UKRAINE
FINANCIAL SECTOR STABILIZATION TECHNICAL ASSISTANCE PROGRAM

STRATEGY FOR FINANCIAL SERVICES CONSUMER PROTECTION & FINANCIAL LITERACY (2012-17)

DIAGNOSTIC REVIEW AND ACTION PLAN

VOLUME II:
ASSESSMENT AGAINST GOOD PRACTICES

APRIL 2012

THE WORLD BANK
EUROPE & CENTRAL ASIA REGION VICE PRESIDENCY
GLOBAL PROGRAM ON CONSUMER PROTECTION AND FINANCIAL LITERACY
This Diagnostic Review is a product of the staff of the International Bank for Reconstruction and Development/ The World Bank. The findings, interpretations, and conclusions expressed herein do not necessarily reflect the views of the Executive Directors of the World Bank or the governments they represent.

A World Bank Technical Assistance mission\(^1\) visited Kyiv from November 16 to 25, 2011 as part of the World Bank's financial sector stabilization and development program for Ukraine. The purpose of the mission was to prepare: (1) a Diagnostic Review of the Ukrainian framework for financial consumer protection in comparison to international practice and (2) an Action Plan of priority recommendations of measures to strengthen the framework. The Bank’s findings and recommendations were prepared and presented in two documents: Main Findings & Recommendations (Volume 1) and Diagnostic Review: Assessment Against Good Practices (Volume 2).

Meetings were held with the National Bank of Ukraine, National Commission for Financial Services Markets Regulation, the Deposit Guarantee Fund, National Commission for Securities Market Regulation, the State Consumer Rights Protection Inspectorate, the Ministry of Education as well as numerous industry associations, private financial institutions, non-government organizations and donors community. The Bank team would like to thank the Ukrainian authorities and members of civil society for their hospitality, active engagement into consultation process, preparation of answers to the questionnaires, information sharing and overall cooperation during the mission’s stay in Kyiv.

The report was updated based on the series of workshops conducted in Kiev in March 2012 on several of key issues discussed in the Diagnostic Review, especially in the areas of institutional setup, legal and regulatory framework, financial ombudsman and financial literacy. The analysis of the regulations is based on the state of the regulatory environment in November 2011.

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Table of Contents

Acronyms and Abbreviations ........................................................................................................ iii
Good Practices: Banking Sector .................................................................................................... 1
Good Practices: Securities Sector ................................................................................................ 40
Good Practices: Insurance Sector .............................................................................................. 63
Good Practices: Credit Unions/Pawn Shops ........................................................................... 74
Good Practices: Private Pensions Sector ................................................................................ 89

Tables

Table 1: Overview of international financial education initiatives in Ukraine ................ 105
Table 2: Selected business initiatives on consumer awareness implemented in Ukraine ................................................................. 107

Annex

ANNEX 1: Financial Education ................................................................................................. 104
ANNEX 2: Key Laws and Institutions .................................................................................... 108
**Acronyms and Abbreviations**

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Full Form</th>
</tr>
</thead>
<tbody>
<tr>
<td>AMC</td>
<td>Antimonopoly Committee</td>
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<tr>
<td>AFP</td>
<td>Securities Market Partnership</td>
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<td>ATM</td>
<td>Automatic Teller Machine</td>
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<tr>
<td>AUST</td>
<td>Ukrainian Association of Stock Traders</td>
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<td>CIDA</td>
<td>Canadian International Development Agency</td>
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<tr>
<td>CII</td>
<td>Collective Investment Scheme</td>
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<tr>
<td>CIU</td>
<td>Collective Investment Undertaking</td>
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<tr>
<td>DGF</td>
<td>Deposit Guarantee Fund</td>
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<td>EU</td>
<td>European Union</td>
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<tr>
<td>FINREP</td>
<td>Financial Sector Development Project</td>
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<tr>
<td>NCRFSM</td>
<td>National Commission for Regulation of Financial Services Markets of Ukraine</td>
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<td>GDP</td>
<td>Gross Domestic Product</td>
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<td>LFS</td>
<td>Law on Financial Services and State Regulation of Financial Markets</td>
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<td>LCRP</td>
<td>Law on Consumers’ Rights Protection</td>
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<td>MoE</td>
<td>Ministry of Education</td>
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<td>MoF</td>
<td>Ministry of Finance</td>
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<td>MoIA</td>
<td>Ministry of International Affairs</td>
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<tr>
<td>MoLSP</td>
<td>Ministry of Labor and Social Policy</td>
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<tr>
<td>MoU</td>
<td>Memorandum of Understanding</td>
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<tr>
<td>NAPFA</td>
<td>National Association of Non-State Pension Funds of Ukraine and Non-state Pension Fund Administrators</td>
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<tr>
<td>NBU</td>
<td>National Bank of Ukraine</td>
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<tr>
<td>NGO</td>
<td>Non-governmental organization</td>
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<tr>
<td>NPF</td>
<td>Non-state pension fund</td>
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<tr>
<td>PARD</td>
<td>Professional Association of Registrars and Depositories</td>
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<tr>
<td>SCRPI</td>
<td>State Consumer Rights Protection Inspectorate</td>
</tr>
<tr>
<td>SI</td>
<td>Securities intermediary</td>
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<tr>
<td>SRO</td>
<td>Self-regulating organization</td>
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<tr>
<td>NSSMC</td>
<td>National Securities and Stock Market Commission</td>
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<tr>
<td>UAIB</td>
<td>Ukraine Association of Investment Businesses</td>
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<tr>
<td>UNDP</td>
<td>United Nations Development Programme</td>
</tr>
<tr>
<td>UNITER</td>
<td>Ukraine National Initiatives to Enhance Reforms</td>
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<tr>
<td>UPAPICI</td>
<td>Ukrainian Professional Association for Protection of Investors, Creditors and Insurers</td>
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<tr>
<td>USAID</td>
<td>United States Agency for International Development</td>
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n.a. Not Available

$1 = 8.02$ Hryvnia (December 2011)
### Good Practices: Banking Sector

<table>
<thead>
<tr>
<th>SECTION A</th>
<th>CONSUMER PROTECTION INSTITUTIONS</th>
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<tbody>
<tr>
<td><strong>Good Practice A.1.</strong></td>
<td><strong>Consumer Protection Regime</strong></td>
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<tr>
<td></td>
<td>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.</td>
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<tr>
<td></td>
<td>a. Specific statutory provisions should create an effective regime for the protection of a consumer of any banking product or service.</td>
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<td></td>
<td>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).</td>
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<tr>
<td></td>
<td>c. The designated agency should be funded adequately to enable it to carry out its mandates efficiently and effectively.</td>
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<tr>
<td></td>
<td>d. The work of the designated agency should be carried out with transparency, accountability and integrity.</td>
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<td></td>
<td>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.</td>
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<td></td>
<td>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.</td>
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### Description

The existing legal system in Ukraine provides consumer protection only in the area of consumer credit (Article 11 of Consumer Protection Law and the NBU Regulation Nr. 168 on Real Cost of Loan Disclosure Policy). There are no other specific legal provisions regarding consumer protection for other banking products and only some general rules (e.g. the ban on false advertising or Article 1060 of the Civil Code stating the right of clients to obtain funds from their deposits upon request) apply.

Article 1056 of the Civil Code and Article 55 of the Law on Banks and Banking outlaw any one-sided action of banks to revise contract terms and conditions (e.g. increase interest rates on loans or decrease interest rates on term deposits).

As for the institutional arrangements, the National Bank of Ukraine, as the prudential supervisor of the banking industry, also deals with some of the consumer protection issues (e.g. defining disclosure rules for consumer credit in its Regulation Nr. 168 on Real Cost of Loan Disclosure Policy or dealing with complaints received). However, dealing with consumer protection issues has been a voluntary decision of the NBU, not a legal requirement as the NBU’s authorizing mandate is one of financial stability and to protect creditors and depositors (but not borrowers or other parties – see Article 55 of the Law on NBU, Objective and Scope of the Banking Supervision: The main objective of the banking regulation and supervision shall be the security and financial stability of the banking system and protection of interests of depositors and creditors.). While some supervisors consider consumer protection to be one of the pillars of financial stability (e.g. the US Federal Reserve), many countries tend to either specify this task in the mandate of the supervisor or set a separate supervisory institution to deal with consumer protection.

The State Consumer Rights Protection Inspectorate (SCRPI) has overall responsibility for consumer protection issues in Ukraine and as part of its overall mandate deals with complaints on banks it receives. The Inspectorate also assists consumers in drafting lawsuits when necessary and acts as an expert witness during the court proceedings. However, there is no clear delimitation of responsibility between the NBU and SCRPI and coordination seems to

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2 For further information on the legal and institutionary system in Ukraine, please see the 2011 FINREP study "Financial Services Consumer Protection in Ukraine: Legal Analysis".
The same lack of legal mandate and coordination may be seen across the whole financial sector with the other supervisory institutions (NCRFSM and NSSMC).

Both the NBU and SCRPI point out that they do not have adequate resources to deal with consumer protection issues. For the NBU, consumer protection is not an official part of its mandate, so other areas are prioritized. The SCRPI has only four members of staff dealing with financial services, none of them with legal education.

There are several NGOs active in financial services and the issue of financial services (especially in the areas of bank failures and consumer credit) is hotly discussed. The Law on Civil Associations and the Law on the Protection of Consumer Rights provide the base for creation of NGOs but there is often lack of funding for the NGOs’ activities and thus for their more significant impact. The laws do not allow NGOs to bring lawsuits on behalf of citizens in cases there are more individuals potentially harmed by a specific practice and each person is required to protect his rights individually.

**Recommendation**

First of all, the Ukrainian legislation should clearly define the need for consumer protection in financial services and ensure the protection is equal across all financial sectors.

As the recommendations of this report illustrate, there are many actions required across the financial sector to bring consumer protection and financial literacy building on par with the best international practices. These actions should be properly coordinated and introduced throughout the financial market to avoid the risks of uneven regulatory regimes and the ensuing regulatory arbitrage.

Therefore, as the first step in the proposed upgrade of the consumer protection regime, a Consumer Protection and Financial Education Coordinating Committee should be set up to coordinate all work on consumer protection and financial education.

The Consumer Protection and Financial Education Coordinating Committee should include all relevant stakeholders from the state agencies (the presidential administration, the three financial supervisory agencies, the State Consumer Rights Protection Inspectorate, the financial ombudsman (if and when established), the Ministry of Education (MoE), and any other relevant government stakeholders), the parliament, financial industry associations and NGOs active in the area of financial services. Its role should be to coordinate and prioritize all work in the area of consumer protection in financial services and financial literacy, ensuring the level playing field for financial institutions by keeping all regulation as similar as possible across sectors, discussing needed legislative changes and coordinating and evaluating financial literacy projects to seek the most effective programs and support their further development.

As the legal provisions for consumer protection in financial services are limited, a new law on consumer protection in financial services should be prepared with five key goals:

- provide for proper definitions of terms and conditions to make the regulations unequivocal and clear,
- define consumer protection as an equal task to the prudential supervision in the area of financial services and define powers and requirements of the supervisor(s) – see below for further details on possible institutional arrangements,
- define rules for effective disclosure requirements for all financial products and for education, training and licensing of agents that sell financial products to the public,
- set up an effective out-of-court redress mechanism for complaints about financial services,
- empower the consumer protection supervisors to deal with consumer protection issues across financial sectors and supervise market conduct of financial groups as a single entity.
The current financial market supervisory institutions, including the NBU, have limited powers for consumer protection supervision and only the NCRFSM has consumer protection listed as a part of its mandate. Therefore, a new institutional setup needs to be developed to provide for clear and effective consumer protection supervision across the financial market.

There are three possible options to be considered and analyzed to bring the best fit for the Ukrainian system:

- include consumer protection supervision and consumer protection as a part of the mandate of the current three financial markets supervisors and establish strongly independent departments responsible for this area with sufficient powers and resources, coordinating their work through the Consumer Protection and Financial Education Coordinating Committee,
- establish a new agency for consumer protection in financial services, covering the whole financial market and having exclusive responsibility in the area of consumer protection supervision and a leading role in financial literacy initiatives,
- task the SCRPI with the task of protecting consumer rights across all financial sectors.

The second option (establishing an independent consumer protection supervisor) seems to be the most effective in the long term. However, as time is of the essence in improvements of the consumer protection regime in Ukraine, the first option may offer the fastest change of the system and could be used as an interim solution before a new law on the new supervisory institution is prepared and passed.

