sup> *Ibid.*, paragraph 2

<sup>106</sup> *Ibid.*, paragraph 5

<sup>107</sup> *Ibid.*, paragraph 8. The duration of this obligation is, however, not specified.

<sup>108</sup> Law 22/09, Article 24, paragraph 1

<sup>109</sup> *Ibid.*, paragraph 2

	<p>binding upon it and deemed to be integrated into any contract related thereto that is entered into with a consumer;<sup>110</sup> and</p> <p>2. to ensure, in its offers and presentations of any product or service, that correct, clear, accurate, and legible information appears in Portuguese about such features as the characteristics, quality, quantity, components, price, warranty and duration of the product or service.<sup>111</sup></p> <p>By far the most elaborate statement of the law dealing with advertising comes, however, from the Code of Advertising<sup>112</sup> which applies to any form of advertising, irrespective of the media used for its dissemination.</p> <p>By Article 4 of the Code, “advertising is governed by the principles of lawfulness, [so-called] ‘identifiability’, veracity and respect for the rights of consumers.”<sup>113</sup> Although all advertising “must respect and truth and not distort the facts,”<sup>114</sup> it is left to the relevant entity to ensure that all banks comply. The “relevant entity” may also demand that banks, as advertisers, present proof of the material accuracy of the facts contained in their advertisements.<sup>115</sup></p> <p>Since the term “relevant entity” is undefined, it is not clear whether the BdM constitutes this entity in respect of all advertisements produced for or by all banks and other CIFCs. A subsequent Code of Advertising provision makes it clear that the General Inspectorate of the Ministry of Trade and Industry is responsible for instituting legal proceedings for the prosecution of the transgressions stipulated in the Code, consulting, whenever necessary, other institutions deemed relevant.<sup>116</sup> Also, the Ministry of Trade and Industry is made responsible for the application of the fines and additional sanctions stipulated in the Code, with the possibility of appeal being lodged against its decisions “under the general law”.<sup>117</sup></p> <p>As indicated, the Code of Advertising prohibits all misleading advertising. No case, however, has yet been brought by the BdM, the Ministry of Trade and Industry or any other “relevant entity.”</p> <p>By Article 10 of the Code of Advertising, it is also important to note that any advertisements are prohibited that violate consumer rights and the respective legislation in force. This means that before any bank or other CIFC prepares and publishes any advertisement (or contracts an advertising agency to prepare and publish any advertisement on its behalf) close attention must be paid to the statutory rights of consumers regarding financial products and services, especially all of Law 22/09 which, in major part, constitutes “the respective legislation in force.” This, however, appears never to have been done.</p> <p>Although all advertising in the printed media must be identified with the word “Advertisement” or with the abbreviation ADV (“Publicidade” and PUB respectively in Portuguese) at the top of the advertisement or advertising block,<sup>118</sup> this requirement seems, as well, to be honored in the breach, at least by most banks.</p> <p>The sanctions for failure to comply with the provisions of the Code include civil responsibility to third parties for damages<sup>119</sup> and the imposition of more or less significant fines,<sup>120</sup> as well as</p>
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<sup>110</sup> *Ibid.*, Article 28, paragraph 1

<sup>111</sup> *Ibid.*, paragraph 2

<sup>112</sup> See Council of Ministers Decree 65/04 of 31 December 2004

<sup>113</sup> With no indication, however, as to any specific consumer rights

<sup>114</sup> Decree 65/04, Article 8, paragraph 1

<sup>115</sup> *Ibid.*, Article 9, paragraph 2

<sup>116</sup> *Ibid.*, Article 37

<sup>117</sup> *Ibid.*, Article 38

<sup>118</sup> *Ibid.*, Article 6, paragraph 4

<sup>119</sup> *Ibid.*, Article 33

<sup>120</sup> *Ibid.*, Article 34

<b>Recommendation</b>	<p>the possible application of more draconian measures, including the seizure of the products that are the subject of the transgression and, in the event of fraud, the prohibition for up to two years of the exercise of advertising activities or the deprivation of rights granted by public entities (including, presumably, the BdM) or even the temporary closure of the premises or establishment where the advertising activity has been performed, as well as the cancellation of licenses or permits.<sup>121</sup></p> <p>Given the above, it is not surprising that there is no active coordination between the Ministry of Trade and Industry and the BdM on matters of advertising by banks or other CIFCs.</p> <p>Notwithstanding the various statutory requirements referred to above, and the commitment made by most banks in the CBB to ensure that all of their advertising is transparent, honest, sensible and not misleading, there are many examples of banks falsely advertising that ATMs are always open, lending interest rates are “low”<sup>122</sup> and credit will be granted “quickly”.<sup>123</sup> Since a potential conflict arises by reason of the fact that the Advertising Code, Law 22/09 and Notice 5 all contain provisions on misleading advertising with different enforcement authorities, in place of all of these, the statutory obligations on financial service providers in respect of their advertisements should be restricted to provisions contained in an expanded and amended Law 15/99, with the BdM thereby becoming the monitoring and enforcement authority in these respects.</p>
<b>Good Practice B.10</b>	<p><i>Third-Party Guarantees</i></p> <p><b>A bank should not advertise either an actual or future deposit or interest rate payable on a deposit as being guaranteed or partially guaranteed unless there is a legally enforceable agreement between the bank and a third party who or which has provided such a guarantee. In the event such an agreement exists, the advertisement should state:</b></p> <ul style="list-style-type: none"> <li><b>i. the extent of the guarantee;</b></li> <li><b>ii. the name and contact details of the party providing the guarantee; and</b></li> <li><b>iii. in the event the party providing the guarantee is in any way connected to the bank, the precise nature of that relationship.</b></li> </ul>
<b>Description Recommendation</b>	<p>No Law, regulation, Notice or CCB provision deals in any way with these matters.</p> <p>The word “guarantee” can be a persuasive element when it comes to “returns” on investment, such as fixed-term savings account. There is a tendency, however, for the term to be used loosely. Furthermore, the actual terms of a guarantee can be difficult for the average customer to understand. Thus, advertisements should ensure that the fact of any third-party guarantee is clearly disclosed to the public so as to enable consumers to make an informed decision about the usefulness or relevance of the guarantee.</p> <p>Consideration should be given to having a future BdM Notice cover all aspects of this Good Practice in the event that any bank seeks to advertise the fact that payment of the interest on a consumer’s deposit is guaranteed by any third party.</p>
<b>Good Practice B.11.</b>	<p><i>Professional Competence</i></p> <p><b>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></p> <p><b>b. Regulators and associations of banks should collaborate to establish and administer</b></p>

<sup>121</sup> *Ibid.*, Article 36

<sup>122</sup> potentially meaning as much as 35% or more

<sup>123</sup> when 45 days or more can easily elapse before a loan can possibly be granted.

	<p><b>minimum competency requirements for any bank staff member who:</b></p> <ul style="list-style-type: none"> <li><b>i. deals directly with consumers;</b></li> <li><b>ii. prepares any Key Facts Statement or any advertisement for the bank; or</b></li> <li><b>iii. markets the bank’s services and products.</b></li> </ul>
<p><b>Description</b></p>	<p>While requirements exist in terms of the qualifications of all managers of banks,<sup>124</sup> there are no statutory or CCB requirements – either as to minimum qualifications or the knowledge of relevant laws, regulations, Notices, the CCB and banks’ financial products and services – for any bank staff member who deals directly with consumers, prepares any documents for consumers, including advertisements, or does any retail marketing for a bank. And, most banks view the shortage of trained staff in the market place as a significant obstacle to doing business.</p> <p>Although all banks recognize that it is in their best interest to employ competent staff who are able to communicate knowledgeably, whether generally by way of advertisement or individually in respect of any actual or potential customer/consumer regarding the products and services the bank has on offer, there is no internally (or externally) applied and enforced regime so as to ensure any consumer that the ‘facts’ as stated to him or her have not been misrepresented. Nor can the consumer have confidence that bank staff with whom he or she deals will be familiar with all relevant legislative and regulatory requirements, as well as with all of the details of any product or service which a bank staff member sells or promotes. Simply put, no bank can currently ensure that all or even most staff dealing with consumers (or performing otherwise as indicated in this Good Practice) have sufficient knowledge of the laws, regulations, Notices and CCB requirements relevant to his or her work.</p> <p>Although the Banking Training Institute of Mozambique (<i>Instituto de Formação Bancária de Moçambique</i>, IFBM)<sup>125</sup> provides training courses for employees of banks and those who have aspirations of holding positions within banks, there is no industry-wide training program for bank employees who deal directly with consumers. That said, most banks have their own internal training programs for their staff. But none of these programs can possibly ensure that all or even most staff dealing with consumers (or performing otherwise as indicated in this Good Practice) know even of the existence – let alone have a basic knowledge – of the laws, regulations, Notices and CCB requirements relevant to his or her work.</p> <p>Industry-wide and specific minimum competency requirements are lacking for bank staff who deal directly with consumers, prepare documentation for consumers, draft an advertisement for the bank or market the bank’s services and products. It follows, therefore, that the BdM and the AMB have not yet collaborated with view to establishing and administering minimum competency requirements for any bank staff member.</p> <p>The AMB should develop minimum standards of information that loan officers and bank agents should pass on to consumers. AMB is well placed to develop information standards and training material in consultation with the BdM. AMB and IFBM could also offer training programs for loan officers and agents, and test how well loan officers and agents communicate to customers in practice.</p> <p>The BdM and AMB should collaborate in order 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; (c) markets any of the bank’s services and products; or (d) in the future, will prepare any Key Facts Statement for the bank.</p>
<p><b>PARAGRAPH C</b></p>	<p><b>CUSTOMER ACCOUNT HANDLING AND MAINTENANCE</b></p>

<sup>124</sup> See Law 15/99, Articles 19 and 20

<sup>125</sup> IFBM was established in Maputo in 1994 by Ministerial “Diploma” No. 76/94 of 25 May and is entirely separate from the AMB.

<p><b>Good Practice C.1</b></p>	<p><b>Statements</b></p> <p><b>a. Unless a bank receives a customer’s prior signed authorization to the contrary, the bank should issue, and provide the customer free of charge, a monthly statement of every account the bank operates for the customer.</b></p> <p><b>b. Each such statement should:</b></p> <ul style="list-style-type: none"> <li><b>i. set out all transactions concerning the account during the period covered by the statement; and</b></li> <li><b>ii. provide details of the interest rate(s) applied to the account during the period covered by the statement.</b></li> </ul> <p><b>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.</b></p> <p><b>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.</b></p> <p><b>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.</b></p> <p><b>f. When a customer signs up for paperless statements, such statements should be in an easy-to-read and readily understandable format.</b></p>
<p><b>Description</b></p>	<p>At least in theory, every bank is obliged to provide its individual customers with a monthly statement regarding each account the bank operates for these individuals. And, by Notice 5, all banks are prohibited from collecting commissions or other charges when providing such statements to consumers with respect to their deposit accounts.<sup>126</sup> Honoring this obligation is problematic, however, in the many instances in which consumers have no access to the internet, given the unreliability and expense of using the existing postal services, as well as the fact that growing numbers of individual account holders have no postal address.</p> <p>The CCB requires banks to provide customers with monthly, quarterly or annual statements of their accounts when they request them<sup>127</sup> and to provide detailed statements to customers via the internet when requested.<sup>128</sup> There is nothing here, though, regarding the matter of commissions of other charges for providing such statements.</p> <p>Although monthly statements do, typically, set out all transactions concerning the account during the period covered by the statement, there are no BdM requirements as to what any such statements must disclose. Also, there is no requirement for such statements to be in an easy-to-read and readily understandable format, whether sent electronically or otherwise. In particular, there is no obligation to provide details of the interest rate(s) applied to <i>any</i> deposit or loan account during the period covered by the statement. Nor is direction yet given by the BdM to all banks regarding the required content of statements for credit and debit cards, as well as for any statement of account that is sent electronically.</p> <p>There is no BdM guidance to banks regarding what, in the banking industry, is to constitute an “inactive deposit account”; nor are there any requirements placed upon banks to notify customers before placing their deposit accounts in “inactive” status. In addition, no bank apparently notifies any individual customer of long periods of inactivity of the customer’s accounts or provides a reasonable final notice in writing to the customer before the bank, at least itself, chooses to treat its customer’s funds as “unclaimed money”.</p>

<sup>126</sup> See Notice 5, Article 4 b

<sup>127</sup> See CCB, Article 18, paragraph 1

<sup>128</sup> *Ibid.*, paragraph 2

<p><b>Recommendation</b></p>	<p>There is no BdM-stipulated or CCB-agreed term during which banks are obliged to hold dormant accounts in the event a customer “re-appears” and wants to re-activate his or her account; nor is there any direction from BdM to all banks as to: (a) the period that any funds in inactive account status must be held by them; and (b) the required disposition of these funds – as “unclaimed money” – on the expiry of this period.</p> <p>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.</p> <p>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 the customers. Also, when customers choose paperless statements, the access to the statements, their format and details should be a fair substitute for paper statements.</p> <p>Banks should be required to carry out all aspects of this Good Practice by means of a new Disclosure Notice.</p>
<p><b>Good Practice C.2</b></p>	<p><b><i>Notification of changes in interest rates and non-interest charges</i></b></p> <p><b>a. A customer of a bank should be notified in writing by the bank of any change in:</b></p> <ul style="list-style-type: none"> <li><b>i. the interest rate to be paid or charged on any account of the customer as soon as possible; and</b></li> <li><b>ii. a non-interest charge on any account of the customer a reasonable period in advance of the effective date of the change.</b></li> </ul> <p><b>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.</b></p> <p><b>c. The bank should inform the customer of the foregoing right whenever a notice of change under paragraph a. is made by the bank.</b></p>
<p><b>Description</b></p>	<p>Banks are required to notify customers in writing of any change in interest rate, non-interest charges, or terms and conditions of a financial product.<sup>129</sup> Indeed, before altering the conditions with respect to any agreement with a customer, <i>which results in any charge for the client</i>, banks are encouraged to give information to the customer about the changed conditions.<sup>130</sup> As wording of the relevant Notice speaks not of an obligation placed upon banks in these respects but rather makes the suggestion that banks “should” do as indicted above, most banks ignore the suggestion.</p> <p>According to CCB, members of AMB are committed to informing their customers about the changes that occur in charges for basic banking transactions by letter, statement of account, flyers, post on ATM's or other media<sup>131</sup> but the words “basic banking transactions” are defined in the CCB as “the opening, maintenance, mobilization and handling of deposit accounts (by means of checks or other payment methods) and of savings accounts.” Thus, no bank voluntarily accepts responsibility to notify its customers in writing of any change either in the interest rate to be paid or charged on any account of the customer as soon as possible or of a non-interest charge on any account of the customer a reasonable period in advance of the effective date of the change. In addition, the CCB ostensibly commits the banks that are parties to AMB to set forth in their contracts with customers the conditions applicable in the event they wish to change the interest rate on any of their operations.<sup>132</sup> There is nothing here,</p>

<sup>129</sup> See Notice 5, Article 6 on the duty to inform.

<sup>130</sup> Notice 5, Article 7

<sup>131</sup> Article 6

<sup>132</sup> Article 24

<p><b>Recommendation</b></p>	<p>though, regarding standard language, including in respect of when, if at all, a customer should or must be informed.</p> <p>Interest rates payable to consumers on their deposit accounts and owed by consumers on their bank loans are set on a floating rate basis, with adjustments being made by the management of the consumer's bank as, when and to the extent it deems appropriate and without reference to any industry-wide benchmark or base interest rate that would serve as guidance for consumers to know how and the extent to which their interest rates may change in the future.</p> <p>Although a customer of a bank typically has the right to exit his or her loan agreement at any time, a penalty is typically charged for doing so, even if the revised terms (i.e. the new interest rate and/or other charges) are not acceptable to the customer.</p> <p>Banks could be required 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 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, such as LIBOR or EURIBOR).</p> <p>The BdM, in technical discussions with all stakeholders, could look at how floating interest rates are set and communicated to consumers, and whether interest rates should be explicitly linked to a base rate such as MAIBOR (Maputo Inter-Bank Offered Rate) or the FPA for variable interest rates on deposits or the FPC for variable interest rates on lending operations.</p> <p>Consideration should be given to the formulation of amendments to Law 15/99 in order to deal with all aspects of this Good Practice. In the process, a provision should be included to the effect 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 banks should be required to inform their customers of this right as an integral part of the bank's notice of change.</p>
<p><b>Good Practice C.3</b></p>	<p><b><i>Customer Records</i></b></p> <p><b>a. A bank should maintain up-to-date records in respect of each customer of the bank that contain the following:</b></p> <ul style="list-style-type: none"> <li><b>i. a copy of all documents required to identify the customer and provide the customer's profile;</b></li> <li><b>ii. the customer's address, telephone number and all other customer contact details;</b></li> <li><b>iii. any information or document in connection with the customer that has been prepared in compliance with any statute, regulation or code of conduct;</b></li> <li><b>iv. details of all products and services provided by the bank to the customer;</b></li> <li><b>v. a copy of correspondence from the customer to the bank and vice-versa and details of any other information provided to the customer in relation to any product or service offered or provided to the customer;</b></li> <li><b>vi. all documents and applications of the bank completed, signed and submitted to the bank by the customer;</b></li> <li><b>vii. a copy of all original documents submitted by the customer in support of an application by the customer for the provision of a product or service by the bank; and</b></li> <li><b>viii. any other relevant information concerning the customer.</b></li> </ul> <p><b>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.</b></p>
<p><b>Description</b></p>	<p>Banks are required to establish the identity of the client of the bank when entering into a business relationship, especially when opening an account or savings deposits or other savings instruments, offering safe custody of securities or investments in securities, or issue insurance policies or pension plans, and/or conducting occasional transactions. For occasional</p>

	<p>transactions the requirement applies when the transaction equals or exceeds the sum of 441 minimum wages.<sup>133</sup></p> <p>Apart from this, there is no specific regulation on the information referred to in this Good Practice.</p> <p>The CCB commits signatory banks to inform customers about their rights to access to the information retained regarding them,<sup>134</sup> leaving each bank to define these “rights” for itself.</p> <p>Furthermore, although “facts or particulars relating to a client’s relations with a CIFC can be disclosed when the client gives written authorization to the CIFC”<sup>135</sup> (and, to this extent, at least, a customer has access to his or her records), there is no indication as to whether this access must be free of charge. And neither is there any regulation that stipulates how long client records must be retained.</p>
<b>Recommendation</b>	<p>A future Notice should require all banks to perform in accordance with this Good Practice. The list may seem prescriptive but its requirements should be regarded as the minimum in order to ensure that sufficient information is kept for the purpose of providing customer protection.</p> <p>The same or a further Notice should also require banks to maintain a loan file for every loan provided to their customers. The Notice should stipulate what every one of these files must contain at a minimum. Relevant documents could include:</p> <ul style="list-style-type: none"> <li>• the request for the loan signed by the applicant, stating the purpose for which the loan will be used;</li> <li>• the original loan agreement;</li> <li>• the employment certification and salary or amount of income per year;</li> <li>• the materials needed to confirm and evaluate the borrower’s financial condition and his or her capacity to repay the loan according to the agreed conditions;</li> <li>• 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;</li> <li>• the records proving the purpose of the loan;</li> <li>• documents showing the collateral or guarantee related to the loan;</li> <li>• records, if any, with the cash amount for which the collateral has been insured with an insurance company;</li> <li>• a record of the changes and additions to the loan agreement, if any, after the loan approval;</li> <li>• documentation confirming and defining any required action; and</li> <li>• all correspondence and documents showing contacts between the bank and the borrower after approval of the loan agreement.</li> </ul> <p>Such a Notice should also require the bank to maintain a loan file as long as the loan in question has not been repaid or liquidated in some other manner.</p>
<b>Good Practice C.4</b>	<p><b><i>Paper and Electronic Checks</i></b></p> <p><b>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:</b></p> <ol style="list-style-type: none"> <li><b>i. checks drawn on an account that has insufficient funds;</b></li> <li><b>ii. the consequences of issuing a check without sufficient funds;</b></li> </ol>

<sup>133</sup> As provided by Law 7/02 on Anti-Money Laundering and in Article 10 of Decree 37/04 thereunder. Reportedly a minimum wage accounts for approximately 2,500 MZN. Therefore 441 minimum wages constitutes 1,102,500 MZN which is equivalent to around US\$ 39,900.

<sup>134</sup> CCB, Article 27

<sup>135</sup> See Law 15/99, Article 49, paragraph 1

	<p>iii. the duration within which funds of a cleared check should be credited into the customer's account;</p> <p>iv. the procedures on countermanding or stopping payment on a check by a customer;</p> <p>v. charges by a bank on the issuance and clearance of checks;</p> <p>vi. liability of the parties in the case of check fraud; and</p> <p>vii. error resolution.</p> <p>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.</p> <p>c. A bank should provide the customer with clear, easily accessible and understandable information regarding electronic checks, as well the cost of using them.</p> <p>d. In respect of electronic or credit card checks, a bank should inform each customer in particular:</p> <p>i. how the use of a credit card check differs from the use of a credit card;</p> <p>ii. of the interest rate that applies and whether this differs from the rate charged for credit card purchases;</p> <p>iii. when interest is charged and whether there is an interest free period, and if so, for how long;</p> <p>iv. whether additional fees or charges apply and, if so, on what basis and to what extent; and</p> <p>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.</p> <p>e. Credit card checks should not be sent to a consumer without the consumer's prior written consent.</p> <p>f. There should be clear rules on procedures for dealing with authentication, error resolution and cases of fraud.</p>
<p><b>Description</b></p>	<p>Most of the requirements of this Good Practice, including rules on procedures for dealing with check authentication, error resolution and cases of fraud, are dealt with in the Law on Checks<sup>136</sup> and the Notice 1.<sup>137</sup></p> <p>When a check is issued with insufficient funds, the bank is required to cancel the drawing/cashing or deposit of the check and notify all entities that are affected by this cancelation.</p> <p>In addition, by the terms of the CCB, most banks have agreed, at least on paper, to:</p> <ol style="list-style-type: none"> <li>1) pay checks issued by customers, provided they present all necessary documentation and all provisions of Law 5/98 and Notice 1 are met;<sup>138</sup></li> <li>2) submit to an issuer of a check, if requested, proof of payment in the event of a dispute in connection with payment;<sup>139</sup></li> <li>3) inform customers of a return of a check without funds no later than by the second business day thereafter;<sup>140</sup> and</li> <li>4) notify the BdM within five days of the issuance of any check without funds.<sup>141</sup></li> </ol> <p>While credit card checks do not exist in Mozambique, paper checks are used only by the wealthiest segment of the population.</p>

<sup>136</sup> Law 5/98

<sup>137</sup> Notice No. 01/GBM/2003

<sup>138</sup> Article 19 CCB, paragraph 1. Clients are admonished by the CCB to inform their bank branch of any loss, theft or destruction of checks and to arrange for stop payments, subject to the revocation rules established by the Law Relating to Checks. See Article 20

<sup>139</sup> *Ibid.*, paragraph 2

<sup>140</sup> *Ibid.*, paragraph 3

<sup>141</sup> *Ibid.*, paragraph 4

<b>Recommendation</b>	None
<b>Good Practice C.5</b>	<p><b><i>Credit Cards</i></b></p> <p>a. There should be legal rules on the issuance of credit cards and related customer disclosure requirements.</p> <p>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.</p> <p>c. Banks should not be permitted to impose charges or fees on pre-approved credit cards that have not been accepted by the customer.</p> <p>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.</p> <p>e. Among other things, the legal rules should also:</p> <ul style="list-style-type: none"> <li>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;</li> <li>ii. require reasonable notice of changes in fees and interest rates increase;</li> <li>iii. prevent the application of new higher penalty interest rates to the entire existing balance, including past purchases made at a lower interest rate;</li> <li>iv. limit fees that can be imposed, such as those charged when consumers exceed their credit limits;</li> <li>v. prohibit a practice called “double-cycle billing” by which card issuers charge interest over two billing cycles rather than one;</li> <li>vi. prevent credit card issuers from allocating monthly payments in ways that maximize interest charges to consumers; and</li> <li>vii. limit up-front fees charged on sub-prime credit cards issued to individuals with bad credit.</li> </ul> <p>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.</p> <p>g. Banks and issuers should conduct consumer awareness programs on the misuse of credit cards, credit card over- indebtedness and prevention of fraud.</p>
<b>Description</b>	<p>There is no specific law, regulation or Notice that deals specifically with credit cards. Banks, however, have a duty to inform.<sup>142</sup> It is not clear, though, whether this duty requires banks to ensure that personalized disclosure requirements are made in all credit card offers, including the fees and charges, credit limit, penalty rates and method of calculating the minimum monthly payment.</p> <p>Banks are not prevented from imposing charges or fees on <i>pre-approved</i> credit cards that have not been formally accepted by the customer. Consumers are not given personalized minimum payment warnings on each monthly statement and the total interest costs that will accrue if the cardholder only makes the requested minimum payment. There are no rules on error resolution, reporting of unauthorized transactions and of stolen cards.</p> <p>At least a few banks and issuers, however, including two of the biggest, conduct consumer awareness programs on the misuse of credit cards, credit card over-indebtedness and prevention of fraud.</p> <p>Typically, though, consumers seem to be unclear as to: (a) what fees and charges (including finance charges) will accrue in respect of their credit cards; (b) what their credit limit will be; (c) what penalty interest rate(s) will apply; (d) what will trigger any penalty; and (e) the basis</p>

<sup>142</sup> See Law 15/99, Article 45

	<p>for calculating their minimum monthly payments.</p> <p>In addition, individual credit card holders do not typically receive personalized minimum payment warnings on each monthly statement and a clear indication of the total interest costs that will accrue if they make only the requested minimum payment.</p>
<b>Recommendation</b>	BdM – with input from the AMB and consumer associations such as DECOM – should formulate a Notice that deals comprehensively with each of the aspects of this Good Practice.
<b>Good Practice C.6</b>	<p><b><i>Internet Banking and Mobile Phone Banking</i></b><sup>143</sup></p> <p><b>a. The provision of internet banking and mobile phone banking (m-banking) should be supported by a sound legal and regulatory framework.</b></p> <p><b>b. Regulators should ensure that banks or financial service providers providing internet and m-banking have in place a security program that ensures:</b></p> <ul style="list-style-type: none"> <li><b>i. data privacy, confidentiality and data integrity;</b></li> <li><b>ii. authentication, identification of counterparties and access control;</b></li> <li><b>iii. non-repudiation of transactions;</b></li> <li><b>iv. a business continuity plan; and</b></li> <li><b>v. the provision of sufficient notice when services are not available.</b></li> </ul> <p><b>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.</b></p> <p><b>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.</b></p> <p><b>e. There should be clear rules on the procedures for error resolution and fraud.</b></p> <p><b>f. Authorities should encourage banks and service providers to undertake measures to increase consumer awareness regarding internet and m-banking transactions.</b></p>
<b>Description</b>	<p>No aspect of this Good Practice is yet covered in any law or regulation, although by way of the 2004 amendments to Law 15/99, so-called “electronic money institutions” have been permitted to be created. They are classified as “credit institutions” and are permitted to mobilize deposits and other reimbursable funds from the public. With the exception of a few basic provisions,<sup>144</sup> however, there are no specific rules regarding how such institutions need to be regulated in practice.</p> <p>The amendments in 2004 to Law 15/99<sup>145</sup> did, though, open up the previously highly restricted scope for outsourcing deposit-taking services and allowed the use of retail agents to accept deposits on behalf of banks and other deposit-taking institutions.<sup>146</sup></p> <p>Mobile phone banking services are becoming increasingly important in Mozambique. Electronic devices, along with third party agents acting as cash-in/out outlets, can dramatically reduce costs and enable providers to serve hard-to-reach, low-income customers. Customers</p>

<sup>143</sup> “Internet banking” is defined as banking services that customers may access via the Internet. The access to the Internet could be through a computer, mobile phone (“mobile phone banking”), or any other suitable device. Payment services that are only initiated via the internet using a mobile phone (e.g. by a mobile banking application using an app on a smart phone) are not considered to be mobile payments; instead they are categorized as internet payments. This interpretation is consistent with the view of the Committee on Payment and Settlement Systems (CPSS) of the Bank for International Settlements (BIS), who is the relevant standard setting body on payment and settlement systems. However, for practical reasons and due to the importance of mobile money in the country, Good Practice C.6 is intended here as also covering mobile payments and, to some extent, e-money.

<sup>144</sup> See Decree 56/04, Articles 56 through 60

<sup>145</sup> See Law 9/04 which amended the previous principle of exclusivity by stating that only credit institutions could accept deposits and other reimbursable funds from the public *for their own use*. This modification allowed for the possibility that an entity other than a credit institution could accept deposits if the deposits were not *for its own use* which is what a retail agent does when accepting deposits on behalf of a bank or other deposit-taking institution.

<sup>146</sup> If the BdM had wished to regulate e-money institutions in the same way as banks, there would have been no need to amend Law 15/99 to create e-money institutions since banks were granted permission under the original statute to facilitate electronic payment services. See Law 15/99 Article 4, paragraph 1.

<b>Recommendation</b>	<p>benefit from reduced transportation costs, less risk of carrying cash over long distances, greater convenience due to extended business hours offered by retail establishments as opposed to bank branches.</p> <p>While the Anti-Money Laundering Law of 2002 requires banks and other CIFCs to check the identity and address of clients for any transactions above a certain limit, the corresponding Decree 1/06 widens the range of documents and other sources that can be used for customer identification.<sup>147</sup> Thus, it would appear that identification requirements do not constitute a major barrier to mobile phone banking services in Mozambique.</p> <p>An initial operator, namely mKesh,<sup>148</sup> entered the market in 2011 as a BdM licensed e-money institution. Piloting branchless banking mirrored in e-money schemes operating elsewhere, particularly in Kenya,<sup>149</sup> mKesh provides payments and transfer services linked to an electronic account. More operators are interested in entering this market as well.</p> <p>The central bank has therefore set up a task force on mobile financial services with members of banking supervision, IT, payments systems and legal department to work on a regulation on e-money.</p> <p>As part of the Government's plans to promote financial inclusion and assure the safety and efficiency of the national payment system, the BdM and retail banks established the Sociedade Interbancária de Moçambique (SIMO) as an interbank company that is eventually to be responsible for: (a) processing all retail electronic transactions in a single platform; and (b) providing other interbank services involving electronic funds transfers and e-banking.<sup>150</sup></p> <p>The issuance of specific regulations on e-money is now a matter of some urgency, not only to provide a level-playing field between bank- and nonbank-based branchless banking that encourages healthy competition, but to set minimum operational and conduct standards that protect customers, particularly low-income consumers.</p> <p>A clear regulatory framework<sup>151</sup> 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. Pyramid schemes using prepaid cards have, for example, been identified in many countries.</p> <p>A new Payments Systems Law that provided the BdM with power to issue regulations and supervise payment services providers, including nonbank providers of e-money services, would enable the BdM to issue regulations for retail payment providers and e-money issuers, as well as on the use of agents by banks and nonbanks.</p>
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<sup>147</sup> In response to concerns that money laundering requirements restricted access to finance for those lacking certain forms of official identification, this Decree amended the Money Laundering Law to permit financial entities to accept documents such as driver's licenses, military ID cards, election registration cards, refugee ID cards, and social security ID cards and, in addition, has permitted financial entities to use alternative methods to identify their clients, including personal knowledge and testimonials.

<sup>148</sup> mKesh was launched by the Mozambican financial institution Carteira Móvel as the country's first phone-banking service. Carteira Móvel is owned as to 70 per cent by the State mobile telecom company Moçambique Celular (mCel) and 30 per cent by the State holding company Instituto de Gestão das Participações do Estado (IGEPE).

<sup>149</sup> mKesh is similar to M-Pesa in Kenya which started operating in 2010 to allow payments and transfer services linked to an electronic account over mobile phones.

<sup>150</sup> SIMO was officially established in June 2011. Already four banks are in the national switch called SIMOREDE, with the largest and the third largest bank in the country among them, measured my asset size and according to the KPMG 2009 Banking Survey. With the planned connection of SIMOREDE with the INTERBANCOS-Switch (Ponto24), another nine banks will join the national switch. Subsequently, it is planned to pilot SIMOREDE in July 2012.

<sup>151</sup> There is, as yet, not statutory or regulatory framework in place in this regard.

The regulations for bank- and nonbank-based branchless banking should, at the minimum<sup>152</sup>:

- 1) clarify the BdM's regulatory and supervisory authority over branchless banking services and providers, including nonbanks that are not currently supervised;
- 2) hold the provider legally liable for regulatory compliance by its agents, including compliance with existing or future consumer protection requirements;
- 3) establish standard clauses to be included in all service level agreements between agents and providers;
- 4) ensure effective disclosure in agent operations, including:
  - a) requiring price disclosure at agents' premises;
  - b) prohibiting agents to charge fees other than those disclosed by the provider;
  - c) prohibiting agents to condition the delivery of financial service on the purchase of products or services in their establishments; and
  - d) requiring disclosure of the agent's regulatory status (an intermediary between the regulated service provider and the client);
- 5) ensure liquidity and client ownership over funds collected against e-money issued by banks (when they are not considered bank deposits) and by nonbanks;
- 6) set minimum standards for speedy and easy fund redemption in e-money schemes, including in case of termination of contracts;
- 7) require providers to ensure the reliability, availability, and safety of services;
- 8) require providers to establish agent selection and training policies;
- 9) ensure that existing rules for internal dispute resolution apply to - and work properly for - branchless banking delivery channels;
- 10) require branchless banking transactions to produce an automatically generated receipt that is either paper-based or electronic;
- 11) require providers to educate customers on how to use electronic devices, including how to keep passwords safe;
- 12) deal with the recognition of electronic signatures;
- 13) ensure a defined security program;
- 14) ensure third-party control conditions;
- 15) require that customers be informed whether any charge applies for internet or m-banking and, if so, on what basis and how much; and
- 16) provide clear procedures for error resolution and fraud.

In summary, consumer protection should be ensured through rules that:

- a) limit systemic and other risks that could threaten the stability of Mozambique's financial market or undermine confidence in the payment system;
- b) encourage institutions to educate customers about their rights and responsibilities and how to protect their own privacy on the Internet and when using mobile phones; and
- c) encourage the development of effective, low risk, low cost and convenient payment and financial services to customers through the Internet and by utilizing mobile phone banking.

#### 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**

<sup>152</sup> In this context a service provider is defined as the entity responsible for the design, creation, and delivery of a given service while an agent is a person or organization that is involved in the delivery of a given service.

	<p>iv. the terms and conditions of electronic fund transfer services that apply to the customer.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>f. A customer should be informed of the terms and conditions of the use of credit/debit cards outside the country, including the foreign transaction fees and foreign exchange rates that may be applicable.</p>
<b>Description</b>	<p>There is no legislation, regulation or Notice yet in place that deals with electronic payments and remittances and the rights, liabilities and responsibilities of the parties involved in any electronic fund transfer.</p> <p>No bank provides information to consumers on prices and service features of electronic fund transfers and remittances in an easily accessible and readily understandable form.</p>
<b>Recommendation</b>	<p>Mozambique needs to adopt clear rules on the rights, liabilities and responsibilities of the parties involved in any electronic fund transfer. There should be specific legal or regulatory provisions or guidelines covering each of the elements included in this good practice, as outlined above. All banks should be required by a BdM Notice to provide information to consumers on prices and service features of electronic fund transfers and remittances in easily accessible and understandable format. Also, as far as possible, this information should include those matters referred to in i. through iv. of item b. of this Good Practice. In addition, if the price or other aspects of the service vary according to different circumstances, banks should be obliged to disclose this information without imposing any requirements on the consumer.</p>
<b>Good Practice C.8</b>	<p><b><i>Debt Recovery</i></b></p> <p>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.</p> <p>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.</p> <p>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.</p> <p>d. Where sale or transfer of debt without borrower consent is allowed by law, the borrower should be:</p> <ul style="list-style-type: none"> <li>i. notified of the sale or transfer within a reasonable number of days;</li> <li>ii. informed that the borrower remains obligated on the debt; and</li> <li>iii. provided with information as to where to make payment, as well as the purchaser's or transferee's contact information.</li> </ul>
<b>Description</b>	<p>Most debt collection activity in Mozambique is entrusted to compliance departments within banks. If amicable settlement proves difficult or impossible, legal assistance is then typically</p>

	<p>brought to bear. In most instances, the bank’s internal legal department is called upon at this stage but, in some cases, the hiring of outside counsel may then be warranted.<sup>153</sup></p> <p>The practices of debt collection agencies (as opposed to bank compliance departments) are not regulated and they operate without a Code of Conduct. There are therefore reputational concerns on the part of banks in retaining their services.</p> <p>Law 22/09 requires that a consumer in default “not be held up to ridicule nor exposed to any type of embarrassment or threat”.<sup>154</sup> And, in addition, if the consumer in default is charged “an undue amount,” he or she has the right to recover the equivalent to twice the amount paid in arrears, with “corresponding adjustments” plus legal interest, except in the event of “justifiable error”.<sup>155</sup></p> <p>There is a general requirement to the effect that, in all of their relations with their clients, the managers and employees of banks and other CIFCs must act with diligence, neutrality, loyalty, discretion and respect for the interests entrusted to them.<sup>156</sup> And “the exercise of a right is illegitimate when the holder manifestly exceeds the limits imposed by good faith, good customs or the social or economic ends of that right.”<sup>157</sup></p> <p>With the exception of the above provisions, however, there are no specific rules, whether in a law, decree or Notice, 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.</p> <p>Furthermore, when a credit agreement is signed in Mozambique, 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.</p> <p>Finally, the law does not permit a transfer of a debt without the borrower’s consent.</p>
<b>Recommendation</b>	<p>In the long-term, consideration might be given to the drafting and enactment of a Law on Debt Collection Operations that would, among other things, require:</p> <ol style="list-style-type: none"> <li>a. the licensing and oversight of all properly registered collection agencies by an appropriate regulatory authority;</li> <li>b. the provision of services in accordance with stated parameters on the basis of generally acceptable fair and reasonable behavior; and</li> <li>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.</li> </ol> <p>In addition, the law of Mozambique should explicitly permit all consumers and their banks the right to re-schedule debts - taking into consideration the interests of both parties and good business practice.</p>
<b>Good Practice C.9</b>	<p><b><i>Foreclosure of mortgaged or charged property</i></b></p> <p><b>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</b></p>

<sup>153</sup> In most instances, the consumer who borrows from a bank is required to sign a blank promissory note or “livrança”. In the event a default in repayment occurs, the bank then simply fills in the amount owing to it and proceeds to court to obtain judgment on the basis of the note without needing to prove the amount that is owed. It then becomes a matter of executing on the judgment by proceeding against the debtor’s assets.

<sup>154</sup> Law 22/09, Article 31, paragraph 1

<sup>155</sup> *Ibid.*, paragraph 2

<sup>156</sup> See Law 15/99, Article 43

<sup>157</sup> Civil Code, Article 334

	<p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p>
<p><b>Description</b></p>	<p>Mozambique has no law or regulation that sets out requirements regarding information banks must disclose at any time to borrowers regarding the possibility of foreclosure of any property the borrower, as mortgagor, has provided to the bank as security. Neither is there any legal provision requiring banks to inform their borrowers in advance of the procedures involved, the process to be employed 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.</p> <p>There is no specific requirement in the law of Mozambique for banks to employ professional and legal means to enforce their contracts with consumers.</p> <p>A law of security on personal property exists to protect borrowers and lenders alike but, in Mozambique, the existing law is badly outdated.</p> <p>Consumers need credit for a wide range of reasons. The existing legal regime, however, makes it especially difficult for consumers to obtain consumer loans at all, let alone in ways that, by law, protect their interests. Although movable assets can be used as collateral while keeping possession of the assets and financial institutions can accept such assets as collateral, the consumer credit market is hampered by the lack of a functioning collateral registry that is unified geographically and by asset type, with an electronic database indexed by debtors’ names. Also, banks as secured creditors are not paid first (i.e. before general tax claims) when a debtor consumer defaults outside an insolvency procedure. In addition, the law does not allow a bank and a consumer to agree in a collateral agreement that the bank, as lender, may enforce its security right out of court, at the time a security interest is created.<sup>158</sup></p>
<p><b>Recommendation</b></p>	<p>According to the Government’s Mozambique Financial Sector Development Strategy (MFSDS) strong support should be given to expanding the ability of individuals to provide collateral to secure credit in ways that protect their rights as consumers by: (i) modernizing the processes for recording and updating real property registration, land surveying, and certifying surveys and surveyors, and (ii) by improving collateralization through the titling and registry of movable assets (e.g. cars and equipment).</p> <p>In addition, consideration should be given to formulating a BdM Notice requirement that every bank have a debt re-scheduling bureau 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.</p>
<p><b>Good Practice C. 10</b></p>	<p><b><i>Bankruptcy of Individuals</i></b></p> <p>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</p>

<sup>158</sup> See: Doing Business Mozambique 2012, The World Bank

	<p>respect and the consequences of any individual's bankruptcy.</p> <p>b. Every individual customer should be given adequate notice and information by his or her bank to enable the customer to avoid bankruptcy.</p> <p>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.</p> <p>d. The law should enable an individual to:</p> <ul style="list-style-type: none"> <li>i. declare his or her intention to present a debtor's petition for a declaration of bankruptcy;</li> <li>ii. propose a debt agreement;</li> <li>iii. propose a personal bankruptcy agreement; and</li> <li>iv. enter into voluntary bankruptcy.</li> </ul> <p>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.</p>
<b>Description</b>	<p>While Mozambique's Code of Civil Procedure applies for individuals there has apparently been no recorded case of any bank seeking to render an individual customer bankrupt and it follows, therefore, that no bank has ever informed its customers on what basis the bank will seek to render any customer bankrupt and the steps it will take to do so.</p> <p>It follows, as well, that banks and the AMB do not make counseling services available to customers who are bankrupt or likely to become bankrupt.</p>
<b>Recommendation</b>	<p>Borrowers should have statutory right to propose debt agreements with their banks and other creditors. 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 benefits of Debt Agreements to insolvent consumers would potentially include: (a) affordable regular payments over a fixed period being 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.</p>
<b>PARAGRAPH D</b>	<b>PRIVACY AND DATA PROTECTION</b>
<b>Good Practice D.1</b>	<p><i>Confidentiality and Security of Customers' Information</i></p> <p>a. The banking transactions of any bank customer should be kept confidential by his or her bank.</p> <p>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.</p>
<b>Description</b>	<p>While Mozambique has yet to enact a data protection law, by the terms of Law 15/99, all banks must ensure that they protect the confidentiality and security of the personal data of their customers.<sup>159</sup></p> <p>A bank employee's violation of professional secrecy can lead to being sentenced to a prison term of six months and a "corresponding fine" in the event the employee either has:</p> <ul style="list-style-type: none"> <li>a) disclosed a secret of which he or she only has knowledge by reason of the exercise of his or her employment; or</li> <li>b) without due authorization, has unduly handed over a document or a copy of a document which should not be publicly known and which has been entrusted to him or her or exists in the employer's offices.<sup>160</sup></li> </ul>

<sup>159</sup> See Law 15/99, Article 48

<sup>160</sup> See the Penal Code, Article 290

<p><b>Recommendation</b></p>	<p>For those banks committed to the CCB, there is a requirement “to maintain professional secrecy for all operations undertaken with their clients, as well as on facts and information relating to clients or third parties.”<sup>161</sup></p> <p>Consideration should be given in the longer term to drafting and enacting a Personal Data Protection Law that would require a bank to protect the confidentiality and security of the personal data of its customers 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. This recommendation is made, given:</p> <ol style="list-style-type: none"> <li>a) the sensitivity of the personal information held and used in financial services;</li> <li>b) the extensive information flows which can take place (such as between intermediaries and agents and between members of a corporate group);</li> <li>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;</li> <li>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</li> <li>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.</li> </ol> <p>The <i>OECD Guidelines on the Protection and Privacy and Trans-border Flows of Personal Data</i>, 1980, have been used as the basis for developing many such data protection laws. In summary, the relevant principles in the <i>OECD Guidelines</i> are those dealing with:</p> <ul style="list-style-type: none"> <li>• Collection: Information should be collected by lawful and fair means and “<i>where appropriate, with the knowledge or consent of the data subject</i>”.</li> <li>• Data Quality: Data collected should be relevant to the purposes for which it is to be used and should be kept “<i>accurate, complete and ... up-to-date</i>”.</li> <li>• 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.</li> <li>• Security: Data must be “<i>protected by reasonable security</i>” safeguards against events such as unauthorized destruction, use and disclosure.</li> <li>• Openness: There should be a general policy of openness about practices in dealing with data.</li> <li>• Access: Individuals should have a reasonable right to access all information relating to them.</li> <li>• 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.</li> </ul>
<p><b>Good Practice D.2</b></p>	<p><b><i>Sharing a Customer’s Information</i></b></p> <ol style="list-style-type: none"> <li>a. <b>A bank should inform its customers in writing:</b> <ol style="list-style-type: none"> <li>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</li> <li>ii. as to how it will use and share the customer’s personal information.</li> </ol> </li> <li>b. <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.</b></li> <li>c. <b>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</b></li> </ol>

<sup>161</sup> See CCB, Article 25

	<p><b>customers in writing of his or her rights in this respect.</b></p> <p><b>d. The law should prohibit the disclosure by a third party of any banking-specific information regarding a customer of a bank.</b></p>
<b>Description</b>	<p>There are no legal provisions dealing with item a. of this Good Practice. In other words, banks are not obliged to inform their customers in writing (or otherwise) of any third-party dealing for which the bank is obliged to share information regarding any account of their customers, such as any legal enquiry by a credit bureau. But, while banks are under no obligation to inform their customers in writing of the existence, nature and objectives of agreements to share their personal information with third parties, there is apparent consensus in the BdM and the banking community that this would be desirable.</p>
<b>Recommendation</b>	<p>A BdM Notice should address each of these issues.</p>
<b>Good Practice D.3</b>	<p><i>Permitted Disclosures</i></p> <p><b>The law should provide for:</b></p> <ul style="list-style-type: none"> <li><b>i. the specific rules and procedures concerning the release to any government authority of the records of any customer of a bank;</b></li> <li><b>ii. rules on what the government authority may and may not do with any such records;</b></li> <li><b>iii. the exceptions, if any, that apply to these rules and procedures; and</b></li> <li><b>iv. the penalties for the bank and any government authority for any breach of these rules and procedures.</b></li> </ul>
<b>Description</b>	<p>Law 15/99 provides specific rules and procedures concerning the release to any government authority of the records of any bank customer.<sup>162</sup> Unless the customer gives his or her written authorization to the bank in question to disclose facts and particulars covered by the duty of confidentiality, these facts and particulars can only be disclosed: a) to the BdM, within the scope of its powers and responsibilities; b) in the terms established in the criminal law and criminal procedure; c) when some other legal provision expressly limits the duty of confidentiality; d) to the Deposit Guarantee Fund, within the scope of its powers and responsibilities; and e) when there is a judicial order, signed by a judge. The authority may use such records for the performance of its obligations which means in the case of the BdM for supervision and statistical purposes.</p> <p>There are no provisions, however, that deal with penalties for the bank in question and any government authority for a breach of these rules and procedures.</p>
<b>Recommendation</b>	<p>By a Notice addressed to every bank, the BdM should require each bank to inform its customers – in plain, written and understandable language – what information it can disclose before any agreement is concluded between the customer and the bank. And this should be the case as well for every co-borrower and personal guarantor.</p> <p>While the BdM should have access to aggregated data on consumers, there should be a clear statutory prohibition on allowing the BdM access to any individual file or files.</p> <p>In addition, a Law – or at least a BdM Notice – should (as set out in the Good Practice):</p> <ul style="list-style-type: none"> <li>• state specific rules and procedures concerning the release to any government authority, including the Governor of the BdM, of the records of any customer of a bank;</li> <li>• state what the government authority may and may not do with any such records;</li> <li>• state what exceptions, if any, apply to these rules and procedures; and</li> <li>• provide for penalties for the bank, credit bureau and any government authority for any breach of these rules and procedures.</li> </ul>
<b>Good Practice D.4</b>	<p><i>Credit Reporting</i></p>