The law should also clearly define the relationship between the prudential and consumer protection supervisory activities. The consumer protection supervisor should be required to report its key findings to the prudential supervisor and the prudential supervisor should be required to take the findings into account while planning its supervisory activities and drafting any legal changes. The key findings of the consumer protection regulator (including analysis of complaints received) should also be discussed twice a year by the Consumer Protection and Financial Education Coordinating Committee and should inform its work program.

To provide for an effective supervision, the agency (or the new departments within the existing financial sector supervisors) should be equipped not only with relevant supervisory powers (including effective tools to sanction improper behavior of financial institutions) but should also have adequate budget and staffing. Taking into regard the current fiscal situation, it is recommended that at least 50% of the budget is covered by levies on the financial sector. The financial industry contributions should be primarily used for activities focused on the deepening of the financial sector and improving trust of Ukrainians of the financial sector (e.g. improving disclosure documents, operating financial literacy programs, supporting relevant NGO programs that improve consumer confidence, etc.).

The operation of the consumer protection regulator should be overseen by the Consumer Protection and Financial Education Coordinating Committee that includes the representatives of the state, the financial industry and the public through NGO representatives. There should also be a yearly report of the supervisor, describing its key activities and findings as well as the work plan for the next year, presented not only to the Consumer Protection and Financial Education Coordinating Committee but also to the President, the government and the relevant committees of the Parliament.

As for the involvement of the financial industry, the supervisory institutions should encourage effective self-regulation. However, any self-regulatory activities should pass two tests:

- they should cover all players of the financial sector, not only some of them so that consumers are not dealt with under two or more different regimes
- there should be effective sanctions for breaching the consumer-related rules of the self-regulatory organization
Moreover, the consumer protection supervisor should approve any self-regulatory documents related to the dealing with consumers and should it find that members of the self-regulatory organization breach the rules and are not punished, it should have power to fine or close down the self-regulatory organization.

As for the involvement of the NGOs, there is a high potential for their involvement but the NGOs need to become better organized and coordinate their activities more closely. At the same time, the consumer protection supervisor should make grants available for relevant consumer protection work of the NGOs, especially in the areas of financial education, improved disclosure, etc. The NGOs should also be vested with the right to initiate lawsuits against financial institutions that participate in harmful, aggressive or unfair business practices.

**Good Practice A.2**

**Code of Conduct for Banks**

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

**Description**

The Association of the Ukrainian banks has developed a voluntary Code of Banker's Honor that deals with the behavior of the banking personnel. The national legislation makes no provisions for the banks to implement such a self-regulatory Code on a compulsory basis. Banks that accepted the Code usually have it posted on their websites. The NBU does not monitor whether banks adhere to the Code and there are no legal regulations related to the issue.

There are no codes or rules on competition-supporting agreements such as easy account switching.

**Recommendation**

Any Code of Conduct should be developed by the industry association in cooperation with the consumer protection supervisor (or the NBU at the moment) and relevant NGOs. After approval by the consumer protection supervisor (or the NBU at the moment) the Code should be valid for all members of the association.

Furthermore, there should be clear penalties for banks breaching the Code and the association should also be required to inform the consumer protection supervisor (or the NBU at the moment) about any breaches and penalties so that the consumer protection regulator may take this information into account when planning its activities.

Based on the EU Unfair Commercial Practices Directive, it should be illegal for any bank to claim it follows a Code of Conduct while not accepting or not applying properly its provisions.

However, the codes of conduct in general should not be implemented instead of legal regulations but should only be used to clarify or improve existing consumer protection rules.

**Good Practice A.3**

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

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

**Description**

As described under A.1 above, neither consumer protection supervision nor consumer protection nor financial education are parts of the official mandate of the NBU.
The work the NBU has conducted in the area of consumer credit (regulating information disclosure for consumer credit and developing educational brochures on consumer credit) has been motivated by the 2008 crisis in Ukraine, many complaints the NBU has received and the public debate about the consumer credit business, not by any official mandate of the NBU.

**Recommendation**

As recommended in A.1 above, a new body responsible for consumer protection must be set up and the current supervisory teams at the NBU should focus on prudential supervision.

However, when setting up the new system, both functions (prudential and consumer protection supervision) must be balanced and must cooperate to ensure the effective functioning of the supervisory system.

### Good Practice A.4 Other Institutional Arrangements

**a.** The judicial system should ensure that the ultimate resolution of any dispute regarding a consumer protection matter in respect of a banking product or service is affordable, timely and professionally delivered.

**b.** The media and consumer associations should play an active role in promoting banking consumer protection.

**Description**

According to the rules of the Ukrainian judicial system, any civil case lawsuit should be decided within two months in the first instance. However, as some of the NGOs have pointed out, this limit is not always kept, not to mention the fact that most cases are appealed by one of the parties and there are no time limits for decisions at higher instances.

When a Ukrainian citizen lodges a lawsuit regarding consumer protection matters, he/she is by law exempt from paying court fees; however, he/she must still bear a lawyer's costs if needed. The need for a lawyer is limited when the SCRPI assists consumers in preparing lawsuits.

As financial product lawsuits often require specialized technical know-how in understanding the functioning of the financial products (and given the weak legislative definitions of financial services in the Ukrainian legislation), court decisions differ from court to court in similar cases.

The media and NGOs play an active role in promoting banking consumer protection. Besides commercial media that cover financial products and strive to educate the general public, the NBU is preparing to launch its own nationwide TV channel that would actively promote and explain consumer rights in financial services.

There are also several NGOs (such as the NGO "Committee for Oversight of Banking Institutions") that actively monitor whether banks fulfill disclosure requirements.

**Recommendation**

As for the judicial system, the following actions are recommended:

1) develop an educational program for judges (and police and prosecutors that deal with criminal cases regarding financial services) on the functioning of financial products to improve their understanding

2) provide a unified rulings recommendation (the so-called Practice Consolidation) in typical financial services-related lawsuits to ensure the law is applied evenly throughout the Ukrainian court system

3) allow NGOs to launch lawsuits on behalf of groups of consumers to stop unfair, aggressive or misleading practices

The new agency/agencies responsible for consumer protection and financial education should develop special training programs for journalists about financial services and regularly alert the media about consumer protection violations, unfair business practices and/or companies operating without proper licenses.

The new agency/agencies responsible for consumer protection and financial education should also operate a grant program for NGOs active in the area of consumer protection and thus support activities focused on improving financial literacy, better information disclosure and proper business conduct.

### Good Practice A.5 Licensing
All banking institutions that provide financial services to consumers should be subject to a licensing and regulatory regime to ensure their financial safety and soundness and effective delivery of financial services.

**Description**
All banks on the Ukrainian market have to be properly licensed by the NBU and the NBU all standard powers. However, many banks have been dealing with their non-performing loans by hiring debt collection agencies that have sometimes employed questionable practices.

**Recommendation**
No recommendation on bank licensing.

Debt collection agencies should be licensed by the agency responsible for consumer protection in the banking sector (and by the NBU before any new regulatory arrangements are set), consumer protection rules and fit-and-proper requirements for their management should be set. The licensing authority should be empowered to withdraw the license for any serious misconduct and thus prevent banks to use this agency as banks would be legally required to collect their debts only by themselves or through licensed debt collection agencies.

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### SECTION B

**DISCLOSURE AND SALES PRACTICES**

**Good Practice B.1**

**Information on Customers**

a. When making a recommendation to a consumer, a bank should gather, file and record sufficient information from the consumer to enable the bank to render an appropriate product or service to that consumer.

b. The extent of information the bank gathers regarding a consumer should:
   (i) be commensurate with the nature and complexity of the product or service either being proposed to or sought by the consumer; and
   (ii) enable the bank to provide a professional service to the consumer in accordance with that consumer's capacity

**Description**
There are no legal requirements for banks to collect sufficient information to provide the client with the most appropriate product or service.

To the contrary of the standard Know Your Customer policy, in the area of consumer credit, each client must sign a form confirming he / she has read the contract, understands all terms and conditions and finds them fair and affordable. However, there is no independent verification whether the bank has properly explained the terms and what the real level of understanding of clients really is. There are also no limits for maximum monthly installments versus the disposable income of the borrower.

**Recommendation**
A "Know Your Customer" policy should be required by the consumer protection regulator from all banks and their agents (if the banks use third party distributors to sell their products) so that they could prove the recommended product were the most appropriate to the client.

The "Know Your Customer" policy should require the banks to collect enough data about customers, their financial goals, risk profiles and their financial portfolio to match offered products with their needs. The information collected (of which the customer should always receive a copy) should also be used in any complaint resolution or lawsuit to prove whether the product was sold properly and in line with the consumer's interest. The "Know Your Customer" policy should be applied not only to banking products but to any products (including investment, pension and insurance products) sold by bank representatives.

**Good Practice B.2**

**Affordability**

a. When a bank makes a recommendation regarding a product or service to a consumer, the product or service it offers to that consumer should be in line with the need of the consumer.

b. The consumer should be given a range of options to choose from to meet his or her requirements.

c. Sufficient information on the product or service should be provided to the consumer to enable him or her to select the most suitable and affordable product or service.

d. When offering a new credit product or service significantly increasing the amount of debt assumed by the consumer, the consumer’s credit worthiness should be properly assessed.
### Description

As described in B.1 above, there is no legal requirement to align the product offered with the best interest of the client or to offer several options. There are legal requirements on proper disclosure only in the area of consumer credit. Clause 2.2 of the consumer credit disclosure rules require that "advantages and disadvantages of lending schemes offered" are disclosed. However, the term is very vague, there is no guidance from the NBU or any other body that would specify these disclosure requirements and most banks interpret it as cost disclosure only. In other areas of banking products, only the Article 54 of the Law on Banks and Banking, forbidding false advertisement, applies.

When offering credit products, banks usually assess consumer's credit worthiness and their risk management procedures are monitored by the NBU as part of the prudential supervision processes to make sure the banks take only reasonable risks in their lending.

### Recommendation

Based on the "Know Your Customer" policy, the banks should be responsible for offering only products suitable to the customer's needs. This duty should be legally defined and the consumer protection supervisor should regularly monitor how banks select products for their clients.

When offering a range of products, the banks should also properly explain each product so that the consumer can make an informed choice. The consumer protection supervisor should regularly conduct inspections through mystery shopping, its supervisory personnel posing as customers and verifying whether they have been provided with all relevant information and truthful explanations of risks and rewards for each offered product.

The rules above should also apply to any third-party selling financial products on behalf of banks.

### Good Practice B.3

#### Cooling-off Period

- **a.** Unless explicitly waived in advance by a consumer in writing, a bank should provide the consumer a cooling-off period of a reasonable number of days (at least 3-5 business days) immediately following the signing of any agreement between the bank and the consumer.

- **b.** On his or her written notice to the bank during the cooling-off period, the consumer should be permitted to cancel or treat the agreement as null and void without penalty to the consumer of any kind.

### Description

Article 11 part 6 of the Law On the Protection of Consumer Rights gives a right to the customer to withdraw its agreement on the consumer loan contract with no explanation of the reasons for such decision within fourteen calendar days after he receives a copy of the consumer loan contract.

Should the customer decide to exercise this right, he shall at the same time give back to the lender the funds and/or goods received under the consumer loan contract and pay interest on the loan for the period from the date of the contractual loan amount being received to the date of it being paid back, at the interest rate set forth by the loan contract.

The lender is forbidden to charge any other fees in connection with the consumer's withdrawal of his agreement on the loan contract.

### Recommendation

As for consumer credit, the information about the 14 day cooling-off period should be prominently displayed in the Key Facts Statement (see B.8 below).

### Good Practice B.4

#### Bundling and Tying Clauses

- **a.** As much as possible, banks should avoid bundling services and products and the use of tying clauses in contracts that restrict the choice of consumers.

- **b.** In particular, whenever a borrower is obliged by a bank to purchase any product, including an insurance policy, as a pre-condition for receiving a loan from the bank, the borrower should be free to choose the provider of the product and this information should be made known to the borrower.

### Description

Article 55, paragraph 3, of the Law on Banks and Banking says that: "Banks shall be prohibited from demanding that clients acquire any product or service from the bank or from the bank’s affiliate or related party as a mandatory condition to render banking services."

However, consumer credit or mortgage contracts require life and / or property insurance and the loan decision often specifies the insurance company for the consumer to apply for the required insurance policy.
This tying practice should have been limited through the initiative of the Antimonopoly Committee (AMC) of Ukraine that has assisted in preparation of the Code of Professional Ethics in the Area of Cooperation of Banks and Insurers. The Code stipulates that the client is free to choose from products offered by any insurer which complies with the bank's requirements. However, the information about this right for free choice is not part of the disclosure documents banks have to provide under regulation 168 of the NBU and there seems to be only very limited monitoring from the AMC on how the Code of Ethics is applied.