<sup>162</sup> See Law 15/99, Article 49, paragraph 2

	<p>a. Credit reporting should be subject to appropriate oversight, with sufficient enforcement authority.</p> <p>b. The credit reporting system should have accurate, timely and sufficient data. The system should also maintain rigorous standards of security and reliability.</p> <p>c. The overall legal and regulatory framework for the credit reporting system should be:</p> <ol style="list-style-type: none"> <li>i. clear, predictable, non-discriminatory, proportionate and supportive of consumer rights; and</li> <li>ii. supported by effective judicial or extrajudicial dispute resolution mechanisms.</li> </ol> <p>d. In facilitating cross-border transfer of credit data, the credit reporting system should provide appropriate levels of protection.</p> <p>e. Proportionate and supportive consumer rights should include the right of the consumer:</p> <ol style="list-style-type: none"> <li>i. to consent to information-sharing based upon the knowledge of the institution's information-sharing practices;</li> <li>ii. to access his or her credit report free of charge (at least once a year), subject to proper identification;</li> <li>iii. to know about adverse action in credit decisions or less-than-optimal conditions/prices due to credit report information;</li> <li>iv. to be informed about all inquiries within a period of time, such as six months;</li> <li>v. to correct factually incorrect information or to have it deleted and to mark (flag) information that is in dispute;</li> <li>vi. to reasonable retention periods of credit history, for instance two years for positive information and 5-7 years for negative information; and</li> <li>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.</li> </ol> <p>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.</p>
<b>Description</b>	See Annex I
<b>Recommendation</b>	See Annex I
<b>PARAGRAPH E</b>	<b>DISPUTE RESOLUTION MECHANISMS</b>
<b>Good Practice E.1</b>	<p><i>Internal Complaints Procedure</i></p> <p>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.</p> <p>b. Within a short period of time following the date a bank receives a complaint, it should:</p> <ol style="list-style-type: none"> <li>i. acknowledge in writing to the customer/complainant the fact of its receipt of the complaint; and</li> <li>ii. provide the complainant with the name of one or more individuals appointed by the bank to deal with the complaint until either the complaint is resolved or cannot be processed further within the bank.</li> </ol> <p>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.</p> <p>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.</p> <p>e. When a bank receives a verbal complaint, it should offer the customer/complainant the</p>

	<p><b>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.</b></p> <p><b>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.</b></p> <p><b>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.</b></p> <p><b>h. The bank should make these records available for review by the banking supervisor or regulator when requested.</b></p>
<p><b>Description</b></p>	<p>By Notice 4, banks and other CIFCs are obliged to maintain complaints, information and suggestions services counters and have in place a complaints procedure and a designated contact point for the handling of consumer complaints.<sup>163</sup> They must also have an internal policy and corresponding regulation for an internal public attendance policy prepared and sent to the BdM.<sup>164</sup> There are, however, no regulatory guidelines on procedures a bank must follow when receiving, processing and deciding on a consumer complaint.</p> <p>Since banks are not required to have a written complaints procedure 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.</p> <p>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. Notwithstanding these <i>lacunae</i>, however, banks and other CIFCs must submit electronically to the BDM a copy of each <i>final internal decision</i> in respect of any complaint they have handled but there is, as yet, no requirement of regular reporting on the part of banks and other CIFCs to the BdM, whether monthly or otherwise.</p> <p>Finally, by the terms of the CCB, banks have at least in principle committed to:</p> <ol style="list-style-type: none"> <li>1) maintaining a service for the collection and handling of customer complaints fairly and quickly, while providing the customer detailed information about all steps to be taken in this regard;<sup>165</sup></li> <li>2) requiring that all customer complaints be reduced to writing;<sup>166</sup> and</li> <li>3) clarifying the situation to the customer regarding his or her complaint in the shortest amount of time and adopting measures to remedy any irregularity.<sup>167</sup></li> </ol> <p>Only relatively few Mozambican consumers are currently raising complaints through formal channels with regard to financial institutions and the services they provide. 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 financial institutions, as well as of the legal obligations these institutions have towards them. In addition, financial services contracts typically do not specify: (i) what consumers should do in the event they have a complaint; and (ii) the possibility of recourse to the BdM in the event the complaint is not resolved to the consumer's satisfaction following completion of the financial institution's internal complaints procedures.</p>
<p><b>Recommendation</b></p>	<p>Financial institutions should be obliged to inform consumers proactively of the right to complain, as well as how to proceed in the event of a dispute.</p>

<sup>163</sup> See Notice 4, Article 4 a)

<sup>164</sup> *Ibid.*, Article 4 c)

<sup>165</sup> CCB, Article 35, paragraph 1

<sup>166</sup> *Ibid.*, paragraph 2 This is contrary to Good Practice

<sup>167</sup> Article 36, paragraph 1

While Notice 4 marks a significant improvement over the complete lack of framework for any consumer complaint involving a bank or other CFIC prior to 2010, more can be done. A future BdM Notice (or a revision to Notice 4) addressed to all banks and other CIFCs could be guided by each aspect of this Good Practice.

In this way, financial institutions could be required:

- 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 BdM – 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 GPI.

It is also recommended that the same or a further Notice be issued regarding the following topics:

- a) the required visibility of the internal review process for consumers' complaints by means of pamphlets, key facts statements and websites;
- b) the precise procedures – with time limits – that will be followed in respect of all complaints;
- c) requirements for advice to the consumer as to: (a) the progress achieved, if any, in dealing with his/her complaint; (b) the decision; and (c) the reasons for any adverse decision;
- d) the staff resources to be provided for complaint resolution, depending on the size of the financial institution and the complexity of the products and services that are offered to consumers and the required training for any staff member who is dedicated (whether part-time or full-time) to dealing with customer complaints;
- e) the need to have such staff independent of the staff responsible for the conduct forming the subject of the complaint;
- f) record keeping in a formal Complaints Register in respect of: (a) the number and type of complaints; (b) the location from which they originated (i.e. relevant branches); (c) whether or not they are resolved in favor of the consumer; (d) how long the process took; and (e) records of any systemic issues; and
- g) the need for involvement of senior management – for example, the need for management, including a board of directors if any: (a) to review and approve the details of their institution's scheme, in part, on the basis of the extent to which it complies with the Notice; (b) to receive regular reports as to systemic issues; and (c) to resolve how these issues should be dealt with.

Such a Notice should also take into account International Standards on Internal Dispute

	Resolution Schemes – such as those in ISO 10002 - 2006.
<b>Good Practice E.2</b>	<p><b><i>Formal Dispute Settlement Mechanisms</i></b></p> <p><b>a. A system should be in place that allows a customer of a bank to seek affordable and efficient recourse to a third-party banking ombudsman or equivalent institution, in the event the complaint of the customers is not resolved in accordance with the procedures outlined in E.1 above.</b></p> <p><b>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.</b></p> <p><b>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.</b></p> <p><b>d. The banking ombudsman or equivalent institution should be appropriately resourced and discharge its function impartially.</b></p> <p><b>e. The decision of the banking ombudsman or equivalent institution should be binding upon the bank against which the complaint has been lodged.</b></p>
<b>Description</b>	<p>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, two possible options. One is to turn to the BdM; the other is to proceed to court.</p> <p>In the first place, in accordance with Notice 4, the consumer can notify the BdM and have the dispute reviewed by the SARPIS (Service for Complaints, Information Requests and Suggestions) Unit within GPI with a view to its possible settlement.<sup>168</sup> Although the experience to date has been positive in dealing satisfactorily for all concerned with relatively straight-forward questions of misinformation in the BdM’s Credit Registry,<sup>169</sup> some 10% of all claims that consumers have brought to the BdM’s attention so far are more complex and entail the GPI carrying out its own investigation of the issues and the preparation and delivery of a written report to the consumer, with a copy to the consumer’s bank or other financial institution.<sup>170</sup> Examples of ‘more complex’ cases include ones dealing with: (i) the improper withdrawal of funds from accounts; (ii) the lack of agreement on interest rates; (iii) the lack of agreement on changes in interest rates; (iv) the fraudulent use of checks; and (v) the fees charged at POS and ATM machines.<sup>171</sup></p> <p>Three challenges arise in respect of GPI services in this regard:</p> <p>Firstly, as the BdM recognizes, helping to resolve complaints that individual consumers have with their banks is an unusual role for any central bank. And, indeed, there is no explicit power given to the BdM by statute to take on this role. Rather, as is stated in the preamble to Notice 4, the power to do so is taken from Law 2/96<sup>172</sup> which regulates the constitutional right of</p>

<sup>168</sup> If a consumer who is a Mozambican citizen disagrees with the response of the bank to his or her complaint or in the event the bank has not responded to the consumer’s complaint, Notice 4 allows the consumer to have recourse to the BdM, attaching a copy of the complaint and the response received or the fact of no response. Notice to the BdM can be made in person, or by letter addressed to the Director of GPI or email sent to BdM\_reclamacoes@bancomoc.mz or by calling 25821426641 or 21354 258 670. There is also a complaint notification form which can be filled in and submitted to the BdM on-line.

<sup>169</sup> The number of cases dealt with by SARPIS grew from 83 in the first semester of 2009 to 284 in the first semester of 2011, with about 90% of the total being related to issues with filings on the BdM’s Credit Registry. When a private credit bureau is permitted and operational, many of these types of consumer ‘complaints’ would presumably be directed to that credit bureau rather than to the GPI. A great many existing cases arise simply because of a bank’s failure to notify the BdM Credit Registry in a timely fashion that a loan has been fully paid. Query, therefore, whether doing so should not be a requirement placed upon all banks by the BdM.

<sup>170</sup> See Notice 4, Article 7, paragraph 1

<sup>171</sup> See SARPIS Report for the 1st Semester 2011

<sup>172</sup> See, in particular, Law 2/96, Article 20, paragraph 2

	<p>citizens to submit petitions, complaints and claims before a competent authority. In the absence of any other specialist institution to play this role, the BdM has filled the vacuum, as it were, at least for the time being.</p> <p>Secondly, Notice 4 does not require any bank to publicize the fact of the GPI's role in these respects, to provide contact information to consumers or to include relevant information about this GPI service in their Terms and Conditions; nor is the GPI, itself, obliged to publicize its services. Despite that, some 1,200 consumers to date have notified the BdM in accordance with Notice 4. In the circumstances, it seems safe to assume that the number of complaints would increase significantly if wide publicity of the SARPIS services is either required or is voluntarily made throughout the country.</p> <p>And thirdly, in what the GPI terms "complex" matters, the reports it produces for consumers are merely for their information. Quite properly, no GPI report constitutes a decision which is binding on the relevant bank or other financial institution; GPI simply suggests 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 nearest Class 1 District 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 BdM.<sup>173</sup></p> <p>With or without having first sought the assistance of the GPI, at least in theory, the consumer can proceed to the district court, being the lowest level of formal trial courts in Mozambique's judicial system. These courts have jurisdiction over any cases consumers might bring against any suppliers to them of goods and services, including their banks and other CIFCs.<sup>174</sup></p> <p>A consumer taking his or her bank to a district court would face the following challenges:</p> <ol style="list-style-type: none"> <li>a) the prevailing awareness that cases in these courts can experience significant delays;</li> <li>b) these courts' lack of expertise in the subject matter;</li> <li>c) the relatively high cost involved in retaining a lawyer as is required; and</li> <li>d) the apparent lack of confidence in the reliability and transparency of the judicial system generally.</li> </ol> <p>Thus, it is not surprising that there is no record of any Mozambican consumer having brought an action against his or her bank in respect of any grievance.</p> <p>This is the case notwithstanding the provisions of Law 22/09 which:</p> <ol style="list-style-type: none"> <li>a) "guarantee" the right of consumers to take action in a District Court<sup>175</sup> destined to prevent, correct or terminate practices that infringe upon any right of consumers protected by Law 22/09, including in respect of commercial practices expressly prohibited by law;<sup>176</sup></li> <li>b) provide for monetary sanctions<sup>177</sup> in addition to any injunctive relief;<sup>178</sup></li> <li>c) dispense with costs in these cases;<sup>179</sup> and</li> <li>d) require any judgment for injunctive relief against a bank to be registered and published at the expense of the bank according to the terms stipulated by the court.<sup>180</sup></li> </ol> <p>In addition, the consumer has the right to be compensated for damages that result from the</p>
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<sup>173</sup> See Law 15/99, Articles 94, 95, 108 and 109

<sup>174</sup> Although Mozambique has a system of so-called "community" courts, these do not have jurisdiction to deal with matters of consumer protection, whether in terms of allegations of rights not being honored or of obligations not being respected.

<sup>175</sup> Law 22/09, Article 13, paragraph 1

<sup>176</sup> *Ibid.*, Article 12, paragraph 1

<sup>177</sup> pursuant to Civil Code, Article 829, paragraph 2

<sup>178</sup> Law 22/09, Article 12, paragraph 2

<sup>179</sup> *Ibid.*, Article 13, paragraph 1

<sup>180</sup> *Ibid.*, paragraph 3

	<p>supply by a bank or other CIFC of any defective service.<sup>181</sup></p> <p>Furthermore, the following have the right to take action in any of the above respects:</p> <ol style="list-style-type: none"> <li>a) consumers harmed directly;</li> <li>b) <i>any</i> consumers and consumer associations <i>even if not directly harmed</i>; and</li> <li>c) the Public Prosecutor, when class actions on the part of consumers are at stake.<sup>182</sup></li> </ol> <p>To date, however, none of the above has exercised its right to take action, at least in respect of a bank or other CIFC.</p> <p>For purposes of providing further incentive consumers are exempt from paying costs of proceedings under certain conditions (Law 22/09). Still, however, there has, to date, been no action taken in reliance on these incentives.</p> <p>In addition, any consumer or entity (i.e. a consumers association) representing him or her is entitled to request that the Office of the Attorney General takes legal proceedings so as to declare the nullity of any contractual clause that is contrary to any requirements of Law 22/09 or cannot ensure a fair balance between the rights and obligations of the parties.<sup>183</sup></p> <p>To date, however once again, no such request has been received by the Office of the Attorney General and no such proceedings have been undertaken.</p> <p>In addition, the Public Prosecutor is “responsible for defending consumers” within the scope of Law 22/09 and for “intervening in administrative and civil actions involving the protection of ... collective or individual consumer interests.”<sup>184</sup> Once again, though, no case has yet been recorded of the Public Prosecutor performing these roles.</p> <p>Furthermore, it is to be noted that Law 22/09 requires “bodies and departments of the Public Administration”<sup>185</sup> to promote the creation of, and to support, arbitration centers with the aim of reducing consumer conflicts.<sup>186</sup> The same Law, however, states, in effect, that a contract concerning the supply of any financial product or service that requires a compulsory use of arbitration will be deemed to be lawfully void.<sup>187</sup> What is deemed abusive in contractual clauses of this sort is the mandatory nature of the arrangement that forces arbitration by a strong bank on a weak consumer in a one-sided transaction.</p> <p>And, although Mozambique has an Arbitration and Mediation Center in Maputo that is operating under Law 11/99 with initial donor support, no dispute between a consumer and his or her supplier has yet been lodged with it. This is not surprising, however, since arbitration makes best in circumstances involving disputes between or among two or more sophisticated entities which voluntarily negotiate an agreement to arbitrate in an effort to keep their business relations intact due to business necessity.</p> <p>Finally, Mozambique’s Constitution provides for an Ombudsman’s office in order to “guarantee the rights of citizens,”<sup>188</sup> while details regarding the functions of the office are provided in the Ombudsman Act of 1996.<sup>189</sup></p>
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<sup>181</sup> *Ibid.*, Article 14

<sup>182</sup> *Ibid.*, Article 17

<sup>183</sup> *Ibid.*, Article 22, paragraph 2 e)

<sup>184</sup> *Ibid.*, Article 37

<sup>185</sup> The words are undefined.

<sup>186</sup> Law 22/09, Article 18, paragraph 1

<sup>187</sup> *Ibid.*, Article 22, paragraph 1 f)

<sup>188</sup> See the Constitution, Article 256. By this same Article, the office is also required “to uphold the legality and justice in the actions of the Public Administration.”

<b>Recommendation</b>	<p>As provided by the Ombudsman Act, the Ombudsman’s powers are to mediate disputes about decisions of Government officials, namely disputes “concerning any alleged instance or matter of abuse of power or unfair treatment of any person by an official in the employ of any organ of Government, or manifest injustice or conduct by such official which would properly be regarded as oppressive or unfair in an open and democratic society.” Furthermore, “the office of the Ombudsman may investigate any and all cases where it is alleged that a person has suffered injustice and it does not appear that there is any remedy reasonably available by way of proceedings in a court or by way of appeal from a court or where there is no other practicable remedy.”</p> <p>Accordingly, it may be legally possible for the existing Ombudsman’s office to expand its functions to handle complaints relating to financial services, as suggested by some stakeholders. However, this option would seem inappropriate. It would send a confusing message and image to the public if the Ombudsman were to have combined administrative and financial services dispute resolution functions and the ability to hear matters of concern to both consumers and to any person affected by a Government decision which could obviously include a bank or other CIFC. Also, the lack of capacity to render binding decisions (whether upon banks, other CIFCs or any other institutions) would constitute a fatal impediment to pursuing this possibility.</p> <p>Careful consideration should be given to establishing an office of Ombudsman for Banking Services (if not for Financial Services, more generally), as resources allow, as “the competent authority” to deal expeditiously, independently, professionally and inexpensively with consumer disputes that are not resolved internally by banks.<sup>190</sup> The legal foundation for doing so would spring from Article 79 of the Constitution<sup>191</sup> and Law 2/96 on the exercise of the right of petition which regulates and disciplines the Constitutional right to present requests, complaints and protests to the relevant authority, with the exception of the courts.<sup>192</sup> International experience has shown this concept to be successful.<sup>193</sup></p> <p>An Ombudsman would also identify complaints that are few in number but high in importance for consumer confidence in the financial system, thereby enabling the BdM or any other relevant authority to take effective action to remedy the situation.</p> <p>Such an office could be established either by:</p> <ol style="list-style-type: none"> <li>a) specific legislation; or</li> <li>b) a Notice requiring CIFCs to join an approved ombudsman service covering complaints made by consumers, which would have rules binding on all its members and which the BdM would need to approve.<sup>194</sup></li> </ol> <p>Regardless of the way in which the service is established, it should be developed by the BdM</p>
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189 Although this Act predates the Constitution of 2004, it remains in effect.

190 The establishment and sustainability of such offices are now generally regarded as fundamental requirements for sound consumer protection.

191 This Article expressly provides all citizens “the right to present petitions, complaints and claims to the competent authority in order to demand the restitution of their rights violated or in defense of the public interest.”

192 By Articles 4 and 5 of Law 2/96, every citizen has the prerogative to petition to the “competent authority” to require the restoration of individual or collective rights. The petition needs to be in writing and signed but, otherwise, the right to petition is not subject to any specific process (see: Article 8). The entity being addressed then has 45 days to respond (see Article 10, paragraph 1) In addition, Law 2/96 establishes a so-called “Permanent Commission” as final arbiter.

193 In South Africa there is a separate ombudsman for most provider types, including banks, different types of insurers, and credit providers. Some options are statutory and others are sponsored by industry associations. Further guidance on this topic, based on experiences in Western Europe, is provided by Thomas and Frizon (2011) “Resolving disputes between consumers and financial businesses: Fundamentals for a financial ombudsman”, available at [www.worldbank.org/consumerprotection](http://www.worldbank.org/consumerprotection).

194 It might well be the case, however, that any such statute or Notice would not apply to some financial institutions, such as small MFIs.

in close consultation with all relevant stakeholders, including relevant Ministries, the financial services industry, the AMB and AMOMIF, as well as consumer representatives, including DECOM and ProConsumers. The funding for the Office could be shared between banks and other CIFCs on a sliding scale, and the Government (as the lesser contributor).

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 institution and its applicable processes and procedures, including the binding nature of decisions and the mechanisms to ensure the enforcement of decisions.

Close consideration should also be given to establishing an oversight body with its own terms of reference. Such a body would, ideally:

- a) have an equal number of industry and consumer representatives and an independent Chair;
- b) have functions such as appointing the Ombudsman, monitoring the Ombudsman service, approving budgets and monitoring systemic complaint issues and serious misconduct issues such as fraud;
- c) require an independent annual audit of the operation of the service; and
- d) report systemic and serious misconduct issues to the BdM, as well as formulate and widely publicize an annual report.

In developing a Banking Ombudsman Service, a useful reference would be the International Standards on Complaints Handling Processes – such as those in ISO 10002:2004. The BdM could also study the models of such services which exist in South Africa<sup>195</sup> and numerous other countries.

### 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**

<sup>195</sup> Regarding South Africa, see: Ombudsman for Banking Services, "An Account of Activities for the period 1 Jan. – 31 Dec. 2009", <[http://www.obssa.co.za/documents/2009\\_obs\\_annual\\_report.pdf](http://www.obssa.co.za/documents/2009_obs_annual_report.pdf)>

	<p><b>disputes.</b></p> <p><b>c. Banking industry associations should also analyze the complaint statistics and data and propose measures to avoid the recurrence of systemic consumer complaints.</b></p>
<b>Description</b>	<p>By Notice 4, every bank and other CIFC is required to send to the BdM electronic copies of all of its decisions about the complaints it has dealt with<sup>196</sup> and the BdM is obliged to publish and keep updated on its website statistical data about all banks and other CIFCs that have received complaints and the respective results, without prejudice to the BdM's supervisory procedures in respect of the bank or other CIFC in question.<sup>197</sup></p> <p>Although statistics and data of customer complaints are periodically compiled by the BdM, this information has yet to be aggregated and published. Neither have banks and the AMB published information on consumer complaints brought on the basis of banking practices or otherwise.<sup>198</sup></p> <p>The BdM has not yet published data and analyses related to its activities in respect of consumer protection in the banking sector.</p>
<b>Recommendation</b>	<p>Banks and all other CIFCs should be required to centralize data on complaints received, analyze them periodically and share the data and the analysis with the BdM. The aim of the internal analysis should be to identify and avoid the most common reasons for consumer complaints, and to change business practices accordingly. The complaint data analysis showing categories of complaints, time to resolve, unresolved complaints, etc., should be sent periodically to GPI with the BdM analyzing and publishing the respective aggregate data on its website on a regular basis as foreseen by Notice 4/2009. Reviewing and checking such reports should be part of BdM's on-site/off-site supervision practice.</p> <p>Publication of the statistics and data should be required in order to inform the public of common problems affecting consumers and to increase the knowledge and awareness of consumers.</p> <p>By analyzing the statistics and data, the BdM is 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 banking system itself.</p>
<b>PARAGRAPH F</b>	<b>GUARANTEE SCHEMES AND INSOLVENCY</b>
<b>Good Practice F.1</b>	<p><b><i>Depositor Protection</i></b></p> <p><b>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></p> <p><b>b. If there is a law on deposit insurance, it should state clearly:</b></p> <ul style="list-style-type: none"> <li><b>i. the insurer;</b></li> <li><b>ii. the classes of those depositors who are insured;</b></li> <li><b>iii. the extent of insurance coverage;</b></li> <li><b>iv. the holder of all funds for payout purposes;</b></li> <li><b>v. the contributor(s) to this fund;</b></li> <li><b>vi. each event that will trigger a payout from this fund to any class of those insured;</b></li> </ul> <p><b>and</b></p>

<sup>196</sup> Notice 4, Article 5, paragraph 5

<sup>197</sup> *Ibid.*, Article 7, paragraph 2

<sup>198</sup> As indicated above, since no stakeholders are aware of any of the obligations the CCB ostensibly places on the AMB members, no dispute has yet arisen from an alleged breach of the CCB.