**Recommendation**

The AMC should – in cooperation with the NBU, the industry associations and consumer representatives – conduct regular studies of competition in the banking industry and monitor the application of the Code of Ethics. Each consumer should always have at least two insurance options from different insurers to choose from and the AC should monitor whether prices of the offered insurance options reflect competitive environment.

Also, the total remuneration of the bank from the insurer through commissions, bonuses, profit-sharing arrangement or any other form of payment related to the sales of insurance products tied to banking products, should not exceed 40% of yearly premium. For life insurance products, the follow-up commission from the second year on should not exceed 5% of yearly premium.

**Good Practice B.5 Preservation of Rights**

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

(i) any duty to act with skill, care and diligence toward the consumer in connection with the provision by the bank of any financial service or product; or

(ii) any liability arising from the bank’s failure to exercise its duty to act with skill, care and diligence in the provision of any financial service or product to the consumer.

**Description**

The laws in Ukraine do not allow any such limitations.

**Recommendation**

No recommendation.

**Good Practice B.6 Regulatory Status Disclosure**

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

**Description**

The Law on Advertisement, articles 24 and 25 define requirements for advertisements intended to encourage contributions from households. Article 24 of this Law requires that any advertising of the services intended to encourage contributions from households, or advertisement of the service providing entities, is allowed only when the advertiser holds a special permit/license that legitimizes such an advertising activity. The advertisement must bear a registration number of the permit or license, the date of its issue and a name of the authority that issued the permit or license, thus identifying its regulator.

**Recommendation**

While the requirement to include number and date of the license are relevant in the print advertising, they should not be required in the radio, TV and internet ads. Stating that the advertiser is regulated by the NBU in these media should be adequate to reach the intended goal.

**Good Practice B.7 Terms and Conditions**

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

(i) disclosure of details of the bank’s general charges;

(ii) a summary of the bank's complaints procedures;

(iii) a statement regarding the existence of the office of banking ombudsman or equivalent institution and basic information relating to its process and procedures;

(iv) information about any compensation scheme that the bank is a member of;

(v) an outline of the action and remedies which the bank may take in the event of a default by the consumer;
(vi) the principles-based code of conduct, if any, referred to in A.2 above;
(vii) information on the methods of computing interest rates paid by or charged to
the consumer, any relevant non-interest charges or fees related to the product
offered to the consumer;
(viii) any service charges to be paid by the consumer, restrictions, if any, on account
transfers by the consumer, and the procedures for closing an account; and
(ix) clear rules on the reporting procedures that the consumer should follow in the
case of unauthorized transactions in general, and stolen cards in particular, as
well as the bank’s liability in such cases facilitates the reading of every word.

**Description**

The disclosure issues are covered by the Law on the Protection of Consumer Rights (in effect
saying that the bank that provides incomplete or untruthful information may be penalized),
Law on Banks and Banking, the NBU Regulation Nr. 492 / 2003 of the Account Opening,
Operating and Closing Procedure Applicable to Foreign Exchange and Local Currency
Accounts and the NBU Regulation 168 / 2007 related to disclosure in the area of consumer
credit.

In addition, Article 5 of the Law on the Individual Deposit Guarantee Fund (DGF) requires
that the Fund members shall post in every office space accessible for individual depositors
information about the deposit guarantee system and provide the visitors with information on
the types of deposits covered by the guarantee of the Fund, and the terms and conditions of the
deposit compensations.

Article 56 of the Law on Banks and Banking requires that a bank must furnish the client **on
his request** with necessary information, and particularly with information on the bank service
pricing; it must also provide other necessary data and advice relating to the bank service
procedure.

As provided by Article 11 item 4 of the Law on the Protection of Consumer Rights, the lender
shall in no case and by no means make it inconvenient for the client to read and understand
the text giving the detailed calculation of the total cost of the consumer credit as specified by
the loan contract or annex to such contract, particularly by using a font size smaller than the
font size of the main text, or a font color that is masked by the color of background.

The NBU has also developed Guidelines for the borrowers with advice on consumer credit and
Recommendations to the bank card holders. These brochures should be posted in all bank
branches. However information about complaints procedure is not required to be made public
by any regulation.

**Recommendation**

The disclosure documents should be amended in line with the above mentioned best practices.
For specific recommendations regarding disclosure of deposit guarantees, please see the
recommendation F.1.

The disclosure rules for credit products should be the same for consumer credit provided by
banks, by credit unions as well as by other financial organizations providing loans to the
public.

Moreover, there should be clear penalties for non-disclosure of any of the information and
bank offices should be regularly inspected whether the information they are required to post
be easily accessible. Especially the first time borrowers and new card holders should be given
the brochures developed by the NBU to familiarize themselves with their rights and
obligations.

Banks should be required to disclose – in bank branches, on their websites, in contracts and
brochures – how a client may complain or raise a question regarding his products, first
internally through a designated contact point and if not satisfied, then through other channels.
Any answer from a bank regarding a client's complaint should also disclose what other steps
the client may take if he/she is not satisfied with the handling of his complaint.

**Good Practice B.8**  **Key Facts Statement**
### Banking Sector

<table>
<thead>
<tr>
<th>Description</th>
<th>Recommendation</th>
</tr>
</thead>
</table>
| a. A bank should have a Key Facts Statement for each of its accounts, types of loans or other products or services and provide these to its customers and potential customers.  
b. The Key Facts Statement should be written in plain language and summarize in a page or two the key terms and conditions of the specific banking product or service.  
c. Prior to a consumer opening any account at, or signing any loan agreement with, the bank, the consumer should have delivered a signed statement to the bank to the effect that he or she has duly received, read and understood the relevant Key Facts Statement from the bank.  
d. Key Facts Statements throughout the banking sector should be written in such a way as to allow consumers the possibility of easily comparing products that are being offered by a range of banks. | The law should require that all consumers are provided with a Key Facts Statement for any banking product and for any third-party product sold by bank representatives.  
The format of the Key Facts Statement for each type of product should be developed by the NBU in cooperation with the Committee for Consumer Protection, the consumer NGOs and the banking associations and issued as a NBR regulation. Before the regulation is issued, the proposed Key Facts Statements should be verified by an independent marketing analysis expert for their readability and understandability by an average consumer. The regulation should also define formulas for any calculations and define vocabulary terms to be used so that consumers may easily compare Key Facts Statements from various banks.  
Besides information on key features and all relevant costs, the Key Facts Statements should also include the key legal obligations and information on sanctions the consumer may face if he breaches the contract (e.g. by demanding an early withdrawal, overdraft of his account, late payment of a loan installment, etc.).  
The NBU Regulation Nr. 168 on consumer credit disclosure should also require the disclosure of the Annual Percentage Rate as defined by the EU Consumer Credit Directive to allow for an easy comparison of the cost of credit.  
The banking supervision department should regularly monitor whether banks provide the Key Facts Statements by requiring there is a signed copy on each consumer's file. |

### Good Practice B.9 Advertising and Sales Materials

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

### Description

As stated in the Article 54 of the Law on Banks and Banking, any form of advertising that contains untrue information about their activity in the sphere of banking services is prohibited and the NBU is empowered to enforce this rule. There is also the Law on Advertisement with similar ban on false or misleading advertising. In addition, there is a draft law currently in the Parliament proposing that any advertising would have to be approved by the relevant supervisory agency before being used publicly.
### Recommendation

The requirements of various laws should be consolidated and the responsibility for enforcement should be vested with the NBU unless a separate consumer protection supervisor is established.

The NBU should be given power to immediately order a withdrawal of any advertisement it sees as breaking the legal rules without the need for a court decision. On the other hand, if monitoring and enforcement of the NBU function properly, there is no need for a pre-approval of planned advertising and the proposal should not be implemented.

With regard to contracts, the law should stipulate that the consumer has a right to receive a contract before signature and that he has a right to study the contract. The banks should be encouraged to develop model contracts they could then distribute to their consumers before signing and post it on their websites.

### Good Practice B.10

**Third-Party Guarantees**

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

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

### Description

The Article 24 of the Law on Advertisement states that an advertisement of services intended to encourage contributions by households, and advertisement of the service-providing entities shall neither inform the public on the expected amounts of dividends nor give any information on future profits, with the exception of the amounts actually paid for a period of at least one year.

### Recommendation

As in the recommendation in B.9 above, all rules regarding advertising should be consolidated and the NBU should devote adequate resources to monitoring and enforcing the rules.

The NBU should also encourage NGOs monitoring financial services to assist it in collecting questionable advertising practices.

The NBU should make its decisions regarding unfair advertising public and explain why it considers any specific advertising in breach of regulations. These rulings can then inform banks and their advertising agencies as to what is still an acceptable practice and what forms of advertising will not be allowed.

### Good Practice B.11

**Professional Competence**

- 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.

- Regulators and associations of banks should collaborate to establish and administer minimum competency requirements for any bank staff member who: (i) deals directly with consumers, (ii) prepares any Key Facts Statement or any advertisement for the bank, or (iii) markets the bank’s services and products.

### Description

There are no regulatory requirements regarding the Good Practice B.11. Therefore, each bank is free to set its staff training policy.

### Recommendation

There should be minimum competency standards set for the members of banks’ staff that directly serve the consumers and the same rules should be applicable also to financial intermediaries offering banking products.

The minimum competency standards should focus on the following areas:
1) functioning of financial products, including legal obligations related to signing a financial-service contract
2) ability to discuss financial planning with consumers and explain the potential impact of various financial products on their financial well-being, including the relationship of risk and reward
3) explanation of consumer rights, including procedures for settling any claim or dispute

The standards should be set by the NBU in cooperation with the banking associations and the NBU University. While the training should be left with the banks (or through third parties the banks select), the NBU should verify the content of the training programs and should participate in verification of the competency standards.

With regard to the marketing staff, each bank should have established internal procedures through which any documents addressed to the public are checked and approved from compliance perspective.

<table>
<thead>
<tr>
<th>SECTION C</th>
<th>CUSTOMER ACCOUNT HANDLING AND MAINTENANCE</th>
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</thead>
<tbody>
<tr>
<td><strong>Good Practice C.1</strong></td>
<td><strong>Statements</strong></td>
</tr>
<tr>
<td></td>
<td>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.</td>
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<td></td>
<td>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.</td>
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<tr>
<td></td>
<td>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.</td>
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<td></td>
<td>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.</td>
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<td>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.</td>
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<td>f. When a customer signs up for paperless statements, such statements should be in an easy-to-read and readily understandable format.</td>
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**Description**
As for the bank account statements, it is the Regulation on the Special Payment Instrument Emission and Operation Procedure approved by the National Bank of Ukraine Board Resolution #223 dated April 30, 2010 ("Regulation 223") that spells out general requirements of the NBU on special payment instruments.

As provided in Section 7 item 7.8 of the Regulation 223, every bank shall, based on the terms and conditions defined in the contract between the bank and its client, provide its clients with statements of cash flows on their accounts. The statement of payment transactions should be provided on a monthly basis and provided free of charge.

Further details regarding statements are defined in chapter 5 of the Regulation of the Operational Process Management by Ukraine’s Banks approved by the National Bank of Ukraine Board Resolution #254 dated June 18, 2003 ("Regulation 254").

Article 5 item 5.5 of Regulation 254 sets forth mandatory contents of a Statement of the Client’s Account, as follow: number of the personal account; date of the last/previous transaction; date of the transaction on the account; code of the bank operating the account; code of the currency on the account; income balance amount on the account; code of the correspondent bank; number of account with the correspondent bank; payment document number; amount of the transactions on the account receivable or payable as applicable; total turnover of the receivables or payables on the account; and the final balance on the account.
As provided by Article 5 item 5.6 of Regulation 254 and Section 7 item 7.18 of Regulation 223, it is the Bank Account Opening Contract negotiated and formed by and between the bank and the client that shall set out the procedure, periodicity requirements and the required form (hardcopy or emailed electronic statements) of the Statement of the Client’s Account. Every statement of personal accounts shall report every transaction completed for the period under the statement.

A statement of fund turnover on the account may be provided to the account holder on his visit to the bank office, or mailed through post, or emailed in an electronic format, or sent as a text message to his mobile telephone, or printed out through an automatic teller machine etc. The above mentioned provisions require no special confirmations of an emailed electronic statement being received by the client.