	<p>vii. the mechanisms to ensure timely payout to depositors who are insured.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>f. The deposit insurer should receive or conduct a regular evaluation of the effectiveness of its public awareness program or activities.</p>
<p><b>Description</b></p>	<p>The authorization to incorporate any CIFC – and thus for it to carry on its business – is granted by BdM’s Governor on a case-by-case basis, following a detailed application process. Furthermore, the authorization may be revoked by the Governor if, among other things, the CIFC in question “violates the laws and regulations that discipline its activity or does not conform to the instructions of the BdM, thereby jeopardizing the interests of depositors and other creditors or endangering the normal operating conditions of the money, financial or foreign exchange markets.”<sup>199</sup> To date, however, there has been no such revocation. The BdM determines a bank’s financial instability on the basis of the prudential rules set out in Law 15/99.<sup>200</sup> Customers are informed of a bank’s financial instability by means of one or more communiqués published by the BdM in the media.</p> <p>In accordance with Law 15/99<sup>201</sup>, a bank’s financial statements must be audited before being provided to the BdM.</p> <p>Law 15/99, Article 59 and Council of Ministers Decree 49/10 provide the basis upon which a Deposit Guarantee Fund (DGF) is eventually to be established. While this Decree creates this Fund, at least on paper, however, a Decree to be signed by the Minister of Finance is still awaited before the Fund is formally created, the members of its Management Committee are appointed and the required initial contributions to the Funds are allocated.</p> <p>Although the Deposit Guarantee Fund is to be housed in the BdM, it is to be an entirely autonomous entity legally and financially. In essence, in accordance with strict requirements, the Fund is to be aimed at the reimbursement of deposits in all banks (and all other CIFCs authorized to collect deposits), as well as to be the subject of prudential supervision by the BdM.</p> <p>The Fund is to guarantee the reimbursement of the total value of the credit balances of each depositor, to a limit stipulated by the Decree of the Minister of Finance as proposed by the BdM.<sup>202</sup> This limit has been set at 20,000 MZN which is aimed at ensuring that some 90% of all depositors will be completely covered on a priority basis in the event their bank or other deposit-taking credit institution faces financial failure. Furthermore, the limit of the guarantee applies to each depositor and for each member institution and cannot be exceeded, irrespective of the number of deposit accounts the holder has in the <i>same</i> institution.<sup>203</sup></p>

<sup>199</sup> Law 15/99, Article 17, paragraph 1 e)

<sup>200</sup> See, in particular, Articles 60 to 64.

<sup>201</sup> See Law 15/99, Article 77, paragraph 1 and Article 103

<sup>202</sup> *Ibid.*, Article 7, paragraph 1

<sup>203</sup> *Ibid.*, paragraph 2

	<p>While individuals' deposits in MZN are covered by the guarantee, whether they are in current deposits, deposits at notice or time deposits,<sup>204</sup> deposits denominated in foreign currency and all deposits held by legal entities are excluded.<sup>205</sup></p> <p>Reimbursement takes place within three months from the date the BdM informs the Fund of the impossibility of a member institution making returns of the deposits created in it.<sup>206</sup></p>
<b>Recommendation</b>	<p>The BdM and the Government are to be commended for the work to date in formulating a framework for explicit, limited-coverage deposit insurance. Instead of individual depositors relying on implicit protection in the event of the financial failure of their deposit taking institution, the deposit insurance system envisaged will limit the scope for discretionary decisions, promote public confidence, help to contain the costs of resolving failed banks and provide for an orderly process for dealing with bank failures.</p> <p>Besides the need for the above-mentioned decree to be signed by the Minister of Finance, attention will need to be given, among other things, to the formulation of detailed Fund regulations and the Fund's organization and staffing requirements, the installation of a Fund-specific information technology system and the training of Fund staff.</p> <p>Once the Fund is operational, the deposit insurance system should be supported by a high level of public awareness, with all member institutions being required themselves to publicize in precisely the same fashion (as fixed by the Fund and the BdM) the fact of membership and the benefits and limitations for depositors as result. And in this respect, it would appear that the power of the Management Committee to promote, in "an adequate way", merely "the publication of the updated list of member institutions"<sup>207</sup> does not go far enough.</p> <p>Finally, given the fact that the Mozambican banking sector is essentially foreign-owned, the BdM needs to be familiar with "home country" supervisors, the strength of support that may be available from any parent company, the home country rules for bankruptcy, and economic conditions in the home country.</p>
<b>Good Practice F.2</b>	<p><b>Bank Insolvency</b></p> <ul style="list-style-type: none"> <li>• <b>Depositors should enjoy higher priority than other unsecured creditors in the liquidation process of a bank.</b></li> <li>• <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.</b></li> </ul>
<b>Description</b>	<p>Law 30/07 provides the regime for the insolvency of banks and all other CIFCs, including the order of priority of creditors in the event of any liquidation.<sup>208</sup></p> <p>Everything that is not provided for explicitly by this law is established by the Code of Civil Procedure<sup>209</sup> and the Civil Code.<sup>210</sup></p>

<sup>204</sup> *Ibid.*, Article 5, paragraphs 1 and 2

<sup>205</sup> *Ibid.*, Article 6, paragraph 1. Also excluded by this paragraph are accounts in Meticaís held by members of management or auditing boards of the respective member institution, chief accountants at the service of the institution, external auditors responsible for carrying out audits of the institution or people of similar status in other companies in the same group or holding a controlling interest in the institution, as well as spouses, relatives in the first degree or third parties acting on behalf of depositors referred to immediately above.

<sup>206</sup> *Ibid.*, Article 8, paragraph 1

<sup>207</sup> As provided in Article 18, paragraph 1 d) of Decree 49/10

<sup>208</sup> See: Law 30/07, Article 41

<sup>209</sup> See the Code of Civil Procedure, Articles 865 to 871, as well as Article 1254

<b>Recommendation</b>	With the establishment of the Deposit Guarantee Fund, most consumer depositors will be fully covered in the event of their bank is insolvent or goes into liquidation. None
<b>PARAGRAPH G</b>	<b>CONSUMER EMPOWERMENT</b>
<b>Good Practice G.1</b>	<p><b><i>Broadly based Financial Capability Program</i></b></p> <p><b>a. A broadly based program of financial education and information should be developed to increase the financial capability of the population.</b></p> <p><b>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.</b></p> <p><b>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.</b></p>
<b>Description</b>	<p>Education is a right and duty of all citizens of Mozambique.<sup>211</sup> Also, the State is obliged to “organize and develop education through a national system of education”.<sup>212</sup></p> <p>The GPI has devised a program proposal which is to be initiated by a series of pilot projects. The proposal envisages a Financial Education Campaign through the media – newspapers and radio – to broadcast basic information regarding consumer’s rights and defense mechanisms. The campaign is directed to all citizens, although special attention will be given to rural areas, informal and formal sector operators, public servants and children and adolescents. It will be conducted in collaboration with the Social Communication Institute (Instituto de Comunicação Social, ICS) responsible for 72 community radios (52 of its own, 20 belonging to NGOs organized in the Forum of Community Radios (FORCOM). The ICS will be in charge of radio programs production and translation to local languages, while the BdM will ensure the production and distribution of graphic materials (pamphlets, posters and brochures) and the realization of public presentations at district level. The themes to be developed include: role and functions of the BdM, Metical notes and coins, functions and attributions of commercial banks, banking concepts and history of money, the banks and the Metical for children</p> <p>Unfortunately, however, the GPI/BdM’s initial proposals – so far at least – have yet to be discussed with interested and potentially helpful stakeholders, including the Ministry of Education, AMB, AMOMIF and consumer NGOs, such as DECOM and ProConsumers.</p>
<b>Recommendation</b>	<p>The most effective ways of improving any Mozambican’s financial capability vary according to factors such as his or her age, income level, educational attainment and particular traditions. A range of approaches will undoubtedly be needed so as to reflect the diversity of people’s needs and aptitudes. These approaches, however, should focus on attitudes, as well as on financial education, information and skills. For example, it is not sufficient that Mozambicans know how to save; they also need: (a) to understand the benefits that savings can bring to them and their families; (b) to recognize that it is worth deferring current expenditures; and (c) to be motivated to set aside money on a regular basis.</p> <p>It will also be important to cover basic issues such as budgeting, saving, planning ahead and choosing products, rather than merely to provide information about particular types of financial products and services.</p>

<sup>210</sup> See the Civil Code, Articles 733 to 735

<sup>211</sup> See the Constitution of the Republic, Article 88, paragraph 1

<sup>212</sup> *Ibid.*, Article 113, paragraph 2

	<p>Those institutions in Mozambique, such as BdM, the Ministry of Education, DECOM and Pro Consumers that have an interest in improving people's financial capability should work together so that a range of initiatives is developed to help Mozambicans improve their capacities to manage their own personal finances.</p> <p>A coordination mechanism for financial literacy and education is needed. The Steering Committee for the Financial Sector Development Strategy would be an appropriate mechanism for introducing a more strategic perspective, monitoring progress on the initiatives, and helping to avoid duplication of efforts. A coordinated approach would improve the coherence of the different initiatives, and integrate them into a long-term strategic perspective including in-school programs and specific programs for other groups of citizens.</p>
<b>Good Practice G.2</b>	<p><i>Using a Range of Initiatives and Channels, including the Mass Media</i></p> <p>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.</p> <p>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.</p> <p>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.</p>
<b>Description</b>	See Annex 2.
<b>Recommendation</b>	See Annex 2.
<b>Good Practice G.3</b>	<p><i>Unbiased Information for Consumers</i></p> <p>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.</p> <p>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.</p> <p>c. The relevant authority or institution should adopt policies that encourage non-governmental organizations to provide consumer awareness programs to the public regarding banking products and services.</p>
<b>Description</b>	See Annex 2.
<b>Recommendation</b>	See Annex 2.
<b>Good Practice G.4</b>	<p><i>Consulting Consumers and the Financial Services Industry</i></p> <p>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.</p> <p>b. The relevant authority or institution should also undertake consumer testing with a view to ensuring that proposed initiatives have their intended outcomes.</p>
<b>Description</b>	See Annex 2.
<b>Recommendation</b>	See Annex 2.
<b>Good Practice G.5</b>	<p><i>Measuring the Impact of Financial Capability Initiatives</i></p> <p>a. The financial capability of consumers should be measured, amongst other things, by</p>

	<p>broadly-based household surveys and mystery shopping trips that are repeated from time to time.</p> <p><b>b. The effectiveness of key financial capability initiatives should be evaluated by the relevant authorities or institutions from time to time.</b></p>
<b>Description</b>	See Annex 2.
<b>Recommendation</b>	See Annex 2.
<b>PARAGRAPH H</b>	<b>COMPETITION AND CONSUMER PROTECTION</b>
<b>Good Practice H.1</b>	<p><i>Regulatory Policy and Competition Policy</i></p> <p><b>Banking regulators and competition authorities should be required to consult with one another for the purpose of ensuring the establishment, application and enforcement of consistent policies regarding the regulation of financial services.</b></p>
<b>Description</b>	<p>Although in the last 8 years, 5 new entrants to the banking sector have been authorized by the BdM to carry on banking business (thus bringing the total number of retail banks in Mozambique today to 18); there is still a significant degree of concentration in the banking sector.</p> <p>By Law 15/99, all banks and other CIFCs are “prohibited from conducting transactions or engaging in concerted practices that enable them, individually or jointly, to control the ... financial ... market.”<sup>213</sup></p> <p>High fees, including <i>ad valorem</i> fees<sup>214</sup> in some cases, on basic banking transactions, and the general practice in the industry of not offering interest on demand deposits, indicate a lack of effective competition.</p> <p>The Competition Policy of Mozambique was approved by the Council of Ministers in July 2007 due to the stated “need to create instruments [to] promote a favorable environment for the performance of economic agents and for the development of true, healthy and regulated competition.” The Policy also stresses the need for “sector regulatory authorities<sup>215</sup> to perform in close collaboration and coordination with the Competition Authority” once the latter is established.</p> <p>The Competition Policy recognizes the occurrence in the Mozambican market of practices - such as the imposition of excessive prices, price discrimination and predatory prices - that give rise to concerns of the possible phenomena of abuse of dominant position. In addition, and without naming the banking sector as such, the Policy notes “the phenomena of concentrations of companies aimed at preserving or raising their market position and resulting in distortions or even restrictions to competition in the country.”<sup>216</sup></p> <p>While various new banks have entered the market since this Policy was adopted, it is not clear that equal opportunities yet prevail in the banking sector. More importantly, however, notwithstanding the existence of a so-called “final” draft Competition Law dating from 2008,<sup>217</sup> no such law and ancillary regulations have yet been enacted and, thus, no Competition Authority has been created.</p>

<sup>213</sup> See Law 15/99, Article 46, paragraph 1

<sup>214</sup> Fees which vary based on the value of the products, services, or property on which they are levied.

<sup>215</sup> Such as BdM, for the banking and other sectors of Mozambique’s financial system.

<sup>216</sup> *Ibid.*, page 2

<sup>217</sup> See: Final Draft, dated May 2008, of the Competition Law of Mozambique. as prepared by ACE, Asesores de Comercio Exterior, S.L. of Spain with funding from the European Commission

<b>Recommendations</b>	The authorities should review the existing final draft Competition Law with a view to enacting it or a similar law in the near term. Once the Competition Authority is formally created, and appropriately staffed, housed, equipped and financed, the BdM and the Competition Authority should coordinate to ensure the establishment, application and enforcement of consistent policies for the regulation of banking products and services.
<b>Good Practice H.2</b>	<p><b><i>Review of Competition</i></b></p> <p><b>Given the significance of retail banking to the economy as a whole and to the welfare of consumers, competition authorities should:</b></p> <ul style="list-style-type: none"> <li>• <b>monitor competition in retail banking;</b></li> <li>• <b>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</b></li> <li>• <b>make recommendations publically available on enhancing competition in retail banking.</b></li> </ul>
<b>Description</b>	<p>The BdM is the sole authority authorized to deal with competition issues in Mozambique's banking sector, although the Ministry of Trade and Industry is empowered to enforce the provisions of Mozambique's Advertising Code that deal with unfair competition.<sup>218</sup></p> <p>BdM has not yet monitored or assessed competition in retail banking nor has it conducted and published any assessment of competition in retail banking however.</p>
<b>Recommendation</b>	<p>Until such time as a Competition Authority is formally established, staffed, equipped and funded, the BdM should be responsible (as far as capacity allows) for monitoring competition in retail banking.</p> <p>In addition the BdM could 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).</p> <p>The Banking Enquiry of the Competition Commission of South Africa can serve as a useful example in terms of the way in which assessments have been conducted, as well as the recommendations made.<sup>219</sup></p>
<b>Good Practice H.3</b>	<p><b><i>Impact of Competition Policy</i></b></p> <p><b>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.</b></p>
<b>Description</b>	The BdM has not applied the Competition Policy to the practices of Mozambique's retail banking system, or carried out an evaluation of the impact of the Competition Policy on the welfare of consumers in their dealings with banks.
<b>Recommendation</b>	Pending the establishment of an effective Competition Authority with power 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 Notice requiring, among other things, greater transparency regarding interest, commissions, fees and other charges, as well as the unbundling of financial services offered by banks.

<sup>218</sup> See Decree 65/04 (The Code of Advertising), Article 30

<sup>219</sup> See: <http://www.compcom.co.za/enquiry-in-to-banking>

	<p>The well-being of Mozambique's consumers is enhanced to the extent that fees, commissions, interest and all other charges that banks require to be paid by consumers – as well as the interest that banks agree to pay to consumers on their deposits – are reasonable, clearly stated, readily available and easily comparable from bank to bank. By means of a future Notice, BdM should ensure that this information is collected and then tabulated by BdM on a regular basis by means at least of benchmarking the average of all consumer costs and consumer income earned across all retail banks for the same or similar products. This information should then be widely disseminated by BdM at least every quarter by means of publication on its website, in widely read newspapers and on radio spots in Portuguese and in Mozambique's most widely spoken indigenous languages.</p>
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## CONSUMER PROTECTION IN THE NON-BANK CREDIT SECTOR

### Overview

**The microfinance sector in Mozambique is diverse with many operators and state-related as well as international donors.** From the statistical point of view, there are many microfinance operators in Mozambique. The microfinance institutions exist in several legal forms, from microfinance-focused banks with a full banking license through cooperatives and community-based savings groups (ASCAs and Xitiques) to non-profit microfinance operators and non-registered informal credit providers. Microfinance in Mozambique is primarily restricted to credit with only limited offer of savings products. There are no factoring or leasing companies. For detailed overview of various legal forms see the Annex III: Legal and Institutional Frameworks.

**Different legal forms bring various regulatory regimes.** Non-bank institutions that collect deposits must be licensed by the BdM and undergo full prudential supervision. However, non-deposit taking microfinance operators are required to only register with the BdM and report basic data about their operation (see Table 4). This section of the report therefore focuses on credit institutions that do not hold a banking license (for banks and microbanks, recommendations from the Banking section of this report apply).

**Table 4: Microfinance providers in Mozambique**

Microfinance providers	# of entities	
Subject to licensing/prudential supervision by BdM	<b>Micro-finance orientated banks</b>	4
	<b>Microbanks</b>	8
	<b>Credit cooperatives</b>	7
Subject to registering/monitoring by BdM	<b>Microfinance operators</b>	166

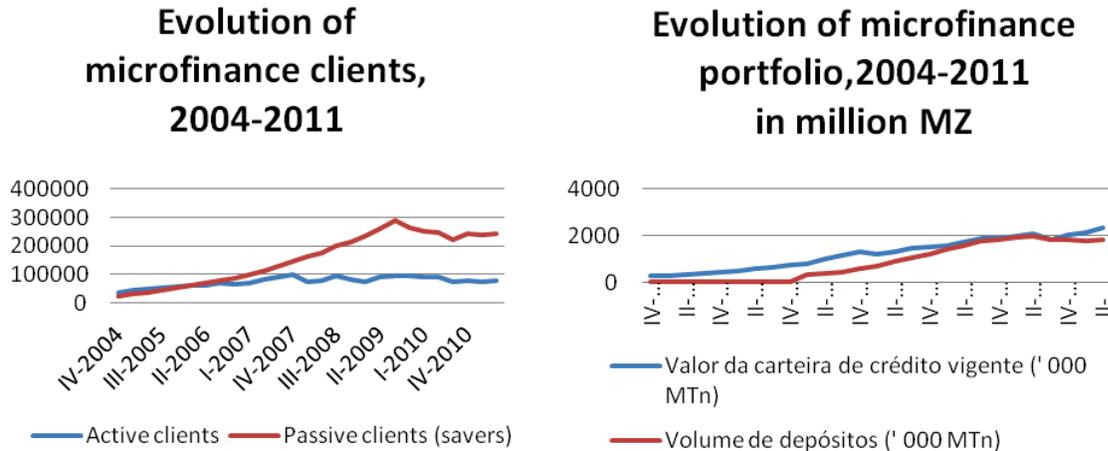
Source: BdM

**After a strong growth during its first decade, the microfinance industry seems to have reached a plateau regarding the number of clients and, to a lesser degree, the volume of activity** (see Figure 3). With the major microfinance institutions going up market, the total number of clients of microfinance institutions reporting to AMOMIF has slightly decreased during the last two years<sup>220</sup> while the loan portfolio continued to grow. The number of microfinance providers has increased from 32 identified in 2005,<sup>221</sup> up to more than 200 operators now: 4 microfinance-oriented commercial banks, 166 registered microfinance operators, 8 microbanks, and 7 financial cooperatives or credit unions.

<sup>220</sup> Despite the low level of information sharing (only 12 institutions reported to AMOMIF up to 2011, around 20 now) the trends are driven by the major MFIs reporting to AMOMIF

<sup>221</sup> De Vletter F, Microfinance in Mozambique: achievements, prospects and challenges. MEDA-UNDP, June 2006

Figure 3: Evolution of microfinance sector in Mozambique

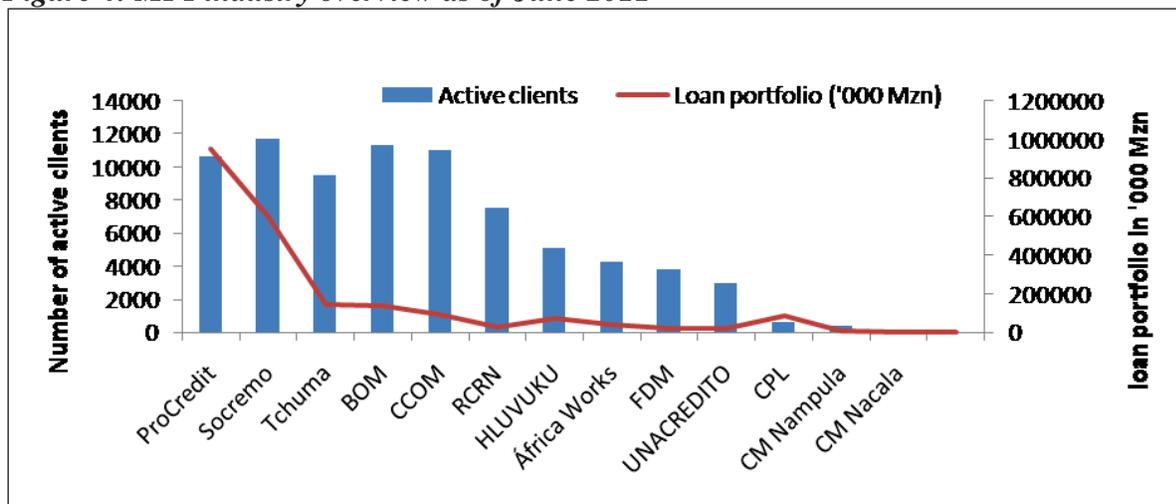


Source: AMOMIF

It is unclear how many of the microfinance operators are really actively providing services. Many of the microfinance institutions are not operating, and only 35 microfinance operators (and the 4 microfinance-oriented banks) duly report to the central bank as required.

The MFI industry is dominated by five major institutions, ProCredit, Socremo, BOM, Tchuma and CCOM, the four former being commercial banks and the later being a network of credit associations (see Figure 4). Each of the "big five" has a market share of 12-14% and the big five in total serve about 64% of the active clients and 82% of the loan portfolio,<sup>222</sup> with ProCredit holding 40% of the loan portfolio. ProCredit and Socremo are moving up market, with an average outstanding loan of MZN 90,000 and MZN 51,000 respectively, against MZN 15,000, 12,000 and 8,000 for Tchuma, BOM and CCOM targeting lower income public. Deposits are concentrated in the four microfinance-focused banks, with ProCredit holding about 60% of the deposits and serving 44% of the depositors.

Figure 4: MFI industry overview as of June 2011



Source: AMOMIF

<sup>222</sup> As reported to AMOMIF, data for June 2011.

**Further growth may be supported by new market entrants and technology-based products.** Newcomers with specific products, like salary based loans operators, will also change the panorama, and increase the competition for bankable clients – as well as risks of over-indebtedness.<sup>223</sup> Technology-based solutions are appearing on the Mozambique market. Electronic money products are becoming widely available, with the potential to bring many new customers who previously did not have bank accounts, into the financial sector (the first e-money operator, mKesh, reports 57.000 registered clients, but so far only 3.000 are active ones due to the limited agent network).

**However, financial access remains limited even in urban settings.** The total number of active clients of microfinance institutions is estimated by AMOMIF at only about 100,000, i.e. 0.43% of the population of Mozambique and the loan portfolio of MFIs is estimated at about USD 65 million.

**The government supports microfinance outreach to rural areas.** In terms of geographical coverage, the MFIs are somehow present in 91 of the 128 districts (71%), but the majority of microfinance activity remains concentrated in Maputo area and in the major towns. The Government of Mozambique therefore operates several assistance programs that should expand access of inhabitants of rural areas to financial services but so far most of financial services operators remain clustered around the capital and other large cities. International donors have primarily focused on capacity building of microfinance operators.

**Informal financial services play a major role in Mozambique.** As in other Sub-Saharan African countries, use of informal financial services is widespread in Mozambique. According to the Global Findex Database, 43 percent of adults saved or set aside money in the past 12 months, with 23 percent of adults (and 54 percent of those who save) using a savings club or person outside the family, compared to 17.5 percent (and 41 percent of those who save) saving at a formal financial institution. The two most important types of community based savings methods are Xitiques (traditional revolving savings groups) and ASCAs (community-based Accumulating Savings and Credit Associations), the latter often supported by donor programs aimed at extending financial services into rural areas. At the same time, only around 6 percent of the adult population borrowed from a registered financial institution, while 35 percent borrowed from family or friends and only 2 percent from an informal private lender.

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<sup>223</sup> Besides commercial banks offering this product, a specialized micro-bank started operating in Feb. 2011. It plans to upgrade to a fully licensed commercial bank in near future. Two other consumer credit providers are expected to come soon.

## Comparison with Good Practices for Non-Banking Credit Institutions

SECTION A	CONSUMER PROTECTION INSTITUTIONS
Good Practice A.1	<p><i>Consumer Protection Regime</i></p> <p>The law should provide clear consumer protection rules in the area of non-bank credit institutions, and there should be adequate institutional arrangements to ensure the thorough, objective, timely and fair implementation and enforcement of all such rules, as well as of sanctions that effectively deter violations of these rules.</p> <ol style="list-style-type: none"> <li>a. There should be specific statutory provisions, which create an effective regime for the protection of consumers of non-bank credit institutions.</li> <li>b. There should be a government authority responsible for implementing, overseeing and enforcing consumer protection in the area of non-bank credit institutions.</li> <li>c. The supervisory authority for non-bank credit institutions should have a register which lists the names of non-bank credit institutions.</li> <li>d. There should be coordination and cooperation among the various institutions mandated to implement, oversee and enforce consumer protection and financial sector regulation and supervision.</li> <li>e. The law should provide for, or at least not prohibit, a role for the private sector, including voluntary consumer associations and self-regulatory organizations, in respect of consumer protection in the area of non-bank credit institutions.</li> </ol>
Description	<p>For the detailed description of the conflicting consumer protection legislation in the Law 15/99 on Credit Institutions and Finance Companies as amended by Law 9/2004 and the Notice 5/GBdM/2009 regarding regulation of prices and charges on the one hand and the Consumer Protection Law 22/2009 on the other hand see the Banking Sector analysis in the previous chapter. Other rules pertaining to the non-bank credit institutions are defined in the Decree 57/2004 on Micro-finance Regulations. Interest rates are set by the Bank of Mozambique, under specific notices. Notice 1/99 sets free interest rate for the NFBIs.</p> <p>The situation in the non-bank credit institution sector is complicated by the varying rules for microfinance institutions depending on their legal status. The Microfinance Regulation (Decree 57/2004) defines two major types of microfinance operators in the terms of the regulatory approach of the Bank of Mozambique. The first group, consisting of micro-banks and credit cooperatives, faces full-scale prudential supervision, focused primarily on their stability, with a regime equal to the supervisory regime of fully licensed banks. The second group of microfinance operators is only required to register with the BdM and reports selected data for statistical purposes with no supervisory oversight.</p> <p>While this may be a proper approach in risk-based prudential regulation, it is detrimental to the position of consumers in the area of market conduct as the consumer's rights depend on the legal status of the service provider and not on the service provided. For example, Chapter VI of the Law on Credit Institutions and Finance Companies (Law 15/99) requires that financial institutions operating under this law act with diligence, neutrality, loyalty, discretion and respect for the interests entrusted to them, as well as informing clients. On the other hand, the Microfinance regulation has much weaker requirements for the institutions that are only registered with the BdM (microfinance operators that do not accept deposits but provide loans only).</p> <p>Moreover, there are no specific statutory provisions regarding consumer protection of non-bank credit institutions and while the BdM conducts some consumer protection functions, there is no overall framework consumer protection policy clients of non-bank credit institutions could rely on.</p>

	<p>The supervision of the non-bank credit institutions is conducted by the NBFI division with eight employees. The division is a part of the banking supervision department along three other divisions (banking supervision, regulation &amp; research and licensing).</p> <p>Only microbanks and credit cooperatives together with microfinance-oriented banks fall under the supervisory regime (that should include off-site supervision as well as periodic on-site inspections) while other non-bank credit institutions are only required to register with the BdM and report twice a year under the so-called monitoring regime, defined in the Article 1 paragraph 4.j of the Decree 57/2004 as follows: "monitoring" means monitoring by the BdM, or an entity acting on its behalf, of financial services provided by qualified operators other than credit institutions or finance companies, aimed at obtaining general information normally provided at infrequent intervals about the financial services offered by these operators, for statistical purposes and with a view to keeping track of the financial business they conduct.</p> <p>The BdM has a list of licensed and registered non-bank credit institutions (for details about licensing and registering please see Annex III). However, many of the listed microcredit providers do not provide the BdM with the required reporting and many of them may not be active anymore, so the list available at BdM is of limited relevance in the terms of active non-bank credit institutions.</p> <p>On the other hand, there are many informal moneylenders (both individuals and corporations) that operate throughout Mozambique. These informal moneylenders operate without any knowledge of or the reporting to the BdM.</p> <p>The Law on Credit Institutions and Finance Companies and the Decree 57/2004 on Microfinance Regulations provide ample opportunity for the private sector to be involved in consumer protection of clients of non-bank credit institutions through codes of conduct. There is even an opportunity for third parties to conduct outsourced supervisory functions of the BdM (see Article 55 paragraph 5 of Law 15/99).</p>
<b>Recommendation</b>	<p>The Organic Law of the Bank of Mozambique should be updated to include the consumer protection, financial awareness and market conduct supervision into the central bank's mandate.</p> <p>The register of non-bank credit institutions in the BdM includes also many institutions that have not provided the BdM with required reporting over several periods and are probably not functioning anymore. The BdM should implement necessary changes described in A.4 below and ensure only functioning non-bank credit institutions are listed in the register.</p> <p>A consumer protection and business conduct task force could be established consisting of the Heads of Department of GPI and BSD as well as GPI staff in charge of financial consumer protection and representatives of BSD's banking, microfinance and regulation &amp; research and licensing divisions. The task force should also interact with other government as well as non-government bodies in strengthening the position of financial service consumers.</p> <p>Further clarity would be beneficial on whether BSD (which has a principal focus on the prudential supervision of deposit-taking financial institutions) should lead on supervision of financial consumer protection regulations as well, or whether this responsibility should rest with GPI. For more changes regarding the institutional setup and legal status of the BdM, see the A.1 part in the banking section.</p> <p>As informal money lending may pose significant social risks by charging high interest rates and even higher penalties, the BdM should consider updating the legislation to ensure every entity (whether a company registered in the Commercial Registry, a group of individuals or an individual) lending money commercially to generate profit falls under the BdM's regulatory regime.</p>

	<p>As the law allows the BdM to outsource supervision to third parties, consideration should be given to unifying reporting requirements by the BdM and AMOMIF and the subsequent delegation of responsibility to collect and analyze reporting data from all non-bank credit institutions by AMOMIF.</p> <p>The GPI department of the BdM should regularly publish an analysis of complaints received and work closely with AMOMIF to prevent the most frequent complaints through developing a microfinance code of conduct, tailored communication training to loan officers to improve their ability to explain the product features and risks and financial literacy activities to improve the knowledge of consumers about their rights and support their ability to seek and compare various options when choosing financial products. The GPI department should also work closely with consumer organizations, as capacity allows, and train them to improve their understanding of financial services so that they become more capable to respond to consumer demands and to advocate for consumers.</p>
<b>Good Practice A.2</b>	<p><b><i>Code of Conduct for Non-Bank Credit Institutions</i></b></p> <ol style="list-style-type: none"> <li>a. <b>There should be a principles-based code of conduct for non-bank credit institutions that is devised in consultation with the non-bank credit industry and with relevant consumer associations, and that is monitored by a statutory agency or an effective self-regulatory agency.</b></li> <li>b. <b>If a principles-based code of conduct exists, it should be publicized and disseminated to the general public.</b></li> <li>c. <b>The principles-based code should be augmented by voluntary codes on matters specific to the industry (credit unions, credit cooperatives, other non-bank credit institutions).</b></li> <li>d. <b>Every such voluntary code should likewise be publicized and disseminated.</b></li> </ol>
<b>Description</b>	There is no code of conduct for the non-bank credit institutions. However, the industry association AMOMIF is currently discussing creating one.
<b>Recommendation</b>	<p>The current discussion at AMOMIF should lead to the development of a microfinance code of conduct that would support ethical and fair behavior towards clients, support activities focused on improving transparency, financial inclusion and financial awareness, and include enforcement rules against those that break the rules of conduct agreed by the industry, possibly by an Ethics Committee that could be established under AMOMIF and include also outside members such as consumer representatives. AMOMIF should support the code by making the acceptance of the code a condition for membership.</p> <p>Key consumer rights based on the code of conduct should be included in the financial education initiatives provided to the clients of microfinance institutions by loan officers.</p>
<b>Good Practice A.3</b>	<p><b><i>Other Institutional Arrangements</i></b></p> <ol style="list-style-type: none"> <li>a. <b>Whether non-bank credit institutions are supervised by a financial supervisory agency, the allocation of resources between financial supervision and consumer protection should be adequate to enable their effective implementation.</b></li> <li>b. <b>The judicial system should ensure that the ultimate resolution of any dispute regarding a consumer protection matter with a non-bank credit institution is affordable, timely and professionally delivered.</b></li> <li>c. <b>The supervisory authority for non-bank credit institutions should encourage media and consumer associations to play an active role in promoting consumer protection regarding non-bank credit institutions.</b></li> </ol>
<b>Description</b>	<p>While the prudential supervision of non-bank credit institutions is lacking capacity to properly supervise the market, there is no consumer protection of customers of non-bank credit institutions besides the overall responsibility for complaints handling at the GPI department of the BdM.</p> <p>The judicial system is apparently slow and especially for low income customers of non-bank</p>

	<p>credit institutions can also be prohibitively costly. Reportedly, there has not been a case yet brought by a consumer against a non-bank credit institution. However, several experts pointed out that there might be questionable debt collection practices against which consumers should be protected. These reported unfair and aggressive practices include a strong push for collection, for example through trying to collect from relatives that are not officially a party to the contract or immediate collection of pledged property without any option to renegotiate the loan.</p> <p>There is no support provided by the BdM to the media or to the consumer associations to strengthen their role in the protection of non-bank credit institutions clients.</p>
<b>Recommendation</b>	<p>The BdM should implement institutional changes as proposed in the banking section of this overview that would allow it to properly conduct its consumer protection responsibilities.</p> <p>The BdM should provide the media and consumer organizations with real-life case studies about consumer treatment in financial institutions with advice on how to deal with the unfair or abusive treatment.</p>
<b>Good Practice A.4</b>	<p><b><i>Registration of Non-Bank Credit Institutions</i></b></p> <p><b>All financial institutions that extend any type of credit to households should be registered with a financial supervisory authority.</b></p>
<b>Description</b>	<p>The Microfinance Regulation as established through Decree 57/2004 defines two major types of non-bank credit institutions in terms of the regulatory approach of the BdM. The first group, consisting of micro-banks and credit cooperatives, faces full-scale prudential supervision, focused primarily on their stability, with a regime equal to the supervisory regime of fully licensed banks.</p> <p>The second group of microfinance institutions (savings and credit organizations, microcredit operators, and deposit intermediaries) is only required to register with the BdM and report selected data for statistical purposes with no supervisory oversight.</p> <p>Informal financial service providers are not required to register with the BdM. If operated as companies, they would be registered in the Commercial Registry<sup>224</sup>.</p>
<b>Recommendation</b>	<p>All non-bank credit institutions, i.e. any institution that provides credit to or collects deposits from the public should be licensed and not only registered. The reason for the recommendation going beyond the scope of the Good Practice is that the BdM has very limited knowledge about the registered institutions and their stability as well as limited powers to enforce market conduct rules. The license requirements for the non-bank credit institutions that are currently only registered should be very light and should focus on the source of capital, elementary fit and proper verification of their management and sufficient operations systems. A license should be awarded for three years and regular reporting should be a condition for the automatic renewal of the license. The BdM should also have power to withdraw the license as necessary. There are 166 registered microfinance operators but many are inactive as they do not report data to the BdM. Therefore, the relicensing should not create an overburdening strain on the BdM's capacity.</p>
<b>SECTION B</b>	<b>DISCLOSURE AND SALES PRACTICES</b>
<b>Good Practice B.1</b>	<p><b><i>Information on Customers</i></b></p> <p><b>a. When making a recommendation to a consumer, a non-bank credit institution should gather, file and record sufficient information from the consumer to enable the institution to render an appropriate product or service to that consumer.</b></p>

<sup>224</sup> For details of corporate registration, see <http://www.acismoz.com/lib/services/publications/docs/Company%20Registration%20Ed%204%20ENG.pdf>

	<p><b>b. The extent of information the non-bank credit institution gathers regarding a consumer should:</b></p> <p>(i) be commensurate with the nature and complexity of the product or service either being proposed to or sought by the consumer; and</p> <p>(ii) enable the institution to provide a professional service to the consumer in accordance with that consumer’s capacity.</p>
<b>Description</b>	<p>There are no specific provisions in the law or regulations requiring providers to conduct such an assessment and keep records with information about the risk of the transaction, the nature and complexity of the product or service being sought by the consumer.</p> <p>Some microfinance institutions have detailed rules (and provide in-depth training to their loan officers) about verifying the creditworthiness of a potential client and selecting a proper product for him or her.</p> <p>However, most of the information collected stays with the loan officer in the client file and is not passed into a central database. Also, the amount of information to be collected (above the minimum standard of each non-bank credit institution) often depends on the individual loan officer.</p> <p>The larger and more established NBFIs, and experienced loan officers, offer in general suitable products to the clients, in a still limited range of loan products, not only for consumer protection/satisfaction purposes, but also to insure proper repayment. However, smaller and newer financial service providers may not, which may result in mis-selling and over-indebtedness of low income consumers.</p>
<b>Recommendation</b>	<p>The market conduct regulation applicable to non-bank credit institutions should include a requirement to properly conduct customer due diligence with the purpose of assessing his or her needs and offering the most suitable product. This is particularly important for the microfinance sector, where clients are not well equipped to assess the risks and characteristics of different product offerings.</p> <p>With regard to loans, non-bank credit institutions should at least be required to:</p> <ul style="list-style-type: none"> <li>• assess a borrower’s repayment capacity based on expected cash flows. Such assessment should shape the repayment schedule, including any necessary grace period before the first installment;</li> <li>• assess the need of the borrower for acquiring a credit life insurance, and provide accessible and understandable information about their credit life insurance offer.</li> </ul> <p>Once a credit bureau is established in Mozambique, the regulation should require all providers to consult the credit bureau about any outstanding debts and reciprocally provide information to the credit bureau in order to construct a solid credit information database over time.</p> <p>The customer due diligence process should be recorded and kept for a minimum of two years after the loan was repaid in full, and should have supporting documentation gathered to conduct such an assessment.</p>
<b>Good Practice B.2</b>	<p><b><i>Affordability</i></b></p> <p>a. When a non-bank credit institution makes a recommendation regarding a product or service to a consumer, the product or service it offers to that consumer should be in line with the need of the consumer.</p> <p>b. Sufficient information on the product or service should be provided to the consumer to enable him or her to select the most suitable and affordable product or service.</p> <p>c. When a non-bank credit institution offers a new credit product or service that</p>

	<b>significantly increases the amount of debt assumed by the consumer, the consumer's credit worthiness should be properly assessed.</b>
<b>Description</b>	<p>There is no regulation or self-regulation regarding affordability of the products offered by non-bank credit institutions.</p> <p>Offering credit products that the borrowers cannot afford increases the risk of over indebtedness. Over indebtedness and high cost of credit are becoming an issue in Mozambique. The BdM, consumer organizations as well as some financial institutions have voiced their concerns about the issues of over indebtedness, high cost of credit, predatory lending and usury. As the credit market in Mozambique is in an early stage of its development, the BdM is well positioned to limit most of the negative social impact of usury and over indebtedness.</p>
<b>Recommendation</b>	<p>The law on credit institutions and finance companies and the microfinance regulations decree 57/2004 should be updated in the medium term by the BdM to require non-bank credit institutions to assess client affordability and loan repayment capacity for products offered. The proposed AMOMIF Code of Conduct should also support the requirement that non-bank credit institutions act in the best interest of their consumers and AMOMIF should also provide guidance for mechanisms to verify affordability of products offered.</p> <p>The proposed AMOMIF Code of Conduct should also address the issue of guarantees required from customers and should ensure that the guarantee is adequate in relation to the credit extended.</p> <p>Total cost of credit must be evaluated. The discussion about usury is often limited to high interest rates but when evaluating the credit, other fees, commissions and tied products (e.g. compulsory life insurance) must also be taken into account to calculate the total cost of credit. The effective interest rate should then be the decisive factor in the evaluation of any credit.</p> <p>Business practices and contract conditions must also be taken into account. For regulatory and penal purposes, predatory lending may be defined as a practice of a lender deceptively convincing borrowers to agree to unfair and abusive loan terms, or systematically violating those terms in ways that make it difficult for the borrower to defend against. These unfair or abusive terms may include not only high effective interest rates but also guarantees with values significantly higher than the loan.</p> <p>Policy actions must limit the space available to predatory lenders. There are several actions the BdM could take – and these actions would need to be taken in harmony with one another. The key actions are<sup>225</sup>:</p> <ul style="list-style-type: none"> <li>• defining rules for market entry: lending money as a business (i.e. to generate profit) should be a licensed operation, with the BdM verifying the history of the managers and the source of capital to be used, also consumer credit intermediaries should be licensed and providing or intermediating consumer credit should be a criminal offense;</li> <li>• having sufficient regulatory power and capacity: all licensed credit providers must report to the BdM as required, failure to report or reporting false data should mean an automatic withdrawal of the license and a sizeable fine; the BdM must have sufficient staff to effectively deal with the credit providers and intermediaries;</li> <li>• setting relevant consumer disclosure: all clients must be provided with a true and easy-to-understand disclosure of the total cost of credit, repayment schedule and penalties in the case of late payment;</li> <li>• having relevant information: all credit providers should inform the BdM about the total cost of credit they provided in pre-defined types of products, the average rates should be published regularly by the BdM and consumers should be taught to</li> </ul>

<sup>225</sup> These recommendations refer to business practices more broadly but were included under Good Practice B.2. on Affordability because of its specific relevance for this section.

	<p>compare offered rates with average market rates;</p> <ul style="list-style-type: none"> <li>• supporting public awareness: develop financial education programs to equip people with the ability to evaluate the proposed credit with other options on the market and properly assess the costs as well as their repayment capability;</li> <li>• cooperating with consumer groups: the BdM should support and encourage consumer organizations to become active in three areas – report predatory lending practices, support consumers in lawsuits against predatory lenders, and participate in public awareness campaigns;</li> <li>• requiring that lenders act in good faith: all consumer credit providers and intermediaries should be required by law (with effective penalties set for breaking the law) to properly evaluate the suitability of the loan to the consumer (including his repayment ability) and offer the most advantageous product for the consumer;</li> <li>• setting maximum penalties: the law should set maximum penalties credit providers may charge for late payments to avoid a practice common in some countries where lenders are able to increase the money owed 2-3 times in several weeks through high penalties and late payment interest;</li> <li>• defining usury / predatory lending in the penal code: the penal code should be updated to define usury as a deceptive action or misuse of the borrower's situation or a lack of knowledge to convince him/her to agree to unfair or abusive loan terms, or systematically violating those terms in ways that make it difficult for the borrower to defend against; penalties should be strict enough to ensure general compliance with the rule;</li> <li>• prosecuting usury / predatory lending actively: an agreement of BdM, the police, the prosecutors and the judiciary should be reached that the cases of usury will be investigated and prosecuted actively and the BdM will support the government institutions with its technical expertise.</li> </ul>
<b>Good Practice B.3</b>	<p><b><i>Cooling-off Period</i></b></p> <ul style="list-style-type: none"> <li>a. <b>Unless explicitly waived by the consumer in writing, a non-bank credit institutions should provide the consumer a cooling-off period of a reasonable number of days immediately following the signing of an agreement between the institution and the consumer.</b></li> <li>b. <b>On his or her written notice to the non-bank credit institution during the cooling- off period, the consumer should be permitted to cancel or treat the agreement as null and void without penalty to the consumer of any kind.</b></li> </ul>
<b>Description</b>	<p>There is no legal right to a cooling-off period for non-bank loans.</p> <p>Cooling-off periods are usually introduced to combat aggressive selling of consumer loans.</p>
<b>Recommendation</b>	<p>A cooling-off period of, say, three to five days for consumer loans over a minimum duration could be a useful safeguard in allowing MFI consumers to withdraw from a loan agreement without penalty on repayment of all of the principal received.</p>
<b>Good Practice B.4</b>	<p><b><i>Bundling and Tying Clauses</i></b></p> <ul style="list-style-type: none"> <li>a. <b>As much as possible, non-bank credit institutions should avoid the use of tying clauses in contracts that restrict the choice of consumers.</b></li> <li>b. <b>In particular, whenever a borrower is required by a non-bank credit institution to purchase any product, including an insurance policy, as a pre-condition for receiving a loan, the borrower should be free to choose the provider of the product and this information should be made known to the borrower.</b></li> <li>c. <b>Also, whenever a non-bank credit institution contracts with a merchant as a</b></li> </ul>

	<b>distribution channel for its credit contracts, no exclusionary dealings should be permitted.</b>
<b>Description</b>	<p>There are no legal or regulatory provisions for the microfinance sector dealing with bundling, tying or other exclusionary dealings.</p> <p>Some MFIs impose compulsory savings to their clients, either before delivering the loan or constituted along the repayment periods. Those deposits, with no interest paid to the client constitute actually an individual guarantee fund that can be accessed in the case of the client's default. Some MFIs allow their clients to use the deposits to pay their last installments. In this case, or when clients are free to withdraw their savings, the saving obligation may actually be considered a benefit improving the financial situation of the client.</p> <p>Credit life insurance is not sold by all MFIs, but the ones offering it have made it compulsory for all their clients. Many clients may consider the credit life insurance, as an attractive offer and use it as the first insurance product they will take if available.<sup>226</sup> Other compulsory insurance includes the insurance of vehicles and equipment, and it is usually sub-contracted to a pre-selected insurance company, as the insurance law limits the activity to insurance companies and registered brokers and agents.</p>
<b>Recommendation</b>	<p>The Microfinance Regulation (Decree 57/2004) should specifically allow NBFIs to collect savings for guarantee purpose, together with the obligation to provide remuneration on those savings. Those savings must be available to the clients after paying off their loan, or under certain conditions and only if explained to clients, to pay off an installment.</p> <p>When offering credit life insurance, MFIs must provide a clear explanation of the costs and benefits of the insurance to their clients and the BdM should monitor the insurance rates to ensure the insurance offered is competitive compared to similar offers on the market from a non-linked insurance provider.</p> <p>When requesting other compulsory insurance, the NBFIs should provide a comparative list of prices by at least three insurance companies and/or a list of insurance companies and respective contacts. The client must be informed that he can choose whatever insurance company he prefers. This provision should not prohibit the MFIs to become an agent for a specific insurance company and negotiate better prices for its clients, as allowed in the new insurance legislation.</p>
<b>Good Practice B.5</b>	<p><b>Key Facts Statement</b></p> <ol style="list-style-type: none"> <li><b>a. Non-bank credit institutions should have a Key Facts Statement for each type of account, loan or other products or services.</b></li> <li><b>b. The Key Facts Statement should be written in plain language, summarizing in a page or two the key terms and conditions of the specific financial product or service, and allowing consumers the possibility of easily comparing products offered by different institutions.</b></li> </ol>
<b>Description</b>	There is no regulation or self-regulation regarding Key Fact Statements for the products offered by non-bank credit institutions.
<b>Recommendation</b>	<p>Key Fact Statements should be required by law for all financial products. The BdM should develop the prescribed form in cooperation with the AMB, AMOMIF and consumer organizations and establish the form through a BdM Notice. Before the regulation requiring Key Fact Statements is issued, the format for the statements should be thoroughly tested for understandability by typical clients.</p> <p>As part of their standard business practices, all non-bank credit institutions should be required by law to furnish consumers with a simple, easy-to-understand and comparable Key Facts Statement that describes in a concise manner the total cost of each product being offered</p>

<sup>226</sup> Market research for introducing micro-insurance products in a Mozambican MFI Tchuma, S. Teyssier, 2010.