The Regulation 254 makes no special requirements for a statement of the client’s account to state information on the interest rate applicable to transactions on the client’s account, on the minimum required payment and the total interest payable in case when the minimum required payment from the account is made using special payment instruments; however, a statement of the clients’ account may report these data if such a requirement is stated by the Bank Account Opening Contract.

As far as the deposits left on inactive (non-operating) accounts are concerned: The Article 1075 of the Civil Code of Ukraine allows for cancellation of accounts when no transactions on the account have been performed for a long time and the bank has lost contact with the account holder (hereinafter referred to as “inactive accounts”). Bank may unilaterally cancel the Bank Account Opening Contract and close the client’s account, provided there have been no transactions on the client’s account for at least three consecutive years and there is no balance of funds on the account.

When there are still some funds deposited on the account, the bank shall have a right to claim the Bank Account Opening Contract being cancelled in the following cases:

1) When the total amount remaining on the balance of the client’s account is found to be lower than the minimum threshold amount required by the relevant bank regulations and/or the Bank Account Opening Contract and the client fails to credit the required amount to the account within one month following the bank notice of the inadequate balance of account;

2) When no transactions are performed on the account for at least one year unless otherwise established by the Bank Account Opening Contract; or

3) In other events specified by the Bank Account Opening Contract or the relevant legal provisions.

It is the Balance Account 2903 "Deposits of the Bank Clients on Inactive Accounts" that are used to account for the funds on the clients’ accounts where no transactions have been performed for at least three years in a row and where a balance of funds is available.

Deposits of the bank clients transferred to Balance Account 2903 shall be accounted for there until the deposit holders decide to make use of the funds. To clear the unused accounts, some banks have established special fees for dormant accounts, allowing them to draw the balance down to zero and then cancel the accounts.

**Recommendation**

As the practice of individual banks varies, the NBU should issue a Regulation defining statements for credit cards. These statements should include the following items on a NBU-prescribed format to make the disclosure documents simple and comparable:

1) all credit card transactions
2) all fees and interest due
3) the total amount owed
4) the minimum payment required
5) the total interest cost that will accrue if the cardholder makes only the required minimum payment

For mortgages, the NBU should issue a Regulation defining mortgage loan statements. These statements should be issued at least once a year and should include the following items on a NBU-prescribed format to make the disclosure documents simple and comparable:
### 1) amount paid during the period covered by the statement
### 2) the allocation of payment to the principal and interest
### 3) the total outstanding amount still owed
### 4) overdue payments and sanctions for late payments.

<table>
<thead>
<tr>
<th>Good Practice C.2</th>
<th>Notification of Changes in Interest Rates and Non-interest Charges</th>
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<tbody>
<tr>
<td>a. A customer of a bank should be notified in writing by the bank of any change in:</td>
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<td>(i) The interest rate to be paid or charged on any account of the customer as soon as possible; and</td>
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<tr>
<td>(ii) A non-interest charge on any account of the customer a reasonable period in advance of the effective date of the change.</td>
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<tr>
<td>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.</td>
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<tr>
<td>c. The bank should inform the customer of the foregoing right whenever a notice of change under paragraph a. is made by the bank.</td>
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### Description
As provided by Article 1056-1 of the Civil Code of Ukraine, a fixed interest rate must remain invariable for the whole period of the loan contract and the lender has no legal power to raise the fixed interest rate specified by the loan contract on its own discretion. Any interest rate change would have to be concluded in the form of a contract change, executed in writing and accepted by both parties.

If the loan contract provides for a variable interest rate, the lender may raise or lower the interest rate unilaterally only in compliance with the interest rate calculation formula and revision periodicity agreed under the terms and conditions of the contract. The lender must notify in writing the borrower, guarantor and other relevant parties to the loan contract of the interest rate adjustment at least 15 calendar days prior to the new interest rate coming into effect. The lender may only change the interest rate according to the calculation formula agreed in the contract and has no right to revise the interest rate calculation set forth by the loan contract without a prior consent of the borrower.

As for bank deposits, the Article 1061 of the Civil Code of Ukraine regulates the interest rate calculation, revision and payment procedure applicable to deposit contracts; based on the article, a bank is entitled to revise the interest rate payable only on demand deposits unless otherwise provided by the contract.

When a bank decides to lower the interest payable on the demand deposits, the new interest rate will apply to deposits made prior to the change not sooner than one month following the notification, unless otherwise agreed in the contract.

An interest rate payable for a time deposit contract or for a deposit returnable in events specified by the contract may not be revised by the bank unless required by the laws in effect.

The Article 55 of the Law on Banks and Banking also reaffirms the rules described above, stating that banks shall in no case, acting on their own, revise the terms and conditions of the contracts formed with their clients, nor shall they, among other things, raise the interest rate payable on a loan contract, nor lower the interest rate payable on a bank deposit contract (with the exception of demand deposit contracts), save for the cases set forth by the legislation in effect.

However, as the law allows for variations from the general rules if these variations are specified in the contract, some banks have tried to put undue burden on consumers by insisting in the contracts that clients are responsible to find out relevant information on the bank’s website or in the branches.

### Recommendation
The law should specify that all material information must be provided to clients in writing if it has impact on how much they pay for a loan or what the return is on their deposits other than demand deposits.

The same written information should be provided to clients about price changes for banking products they use at least one month before the changes take effect and the consumers should
be given a right to terminate their bank account contracts free of charge within two months if they disagree with the proposed changes.

**Good Practice C.3 Customer Records**

a. A bank should maintain up-to-date records in respect of each customer of the bank that contain the following:

(i) a copy of all documents required to identify the customer and provide the customer’s profile;
(ii) the customer’s address, telephone number and all other customer contact details;
(iii) any information or document in connection with the customer that has been prepared in compliance with any statute, regulation or code of conduct;
(iv) details of all products and services provided by the bank to the customer;
(v) all documents and applications of the bank completed, signed and submitted to the bank by the customer;
(vi) a copy of all original documents submitted by the customer in support of an application by the customer for the provision of a product or service by the bank; and
(vii) any other relevant information concerning the customer.

b. A law or regulation should provide the minimum permissible period for retaining all such records and, throughout this period, the customer should be provided ready access to all such records free of charge or for a reasonable fee.

**Description**

As provided by Article 63 of the Law on Banks and Banking, banks shall work out, implement and regularly improve their internal financial monitoring rules and the relevant management procedures acting in compliance with the relevant legal provisions to prevent and control money laundering / legalization activities that involve incomes from illegal businesses. The Article 65 of the Law on Banks and Banking provides that every document supporting the financial transactions subject to the financial monitoring procedure and the relevant client identity documents shall be kept by bank for five years following the dates of such transactions being performed. Identity documents of the account holder and his/her authorized person acting on his behalf shall be kept by the bank for five years following the account closing date.

Article 6 of Resolution #254 sets out the legal documents that shall be kept in an account file, as follows:

1) Supporting documents for the client’s bank account opening procedure (see item 6.4 of Resolution #254);
2) All correspondence relating to the legal processing of the client’s accounts (see item 6.6 of Resolution #254);
3) Documents that are no longer valid, relating to the effective accounts of the clients. In case when a bank registration form bearing sample signatures is replaced by a new one, one copy of the outdated registration form, notarized or attested by the relevant upper-level authority, shall be filed and the remaining copies shall be destroyed (see item 6.7 of Resolution #254);
4) Cancelled checks, in case when the account is closed, or the corporate client is restructured, or its name is changed (see item 6.8 of Resolution #254).
5) Bank acting on its own discretion in compliance with its internal regulation shall set out the supporting documentation keeping requirements for the client account (legal case) processing procedure (see item 6.5 of Resolution #254).

It is the List of Documents Produced in Operations of the National Bank of Ukraine and other Banks of Ukraine, with their Keeping Terms approved by the National Bank of Ukraine Board Resolution #601 dated December 08, 2004 (hereinafter referred to as the “List”) that provides requirements to the list of documents with their keeping terms, and includes, among other things, the following requirements:
1) Legal processing cases supporting the clients’ accounts shall be kept by banks for 10 years following the account closing date (see Chapter 8 item 8.2 Article 694 of the List);

2) All correspondence on the account opening procedure for the benefit of companies, organizations, institutions and individual clients shall be kept within 5 years following the account closing date (see Chapter 1 item 1.4 Article 88 of the List);

3) Supporting documents (contracts, agreements, correspondence) relating to deposits/contributions on accounts of individual clients shall be kept for 10 years following the deposit contract/agreement expiration date (see Chapter 8 item 8.5 Article 747 of the List);

4) Supporting documents (contracts, correspondence) relating to deposits/contributions on accounts of underage individual clients shall be kept for 10 years following the date of the client attaining the full age (see Chapter 8 item 8.5 Article 748 of the List);

5) Supporting documents (deposit records, primary orders and account closing documents, including cash withdrawal orders, commissions, wills, letters of attorney) in files of closed accounts shall be kept for 10 years following the account closing date (see Chapter 8 item 8.5 Article 749 of the List);

6) Supporting documents (deposit records, primary orders and account closing documents, including cash withdrawal orders, commissions, wills, letters of attorney) in files of closed accounts of underage individual clients shall be kept for 10 years following the date of the client attaining the full age (see Chapter 8 item 8.5 Article 750 of the List);

7) Supporting documents (applications, cash withdrawal orders, commissions, letters of attorney, contracts) in files of closed accounts of individual clients in case when the client states that he/she lost the savings book or other relevant document (that may be found and presented by the individual client later on) issued by the bank as required by the laws in effect – shall be kept for unlimited time until the banking institution is liquidated (see Chapter 8 item 8.5 Article 751 of the List);

8) Supporting documents (deposit records, primary orders and account closing documents, including cash withdrawal orders, commissions, wills, letters of attorney) in files of closed accounts of military servicemen/women who have served abroad since the year of 1944 shall be kept for 5 years following the account closing date (see Chapter 8 item 8.5 Article 752 of the List);

9) Correspondence with individual clients on the matters of account operation and fund transfers shall be kept for 5 years (see Chapter 8 item 8.5 Article 753 of the List).

As provided by Article 60 of the Law on Banks and Banking, all information on bank accounts of clients, transactions on the accounts for the benefit and on orders of the bank clients and contracts formed by bank clients shall be treated as confidential bank information. Information about corporate and individual clients qualified as confidential bank information may be disclosed by the bank only on a request or permit in writing of the owner of such information (as provided by Article 62 of the Law on Banks and Banking).

**Recommendation**

No recommendation.

**Good Practice C.4**  
**Paper and Electronic Checks**

a. The law and code of conduct should provide for clear rules on the issuance and clearing of paper checks that include, among other things, rules on:

- (i) checks drawn on an account that has insufficient funds;
- (ii) the consequences of issuing a check without sufficient funds;
- (iii) the duration within which funds of a cleared check should be credited into the customer’s account;
- (iv) the procedures on countermanding or stopping payment on a check by a customer;
- (v) charges by a bank on the issuance and clearance of checks;
- (vi) liability of the parties in the case of check fraud; and
### Banking Sector

#### (vii) error resolution

b. A customer should be told of the consequences of issuing a paper check without sufficient funds at the time the customer opens a checking account.

c. A bank should provide the customer with clear, easily accessible and understandable information regarding electronic checks, as well as the cost of using them.

d. In respect of electronic or credit card checks, a bank should inform each customer in particular:

   - how the use of a credit card check differs from the use of a credit card;
   - of the interest rate that applies and whether this differs from the rate charged for credit card purchases;
   - when interest is charged and whether there is an interest free period, and if so, for how long;
   - whether additional fees or charges apply and, if so, on what basis and to what extent; and
   - whether the protection afforded to the customer making a purchase using a credit card check differs from that afforded when using a credit card and, if so, the specific differences.

e. Credit card checks should not be sent to a consumer without the consumer's prior written consent.

f. There should be clear rules on procedures for dealing with authentication, error resolution and cases of fraud.

| Description | Settlement procedures using clearance checks are regulated by Chapter 74 Articles 1102 through 1106 of the Civil Code of Ukraine. Article 1102 item 5 of the Civil Code of Ukraine, for instance, states that terms and conditions for the checks application procedure are provided by this Code, legislation in effect and the relevant bank rules. As provided by Article 1103 item 1 of the Civil Code of Ukraine, a check shall be cashed for account of the check issuing customer.

   It is Chapter 7 of the Regulation on Cashless Settlements in Ukraine in National Currency (approved by the National Bank of Ukraine Board Resolution #22 dated January 21, 2004) (hereinafter referred to as the Regulation #22) that spells out the settlement procedure using clearance checks.

   To provide for the checks being paid in a timely manner, the check issuer shall fund a special checking account called “Settlements through checks” on the relevant balance accounts of the emitting bank. To fund the account, the check issuer shall file its application for a check book with the emitting bank complete with a payment order to transfer funds to the special checking account called “Settlements through checks”.

   The emitting bank may dishonor a check when the check is found to be drawn on the special checking account “Settlements through checks” with insufficient funds.

   The question of whether or not the bank may use an overdraft lending instrument in case when the cash issuer’s account is found insufficient to cash the issued checks shall be regulated by the relevant Bank Account Opening Contract.

   As provided by Article 47 of the Law on Banks and Banking, a bank may set on its own discretion an interest rate and commission rate for the services it provides.

   Checks shall be made on an order from the bank by the Banknote and Coin Mint of the National Bank of Ukraine or some other special government enterprise using a special paper and in compliance with the relevant compulsory requirements as provided by Regulation #22. |

| Recommendation | No recommendations. |

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<thead>
<tr>
<th>Good Practice C.5</th>
<th>Credit Cards</th>
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<tbody>
<tr>
<td>a.</td>
<td>There should be legal rules on the issuance of credit cards and related customer disclosure requirements.</td>
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<tr>
<td>b.</td>
<td>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</td>
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</tbody>
</table>
c. Banks should not be permitted to impose charges or fees on pre-approved credit cards that have not been accepted by the customer.
d. Consumers should be given personalized minimum payment warnings on each monthly statement and the total interest costs that will accrue if the cardholder makes only the requested minimum payment.
e. Among other things, the legal rules should also:
   (i) restrict or impose conditions on the issuance and marketing of credit cards to young adults (below age of 21) who have no independent means of income;
   (ii) require reasonable notice of changes in fees and interest rates increase;
   (iii) prevent the application of new higher penalty interest rates to the entire existing balance, including past purchases made at a lower interest rate;
   (iv) limit fees that can be imposed, such as those charged when consumers exceed their credit limits;
   (v) prohibit a practice called —double-cycle billing‖ by which card issuers charge interest over two billing cycles rather than one;
   (vi) prevent credit card issuers from allocating monthly payments in ways that maximize interest charges to consumers; and
   (vii) limit up-front fees charged on sub-prime credit cards issued to individuals with bad credit.
f. There should be clear rules on error resolution, reporting of unauthorized transactions and of stolen cards, with the ensuing liability of the customer being made clear to the customer prior to his or her acceptance of the credit card.
g. Banks and issuers should conduct consumer awareness programs on the misuse of credit cards, credit card over-indebtedness and prevention of fraud.
With regard to fees for pre-approved credit cards, Article 11 of the Law of Ukraine “On Consumer Rights Protection” stipulates consumers’ rights in the event of his/her installment buying of products. A consumer is not obliged to pay any dues, interests or other cost elements a loan provider, except for those specified in the agreement.

The credit card disclosure is based on the Regulation 168 of the NBU regarding disclosure of consumer credit. However, the required disclosure of expected installments to be paid depend on the information of the consumer on how he wants to draw the funds from the credit card which usually cannot be planned properly in advance and the disclosure thus has only a limited effect.

As for the minimum payment warning, a consumer gets information on his transactions with a card and other payments funded from the credit limit in his card account statements. The statements are provided within the terms and in the manner specified in the agreement. As a rule, clients are informed on the need to redeem debts at bank branches, via internet banking or SMS.

With regard to the changes of interest rates, fixed and floating interest rates are applied to loans in Ukraine. Article 10561 of the Civil Code of Ukraine stipulates that the fixed interest rate specified in an agreement may not be unilaterally increased by a bank. An agreement provision entitling a bank to the fixed interest rate change unilaterally is null and void. In case of the floating interest rate, a creditor on its own, as frequently as the contract specifies, has the right to increase and is obliged to reduce the interest rate according to the terms and procedure stipulated in the loan agreement. The loan provider must inform in writing a borrower, a guarantor and other obligators under the agreement of an interest rate change not later than 15 calendar days prior to the new rate application start date.

As for unauthorized transactions, the general requirements to the security of payment transactions involving special payment instruments are regulated under Chapter 6 of the Regulation no. 223. In particular, Clauses 6.4 and 7.9 of Chapters 6 and 7, respectively, of the Regulation no. 223 stipulate that users of payment cards must immediately inform an issuer, or its designated legal person, about the loss of a special payment instrument under the procedure and in the form specified in an agreement. If an account owner has objections as to account transactions enlisted in the statement, he has the right to ask the issuer to consider the matter in question or file an appeal with a court. The issue of unauthorized transactions is also regulated by the rules of payment systems, in particular, by Visa and MasterCard which, in total, cover more than 90% of the card payment market in Ukraine.

In order to ensure banks’ compliance with the Ukrainian legal requirements in the realm of consumer lending and credit card use, and to enhance public financial literacy, the National Bank of Ukraine has elaborated and published on its official page the Quick Reference Card on Consumer Loans (http://www.bank.gov.ua/doccatalog/document?id=59627), the General Requirements to Payment Transactions (http://www.bank.gov.ua/control/uk/publish/article?art_id=68708&cat_id=79220), and the Recommendations on Payment Card Use for the Holders (http://www.bank.gov.ua/doccatalog/document?id=70904) to be available in a place which is accessible for clients within a bank.

**Recommendation**

The NBU should analyze credit card statements and prepare a unified disclosure format with focus on minimum payment required and the effect of paying only a part of the sum borrowed. The new credit card statement format, developed by the US Federal Reserve Bank, may be used as a guide for the NBU.

Based on the EU Consumer Credit Directive, update the NBU Regulation 168 on consumer credit disclosure and require that effective interest rate for credit cards is shown for three typical versions of drawdown of funds. The banking associations should assist the NBU in defining these typical scenarios to make it as relevant as possible.

**Good Practice C.6**

**Internet Banking and Mobile Phone Banking**

a. The provision of internet banking and mobile phone banking (m-banking) should be supported by a sound legal and regulatory framework.
b. Regulators should ensure that banks or financial service providers providing internet and m-banking have in place a security program that ensures:
   (i) data privacy, confidentiality and data integrity;
   (ii) authentication, identification of counterparties and access control;
   (iii) non-repudiation of transactions;
   (iv) a business continuity plan; and
   (v) the provision of sufficient notice when services are not available.

c. Banks should also implement an oversight program to monitor third-party control conditions and performance, especially when agents are used for carrying out m-banking.

d. A customer should be informed by the bank whether fees or charges apply for internet or m-banking and, if so, on what basis and how much.

e. There should be clear rules on the procedures for error resolution and fraud.

f. Authorities should encourage banks and service providers to undertake measures to increase consumer awareness regarding internet and m-banking transactions.

Description

The general requirements to internet or mobile (phone) banking are stipulated in the following legal acts:

1. The Law of Ukraine “On Payment Systems and Transfer of Funds in Ukraine” (hereinafter referred to as the “Law of Ukraine “On Payment Systems and Transfer of Funds in Ukraine””) (Clause 17.2 of Article 17; Clauses 18.1 and 18.3 of Article 18);

2. The Law of Ukraine “On the Electronic Digital Signature” (Articles 3, 4 and 5);

3. The Law of Ukraine “On Electronic Documents and the Electronic Document Flow” (Articles 5, 6 and 8);

4. Chapter 11 of the Instruction on Cashless Settlements in the National Currency in Ukraine, approved with the Resolution of the Board of the National Bank of Ukraine no. 22 dated March 29, 2004 (hereinafter referred to as the “Instruction no. 22”) establishes the procedure for settlements involving remote service systems;

5. The Regulation on the Procedure for the Banks’ Enforcement of Documents on Transfer, Compulsive Writing-off and Distrait of Funds in Foreign Currencies and Bank Metals, approved with the Resolution of the Board of the National Bank of Ukraine no. 216 dated July 28, 2008 (hereinafter referred to as the “Regulation no. 216”).

According to Clause 11.2 of Chapter of the Instruction no. 22, software for remote service systems should comply with legal requirements, including NBU’s regulations on this technology and the security of electronic bank settlements. Information protection in money transfers is ensured in compliance with the requirements imposed by Articles 38 and 39 of Section VIII of the Law of Ukraine “On Payment Systems and Transfer of Funds”. The issues of parties' identification and access control are governed by the provisions of Chapter 11 of the Instruction no. 22 and Clause 22.6 of Article 22 of the Law of Ukraine “On Payment Systems and Transfer of Funds”.

Clause 6.2 of the Regulation 223 specifies that the issuer must not disclose a PIN and other information that enables performing payment transactions with the use of a special payment instrument to any person, except for the holder. Issuing a special payment instrument, subject to the possibility for a holder to change a PIN, the issuer is obliged to inform him thereof. The holder is obliged to safely store the special payment instrument, PIN and other means allowing him to use it.

In accordance with Clause 8.1 of the Regulation 223 organizations of payment systems and suppliers of payment services are entitled have the right to give over performance of some of their functions to legal bodies - agents or authorize another person to partly perform technical functions which are not typical for banks, i.e. to outsource an agent, in compliance with the law of Ukraine, the said Regulation and the agreement. Still, outsourcing certain functions does not result in delegating its liability by payment services supplier’s management; payment and informational services rendered to consumers via an agent shouldn’t be inferior in quality to the same provided by the payment services supplier on its own.
<table>
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<th>Recommendation</th>
<th>No recommendation.</th>
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<tr>
<th>Good Practice C.7</th>
<th><strong>Electronic Fund Transfers and Remittances</strong></th>
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<tbody>
<tr>
<td>a.</td>
<td>There should be clear rules on the rights, liabilities and responsibilities of the parties involved in any electronic fund transfer.</td>
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<td>b.</td>
<td>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:</td>
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<td>(i) the total price (e.g. fees for the sender and the receiver, foreign exchange rates and other costs);</td>
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<td>(ii) the time it will take the funds to reach the receiver;</td>
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<td>(iii) the locations of the access points for sender and receiver; and</td>
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<td></td>
<td>(iv) the terms and conditions of electronic fund transfer services that apply to the customer.</td>
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<tr>
<td>c.</td>
<td>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.</td>
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<td>d.</td>
<td>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.</td>
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<td>e.</td>
<td>There should be clear, publicly available and easily applicable procedures in cases of errors and frauds in respect of electronic fund transfers and remittances.</td>
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<tr>
<td>f.</td>
<td>A customer should be informed of the terms and condition of the use of credit/debit cards outside the country including the foreign transaction fees and foreign exchange rates that may be applicable.</td>
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| Description | There is no definition of the term “electronic transfer” in the Ukrainian legislation. The general requirements to fund transfer are established by the Law of Ukraine “On Payment Systems and Transfer of Funds in Ukraine” and the Law of Ukraine “On the Electronic Digital Signature”. For instance, according to the Law of Ukraine “On Payment Systems and Transfer of Funds in Ukraine”, fund transfer is the movement of a certain sum of funds with a view of crediting a recipient’s account or issuing to him/her as cash. An initiator and a recipient may be one and the same person. A remittance document may be in hard or soft copy, as provided for by Article 17 of Section III of the Law of Ukraine “On Payment Systems and Transfer of Funds in Ukraine”.

The procedure for incurring liability in fund transfers is set forth by Section VII of the Law of Ukraine “On Payment Systems and Transfer of Funds in Ukraine” and in Regulation 223.

The client’s right for information, in particular about prices of banking services, is stipulated in Article 56 of the Law of Ukraine “On Banks”. The time-frame for conducting a remittance are specified in Article 8 of Section I of the Law of Ukraine “On Payment Systems and Transfer of Funds in Ukraine”.

Clause 7.3 of the Regulation 223 stipulates that consumers’ transactions with the use of special payment instruments should be performed with executing a payment terminal receipt, an ATM check, a slip or other documents in the paper form which are drawn up and printed in the national language in the place of the transaction in a number of copies that is needed for all the transaction participants and/or documents in the electronic form specified in the payment system rules. According to Clause 18.1 of the Law of Ukraine “On Payment Systems and Transfer of Funds in Ukraine”, an electronic remittance document and a paper document are of equal legal force.

The liability of banks in processing a remittance and [that of] inappropriate recipients in conducting a remittance are set forth by Articles 32 and 35 of the Law of Ukraine “On Payment Systems and Transfer of Funds in Ukraine”. The said procedures, as a rule, are written out and detailed directly in offices of institutions rendering fund transfer services.
### Good Practice C.8 Debt Recovery

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

### Description

Legal relationship of a lender and a borrower is regulated, among other provisions, by the Civil Code of Ukraine and Article 11 of the Law on Consumer Rights Protection. Grounds and the procedure for a change of a creditor in a liability are regulated under Articles 512-519 of the Civil Code of Ukraine. According to the Article 516, replacement of the creditor may be made without consent of the debtor. As provided by Article 11 of the Law on Consumer Rights Protection, the lender shall notify the customer of the lender’s rights under the consumer loan contract being delegated to a third party.