	<p>(using formulas and key terminology prescribed by the BdM) and the main terms and conditions of the product, including, for example, any requirement for compulsory credit life insurance.</p> <p>With regard to the total cost of credit, the BdM should require that all bank and non-bank credit institutions use the same formula approved by the BdM to calculate the effective interest rate to make competing products comparable. Compulsory savings should be excluded from the calculation of the effective interest rate to make offers comparable but clients should be made aware of the additional expense. Effective deposit interest rates should be also calculated with a formula defined by the BdM.</p>
<b>Good Practice B.6</b>	<p><b><i>Advertising and Sales Materials</i></b></p> <ul style="list-style-type: none"> <li><b>a. Non-bank credit institutions should ensure that their advertising and sales materials and procedures do not mislead customers.</b></li> <li><b>b. All advertising and sales materials should be easily readable and understandable by the general public.</b></li> <li><b>c. Non-bank credit institutions should be legally responsible for all statements made in advertising and sales materials (i.e. be subject to the penalties under the law for making any false or misleading statements).</b></li> </ul>
<b>Description</b>	Non-bank credit institutions are legally responsible for statements made in their advertising and sales materials by the Civil Code (Articles 483 to 498 on Civil Liability) and the Code on Advertisement, with the Article 9 of the Code of Advertising forbidding misleading advertising.
<b>Recommendation</b>	<p>Since a potential conflict arises by reason of the fact that the Advertising Code, Law 22/09 and Notice 5 all contain provisions on misleading advertising with different enforcement authorities, in place of all of these, the statutory obligations on financial service providers in respect of their advertisements should be restricted to provisions contained in an expanded and amended Law 15/99, with the BdM thereby becoming the monitoring and enforcement authority in these respects.</p> <p>Regulation should be amended to ensure that advertising of credit always shows the effective interest rate as prominently as any other information about interest rate or cost of credit and that a BdM-approved formula to calculate the effective interest rate is used.</p> <p>Consumer agencies should be actively encouraged to monitor sales and advertising materials of non-bank credit institutions and report to BdM those that may not be in line with the rules prohibiting misleading advertising.</p>
<b>Good Practice B.7</b>	<p><b><i>General Practices</i></b></p> <p><b>Specific rules on disclosure and sales practices should be included in the non-bank credit institutions' code of conduct and monitored by the relevant supervisory authority.</b></p>
<b>Description</b>	There is currently no code of conduct for non-bank credit institutions but AMOMIF is discussing developing one.
<b>Recommendation</b>	<p>AMOMIF should develop a microfinance code of conduct that would define rules for fair, comparable and easy-to-understand disclosure and prohibit unfair and aggressive business practices. The rules should be in line with the proposals of this report and the BdM as well as consumer organizations should be invited to discuss them before the code of conduct is approved.</p> <p>AMOMIF should also promote the code of conduct as the industry standard and the BdM should encourage non-members of AMOMIF to adopt the rules as well.</p> <p>All consumer credit providers and intermediaries should be required by law (with effective penalties set for breaking the law) to properly evaluate the suitability of the loan to the consumer (including his repayment ability) and offer the most advantageous product for the</p>

	consumer. The rules should be included into the Microfinance Regulation (Decree 57/2004).
<b>Good Practice B.8</b>	<p><b><i>Disclosure of Financial Situation</i></b></p> <ul style="list-style-type: none"> <li>a. The relevant supervisory authority should publish annual public reports on the development, health, strength and penetration of the non-bank credit institutions, either as a special report or as part of the disclosure and accountability requirements under the law that governs these.</li> <li>b. Non-bank credit institutions should be required to disclose their financial information to enable the general public to form an opinion regarding the financial viability of the institution.</li> </ul>
<b>Description</b>	Many microfinance institutions registered with the BdM do not provide the supervisory authority with the required reporting.
<b>Recommendation</b>	<p>Proper and reliable reporting should be made a prerequisite for the renewal of the financial institution license (see A.4 above for details). The BdM and AMOMIF should work together to unify reporting requirements and if needed, AMOMIF could become responsible for collecting and analyzing data for the microfinance industry on behalf of the BdM, if it develops sufficient capacity.</p> <p>Information published for non-bank credit institutions and the sector in general could include: number of borrowers, depositors, total deposits, total loan portfolio, portfolio at risk, average interest rates for different types of loans and savings accounts (as defined by the BdM), geographic coverage, total assets and liabilities, number of employees.</p>
<b>SECTION C</b>	<b>CUSTOMER ACCOUNT HANDLING AND MAINTENANCE</b>
<b>Good Practice C.1</b>	<p><b><i>Statements</i></b></p> <ul style="list-style-type: none"> <li>a. Unless a non-bank credit institution receives a customer's prior signed authorization to the contrary, the non-bank credit institution should issue, and provide the customer with, a monthly statement regarding every account the non-bank credit institution operates for the customer.</li> <li>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.</li> <li>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.</li> <li>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.</li> <li>e. A non-bank credit institution should notify a customer of long periods of inactivity of any account of the customer and provide reasonable final notice in writing to the customer if the funds are to be transferred to the government.</li> <li>f. When a customer signs up for paperless statements, such statements should be in an easy-to-read and readily understandable format.</li> </ul>
<b>Description</b>	The non-supervised NBFIs are not allowed to collect deposits, so only those authorized to do so (banks, microbanks and cooperatives under the supervision of the BdM) are required to provide account statements for their respective deposit accounts <sup>227</sup> and as they fall under the banking law, they should follow the same obligations as other banks (for further details, see the corresponding Good Principle in the banking section).

<sup>227</sup> See Notice 5/2009, Article 4b

	<p>Some MFIs provide their clients with a copy of the contract and the necessary details (loan amount, duration, interest rate, installment value, total interest to be paid, and installment calendar with the loan balance after each payment). Savings, when existing, are often registered in booklets. However, there is no regulation regarding what information and in what form should be provided to clients.</p>
<b>Recommendation</b>	<p>When issuing a loan, all NBFIs should provide their clients with a copy of the contract and the necessary details (loan amount, duration, effective interest rate, installment, total amount to be paid, and installment calendar with the loan balance after each payment). The format of this disclosure should be prescribed by the BdM and should be tested for understandability by focus groups.</p> <p>The deposit taking NBFIs should also provide their clients a monthly statement with the information on their deposit/savings accounts: movements (date and value, deposit or withdrawal), and balance, unless all the movements and balances are registered on specific booklets in the hand of the clients.</p>
<b>Good Practice C.2</b>	<p><b><i>Notification of Changes in Interest Rates and Non-Interest Charges</i></b></p> <p><b>a. A customer of a non-bank credit institution should be notified in writing by the non-bank credit institution of any change in:</b></p> <p style="padding-left: 40px;"><b>(i) the interest rate to be paid or charged on any account of the customer as soon as possible; and</b></p> <p style="padding-left: 40px;"><b>(ii) a non-interest charge on any account of the customer a reasonable period in advance of the effective date of the change.</b></p> <p><b>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.</b></p> <p><b>c. The non-bank credit institution should inform the customer of the foregoing right whenever a notice of change under paragraph a. is made by the institution.</b></p>
<b>Description</b>	<p>There are no such provisions in the law or the regulations covering microfinance services providers. It is not a practice in the microfinance sector to provide such an advance notice when prices are being changed, especially due to the short-term nature of microlending. Also, unlike most banks that rely on variable interest rates and unilateral changes of interest or fees, microfinance operators usually offer fixed-rate deposits and loans.</p>
<b>Recommendation</b>	<p>The regulation should be updated to require the institution to inform its clients about planned changes in fees or interest rates at least a month in advance. If the client disagrees with the changes, he should have the right to repay the loan, withdraw his deposits or cancel his contract without any penalties within one month after the announcement about upcoming changes was made. The client should also be explicitly informed about his right to do so.</p>
<b>Good Practice C.3</b>	<p><b><i>Customer Records</i></b></p> <p><b>a. A non-bank credit institution should maintain up-to-date records in respect of each customer of the non-bank credit institution that contain the following:</b></p> <p style="padding-left: 40px;"><b>(i) a copy of all documents required to identify the customer and provide the customer's profile;</b></p> <p style="padding-left: 40px;"><b>(ii) the customer's address, telephone number and all other customer contact details;</b></p> <p style="padding-left: 40px;"><b>(iii) any information or document in connection with the customer that has been prepared in compliance with any statute, regulation or code of conduct;</b></p> <p style="padding-left: 40px;"><b>(iv) details of all products and services provided by the non-bank credit institution to the customer;</b></p> <p style="padding-left: 40px;"><b>(v) a copy of all correspondence from the customer to the non-bank credit institution and vice-versa and details of any other information provided to</b></p>

	<p>the customer in relation to any product or service offered or provided to the customer;</p> <p>(vi) all documents and applications of the non-bank credit institution completed, signed and submitted to the non-bank credit institution by the customer;</p> <p>(vii) a copy of all original documents submitted by the customer in support of an application by the customer for the provision of a product or service by the non-bank credit institution; and</p> <p>(viii) any other relevant information concerning the customer.</p> <p>b. A law or regulation should provide the minimum permissible period for retaining all such records and, throughout this period, the customer should be provided ready free access to all such records.</p>
<b>Description</b>	<p>Most MFIs have archives of customers' files with basic information. However, many Mozambican citizens still do not have proper IDs, although the range of IDs acceptable for identification when providing financial services has been increased to include election cards and testimonies.</p> <p>Organization of the archive is often quite complex as it combines paper files and computer files, and most MFIs lack a proper information system to deal with the records.</p>
<b>Recommendation</b>	<p>NBFIs should be encouraged and supported to get an adequate information system where personal information regarding their clients and the transactions made with them should be easily available. Client files with all required documentation should be kept for five years.</p> <p>With the new technologies available at relatively low costs, biometric banking IDs could be an option to overcome the diversity of official IDs (and therefore reference number) clients can get.</p>
<b>Good Practice C.4</b>	<p><i>Credit Cards</i></p> <p>a. There should be clear rules on the issuance of credit cards and related customer disclosure requirements.</p> <p>b. Non-bank credit institutions, as credit card issuers, should ensure that personalized disclosure requirements are made in all credit card offers, including fees and charges (including finance charges), credit limit, penalty interest rates and method of calculating the minimum monthly payment.</p> <p>c. Non-bank credit institutions should not be permitted to impose charges or fees on pre-approved credit cards that have not been accepted by the customer.</p> <p>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.</p> <p>e. Among other things, the rules should also:</p> <ul style="list-style-type: none"> <li>(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;</li> <li>(ii) require reasonable notice of changes in fees and interest rates increase;</li> <li>(iii) prevent the application of new higher penalty interest rates to the entire existing balance, including past purchases made at a lower interest rate;</li> <li>(iv) limit fees that can be imposed, such as those charged when consumers exceed their credit limits;</li> <li>(v) prohibit a practice called —double-cycle billing— by which card issuers charge interest over two billing cycles rather than one;</li> <li>(vi) prevent credit card issuers from allocating monthly payments in ways that maximize interest charges to consumers; and</li> <li>(vii) limit up-front fees charged on sub-prime credit cards issued to individuals with bad credit.</li> </ul> <p>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</p>

	<p>made clear to the customer prior to his or her acceptance of the credit card.</p> <p><b>g. Non-bank credit institutions and issuers should conduct consumer awareness programs on the misuse of credit cards, credit card over-indebtedness and prevention of fraud.</b></p>
<b>Description</b>	Non-bank credit institutions do not issue credit cards in Mozambique so far.
<b>Recommendation</b>	No recommendation.
<b>Good Practice C.5</b>	<p><b><i>Debt Recovery</i></b></p> <p><b>a. All non-bank credit institutions, agents of a non-bank credit institutions and third parties should be prohibited from employing any abusive debt collection practice against any customer of the non-bank credit institution, including the use of any false statement, any unfair practice or the giving of false credit information to others.</b></p> <p><b>b. The type of debt that can be collected on behalf of a non-bank credit institution, the person who can collect any such debt and the manner in which that debt can be collected should be indicated to the customer of the non-bank credit institution when the credit agreement giving rise to the debt is entered into between the non-bank credit institution and the customer.</b></p> <p><b>c. A debt collector should not contact any third party about a non-bank credit institution customer's debt without informing that party of the debt collector's right to do so; and (ii) the type of information that the debt collector is seeking.</b></p> <p><b>d. Where sale or transfer of debt without borrower consent is allowed by law, the borrower should be:</b></p> <p style="padding-left: 40px;"><b>(i) notified of the sale or transfer within a reasonable number of days;</b></p> <p style="padding-left: 40px;"><b>(ii) informed that the borrower remains obligated on the debt; and</b></p> <p style="padding-left: 40px;"><b>(iii) provided with information as to where to make payment, as well as the purchaser's or transferee's contact information.</b></p>
<b>Description</b>	<p>There are no legal provisions on debt collection practices.</p> <p>There is also no central registry of guarantees pledged for loans and as over indebtedness becomes an issue in certain urban markets, many credit institutions rush to recover debt as soon as there is any delay in payment as clients may use the same guarantee for several loans. There is a strong incentive to collect outstanding debt as the first institution.</p>
<b>Recommendation</b>	<p>The BdM in cooperation with AMB and AMOMIF should develop debt recovery rules, including defining and prohibiting abusive collection practices. The rules can be either established as a self-regulatory initiative or if needed, defined by a newly drafted law.</p> <p>The law that would allow private credit bureaus to be established should require that credit information includes information on guarantees provided for a loan.</p>
<b>SECTION D</b>	<b>PRIVACY AND DATA PROTECTION</b>
<b>Good Practice D.1</b>	<p><b><i>Confidentiality and Security of Customers' Information</i></b></p> <p><b>a. The financial transactions of any customer of a non-bank credit institution should be kept confidential by the institution.</b></p> <p><b>b. The law should require non-bank credit institutions to ensure that they protect the confidentiality and security of personal data of their customers against any anticipated threats or hazards to the security or integrity of such information, and against unauthorized access.</b></p>
<b>Description</b>	Law 15/99 requires in Article 48 that information about consumers is kept confidential, offering basic protection for customer information. However, there is no data protection law that would clearly define liability for misuse of personal data.
<b>Recommendation</b>	A personal data protection law should be enacted, drawing on international guidelines such as

	<p>the OECD Guidelines on the Protection of Privacy and Trans-border Flows of Personal Data<sup>228</sup> or the APEC Privacy Framework.<sup>229</sup> The BdM should ensure the rules relate to clients of financial institutions.</p> <p>For the summary of the guidelines and the possible introduction of a Personal Data Protection Law, see D.1 in the Banking section of this report.</p>
<b>Good Practice D.2</b>	<p><b><i>Credit Reporting</i></b></p> <ol style="list-style-type: none"> <li>a. Credit reporting should be subject to appropriate oversight, with sufficient enforcement authority.</li> <li>b. The credit reporting system should have accurate, timely and sufficient data. The system should also maintain rigorous standards of security and reliability.</li> <li>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.</li> <li>d. Proportionate and supportive consumer rights should include the right of the consumer <ol style="list-style-type: none"> <li>(i) to consent to information-sharing based upon the knowledge of the institution's information-sharing practices;</li> <li>(ii) to access his or her credit report free of charge (at least once a year), subject to proper identification;</li> <li>(iii) to know about adverse action in credit decisions or less-than-optimal conditions/prices due to credit report information;</li> <li>(iv) to be informed about all inquiries within a period of time, such as six months;</li> <li>(v) to correct factually incorrect information or to have it deleted and to mark (flag) information that is in dispute;</li> <li>(vi) to reasonable retention periods of credit history; and</li> <li>(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.</li> </ol> </li> <li>e. The credit registers, regulator and associations of non-bank credit institutions should undertake campaigns to inform and educate the public on the rights of consumers in the above respects, as well as the consequences of a negative personal credit history.</li> </ol>
<b>Description</b>	For analysis of the current state of credit reporting, please see the Credit Reporting Annex 1 to this report.
<b>Recommendation</b>	For recommendations related to improvements of the credit reporting system, please see the Credit Reporting Annex 1 to this report.
<b>SECTION E</b>	<b>DISPUTE RESOLUTION MECHANISM</b>
<b>Good Practice E.1</b>	<p><b><i>Internal Complaints Procedure</i></b></p> <p><b>Complaint resolution procedures should be included in the non-bank credit institutions' code of conduct and monitored by the supervisory authority.</b></p>
<b>Description</b>	All credit institutions and finance companies licensed under the law 15/99 must follow the Notice 4/2009 on complaints handling. According to the Article 4a, all financial institutions must create a unit for complaints handling, information requests and suggestions. According to the Article 4c, all financial institutions must also establish an internal policy and corresponding regulation for services to the public and send copies of these to the BdM.

<sup>228</sup> See the text at [http://www.oecd.org/document/18/0,3746,en\\_2649\\_34223\\_1815186\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/18/0,3746,en_2649_34223_1815186_1_1_1_1,00.html)

<sup>229</sup> See the text at <http://www.apec.org/About-Us/About-APEC/Fact-Sheets/APEC-Privacy-Framework.aspx>

	However, the above-mentioned notice applies only to non-bank credit institutions which operate under a microbank or a credit cooperative license. Moreover, as there is no code of conduct for non-bank credit institutions, there are no industry-wide rules regarding complaint handling.
<b>Recommendation</b>	While complaints handling could become a part of the planned AMOMIF code of conduct, the BdM should extend the validity of Notice 4/2009 to all financial institutions, including microfinance operators.  See recommendation E.1. of the banking section for suggested detail for internal complaints resolution procedures.
<b>Good Practice E.2</b>	<b><i>Formal Dispute Settlement Mechanisms</i></b> <ol style="list-style-type: none"> <li>a. A system should be in place that allows consumers to seek affordable and efficient third-party recourse, such as an ombudsman, in the event the complaint with the non-bank credit institution is not resolved to the consumer's satisfaction in accordance with internal procedures.</li> <li>b. The role of an ombudsman or equivalent institution in dealing with consumer disputes should be made known to the public.</li> <li>c. The ombudsman or equivalent institution should be impartial and act independently from the appointing authority, the industry and the parties to the dispute.</li> <li>d. The decisions of the ombudsman or equivalent institution should be binding upon non-bank credit institutions. The mechanisms to ensure the enforcement of these decisions should be established and publicized.</li> </ol>
<b>Description</b>	There is no out-of-court external dispute resolution mechanism available for microfinance customers. The only formal dispute resolution mechanisms are within the Mozambican judicial system, which seems inadequate for this type of clientele and their small claims.
<b>Recommendation</b>	The BdM could consider creating an ombudsman for all financial services in the long term to assist with effective and fast settlement of consumer claims.  In the meantime, AMOMIF (possibly in cooperation with one of the consumer organizations) could introduce a mediation service that would try to settle disputes between microfinance clients and the MFIs through a jointly agreed solution. The industry-based examples to study could be the French, Croatian, Estonian, Latvian insurance ombudsman, the German, Polish or Slovak banking ombudsman, as well as the South African Banking, Credit, Long-Term Insurance and Short-Term Insurance ombudsmen.
<b>SECTION F</b>	<b>CONSUMER EMPOWERMENT</b>
<b>Good Practice F.1</b>	<b><i>Broadly based Financial Capability Program</i></b> <ol style="list-style-type: none"> <li>a. A broadly based program of financial education and information should be developed to increase the financial capability of the population.</li> <li>b. A range of organizations—including government, state agencies and non-governmental organizations—should be involved in developing and implementing the financial capability program.</li> <li>c. The government should appoint an institution such as the central bank or a financial regulator to lead and coordinate the development and implementation of the national financial capability program.</li> </ol>
<b>Description</b>	For information on various initiatives and stakeholder involvement, see the Financial Education Annex of this report.
<b>Recommendation</b>	For recommendations, see the Financial Education Annex of this report.
<b>Good Practice F.2</b>	<b><i>Using a Range of Initiatives and Channels, including the Mass Media</i></b>

	<ul style="list-style-type: none"> <li>a. A range of initiatives should be undertaken by the relevant authority to improve the financial capability of the population, and especially from low-income communities.</li> <li>b. The mass media should be encouraged by the relevant authority to provide financial education, information and guidance to the public, including on non-bank credit institutions and the products and services they offer.</li> <li>c. The government should provide appropriate incentives and encourage collaboration between governmental agencies, the supervisory authority for non-bank credit institutions, the associations of non-bank credit institutions and consumer associations in the provision of financial education, information and guidance to consumers.</li> </ul>
<b>Description</b>	For information on distribution channels, see the Financial Education Annex of this report.
<b>Recommendation</b>	For recommendations, see the Financial Education Annex of this report.
<b>Good Practice F.3</b>	<p><i>Unbiased Information for Consumers</i></p> <ul style="list-style-type: none"> <li>a. Consumers, especially the most vulnerable, should have access to sufficient resources to enable them to understand financial products and services available to them.</li> <li>b. Supervisory authorities and consumer associations should provide, via the internet and printed publications, independent information on the key features, benefits and risks – and, where practicable, the costs – of the main types of financial products and services, including those offered by non-bank credit institutions.</li> <li>c. The relevant authority should adopt policies that encourage non-government organizations to provide consumer awareness programs to the public regarding financial products and services, including those offered by non-bank credit institutions.</li> </ul>
<b>Description</b>	For tools that support understanding of financial information, see the Financial Education Annex of this report.
<b>Recommendation</b>	For recommendations, see the Financial Education Annex of this report.
<b>Good Practice F.4</b>	<p><i>Consulting Consumers and the Financial Services Industry</i></p> <p>The relevant authority should consult consumer associations and associations of non-bank credit institutions to help the authority develop financial capability programs that meet the needs and expectations of financial consumers, especially those served by non-bank credit institutions.</p>
<b>Description</b>	For information on consumer involvement, see the Financial Education Annex of this report.
<b>Recommendation</b>	For recommendations, see the Financial Education Annex of this report.
<b>Good Practice F.5</b>	<p><i>Financial Capability Should Be Measured and Financial Capability Initiatives Properly Evaluated.</i></p> <ul style="list-style-type: none"> <li>a. Policymakers, industry and consumer advocates should understand the financial capability of various market segments, particularly those most vulnerable to abuse.</li> <li>b. The financial capability of consumers should be measured, amongst other things, by broadly based household surveys that are repeated from time to time.</li> <li>c. The effectiveness of key financial capability initiatives should be evaluated by the relevant authority from time to time.</li> </ul>
<b>Description</b>	For information on various initiatives, their mapping and evaluation, see the Financial Education Annex of this report.
<b>Recommendation</b>	For recommendations, see the Financial Education Annex of this report.

## ANNEX I: CONSUMER PROTECTION IN CREDIT REPORTING

**Credit information in Mozambique is stored at the Central Credit Registry.** The credit registry was originally established under the Law 15/99 on Credit Institutions and Finance Companies to provide the central bank relevant information for prudential supervisory purposes. The system is organized in a manner that allows banks and financial institutions participating in the system to access information from the CCR. A total number of 21 institutions participate currently in the system, all of them regulated.

**Information contained in the CCR is collected on a mandatory basis and consumers are not aware of such data collection.** Information in the CCR is collected on individuals and corporations and it is updated by banks on a monthly basis and is not digitalized, therefore the system still relies heavily on paper. Even if data is collected from consumers for supervisory purposes, consumers should be aware that such data is being accessed by a financial institution. The General Principles on Credit Reporting issued by the World Bank in November 2011 are clear regarding the need to enable consumers access and challenge their credit data when information is distributed among different participants.

**Under the laws of Mozambique there is no consumer protection law for financial services and no data protection law has been issued.** The Constitution of Mozambique recognizes the right to access computerized data<sup>230</sup>. Finally the Notice 7/20003 issued by the Bank of Mozambique establishes deadlines to credit reporting data providers regarding the correction of inaccurate data. However further details regarding how the complaints from consumers should be submitted and whether they can be submitted to the Bank of Mozambique or to the different data providers should be considered. Also it would be relevant to allow consumers to submit the complaints electronically enabling those located in remote areas not to travel to the Bank of Mozambique premises.

**Although there are no formal policies and procedures regarding consumer's claims on credit information, the Bank of Mozambique solves those complaints through an internal unit (GPI).** A large number of complaints are received once a consumer has been rejected a credit and refer to inaccurate information held in the CCR. Due to the lack of adequate policies and procedures in place complaints are solved on a case by case basis involving great amount of resources from the Bank of Mozambique. The establishment of a streamlined procedure to solve claims according to international practices regarding data protection rights will enable a more efficient use of the resources. This process should also include a notification to all those users that have accessed the information in the previous months informing them on the updates resulting from consumers' claims.

**The Bank of Mozambique is currently leading efforts towards the establishment of credit reporting system operated by the private sector including credit information from other institutions.** The system will include additional information on consumers (data subjects) from different institutions (e.g. MFI's, telecommunication institutions, retailers) which fall under the regulation of different supervisory authorities.

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<sup>230</sup> Article 71 of the Constitution of Mozambique. 1. The use of computerised means for recording and processing individually identifiable data in respect of political, philosophical or ideological beliefs, of religious faith, party or trade union affiliation or private lives, shall be prohibited.

2. The law shall regulate the protection of personal data kept on computerised records, the conditions of access to data banks, and the creation and use of such data banks and information stored on computerised media by public authorities and private entities.

3. Access to data bases or to computerised archives, files and records for obtaining information on the personal data of third parties, as well as the transfer of personal data from one computerised file to another that belongs to a distinct service or institution, shall be prohibited except in cases provided for by law or by judicial decision.