Using of false statements or any other similar activity is punishable under Section 7 (Economic Crimes) of the Criminal Code of Ukraine.

During the economic crisis of 2008 and the subsequent increase of non-payment of consumer credit, debt recovery activities have significantly increased with no regulation of the debt collection business. There have been many excesses, especially by small debt collection agencies but many of them have been pushed to the fringes of the debt collection business as most financial institutions have started using only reputable debt collection agencies. While originally most debt collectors operated in the agency mode, now about 50% of Ukrainian collection companies engage in debt purchasing activities.

As many loans prior to 2008 were extended in foreign currencies, debt collectors are limited in collecting these loans as they would need a special NBU permit to receive payments in foreign currencies. This permit unfortunately has not been issued to a single collection company despite numerous collectors’ attempts to receive one. There is also no simple legal option to restructure these FX loans into hryvnia-denominated loans and debtors thus must bear the burden of the FX risks.

Five major collection companies created the Associated Collection Business of Ukraine in 2008 (an NGO that sets industry standards and promotes civilized collection practices). Currently, the ACBU unites 13 major debt collection agencies. In 2009 the ACBU has introduced a Code of Conduct for its members and operates a hotline and a web-based service where consumers may report the breaches of the Code.

Based on the negative experience with some debt collection practices, a law has been prepared to ban the debt collection business altogether. However, this approach might endanger the stability of financial institutions as many debts would not be collected and provisioning would have to significantly increase, limiting other commercial activities of the financial institutions.

### Recommendation

To avoid the issues described above, a new law on debt collection should be prepared and include the following:

1) the NBU is named the agency responsible for licensing and supervising debt collection agencies;
2) Debt collection agencies would have to be licensed by the NBU and within the licensing process prove:
   a. Adequate capital requirements, including the source of the capital;
   b. Adequate technical equipment, including a call center equipped to record all calls to and from debtors and a software that will be used for workflow management of debt collection and allow for all documents to be digitalized; and
   c. Clear internal procedures and training programs for all employees that come into contact with debtors;
3) Rules on communication with debtors, ban on aggressive and deceiving business practices;
4) As a licensed financial institution, allow debt collectors to accept payments in foreign currencies for collection of loans made in foreign currencies;
5) Require the debt collectors to inform credit history bureaus when the debt is paid in full; and
6) Amend the law on consumer protection with caps on maximum penalties and sanctions lenders may charge for late payments.

Until the law is prepared and passed, the NBU and NCRFSM should work closely with the Association of Debt Collectors of Ukraine to identify unfair or aggressive business practices and promote proper functioning of debt collection. The NBU and NCRFSM should also monitor the banks' and credit unions' policies for debt collection and ensure these are in line with the Code of Ethics of the Association of Debt Collectors of Ukraine that could be used as the base for business conduct rules of debt collection in Ukraine.

Should the cooperation between the NBU, FSR and the Associated Collection Business of Ukraine function properly, the NBU should consider turning some of its future supervisory activities for debt collection to the Association, turning it into a self-regulatory institution with legally mandated membership.

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### Good Practice C.9 Foreclosure of mortgaged or charged property

a. In the event that a bank exercises its right to foreclose on a property that serves as collateral for a loan, the bank should inform the consumer in writing in advance of the procedures involved, and the process to be employed by the bank to foreclose on the property it holds as collateral and the consequences thereof to the consumer.

b. At the same time, the bank should inform the consumer of the legal remedies and options available to him or her in respect of the foreclosure process.

c. If applicable, the bank should draw the consumer’s attention to the fact that the bank has a legal right to recover the balance of the debt due in the event the proceeds from the sale of the foreclosed property are not sufficient to fully discharge the outstanding amount.

d. In the event the mortgage contract or charge agreement permits the bank to enforce the contract without court assistance, the bank should ensure that it employs professional and legal means to enforce the contract, including regarding the sale of the property.

### Description

The notions of the collateral, the foreclosure on the pledged item, etc., are stipulated in Paragraph 6 of Chapter 49 of Section 1 of Volume 5 of the Civil Code of Ukraine. Article 590 of Paragraph 6 Chapter 49 of Section 1 of Volume 5 of the Civil Code sets forth that the foreclosure on the pledged item is enforced following a court decision, unless otherwise stipulated in an agreement or in the law.

Furthermore, basic provisions dealing with mortgage are stipulated in the Law of Ukraine “On Mortgage”. Under this law, a bank must inform a borrower on its intention to foreclose on a property. In the event that the underlying obligation and/or the mortgage agreement provisions are violated, a mortgagee sends to a mortgager a written claim to remedy the violation. This claim contains a brief description of the core of the violated obligations, a claim to fulfill the violated obligation within no less than 30 days and a warning of the foreclosure on the mortgage subject in case of the failure to satisfy this claim. If within the set term the mortgagee’s claim remains unsatisfied, the mortgagee has the right to make a decision to foreclose on the mortgage subject.
According to the general rule, the mortgage subject is foreclosed on subsequent to a court decision, a notary’s executory endorsement or voluntarily under an agreement on satisfaction of mortgagee’s claims.

According to Article 36 of the Law on Mortgage, the parties to a mortgage agreement may resolve the issue of foreclosure on the mortgage subject by way of extrajudicial regulation based on the agreement. Extrajudicial regulation is made based on the caveat to satisfy the mortgagee’s claims contained in the mortgage agreement between a mortgagor and a mortgagor or based on a separate agreement on mortgagee’s claim satisfaction between a mortgagor and a mortgagee which is to be notary witnessed and may be made simultaneously with the mortgage agreement or at any time prior to the court decision on the foreclosure on the mortgage subject.

In accordance with Part 6 of Article 20 of the Law of Ukraine “On Collateral”, collateralized property is foreclosed on subsequent to the decision by a court or an arbitration court (according to the Law of Ukraine “On Arbitration Courts”, consumer protection cases, including consumers of services rendered by banks or credit unions, may not be considered by arbitration courts) or based on a notary’s executory endorsement (it may be made subject to notarial certification of the pledge agreement).

Banks and other financial institutions issue collateralized loans in two areas – for buying of real estate (mortgages) and for buying of vehicles (auto credit). Unlike unsecured credit, where non-performing loans are often sold to debt collection agencies, the secured loans have so far been sold to third parties only very rarely.

Banks often try to use foreclosures as the solution for non-performing mortgages and auto credit but must deal with four issues that make the process less than effective:
1) Ukrainian court system is not the most efficient and due to lack of resources is overloaded with debt claims of various types, making the foreclosure process significantly long;
2) The state bailiff service is understaffed and does not have sufficient resources to respond to all approved foreclosure rulings quickly and effectively;
3) There are a number of social laws that prevent foreclosures (for example for families with underaged children) which serves understandable social goals but at the same time limits the willingness of banks to extend credit to these customers and increases the overall cost of credit as banks have to create provisions for technically secured loans but with unrecoverable collateral; and
4) Any banks prefer to avoid foreclosure of real estate as the real estate market is currently rather slow due to the lack of available financing and economic situation.

To make foreclosure a faster process, the recently (October 2011) adopted Law on Amendments to Certain Legislative Acts of Ukraine Regarding the Settlement of Relations between Creditors and Consumers of Financial Services allowed for a foreclosure decision to be made by an out-of-court settlement system agreed in the loan contract. The foreclosure may also be approved by the executive inscription by a notary.

The courts are also required by the new above mentioned law to simultaneously rule on the foreclosure request and an eviction request if the foreclosed property is a residential house or an apartment. Previously, the court was not required to rule on both issues at the same time, thus sometimes approving the foreclosure request but providing the bank with no eviction ruling and thus in effect no power to sell the foreclosed property.

**Recommendation**

No recommendation.

**Good Practice C.10**

**Bankruptcy of Individuals**

a. A bank should inform its individual customers in a timely manner and in writing on what basis the bank will seek to render a customer bankrupt, the steps it will take in this respect and the consequences of any individual’s bankruptcy.

b. Every individual customer should be given adequate notice and information by his or her bank to enable the customer to avoid bankruptcy.
c. Either directly or through its association of banks, every bank should make counseling services available to customers who are bankrupt or likely to become bankrupt.

d. The law should enable an individual to:
   (i) declare his or her intention to present a debtor’s petition for a declaration of bankruptcy;
   (ii) propose a debt agreement;
   (iii) propose a personal bankruptcy agreement; or
   (iv) enter into voluntary bankruptcy.

e. Any institution acting as the bankruptcy office or trustee responsible for the administration and regulation of the personal bankruptcy system should provide adequate information to consumers on their options to deal with their own unmanageable debt.

Description
The possibility of personal bankruptcy is currently not available in Ukraine.

Recommendation
Develop rules for personal bankruptcy, based on the agreement of all involved lenders, allowing for partial debt write-offs after the indebted person agrees to repay a part of his debts over the following 3-5 years.

Before personal bankruptcy is allowed, a system of debt counseling should be developed to help citizens avoid the debt trap. All lenders should ensure the installments are in line with the borrower's income and expenditures and should explain the effects of late installment payments, including penalties and sanctions the borrower will face.

SECTION D
PRIVACY AND DATA PROTECTION

Good Practice D.1
Confidentiality and Security of Customers’ Information

a. The banking transactions of any bank customer should be kept confidential by his or her bank.

b. The law should require a bank to ensure that it protects the confidentiality and security of the personal data of its customers against any anticipated threats or hazards to the security or integrity of such information, as well as against unauthorized access.

Description
The issue of circulation of personal data, disclosure of bank secrets and forming of a credit bureau are regulated under the Law on the Protection of Personal Data, Chapter 10 of the Law on Banks and Banking and Section 2 of the Law on Arrangement of Forming and Circulation of Credit Stories.

The NBU is specifically tasked by Article 60 of the Law on Banks and Banking to issue normative legal acts on the storage, protection, use and disclosure of information that is a bank secret, and provide explanations for the application of such acts.

Article 61 then defines responsibilities of banks in guarding bank secrecy, among other things by:

- Limiting the number of persons who have access to information that constitutes banking secrecy.
- Organizing a special handling and processing of documents containing banking secrets.
- Using technical features to prevent unauthorized access to electronic and other information carriers.
- Application of clauses on guarding the banking secrecy and responsibility for its disclosure in agreements and contracts concluded between the bank and its client.
- When hired, bank employees must sign a commitment to keep the banking secrets confidential.

The law also stipulates that if losses are inflicted on the bank or on its clients through a leak of bank secrecy information from banks or from the bodies authorized to exercise bank supervision, bodies guilty of such disclosure must reimburse these losses.
### Recommendation

The NBU should ensure it has enough resources to conduct supervision that ensures requirements for data protection (including proper technical features as well as staff training) are properly met in all banks.

### Good Practice D.2

**Sharing Customer’s Information**

*a. A bank should inform its customer in writing:*

(i) of any third-party dealing for which the bank is obliged to share information regarding any account of the customer, such as any legal enquiry by a credit bureau; and

(ii) as to how it will use and share the customer’s personal information.

*b. Without the customer’s prior written consent, a bank should not sell or share account or personal information regarding a customer of the bank to or with any party not affiliated with the bank for the purpose of telemarketing or direct mail marketing.*

*c. The law should allow a customer of a bank to stop or opt out of the sharing by the bank of certain information regarding the customer and, prior to any such sharing of information for the first time, every bank should be required to inform each of its customers in writing of his or her rights in this respect.*

*d. The law should prohibit the disclosure by a third party of any banking-specific information regarding a customer of a bank.*

### Description

The issue of circulation of personal data, disclosure of a bank secret and forming a credit bureau are regulated under the Law on the Protection of Personal Data, Chapter 10 of the Law on Banks and Banking and Section 2 of the Law on Arrangement of Forming and Circulation of Credit Stories.

Restrictions on disclosure of bank secrecy information are stipulated in Articles 60-62 of the Law on Banks and Banking.

The matter of circulation of personal data, disclosure of banking secrecy and formation of a credit bureau are regulated by the Law on the Protection of Personal Data, Chapter 10 of the Law on Banks and Banking and Section 2 of the Law on Arrangement of Forming and Circulation of Credit Histories.