4. All persons shall be entitled to have access to collected data that relates to them and to have such data rectified

**A draft law for private credit bureau has been prepared by the BdM and is currently disseminated for public comments.** The World Bank has been requested to review the draft law as part of these public consultations. The evolution of such a law should be monitored to ensure that the law covers consumers' rights regarding credit information such as: a) information b) access and c) challenge inaccurate data. The laws should establish clear guidelines involving credit reporting service providers, credit reporting data providers and users in the process of information, access and data challenge. In addition the law should establish an adequate mechanism (judicial or extra-judicial) for dispute resolution between the different participants in the system.

**Authorities could consider the World Bank's General Principles for Credit Reporting<sup>231</sup> and the Good Practices below as tools to guide the design and adoption of an adequate consumer protection environment for credit reporting.** In particular, General Principle IV from the document and the discussion including existing dispute mechanisms and approaches to data protection and privacy in different countries worldwide would benefit the authorities in this process. GP IV relates to legal and regulatory framework for credit reporting while also includes guidelines on consumer protection considering different approaches to privacy and establishing criteria for the adoption of consumers' rights. In addition the recommendations for oversight contained in such a document can also guide the establishment of an oversight function in Mozambique including the role of authorities regarding consumer protection for credit reporting.

### ***Key Legal Provisions Related to Credit Reporting***

The Constitution of Mozambique

Article 71- 1. The use of computerised means for recording and processing individually identifiable data in respect of political, philosophical or ideological beliefs, of religious faith, party or trade union affiliation or private lives, shall be prohibited.

2. The law shall regulate the protection of personal data kept on computerised records, the conditions of access to data banks, and the creation and use of such data banks and information stored on computerised media by public authorities and private entities.

3. Access to data bases or to computerised archives, files and records for obtaining information on the personal data of third parties, as well as the transfer of personal data from one computerised file to another that belongs to a distinct service or institution, shall be prohibited except in cases provided for by law or by judicial decision.

4. All persons shall be entitled to have access to collected data that relates to them and to have such data rectified

### **Law 15/99 on Credit Institutions and Finance Companies as amended by Law 9/2004**

There are two key provisions, with the Article 76 being the base of existence for the Central Credit Registry and the Article 50 that would allow credit institutions even under existing legislation to form their own credit bureau (however, all non-credit institutions would be excluded).

ARTICLE 76 (Centralisation of credit risks)

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<sup>231</sup> General Principles for Credit Reporting, The World Bank, 2011. The document is available at [www.worldbank.org/paymentsystems](http://www.worldbank.org/paymentsystems).

The Bank of Mozambique shall promote the centralisation of information regarding lending and investment risks, which can be made available to credit institutions and finance companies in accordance with the terms of specific regulations.

ARTICLE 50 (Information about risk)

Independently of provisions established in regard to the centralisation of information about credit risks, credit institutions may organise a confidential system of reciprocal information to guarantee the security of operations.

**Notice 7/2003 on the Credit Registry**

The Notice 7/2003 provides rules of operation for the Central Credit Registry. Some of the key provisions from the consumer protection point of view include:

**responsibility of the credit institution for the information provided:** Article 9, paragraph 2 (“The information contained in the Central Credit Registry and disclosed by the Bank of Mozambique under this regulation is the sole responsibility of the participating entities that have submitted it for a request for information.”)

**clear deadlines for complaints handling:** Article 11, paragraph 2 (“The participating entities have 10 days to clarify complaints from beneficiaries or potential beneficiaries of credit pursuant to the preceding.”)

**requirement to ensure any mistakes are corrected as soon as possible:** Article 13 (“Always when a participating entity, by itself or through the solicitation of an interested beneficiary of credit, verifies that there has been an omission or lapse in any communication of information, in the past or present, it is obliged to carry out the respective correction, remitting to this end all necessary communication to the Bank of Mozambique so that it can be processed in the following periodic centralization.”).

**the right of access to information:** Article 10 (“The beneficiaries or potential beneficiaries of credit are entitled to take notice of what information referring to them is contained in the Central Credit Registry at the participating entity/entities where they hold, or already held credit or at which they have submitted a request for a credit.”).

***Other International Standards***

General Principles for Credit Reporting, The World Bank, November 2011. These Standards result from the consensus of a Task Force led by the World Bank with the support of the Bank for International Settlements that held discussions during a period of 18 months until the final Standards were drafted and approved by the members. They represent the only existing International Standards in the Credit Reporting area and include not only principles but guidelines, supporting text, roles of the different parties and recommendations on adequate oversight function.

### Comparison with Good Practices for Credit Reporting Systems

SECTION A	PRIVACY AND DATA PROTECTION
Good Practice A.1	<p><b>Consumer Rights in Credit Reporting</b></p> <p>Laws and regulations should require basic consumer rights. These rights may include:</p> <ol style="list-style-type: none"> <li>a. The right of the consumer to consent to information-sharing based upon the knowledge of the institution's information-sharing practices.</li> <li>b. The right to access the credit report of the individual, subject to proper identification of that individual and free of charge (at least once a year).</li> <li>c. The right to know about adverse action in credit decisions or less-than-optimal conditions/prices due to credit report information. In this process, consumers should be provided with the name and address of credit bureau.</li> <li>d. The right to be informed about all inquiries within a period, such as six months.</li> <li>e. The right to correct factually incorrect information or to have it deleted.</li> <li>f. The right to mark (flag) information that is in dispute.</li> <li>g. The right to decide if the consumer's credit information (for purposes not related to the granting of credit) can be shared with third parties.</li> <li>h. The right to have sensitive information especially protected (not included in the credit report), such as race, political and philosophical views, religion, medical information, sexual orientation or trade union membership.</li> <li>i. The right to reasonable retention periods such as those for positive information (for example, at least two years) and negative information (for example, 5-7 years.)</li> <li>j. The right 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.</li> </ol>
Description	<p>The existing legal base for the operation of the Central Credit Registry provides inadequate protection for consumers both generally and for the purposes of Good Practice A.1. However, it should be pointed out that the Good Practices were developed for private credit bureaus and their application to the CCR is therefore limited as the primary function of the CCR is to provide supervision-related information to the BdM. With that caveat, specific concerns regarding the current credit reporting relate to:</p> <ul style="list-style-type: none"> <li>• <b>Disclosure to consumers.</b> There is no requirement for the consumer to consent, or even be told, that their information will be disclosed to the credit registry and shared with other credit institutions. There is also no provision for publication of the information sharing practices of the CCR. However, as the primary role of the CCR is to provide information to the supervisor, no consent should be needed to provide the information to the CCR. On the other hand, consumers need to be made aware that their information is being shared with other financial institutions.</li> <li>• <b>Information which can be collected.</b> Information that can be collected in the CCR is credit information, i.e. the information related to a credit contract as defined in Law 15/99, Art 2 d (Definições).</li> <li>• <b>Time period for holding information.</b> The information in the CCR may be held for 15 years for the reason of bank supervision purposes. There is no time limit for holding or using the information for providing individual credit reports.</li> <li>• <b>Notice of adverse credit report.</b> There is no requirement that a consumer be notified if a credit application is refused on the basis of a credit report or to be told that they can have access the relevant credit information file and seek correction of the information.</li> <li>• <b>Dispute about accuracy of information.</b> The CCR is required to correct information if</li> </ul>

	inaccurate or no longer valid, and there is a provision which gives the consumer a right to seek correction of information which he/she believes to be inaccurate, erroneous, or outdated. The request for correction must be dealt by the CCR within 10 days.
<b>Recommendations</b>	<p>As the new law on credit bureaus is currently being drafted, it should include all consumer rights as described in the Good Practice A.1. Besides these good practices and in line with the World Bank's General Principles for Credit Reporting, there are several other issues that should be defined by the new law:</p> <ul style="list-style-type: none"> <li>• Information on a credit information file should be limited to identification information and credit specific information such as details of credit reports which have been provided, current credit facilities and repayment history.</li> <li>• Disclosure of credit history information should be limited only to credit reports provided in response to a specific application for credit or for the purposes of collection of a debt which is overdue.</li> <li>• Recipients of credit reports should be able to use credit reports solely for the purpose of assessing an application for credit and to collect overdue payments. Any other uses of credit reporting should be legally limited as well and proper disclosure is necessary for consumers to understand these non-debt-related uses of credit history.</li> <li>• There should be no charge for a request for a review of information on a credit file, where there has been no such request in the previous 12 months.</li> <li>• There should be no charge for a request to review a file when the customer has been told that a credit request has been declined on the basis of information in that file.</li> </ul>
<b>SECTION B</b>	<b>CONSUMER EMPOWERMENT</b>
<b>Good Practice B.1</b>	<b><i>Unbiased Information for Consumers</i></b> <b>Financial regulators should provide, via the internet and printed publications, independent information for consumers that seek to improve their knowledge for actively managing the credit report.</b>
<b>Description</b>	No such information is currently provided.
<b>Recommendation</b>	Such information should be provided about the Central Credit Registry and the BdM should help design an information campaign before the new credit bureaus start their operations.
<b>Good Practice B.2</b>	<b><i>Awareness of Credit Reporting</i></b> <b>To ensure that financial consumer protection and educational initiatives are appropriate, it is necessary to measure financial capability with large-scale surveys that are repeated periodically. These surveys should include questions on credit reporting and scoring.</b>
<b>Description</b>	A financial capability survey is to be developed in 2012, with the support of the World Bank.
<b>Recommendation</b>	<p>The abovementioned survey is very important and should be undertaken. Consideration should be given to including questions as to the understanding of the implications of having personal information included in a credit bureau and of data protection rights. Subsequent surveys could then measure the effectiveness of financial awareness (and consumer protection) initiatives.</p> <p>The BdM should also assist the new credit bureaus in developing an information campaign before they start their operation. The BdM should also ensure disclosure materials adequately explain consumers' rights regarding information about their credit history, including access to the credit report and the right to challenge incorrect information.</p>

## ANNEX II: FINANCIAL EDUCATION

### *Introduction*

**Financial literacy is still at very low level among adult population.** Due to general low level of education and the absence of nearby or easily accessible formal financial services, a vast majority of Mozambican population does not know about banks or banking services. The 2009 FinScope Survey shows that a very large proportion (41.4%) of the adult population had either never heard of a bank (22.5%) or had heard about them but did not know what it was (18.9%). Considerably larger percentages did not know what some of the more basic products and services of banks were. The situation of rural population is even more severe, with less than half (48.6%) of rural adults knowing what a bank is and only negligible percentages aware of basic banking products or services. This can be explained by lower education, lack of public transport and long distances to the banks.

**There is a growing consensus that financial education is a priority since a lack of financial literacy and knowledge constrains the demand for and uptake of financial services, and limits the potential benefits of financial services.** Individuals and firms need information on financial services, together with the knowledge and motivation to use this information, in order to be able to make an informed selection and to fully benefit from those financial services that are available to them (although for many low income and rural individuals and firms this may still be a very restricted range of services).

**Different initiatives regarding Consumer Protection and Financial Education are under preparation or underway,** including notably: 1) BdM's Financial Education Campaign, prepared last year by GPI and awaiting full scale implementation; 2) National Directorate for Rural Development Promotion (Direcção Nacional para a Promoção do Desenvolvimento Rural, DNPDR) has implemented a national savings campaign; 3) the Ministry of Education has introduced basic financial concepts in the general curriculum, such as Portuguese and math; 4) National Institute for Education Development (Instituto Nacional de Desenvolvimento de Educação, INDE) is developing a proposal for education activities for children that could be undertaken as part of the 20% 'local content' in the school curriculum; and 5) the National Directorate for Literacy and Adult Education (Direcção Nacional de Alfabetização e Educação de Adultos, DNAEA) has training materials regarding business management, including financial literacy, although lacks funds to reproduce and distribute the booklets. However, those initiatives appear to lack coordination, and in many cases also resources and a joined-up more strategic approach on financial education could achieve greater impact.

**BdM is preparing a Financial Education Campaign through the medias – newspapers and radio – to broadcast basic information regarding consumer's rights and defense mechanisms.** The campaign is directed to all citizens, although special attention will be given to rural areas, informal and formal sector operators, public servants, and youth. It is organized in collaboration with the Social Communication Institute (Instituto de Comunicação Social, ICS) responsible for 72 community radios (52 of its own, 20 belonging to NGOs organized in the Forum of Community Radios (FORCOM)). ICS will be in charge of radio programs production and translation to local languages, while the BdM will ensure the production and distribution of graphic materials (pamphlets, posters and brochures) and the realization of public presentations at district level. The themes to be developed include: role and functions of the BdM, Metical notes and coins, functions and attributions of commercial banks, banking concepts and finally history of the money, the banks and the Metical for children.

**Financial Education is also a gaining recognition in the education sector.** The recent primary school curriculum reform gave more importance to financial concepts in Portuguese and math disciplines. An

optional course has been introduced for 10<sup>th</sup> grade students regarding business management with financial education contents. INDE is preparing a financial education program, called “Open school for financial education”, that will provide different activities to schools such as exhibits, explanations, lectures and games to make the theoretical concepts come alive in practice. Those materials could be displayed in primary and secondary schools, as well as in the Teachers’ Training Institute and the public in general. The 1<sup>st</sup> step will be to run the exhibit in all provincial capitals. It could then be adapted to fit into the 20% of school time allocated for “local curriculum” recently introduced. However, INDE and its partners (Universidade de Aveiro, Portugal) are struggling to find complementary funds to expand the program. DNAEA has also training materials regarding business management, with some focus on financial education. These materials are used for specific “life skills” training sessions for “adult education” (post-literacy courses) but the materials cannot be distributed as broadly as needed due to funding limitations. However, DINAEA programs cover some 700.000 adults every year, mostly women in rural areas. It is therefore an important channel for financial literacy dissemination, and should be considered in any financial literacy initiative.

**Financial education is a general concern in the banking/microfinance industry.** Most professional MFIs include some kind of financial education in their clients’ recruitment strategy. This financial education is based on the offered products and emphasizes on the need to pay back loans, but it also includes basic concepts like interest/cost of money, the importance of savings and insurance, and often includes some business management tips. BOM even has an education program on video displayed at its branches. AMOMIF has shown a special interest in this area. It already translated an “ABC” pamphlet from Ghana to be distributed to clients through MFIs, and developed an “ABC of microfinance” course directed to journalists and other “opinion makers”. The course has already been tested and delivered to trainers (Training of trainers) for broader dissemination. AMOMIF is also directly involved, with GIZ support, in transparency promotion initiatives. It initiated a study on Financial Capability and Consumer Recourse Pre-diagnostic as well as a Code of Conduct, realized in 2011, which recommended a full diagnostic of both the supply and demand side to enable the formulation of a detailed financial education strategy and plan. It also recommends stakeholder’s education, training in financial education for AMOMIF members, and proposes a guideline for the elaboration of a MF sector code of conduct.

**ASCAs are playing an important role in financial education of rural population.** In rural areas, the “Accumulative Savings and Credit Associations” (ASCA) methodology, inspired from Xitique and developed by CARE, is expanding rapidly through NGOs and donors’ support. A study realized in 2010<sup>232</sup> shows that ASCAs are present in 80 districts, and more than 5,000 groups (around 100,000 persons) were declared by the promoting NGOs – the effective number of existing groups being much higher, as groups are monitored only for 1 year, before turning “independent”. The study also shows that the ASCA methodology is a powerful tool for financial education, as group members learn in practice the advantages of saving, and the meanings of loan concepts (such as payment obligation, due term, installments, capital and interests and penalties for delayed payment). Another strong point of the methodology is that ASCAs mainly enroll women, reaching the weakest segments of the population.

**Donors and Government supporting MFIs’ development are also implementing financial education activities.** Under the Building an Inclusive Financial Sector in Mozambique (BIFSMO) project, UNCDF and UNDP in partnership with DNPDR and AMOMIF, organized a training on price transparency, and Micro Finance Transparency (MFT), an international NGO, did a price comparison of ten Mozambican MFIs<sup>233</sup>. For the next BIFSMO II, a Financial inclusion study is to be carried out soon (based on FINSCOPE, with broader scope to take supply side and legislative issues into account, and a “financial

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<sup>232</sup> Carilho & Teyssier: Savings and Credit Groups in Mozambique, 10 years later – realizations, challenges and perspective, MAE-DNPDR, 2011

<sup>233</sup> available at <http://www.mftransparency.org/account/login/?next=/data/countries/mz/>

inclusion roadmap” should be established, with a range of recommended activities including financial education. The Economic Rehabilitation Support Fund (FARE), under the Rural Finance Support Program (RFSP) funded by the International Fund for Agriculture Development (IFAD) and African Development Bank (AfDB), is also promoting some financial activities, through the training of trainers for rural clients, on financial education and business management skills. The Banking Training Institute (IFBM), a joint venture between the Mozambican Association of Banks (AMB) and the Ministry of Education, is also planning to develop a financial education program directed to journalists.

**Consumer protection associations are also aware of a growing need to develop consumer protection mechanisms and promote financial education, as the number of clients interacting with the financial industry is growing.** The two existing associations DECOM and ProConsumers are struggling for funds, as they do not receive the governmental subsidies as established in the Consumer Protection Law (Law 22/2009); their activities are still incipient in those matters, but both have received a few complaints regarding banks or MFIs misbehavior, especially regarding compulsory collateral seizure. It is therefore important to strengthen their knowledge and understanding of consumers’ rights and duties, to empower them to better protect financial consumers and pool cases to push for improving legislation.

### ***Recommendations***

**There are a plethora of public or private initiatives on financial literacy or education ongoing or at planning stage, and therefore a coordination mechanism for financial literacy and education is needed.** The Steering Committee for the Financial Sector Development Strategy would be an appropriate mechanism for introducing a more strategic perspective, monitoring progress on the initiatives, and helping to avoid duplication of efforts. A coordinated approach would improve the coherence of the different initiatives, and integrate them into a long-term strategic perspective including both in-school programs and specific programs for other groups of citizens. A sub-committee or Task Force could be set-up under the Steering Committee, comprising key stakeholders including the BdM, Ministry of State Administration (MAE) through DNPDR, the Ministry of Education – INDE and DNAEA, as well as representatives of the financial industry – the AMB, AMOMIF, Insurers Association, IFBM, and consumer protection associations. Such a task force would also be the appropriate coordinating body if a national Financial Education Strategy (which has been suggested by some donors) is developed.

**This task force should establish a minimum curriculum for financial education** that all financial institutions, banks and non banks, should provide to their staff and clients. Financial industry associations could be encouraged to develop financial education activities and materials and coordinate financial education programs among its members, reporting to the task force (or to the Steering Committee) on activities in their respective industry. Financial Education efforts should cover: i) explaining individuals’ rights as consumers of financial services with the aim of increasing the trust of the public in financial institutions, ii) understanding the risks and rewards of using financial services.

**Financial education programs should focus on reaching low income and also rural populations, including those with low levels of literacy, and therefore consider different communication channels.** The FinScope survey (2009) found that: two thirds of the population does not have or use any means of telecommunications although mobile phone use has expanded since then; that one third of the population has not been exposed to any form of education; and that 39 percent would like to receive information about financial services via radio. Techniques to consider therefore include: community radio and local programs of national Mozambican Radio, some of which include programming in local languages, information presented in cartoon form rather than text, training of “knowledge duplicators” such as teachers and journalists, and strengthened curriculum content in schools and alphabetization programs, to teach children and adults about earning, spending, sharing, and saving money. When

planning educational programs in schools, proper attention should be given to educating teachers so that they feel comfortable about the subject and can properly explain the topic. Mobile phone is a popular communication tool, and can be used to display financial education messages either written or better verbally – when waiting for his/her correspondent, the caller can hear an alert message. Financial institutions could be requested to put a financial education message on each advertisement they display, whatever media used, for example warning about engagements and obligations linked to loan contracts or the advantages of savings.

**A national survey of financial literacy should be conducted to provide the first comprehensive set of data and insights on the levels of financial literacy (and broader financial ‘capability’) in Mozambique, and a baseline to measure impact of financial education and consumer awareness initiatives going forward.** As requested by the BdM, the World Bank plans to conduct a Financial Literacy Survey in 2012. The survey will provide country-specific information regarding the saving and borrowing behavior of individuals, prevailing levels of understanding of basic financial concepts, awareness of financial consumer rights, patterns of household budget management, and use of financial services. It will provide further information required to design financial education programs that will address the most important needs of different segments of the population. This study should be coordinated with the planned UNCDF study on financial inclusion to avoid duplication of efforts and allow best use of available funds. By administering key questions in the survey periodically such as every 3 years or so (these could be added as a module in a national financial inclusion household survey, such as FinScope or the Household Survey (IAF) or Family Budget Survey (IOF) realized regularly by the National Statistics Institute (INE)), progress in financial education can be assessed, policies reformed, and financial education approaches revised to better meet the outstanding challenges.

**Overview of Financial Education Initiatives**

Initiative	Lead and stakeholders	Target group	Description	Status
Financial Education Campaign	<b>Bank of Mozambique (BdM)</b> , Social Communication Institute (ICS)	All citizen, with focus on rural population and youth	<p>Objective: to provide orientation to the public regarding financial matters and the role of the BdM in keeping a stable economy.</p> <p>Targeted public: all citizen, with special attention to youth and rural population</p> <p>Main themes :</p> <ol style="list-style-type: none"> <li><b>Financial operations:</b> banking concepts and operations, who are the financial agents and how they work, rights and obligations of banks and clients, microfinance.</li> <li><b>Bank of Mozambique:</b> functions and attributions.</li> <li><b>Notes and coins:</b> use and conservation of notes, history of money</li> </ol> <p>Channels: mainly radio broadcasting and media, pamphlets and lectures. The Social Communication Institute (ISC) will be in charge of radio programs production and translation to local languages, while the BdM will insure the production and routing of graphic materials (pamphlets, posters and brochures) and the realization of public presentations at district level.</p>	In preparation
Savings Campaign	<b>National Directorate for Rural Development Promotion (DNPDR)</b> , BdM, Mozambican Association of Banks (AMB), Mozambican Association of Microfinance Operators (AMOMIF), ICS	All citizen	<p>Objective: to promote savings habits among the population.</p> <p>Channels: community radios, through a partnership with ICS; public lectures at provincial and district levels; pamphlets and other promotion materials; stickers for the savings taking institutions.</p>	On going
FL program	<b>DNPDR</b> United Nations Capital Development Fund (UNCDF) United Nations	MF clients	As part of the BIFSMO program, DNPDR and UNCDF organized a training on consumer protection for MFIs. A tool for self-assessment of the MFI was provided; UNCDF is willing to pass the materials to AMOMIF so	In preparation

	Development Program (UNDP) Building an Inclusive Financial Sector in Mozambique Program (BIFSMO)		the training can be replicated. For the next BIFSMO II, a Financial inclusion study is to be carried out soon (based on FINSCOPE, with broader scope to take supply side and legislative issues into account, and a “financial inclusion roadmap” should be established, with a range of recommended activities including financial education that could be assumed by international partners in line with their priorities.	
Price transparency in microfinance sector	<b>DNPDR/ Micro Finance Transparency (MFT)</b>	MFIs	With Master Card Foundation support, Micro Finance Transparency (MFT) did a study on price dynamics of 10 MFIs. Next step will be the cost mapping for MFIs so they can reduce costs and adjust their prices to real costs.	Ongoing
AMOMIF Financial literacy strategy and code of conduct	<b>AMOMIF, German Development Cooperation (GIZ)</b>	MFIs	AMOMIF is preparing a Financial Capability and Consumer Protection Strategy, as well as a code of conduct for its members to adhere. A preparatory study has been commissioned. AMOMIF also translated financial education materials from Ghana, distributed at public and training events.	Pre-diagnostic concluded 2011. Mystery shopping exercise conducted 2010
Business skills and financial literacy for MFI clients	<b>Economic Rehabilitation Support Fund/ Rural Finance Support Program (FARE/RFSP)</b>	MFIs	The Rural Finance Support Program (RFSP), implemented by the Economic Rehabilitation Support Fund (FARE), and funded by the International Fund for Agriculture Development (IFAD) and the African Development Bank (AfDB), has 3 components: i) policy, legislative and institutional support, ii) innovation outreach facility (credit line, matching grants and technical assistance to expand financial services into rural areas) and iii) community based finances. FARE/RFSP is promoting financial literacy activities among the MFIs through the training of trainers for rural clients: 1. a study regarding the MFI’s clients capacity building has been performed (2010) 2. training of trainers (MFIs’ staff) for financial literacy and business management skills of rural clients is to be performed in 2012.	Ongoing

Open school for financial education	<b>National Institute for Education Development (INDE)</b> , Aveiro University, Portugal	Primary schools, teachers' institutes General public	The "Open School" is a pedagogic tool that can be adapted according to the specific age and interest of students. Different activities are proposed, as exhibits, explanations, lectures and games.  The 1 <sup>st</sup> step will be to run the exhibit in all provincial capitals, later it would be running within the rural districts.	In preparation
Life skills education – business skills and financial education	<b>National Adult Alphabetization and Education Directorate (DNEA)</b>	Post-literacy adults students	As part of the national adult education program, DNEA has a 3 <sup>rd</sup> cycle of education regarding "life skills". This includes practical training regarding agricultural and husbandry practices, health and nutrition, gender, and business management. The training books are also used by educators to get example for their literacy/numeracy classes, and for the 3 <sup>rd</sup> cycle's students (free distribution).	Ongoing / on hold (no funds)
Financial Literacy	<b>Banco Oportunidade de Moçambique (BOM)</b>	BOM's clients	With the support of the Financial Education Fund, from the Department for International Development, BOM realized a financial education video, screened at branches and public places. BOM also received funds from the World Bank to develop financial education training among its staff.	On going

## ANNEX III: LEGAL AND INSTITUTIONAL FRAMEWORK

### *General Legal Framework for Consumer Protection in Financial Services*

The primary sources of law dealing with financial consumer protection consist of the Constitution, the Commercial Code (Decree 2/2005), the Code of Advertising (Decree 65/04), the Civil Code, the Law on Credit Institutions and Finance Companies (Law 15/99), the Law on Consumer Protection (Law 22/09) and two Notices of the Governor of the Bank of Mozambique (Notice 4/2009 and Notice 5/2009). In addition, there is a voluntary Code of Conduct applicable, in theory at least, to most banks, but this Code is without the force of law.