However, many contracts include conditions that banks do not have to inform their customers about any information sharing. Banks are also not prevented from selling or sharing consumer data unless stated in the contract and there are no legal rules for stopping or opting out of sharing consumer information.

### Recommendation

While information defined as bank secrecy is protected properly, protection of information usable for marketing purposes is weak. The consumers should be given an explicit right to forbid any information sharing with third parties (except for information sharing based on legal requirements) and should also be given the right to opt out of any previous sharing, with the third party being obliged to destroy all information it holds about the person that has withdrawn his consent to information sharing.

### Good Practice D.3

**Permitted Disclosures**

The law should provide for:

(i) the specific rules and procedures concerning the release to any government authority of the records of any customer of a bank;

(ii) rules on what the government authority may and may not do with any such records;

(iii) the exceptions, if any, that apply to these rules and procedures; and

(iv) the penalties for the bank and any government authority for any breach of these rules and procedures.

### Description

As provided by Article 60 of the Law on Banks and Banking, all information relating to the business and financial standing of the client that has become known to the bank in the client servicing process and through contacts with the client or the relevant third parties shall be qualified a confidential bank information.

The Article 62 of the Law on Banks and Banking sets forth a confidential bank information disclosure procedure. Such information about corporate and individual clients may be disclosed by banks only in the following cases:
1) When the disclosure is allowed by a request or permit of the information owner in writing;
2) Pursuant to a court decision;
3) When the disclosure is required by office(s) of the Public Prosecutor of Ukraine, Security Service of Ukraine, Ministry of Internal Affairs (MoIA) of Ukraine or the AC of Ukraine that apply for such information in writing to clarify certain transactions on accounts of specific corporate or individual clients engaged in business activity, the transactions of interest being limited by a specified period of time;
4) When the disclosure is required by offices of the State Tax Service of Ukraine, the request being filed in writing with an objective to check whether or not the customer(s) of interest holds bank account(s);
5) When the disclosure is required by a national executive government agency vested with special powers to exercise financial monitoring procedures, the request being filed in writing with an objective to check the financial transactions of interest for the financial monitoring / analyzing procedure based on the legislation designed to prevent and control money laundering / legalization activities including laundering of incomes from illegal businesses and terrorism financing activity, and to identify parties to the above transactions; and
6) When the disclosure is required by state executive service offices, the request being filed in writing with an objective to execute court sentences and other decisions that must be executed on a compulsory basis as required by the Law on Executive Service, the actions being limited to accounts of a specific corporate or individual client, or an individual client certified for a business activity.

As provided by Article 9 of the Law on Arrangements for Formation and Circulation of Credit Histories, a bank may furnish the Bureau of Credit Histories with the information it requests for the credit history formation purposes only when such sharing of information is based on a written consent of the bank client.

As for compensation, the client is required to go to court to claim compensation related to the disclosure of the confidential information.

**Recommendation**

No recommendation.

**Good Practice D.4**  
**Credit Reporting**

a. Credit reporting should be subject to appropriate oversight, with sufficient enforcement authority.

b. The credit reporting system should have accurate, timely and sufficient data. The system should also maintain rigorous standards of security and reliability.

c. The overall legal and regulatory framework for the credit reporting system should be: (i) clear, predictable, non-discriminatory, proportionate and supportive of consumer rights; and (ii) supported by effective judicial or extrajudicial dispute resolution mechanisms.

d. In facilitating cross-border transfer of credit data, the credit reporting system should provide appropriate levels of protection.

e. Proportionate and supportive consumer rights should include the right of the consumer

   (i) to consent to information-sharing based upon the knowledge of the institution’s information-sharing practices;

   (ii) to access his or her credit report free of charge (at least once a year), subject to proper identification;

   (iii) to know about adverse action in credit decisions or less-than-optimal conditions/prices due to credit report information;

   (iv) to be informed about all inquiries within a period of time, such as six months;

   (v) to correct factually incorrect information or to have it deleted and to mark (flag) information that is in dispute;

   (vi) to reasonable retention periods of credit history, for instance two years for positive information and 5-7 years for negative information; and
| **Description** | It is the Law on Arrangements for Formation and Circulation of Credit Histories that spells out the legal and organizational concepts for the credit reports formation and records-keeping procedure; rights of the subjects of the credit reports and clients of the credit history bureaus; requirements to information protection in the credit history treatment process; and the credit history bureau establishment, operation and liquidation procedure.

A bank shall provide information for the purposes of credit history formation only when such sharing of information is based on a written consent of the relevant corporate or individual client that has a loan contract with the bank (see Article 9 of the law).

The subject of the credit report shall have a right of access to the information collected in his credit history file, including the credit report and records in the register of requests for information (Article 13 of the law).

Every bureau of credit histories must be licensed, the license being issued by a relevant Authorized Body which currently is the National commission in charge of the state regulation of the markets of financial services (NCRFSM) (Article 15 of the law).

One of the key objectives of the credit history resource formation and access control procedures is to ensure the credit information being all-inclusive, unbiased, complete and authentic (see Article 4 of the law). Both the credit bureau and the bank that has submitted or accessed the information are liable for any misrepresentation, mollification, fraud or corruption of data submitted, stored and processed (Article 12 of the law).

The government is required by the law to provide credit bureaus with information from its registries (e.g. a real estate register) to allow banks to gain complete information about a customer from a single source. However, many government entities require that banks purchase information directly, making credit checks more expensive and time consuming.

There are currently six credit bureaus in Ukraine, two large ones with wide membership, two established by an individual bank (Privat Bank and Russkij Standard Bank) and two smaller ones. Besides banks, credit unions are members of some of the bureaus, as well as insurance companies and leasing companies. Unlike in some European countries, utility companies or mobile operators are not members of the bureaus and do not provide credit history information to the registers.

The NBU regulations on credit provisioning support using credit bureaus by requiring that banks check credit history of their client and provide information on their clients to the credit bureau. If they do not do so, the client's creditworthiness is automatically downgraded and the bank must set aside higher provisions for such a client. |
| **Recommendation** | The legal basis for the existence of credit bureaus is sound with no recommendations. However, the existence of small or single-bank affiliated credit bureaus diminishes the NBU's support of checking and developing credit histories by the above mentioned requirements for higher provisioning for clients that do not agree to have their credit history checked and data on their credit passed to a credit bureau. Moreover, the trigger allowing for lower provisioning should not be the client's agreement to share his information but the actual sharing with the credit bureaus representing at least a 75% majority of consumer records.

As the credit bureaus deal primarily with information provided by banks and the usage of credit bureaus has an impact on bank provisioning, the NBU should become the regulator of the credit bureaus instead of the NCRFSM.

In line with legal requirements, relevant government authorities should provide information to the credit bureaus. |
The existing smaller credit bureaus should be merged with the larger existing ones. Moreover, the two credit bureaus established by an individual bank should ensure that they also have access to credit information held by other credit bureaus so that they are able to verify a realistic credit history of an individual. The general principle of credit bureaus – only those who provide information to the credit bureau should be provided with information from the credit bureau – should be followed.

**SECTION E  DISPUTE RESOLUTION MECHANISMS**

**Good Practice E.1  Internal Complaints Procedure**

a. Every bank should have in place a written complaints procedure and a designated contact point for the proper handling of any complaint from a customer, with a summary of this procedure forming part of the bank’s Terms and Conditions referred to in B.7 above and an indication in the same Terms and Conditions of how a consumer can easily obtain the complete statement of the procedure.

b. Within a short period of time following the date a bank receives a complaint, it should:
   (i) acknowledge in writing to the customer/complainant the fact of its receipt of the complaint; and
   (i) provide the complainant with the name of one or more individuals appointed by the bank to deal with the complaint until either the complaint is resolved or cannot be processed further within the bank.

c. The bank should provide the complainant with a regular written update on the progress of the investigation of the complaint at reasonable intervals of time.

d. Within a few business days of its completion of the investigation of the complaint, the bank should inform the customer/complainant in writing of the outcome of the investigation and, where applicable, explain the terms of any offer or settlement being made to the customer/complainant.

e. When a bank receives a verbal complaint, it should offer the customer/complainant the opportunity to have the complaint treated by the bank as a written complaint in accordance with the above. A bank should not require, however, that a complaint be in writing.

f. A bank should maintain an up-to-date record of all complaints it has received and the action it has taken in dealing with them.

g. The record should contain the details of the complainant, the nature of the complaint, a copy of the bank's response(s), a copy of all other relevant correspondence or records, the action taken to resolve the complaint and whether resolution was achieved and, if so, on what basis.

h. The bank should make these records available for review by the banking supervisor or regulator when requested.

**Description**

The Law on Civil Complaints defines a general procedure of civil complaints against unlawful actions of companies, institutions, organizations etc. that the complainants perceive as violating their civil rights and lawful interests, and a relevant complaint consideration and handling procedure.

The information about complaints of bank customers that come to the National Bank of Ukraine is taken into consideration when the NBU staff performs prudential supervision and scheduled audits of the bank in question. Handling consumer complaints is one of the issues evaluated under the Legal / reputation risk assessment of the overall Bank Risk Assessment System conducted by the NBU. However, there are no official requirements of the NBU for the internal complaints procedures in banks as well as no requirements that the NBU is provided with statistics on complaints received by the banks and how they were handled.

According to the Article 20 of the Law on Civil Complaints customer complaint must be considered within 30 days. There are no other requirements stated by the laws in effect.

**Recommendation**

The NBU should require that all banks formally establish an internal complaints resolution procedure with the following features:
Banking Sector

1) All complaints must be formally recorded in a single complaint-handling system regardless of the method they were lodged – in writing, personally in branches, through a call center or via email.
2) The banks’ websites and branches should provide information on how to lodge complaints easily available, including providing all contacts.
3) All actions, communications, and documents related to a complaint must be recorded in the complaint-handling system.
4) All complaints should be acknowledged in writing or via email within three working days of receipt and the receipt should include direct contacts (name, position, telephone, and email) of the person dealing with the complaint.
5) All complaints should be answered within 30 days unless the issue is too complex – in such a case, the complainant should be informed within 30 days that the complaint will take longer to deal with.
6) The answer to the customer must contain advice on what steps the customer can take if he is not satisfied with how the complaint was dealt with by the bank.
7) Received complaints should be analyzed, and the board of directors should be provided with an analytical report twice a year, with recommendations on how the bank’s products and processes could be updated to limit the number of received complaints.
8) The analytical report should also be provided to the NBU and the NBU should use the reports to consider amendments to legislation or NBU’s regulations.

The NBU should include monitoring of complaints handling into its regular onsite visits of banks.

Good Practice E.2

Formal Dispute Settlement Mechanisms

a. A system should be in place that allows customers of a bank to seek affordable and efficient recourse to a third-party banking ombudsman or equivalent institution, in the event the complaint of one or more of customers is not resolved in accordance with the procedures outlined in E.1 above.

b. The existence of the banking ombudsman or equivalent institution and basic information relating to the process and procedures should be made known in every bank’s Terms and Conditions referred to in B.7 above.

c. Upon the request of any customer of a bank, the bank should make available to the customer the details of the banking ombudsman or equivalent institution, and its applicable processes and procedures, including the binding nature of decisions and the mechanisms to ensure the enforcement of decisions.

d. The banking ombudsman or equivalent institution should be appropriately resourced and discharge its function impartially.

e. The decision of the banking ombudsman or equivalent institution should be binding upon the bank against which the complaint has been lodged.

Description

The Association of Ukrainian banks operates a voluntary internal arbitration court for its members and the member banks may use the arbitration court to settle disputes with clients as long as this option is allowed for in the contract.

However, there is no general alternative dispute resolution mechanism available to all banking clients.

Recommendation

A financial ombudsman should be established with the following features:

1) Cover all financial services
2) Be free for consumers
3) Make decisions binding on financial institutions for complaints with values of up to 20,000 hryvnias
4) Even after the ruling of the financial ombudsman, the consumer could go to court if he is not satisfied with the ruling
5) Regularly analyze complaints brought to the ombudsman and report main issues and trends yearly to the financial services supervisors, the government, and the relevant parliamentary committee to inform their work on regulation of financial services
6) Be appointed by a high authority (either the president or the government) and be independent in his decisions
be financed through financial industry contributions, with each financial institution paying a basic yearly fee that covers the first three complaints and then the institution is charged an additional fee for each case brought against the institution.

be vested with official authority to develop and coordinate financial education initiatives, serve as a depository of all existing financial education projects and have responsibility for evaluation of effectiveness of all programs, a part of the ombudsman's budget should be used for supporting non-profit financial education activities.