Mozambique's *Constitution* makes explicit reference to fundamental rights of consumers, which include:

- i) the right to quality in the goods and services they consume;
- ii) the right to education and information;
- iii) the right to the safeguarding of consumers' economic interests; and
- iv) the right to reparation for damages.<sup>234</sup>

These provisions are worded broadly enough to cover all consumers of financial products and services.

The *Commercial Code* prohibits abusive clauses in contracts with consumers and the *Code of Advertising* requires those who advertise, including banks, to abide by a range of rules, including respecting the rights of consumers.<sup>235</sup> The *Civil Code*, in turn, provides certain additional measures of relevance, including in respect of advertising and civil liabilities.<sup>236</sup>

Further obligations in terms of business conduct are placed upon banks and all other credit institutions and finance companies (CIFCs) by the *Law on Credit Institutions and Finance Companies* (Law 15/99).

Of particular importance to consumers are the rules of conduct set forth in its Chapter VI. Among other things,<sup>237</sup> these deal with obligations:

- a) to provide the "highest levels of technical competence;"
- b) to act "with diligence, neutrality, loyalty, discretion and respect for the interests entrusted to them;"
- c) to inform clients;
- d) to protect competition; and
- e) to maintain client confidentiality, unless exceptional circumstances apply.<sup>238</sup>

In addition, extensive rights of financial consumers are provided in Law 22/09<sup>239</sup>, as are numerous obligations to be observed by all Mozambican banks and other CIFCs in their dealings with consumers.

<sup>234</sup> See The Constitution, Article 92, paragraph 1. The Constitution is the fundamental law of the land, meaning that any other law that is inconsistent with it is null and void to the extent of the inconsistency.

<sup>235</sup> See the text under Good Practice B.9 in Section 7 below.

<sup>236</sup> See the text under Good Practices B. 7 and B.9 in Section 7 below.

<sup>237</sup> Law 15/99 also provides for: (i) prudential rules applicable to all CIFCs; (ii) BdM's supervision procedures in order to ensure that these rules are being followed; (iii) the requirements regarding a reorganization of a CIFC that is experiencing financial distress; and (iv) the sanctions that apply for failures to comply with the law.

<sup>238</sup> For a full summary of CIFC obligations to consumers, see Annex III.

<sup>239</sup> Notwithstanding its many provisions which deal with financial services, the BdM and the entire financial services industry were not consulted in the process of drafting or enacting Law 22/09 and, contrary to the stated intention, Law 22/09 did not harmonize, unify and reform consumer protection provisions in Law 15/99. Indeed, Law 22/09 does not make reference to Law 15/99, let alone purport to repeal its Chapter VI or any of its Articles.

The **Consumer Protection Law** (Law 22/09) defines “consumers” as “those who have been provided goods, services or transmitted any rights, intended for non-professional use (or) service ... by a person who performs an economic activity aimed at obtaining benefits”. Although the word “person” is not defined in the Law 22/09, it is defined in the Civil Code as including any legal entity and, thus, any bank. Law 22/09 does, however, define suppliers” as including: “all legal persons, public or private ..., which customarily develop activities of ... distribution or marketing of goods or services for a price.” And the word “service”, in turn, is defined as “any activity provided to a consumer for remuneration, including in respect of banking, finance, and of the provision of credit and of security [emphasis added] ... .” In addition to the definition of key words in its Annex, Law 22/09 includes provisions that set forth or deal with:

- i) obligations of the State with a view to protecting consumers;
- ii) various consumers’ rights;
- iii) the terms of consumer contracts to ensure that they protect consumers’ economic interests and do not contain “unfair” terms;
- iv) appropriate commercial practices in dealing with consumers;
- v) the responsibilities of the State and Public Administration<sup>240</sup> to “issue rules for the production, ... distribution and consumption of products and services, as well as intervene in the protection of consumers’ rights, supervise and control the production, ... distribution and advertisement of products and services and the consumer market, with a view to safeguarding consumers’ ... information and well-being, issuing the necessary rules therefore”,<sup>241</sup>
- vi) the requirement for the “administrative authority within the relevant sphere of action”<sup>242</sup> to apply administrative sanctions for any failure to comply with Law 22/09;
- vii) consumer associations and their rights;
- viii) the obligation of the public prosecutor to defend consumers; and
- ix) the role of a so-called “Consumer Institute”.

There are, in addition, two Notices issued by BdM’s Governor of relevance to consumers. The first, **Notice 4/2009**, requires a service in each bank or other CIFC devoted to the handling of consumer complaints, requests for information and suggestions and provides for a possible role for the BdM in the event that disputes consumers have with their banks or other CIFCs are not resolved to their satisfaction.

The second, **Notice 5/2009**, places certain obligations on – and makes various recommendations to – banks and all other CIFCs in terms of the commissions they can and cannot charge to consumers.<sup>243</sup> Although there has yet to be supervision of banks by BdM in respect of the requirements of Notice 5, it would appear that most, if not all, banks accept and abide by the prohibition placed upon them to collect commissions or other charges in the following cases and for rendering the following banking services with respect to deposit accounts:

- a) the return to the depositor, for the first time, of a check, which cannot be used for its intended payment;
- b) the provision of a monthly statement of account;
- c) the inactivity of an account when its balance is 100 MZN or above;
- d) the inactivity of an account when its balance is less than 100 MZN for a period not exceeding six months;
- e) the withdrawal of cash in national currency at the counter;
- f) an account balance consultation once a day at the counter or at an ATM or through the use of other electronic means;

<sup>240</sup> Although the BdM is not named explicitly, it presumably is covered by the words “Public Administration” in respect of administrative action regarding banks and other CIFCs.

<sup>241</sup> See Law 22/09, Article 32, paragraph 1

<sup>242</sup> This, once again, implicitly means the BdM in respect of any failure of a CIFC to abide by the terms of Law 22/09.

<sup>243</sup> Ibid.

- g) an account transaction consultation once a day at an ATM or through other electronic means, provided that transactions are displayed on the screen;
- h) the cancelling of a check;
- i) account maintenance;
- j) cash deposits;
- k) check deposits in national currency;
- l) the opening of an account or the establishment of a deposit; and
- m) the non-observance of the minimum balance in current accounts, except when “the minimum balance is compensated”

In addition, Notice 5 requires banks and all other CIFCs to post a complete list of their commissions and other charges in a highly visible place with easy public access and “adequate letter size and format” with this information being updated according to BdM requirements. The list must cover the prevailing commissions and other charges that apply in respect of any of the following 26 categories of services that each bank or other CIFC supplies to consumers:

No.	Service
1.	Lack of debit or credit transactions in respect of a given account, with a balance of less than 100 MZN, for a period of over six months
2.	Termination of a deposit contract, on the client’s initiative
3.	Production of a complete paper list of the transactions of a deposit account for any period
4.	Production, at the client’s request, of a second copy of a debit or credit transaction
5.	Cash withdrawal from an ATM of the bank’s network inside Mozambique
6.	Cash withdrawal from an ATM of the network of another bank inside Mozambique
7.	Cash withdrawal from an ATM abroad
8.	Withdrawal of foreign currency at a counter inside Mozambique
9.	Transfer of values between accounts of the same banking institution
10.	Transfer of values between accounts of two different banking Institutions
11.	Transfer of funds abroad, as instructed by a client
12.	Reception by the bank of funds from abroad, transferred to the credit of one of its clients
13.	Adherence of a client to a financial service offered by the bank
14.	Alteration of the scope of a service requested by a client
15.	Termination of a service at the request of a client
16.	An order for payment by the account holder to the credit of a third party, carried out at the counter.
17.	Provision of payment services through a debit to the client’s deposit account
18.	Payment by the client, for the return of a direct debit payment to a third party, due to insufficiency of funds
19.	Making a check or other equivalent instrument available at the counter, for the collection of cash
20.	Making a check book available
21.	The request for a certified check or other equivalent instrument

	at the counter
22.	Payment by the issuer for the return of a check due to insufficiency of funds.
23.	Payment by the issuer for the return of a check due to other technical reasons attributable to the client.
24.	Payment by the account holder for the expenses incurred for the production of a debit or credit card, as fixed in accordance with previously agreed cost attribution criterion
25.	Payment by the account holder of a previously agreed annuity for the possession of a debit or credit card in accordance with previously agreed cost attribution criterion.
26.	Payment by the account holder of the expenses incurred for the replacement of a card for reasons attributable to the client

Finally, although their commitments in these respects are without the force of law, by means of the Code of Conduct for Banks (CCB) of the Association of Mozambican Banks (AMB), most banks have voluntarily agreed to uphold certain levels of business conduct in their dealings with consumers.

The *Microfinance Regulation (Decree 57/2004)* defines two major types of microfinance operators in the terms of the regulatory approach of the Bank of Mozambique. The first group, consisting of micro-banks and credit cooperatives, faces full-scale prudential supervision, focused primarily on their stability, with a regime equal to the supervisory regime of fully licensed banks. The second group of microfinance operators is only required to register with the BdM and report selected data for statistical purposes with no supervisory oversight.

There are two basic legal acts that regulate the operation of MFIs. The key act for the operation of microbanks and credit cooperatives is the law on credit institutions and finance companies. Further rules applicable to all MFIs are defined by the microfinance regulations decree 57/2004.

Regulatory requirements for establishing a MFI are appropriate. Discussions with the industry indicated that regulatory requirements are not seen as an obstacle to establishing MFIs, unlike long decision-making time some of the industry representatives pointed as the key issue in their relationship with the supervisory agency. With regard to regulatory status and establishing requirements, microbanks are divided into four sub-categories:

1. Credit and savings general bank (Caixa geral de poupança e crédito)
  - i. Activities: Deposit taking and credit provision from and to the public
  - ii. Minimum capital: 5,000,000 MZN
2. Rural financial bank (Caixa financeira rural)
  - i. Activities: Deposit taking and credit provision from and to the public. At least 50% of its activities must be focused on rural areas.
  - ii. Minimum capital: 1,200,000 MZN
3. Economic bank (Caixa econômica)
  - i. Activities: Deposit taking (up to one year) and credit provision from and to the public.
  - ii. Minimum capital: 2,400,000 MZN
  - iii. Must have at least one non-government organization with a social focus among its shareholders

4. Savings postal banks (Caixa de poupança postal)
  - i. Activities: Deposit taking from the public. The funds can only be invested into low risk operations.
  - ii. Minimum capital: 1,800,000 MZN

Credit cooperatives are entitled to take deposits and provide loans to their members only. The minimum capital requirement is 1,800,000 MZN.

Regulation for other microfinance operators is very light and there are no prudential supervision rules. The only interaction with the BM for these operators is the required reporting – but even operators that do not report to BM remain listed as licensed operators. There are three types of the microfinance operators:

1. Savings and credit organizations (Organizações de poupança e empréstimo)
  - i. Activities: Deposit taking (max. 10,000 MZN per deposit) and loan provision to its members only. Max. 200 members.
  - ii. Minimum capital: 150,000 MZN
2. Microcredit operators (Operadores de microcrédito)
  - i. Activities: Credit provision
  - ii. Minimum operation funds: 75,000 MZN
  - iii. Microcredit operators can be natural or legal persons
3. Deposit intermediaries (Intermediários de captação de depósitos)
  - i. Activities: Intermediating deposits on behalf of deposit taking credit institutions
  - ii. Minimum capital: no minimum capital requirements

The *Notice 10/2007* sets up lighter compulsory reserves for the financial institutions and MFIs established in the rural areas, and the Decree 54/2004 set up reduced capital requirement for the MFIs in order to promote geographical expansion of financial services.

The advisory *Notice IGGBM/99* of the Bank of Mozambique also allows MFIs to charge interest rates without a ceiling.

### *Institutional Arrangements for Financial Consumer Protection*

So far at least, the only state institutions empowered to deal with matters of consumer protection regarding financial products and services are the BdM, the Ministry of Trade and Industry and the Public Prosecutor. A fourth State institution, namely the Consumer Institute, remains to be formally established but is potentially important as well. In addition, four other institutions play potentially important roles in terms of consumer protection regarding the products and services provided by banks and other CIFCs. These are the AMB, AMOMIF and the Consumers Associations, DECOM and ProConsumers.

#### *Bank of Mozambique (BdM)*

The BdM is the main government body responsible for regulation of the financial sector. The BdM is vested with the power to issue norms and decrees regulating the financial sector and is responsible for their enforcement. The Department of Banking Supervision (BSD) carries out all supervisory activities while the Department for Strategic Planning, Communication and Image (Gabinete de Planeamento Estratégico, Comunicação e Imagem, GPI) has been put in charge of consumer complaint handling and

financial education.

As required by the then prevailing Constitution, the BdM was established by Act of Parliament in 1992. By the terms of Law 1/92 (the BdM's so-called "Organic Law"), the maintenance of the value of the national currency is stated as BdM's principal objective.<sup>244</sup> The BdM's ancillary objectives, however, include the "guiding of credit policy to promote the country's economic and social growth and development" and the "disciplining of banking activity."<sup>245</sup> Although there is nothing in Law 1/92 that explicitly grants a role to the BdM in ensuring that all statutory rights of consumers of financial products and services are honored and the obligations of all banks and other CIFCs towards their customers are fully respected, BdM's role implicitly covers the protection of consumers' rights and the supervision and enforcement of the many obligations that CIFC owe towards consumers.

With the exception of insurance companies, all CIFCs are subject to supervision by the BdM<sup>246</sup> to ensure compliance with all relevant laws and regulations, as well as instructions by way of Notices which the BdM is empowered to issue dealing with their operations.<sup>247</sup> In addition, the Governor of the BdM may order any inspections of CIFCs as he considers appropriate<sup>248</sup> and may "intervene in all acts which the law or regulations explicitly or *implicitly* [emphasis added] attributes to him and supervise all matters related to the interests and activities of the BdM." Furthermore, the BdM is empowered to:

- a) discipline banking activity;<sup>249</sup>
- b) act as the guide and controller of financial policies and the supervisor of financial institutions;<sup>250</sup>
- c) establish the regime for interest rates, commissions and any other forms of remuneration for operations carried out by financial institutions;<sup>251</sup>
- d) issue instructions on the volume, structure, terms and conditions of credit to be granted by financial institutions and monitor the application of those instructions;<sup>252</sup>
- e) carry out inspections of banks and other financial institutions;<sup>253</sup> and
- f) require all banks and other institutions subject to BdM supervision to send to the BdM, in accordance with its instructions, information relating to the operations they perform.<sup>254</sup>

In addition, Law 15/99 provides for the regulation of the establishment and operation of CIFCs. By its terms, while the Minister of Finance is authorized "to oversee the ... financial and money markets" and to "intervene in the event of any disturbance in those markets",<sup>255</sup> the BdM has "authority to guide and supervise the money, financial and foreign exchange markets, bearing in mind the government's economic and social policy".<sup>256</sup> Although Law 15/99, likewise, makes no explicit reference to the BdM playing any role in protecting financial consumers and supervising banks and other CIFCs in terms of their business conduct, more detailed provisions regarding supervision are found under a Chapter headed "Prudential rules and supervision"<sup>257</sup> and an Article entitled "Supervision procedures".<sup>258</sup>

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<sup>244</sup> See Law 1/92, Article 3, paragraph 1

<sup>245</sup> See *Ibid.*, paragraph 2, b) and d)

<sup>246</sup> *Ibid.*, Article 37, paragraph 1

<sup>247</sup> *Ibid.*, paragraph 2 d)

<sup>248</sup> *Ibid.*, Article 47, paragraph 1, h)

<sup>249</sup> Law 1/92, Article 3, paragraph 2 d)

<sup>250</sup> *Ibid.*, Article 16, paragraph 1

<sup>251</sup> *Ibid.*, Article 25

<sup>252</sup> *Ibid.*, Article 26

<sup>253</sup> *Ibid.*, Article 38, paragraph 1

<sup>254</sup> *Ibid.*, Article 39

<sup>255</sup> Law 15/99, Article 1a, paragraph 1

<sup>256</sup> *Ibid.*, Article 54

<sup>257</sup> See: Law 15/99, Articles 54 and 55

<sup>258</sup> *Ibid.*, Article 72

Law 15/99 grants broad powers to the BdM to issue Notices not only regarding prudential matters, but also regarding the business conduct of financial institutions. In particular, the BdM is empowered to “issue Notices to establish *rules of conduct* [emphasis added] that it considers necessary to complement and expand upon the rules laid down in Law 15/99.”<sup>259</sup> Furthermore, the BdM is explicitly empowered to “issue Notices to regulate the minimum requirements that CIFCs *should* [emphasis added] meet in their disclosure to the public of the rates and conditions that apply to the services they offer.”<sup>260</sup>

In addition, however, it is important to note that in its area of administrative action and as an “entity of the State and Public Administration”, the BdM is empowered by Law 22/09 to safeguard consumers’ information and well-being by:

- a) issuing rules for the production, distribution and consumption of products and services, (including financial products and services);
- b) intervening in the protection of consumers’ rights;
- c) supervising and controlling the production, distribution and advertisement of products and services;
- d) supervising and controlling the consumer market; and
- e) issuing the necessary rules dealing with supervision and control.<sup>261</sup>

Furthermore, the BdM is empowered to send notices to banks and other CIFCs, subject to penalty for noncompliance, requiring information on issues of consumers' interest.<sup>262</sup>

### ***National Directorate for Promotion of Rural Development***

The National Directorate for Promotion of Rural Development (Direcção Nacional de Promoção do Desenvolvimento Rural, DNPDR) is the other major institutional actor in the microfinance sector. The DNPDR was established as an independent institute in 1992 functioning till 2000 when it was transformed to the National Directorate of the Ministry of Agriculture and Rural Development, then transferred to the Ministry of Planning and Development (MPD), and since 2010 it is under the authority of the Ministry of State Administration (MAE). The DNPDR is in charge of the promotion of microfinance since 1997, and rural finance since 2004, with the aim to elaborate and promote conducive policies, and coordinate and implement programs to support MFI operators and build their capacities. Within this framework, DNPDR participated in the joint effort to promote a specific microfinance legislation (Decree 57/2004), and prepared the rural finance strategy approved in 2011, and a microfinance development strategy, still to be approved. It is currently supporting the elaboration of a micro-insurance action plan.

### ***Ministry of Trade and Industry***

By the terms of Mozambique’s Code of Advertising, the General Inspectorate of the Ministry of Trade and Industry is responsible for instituting legal proceedings for the prosecution of the transgressions stipulated in the Code, consulting, whenever necessary, other institutions deemed relevant.<sup>263</sup>

<sup>259</sup> *Ibid.*, Article 47, paragraph 1

<sup>260</sup> *Ibid.*, Article 45, paragraph 4

<sup>261</sup> See Law 22/09, Article 32, paragraph 1

<sup>262</sup> *Ibid.*, paragraph 2. The only exception is in respect of industrial secrets. Query, though, whether the factors each bank applies in coming up with its own so-called “prime rate” could be said to constitute “industrial secrets”.

<sup>263</sup> Code of Advertising, Decree 65/04, Article 37

Also, the Ministry of Trade and Industry is responsible for the application of the fines and additional sanctions stipulated in the Code, with the possibility of appeal being lodged against its decisions “under the general law”.<sup>264</sup>

### ***The Public Prosecutor***

The Public Prosecutor is “responsible for defending consumers” and for “intervening in administrative and civil actions involving the protection of ... collective or individual consumer interests.”<sup>265</sup>

### ***Consumer Institute***

On paper at least, Law 22/09 has provided for a Consumer Institute and set out its powers. Once it is formally established, the purpose of the Consumer Institute is to be the public authority designated: (a) to promote consumer rights protection policy; and (b) to coordinate and execute measures related to consumer protection, information and education, as well as measures to support consumer organizations.<sup>266</sup>

Furthermore, the Consumer Institute is to be entrusted with power to:

- a) request and obtain from banks, other CIFCs and the BdM<sup>267</sup> all information, documents and whatever assistance it deems necessary for the protection of the rights and interests of consumers;
- b) participate in defining the content of public radio and television services with respect to consumer information and education;
- c) represent consumers collectively and individually at law regarding their rights and interests as consumers; and
- d) order precautionary termination, suspension or interdiction measures with respect to the supply of banking products and services, which, regardless of evidence of loss, due to their object, form or purpose may entail risks to the economic interests of consumers.<sup>268</sup>

Nevertheless, as can readily be seen, once the Consumer Institute is formally established, its jurisdiction will inevitably conflict with that of the BdM. As indicated below, such a possibility needs to be avoided by amending Law 22/09 to make it inapplicable to banks and all other CIFCs.

### ***The Mozambican Association of Banks (AMB)***

The AMB is a network of banks established in Maputo in 1999. Membership is voluntary and 17 of the 18 banks authorized to do business in Mozambique, have chosen to join. While, in theory at least, the Association exists to provide a common platform for banks to discuss common issues, frame pertinent policies and represent the banking industry to government agencies and to consumer rights associations, this has not been possible due to the fact that for some years its annual budget has been limited to merely 3.5 million MZNs. This funding, which comes solely from subscriptions paid by member banks, does not permit either the hiring of any permanent, professional staff or the rental or purchase of premises to house any such staff. The AMB produced a Code of Conduct for Banks (CCB) in 2006 for its members voluntarily to apply in their dealings with consumers.

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<sup>264</sup> *Ibid.*, Article 38

<sup>265</sup> Law 22/09, Article 37

<sup>266</sup> *Ibid.*, Article 38, paragraph 1

<sup>267</sup> Being a Public Administration body referred to in Article 3, paragraph 2 of Law 22/09

<sup>268</sup> See Law 22/99 Article 38, Paragraph 2

**Mozambican Association of Micro Finance Operators (AMOMIF)**

The Microfinance Association of Mozambique (AMOMIF) was founded in 2007 and currently has 28 members, including all the country's major MFIs except for the largest one<sup>269</sup>. It provides training to members (including 'training of trainers programs) and is currently drafting an industry-wide microfinance code of conduct.

**Consumer Associations**

*DECOM* is an independent non-government body, established in 1997, which promotes consumer rights generally through campaigns and educational programs, while also providing some consumer protection services for specific financial service related cases. It has a permanent salaried staff of five, including two lawyers, in addition to a Chairman who acts as a volunteer.

*ProConsumers* is, likewise, an independent non-government organization which promotes consumer rights generally through campaigns and educational programs. While it, like *DECOM*, is ready to consider focusing on financial consumer protection matters and providing assistance to consumers of products and services provided by banks and other CIFCs, it also lacks the resources to do so.

**Banking Training Institute of Mozambique (Instituto de Formação Bancária de Moçambique, IFBM)** was established in Maputo in 1994 by Ministerial "Diploma" No. 76/94 of 25 May and is entirely separate from the AMB. It provides training courses for employees of banks and those who have aspirations of holding positions within banks.

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<sup>269</sup> ProCredit