### Good Practice E.3 Publication of Information on Consumer Complaints

<p>| | |</p>
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<tbody>
<tr>
<td>a.</td>
<td>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.</td>
</tr>
<tr>
<td>b.</td>
<td>Regulatory agencies should publish statistics and data and analyses related to their activities in respect of consumer protection regarding banking products and services so as, among other things, to reduce the sources of systemic consumer complaints and disputes.</td>
</tr>
<tr>
<td>c.</td>
<td>Banking industry associations should also analyze the complaint statistics and data and propose measures to avoid the recurrence of systemic consumer complaints.</td>
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</tbody>
</table>

### Description
None of the above is currently conducted in Ukraine. On a positive note, the NBU operates a hotline to collect consumer complaints and once a week also receives the public to lodge their complaints in person.

### Recommendation
The NBU should regularly analyze complaints it receives as well as complaints information submitted by all banks and present the analysis as well as proposals for improvement of consumer protection based on the analysis to the NBU Board.

### Good Practice F.1 Depositor Protection

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<tbody>
<tr>
<td>a.</td>
<td>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.</td>
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<tr>
<td>b.</td>
<td>If there is a law on deposit insurance, it should state clearly:</td>
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<td></td>
<td>(i) the insurer;</td>
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<td>(ii) the classes of those depositors who are insured;</td>
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<td></td>
<td>(iii) the extent of insurance coverage;</td>
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<td>(iv) the holder of all funds for payout purposes;</td>
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<td>(v) the contributor(s) to this fund;</td>
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<td></td>
<td>(vi) each event that will trigger a payout from this fund to any class of those insured;</td>
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<td></td>
<td>(vii) the mechanisms to ensure timely payout to depositors who are insured.</td>
</tr>
<tr>
<td>c.</td>
<td>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.</td>
</tr>
<tr>
<td>d.</td>
<td>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.</td>
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<tr>
<td>e.</td>
<td>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.</td>
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<tr>
<td>f.</td>
<td>The deposit insurer should receive or conduct a regular evaluation of the effectiveness of its public awareness program or activities.</td>
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### Description
Articles 73 and 75 of the Law on Banks and Banking provide a list of grounds that give a right to the NBU to take corrective actions towards banks to adequately respond to reported violations.
Banking Sector

It is the Statute of Corrective Actions Applicable by the NBU to Correct Violations of the Banking Legislation in Effect approved by the NBU Board Regulation #369 dated August 28, 2001 (hereinafter referred to as "Regulation 369") that spells out the grounds and procedures of corrective actions applicable to banks (or local offices of foreign banks).

Based on the Article 75 of the Law on Banks and Banking, the NBU has the right to appoint an interim administration to a bank in the event that the bank’s solvency is found to be under serious risk; the potential insolvency in this case is defined, according to Section V Chapter 1 item 1.3 of Regulation 369, as a bank’s failure to keep its minimum capital adequacy ratio below 7 percent.

As provided by Article 75 of the Law on Banks, the NBU may also appoint an interim administration to a bank in the following events:

1) when the regulated capital of the bank has been found to drop by at least 30 percent within the last six months;
2) when the bank has failed, for the last 5 active days, to meet at least 10 percent of its liabilities coming due; or
3) when the bank is found to be involved in transactions associated with high risks that may result in a loss of assets or incomes.

As provided by Article 79 of the Law on Banks, the NBU shall, on the date when it appoints an interim administration to a bank, post information on this appointment on its official website and have the information published within three days following the appointment date by the “Uriadovy Courier” [Government Courier] or “Golos Ukrainy” [Voice of Ukraine] newspapers. Furthermore, the NBU shall notify the head office and every separate branch office of the bank of its decision to appoint an interim administration with clear specification of the date when the interim administration comes to office and takes over the legal responsibility for the bank's operations.

The NBU may also declare a moratorium on deposit withdrawals from the bank under temporary administration. While it may be an acceptable short-term solution to prevent a run on the bank, any long-term moratorium (such as a 30-month moratorium on Bank Nadra from February 2009 to August 2011) is harmful to consumer trust and may cause significant damages for clients with all their deposits frozen in the bank.

As for the deposit guarantee system, it is based on the Law on the Individual Deposit Guarantee Fund (hereinafter referred to as the "Law on Deposit Guarantee" adopted in 2001.

As provided by Article 8 of the Law on Deposit Guarantee, the Individual Deposit Guarantee Fund (hereinafter referred to as the "Fund") is established as a special government institution that is vested with powers of state control in the area of individual deposit guarantee and protection. The Fund is established as a corporate entity that holds its independent state-owned assets subject to its unlimited management.

The Fund is established as an economically independent non-profit institution with its independent balance sheet, current account and other accounts with the NBU. The Fund is governed by the Constitution of Ukraine, legislation of Ukraine in effect and shall run its activities based on the Statute of the Individual Deposit Guarantee Fund approved by the Cabinet of Ministers of Ukraine and the NBU.

As provided by Article 2 of the Law on Deposit Guarantee, it is the commercial banks and local offices of foreign banks that are registered with the National Register of Banks kept by the NBU and hold valid banking licenses that give them the right for banking operations that are qualified members of the Fund. Membership in the Fund is compulsory for commercial banks and local offices of foreign banks.

As provided by the Fund Administration Board Decision #2 dated November 17, 2001 "On the Amounts of Compensations Due on Deposits", an amount of compensation due on a deposit, including the accrued interest on the deposit, as of the date when the deposit becomes inaccessible, is limited by UAH 150,000 per deposit reported by every member (or temporary member) of the Fund.
As provided by Article 3 of the Law on Deposit Guarantee, the Fund shall guarantee a deposit being paid off to every individual depositor, irrespective of the number of deposits he holds with the bank. In the case that a depositor has deposits on accounts served by several member (or temporary member) banks of the Fund that were at some previous point restructured through mergers, incorporations or re-establishments into a single bank registered as an independent corporate entity, in such case the Fund shall guarantee the funds on such deposits being paid back within the validity terms of the relevant deposit contracts on the same terms and conditions that were contracted prior to the bank being restructured.

Deposits in amounts less than UAH 1 shall not be subject to the compensation procedure.

Furthermore, as provided by Article 4 of the Law on Deposit Guarantee, the Fund shall not be liable to compensate the guaranteed amounts on deposits placed by the following entities:

1) Supervisory Board members, Board of Directors members, Auditing Commission members of the bank;
2) Officers (auditors) of an independent audit firm that has audited the bank for the last three years;
3) Major shareholders whose stocks in the statutory capital of the bank are in excess of 10 percent;
4) Third parties acting on behalf of the depositors mentioned above in items 1, 2 and 3 thereof;
5) Depositors who enjoy privileged interest rates or other financial benefits that are found to have contributed to the deterioration of the financial standing of the bank; and
6) Depositors that could not be identified by the Liquidation Commission.

As provided by Article 2 of the Law on Deposit Guarantee, a membership in the Fund is a compulsory condition for operations of commercial banks (with the exception of a bridge bank) and local offices of foreign banks.

However, when a Fund member is found to violate some provisions of the Law on Deposit Guarantee or other legal and regulatory provisions and standards of the Fund, the Fund Administration Board acting on submission of the Executive Board of Directors of the Fund shall disqualify the defaulting bank to the category of temporary members of the Fund as provided by Article 28 of the Law on Deposit Guarantee.

The Fund shall not be liable to compensate guaranteed amounts on the individual deposits placed with the commercial bank or local office of foreign bank disqualified to the category of temporary members of the Fund, if the above deposits are placed with the banks after the date when the bank received the notification about their disqualification to the category of temporary members of the Fund.

Furthermore, as provided by Article 29 of the Law on Deposit Guarantee Fund, the Fund shall dismiss a bank or a local office of foreign bank from the membership (or temporary membership) of the Fund when its banking license issued by the NBU is withdrawn or in the case when the bank or the local office of foreign bank has stopped its deposit collection and servicing activity.

When a bank or a local office of foreign bank is dismissed from membership (or temporary membership) of the Fund, it shall in no case deprive the depositors – whose deposits were placed with these banks prior to the disqualifying notification on the bank (or local office of foreign bank) on its disqualification to the category of temporary members of the Fund – of their right to have these deposits compensated in the case when they become inaccessible, as provided by the Law on Deposit Guarantee.

As provided by Article 30 of the Law on Deposit Guarantee, individual depositors shall have a right to receive a guaranteed amount in the national currency of Ukraine on their deposits for account of the Fund, effective since the date when the deposit becomes inaccessible.
"Inaccessibility of deposits" means, as provided by Article 1 of the Law on Deposit Guarantee, the situation when it is impossible for the depositor to receive funds from his deposit as provided by the terms and conditions of the deposit contract, effective since the date when a liquidator of the member (or temporary member) bank of the Individual Deposit Guarantee Fund is appointed.

As provided by Article 31 of the Law on Deposit Guarantee, the liquidator of the member (or temporary member) bank of the Fund shall submit to the Fund, within twenty working days following the date when the deposits become inaccessible, a full list of the depositors that have a right for compensation of funds on their deposits, with specification of the calculated amounts due under the applicable compensation scheme as provided by the Law on Deposit Guarantee.

Based on the list submitted by the liquidator of the member (or temporary member) bank of the Fund that lists the specification of the calculated amounts due under the applicable compensation scheme for account of the Fund, the Fund shall, within one month, verify the calculated amounts with consideration for the requirements of Article 4 of the Law on Deposit Guarantee and make a decision on compensation of the amounts due to individual depositors. Within three working days following the date of the above decision on compensation of the amounts due to the individual depositors, the Fund shall publicize the decision through mass media for the depositors' information.

As provided by Article 32 of the Law on Deposit Guarantee, the amounts due to the depositors shall be compensated either in cash or through a bank transfer as provided by the Individual Deposit Compensation Procedure approved by the Fund Administration Board.

The Fund shall pay off the compensations through its designated bank agents, the compensation being due within three months following the date when the deposits become inaccessible. This term may be extended to six months in case of liquidation of a major systemic bank. Compensations due on the deposits may be paid off to third parties as provided by the relevant legal provisions of Ukraine (on a letter of attorney, on a will etc.). Period of limitation for claims of depositors are set to three years.

The Deposit Guarantee Fund does not operate any long-term public education projects. However, due to the 2008 banking crisis the general public is rather well informed about the general features of the deposit guarantee system and more significant issues lay in the distinction of bank and credit union deposits (and their different guarantees) and in knowing which deposits (e.g. in banking metals) are not subject to the guarantee.

Recommendation

The law requires the NBU to take action only in case of risks to solvency of a bank which means that the corrective action lags behind the onset of financial instability of a bank. The NBU's ability to appoint a provisional administrator or take other corrective action is worded as a right and not an obligation which might cause delays in needed action. Accordingly, the NBU must act by the law as quickly as needed.

The length of a moratorium on deposit withdrawals from a bank under temporary administration should be limited to only one month.

As for the deposit guarantee fund, there was a draft law on the deposit guarantee fund discussed in the parliament at the time of writing of this report. Should the law pass as drafted, it would significantly strengthen the deposit guarantee fund, especially in the area of interim administration and liquidation of problematic banks.

When concluding a deposit contract, the first page of the contract should specifically state whether the deposit is covered by the deposit guarantee insurance and for what amount for the specific consumer, taking into account his other deposits with the bank. Should the contract be not for a specific sum but only providing framework agreement allowing the client to deposit additional money on a later date, the contract should stipulate what would be the maximum insured deposit for the individual client.

When a bank's status is changed from full to limited membership in the deposit guarantee fund, all clients must be warned that only deposits made before this change of membership are
covered by the deposit guarantee and when they make any new deposits they must be clearly informed the deposit is not covered.

After the law on the deposit guarantee fund is amended through the draft currently in the parliament, the Fund should prepare an education campaign to explain the improved protection of deposits and to better educate the public on the rules and limits of the guarantees of their deposits.

**Good Practice F.2**  
*Insolvency*

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

**Description**  
Article 96 of the Law on Banks and Banking spells out the sequence of the creditors’ claims satisfaction on behalf of the bank slated for liquidation. Funds raised through a bank liquidation procedure shall be disbursed to satisfy the creditors’ claims in the following sequence, with depositors with deposits over the deposit guarantee limit listed as the fourth priority:

1) Liabilities of the bank that arise in connection with a damage to health or life of individual citizens;
2) Pecuniary liability of the bank on the backlog of payroll fund that means the arrears of the bank on wages and salaries overdue to its staff for the period prior to the bank being slated for liquidation;
3) Claims of the Individual Deposit Guarantee Fund in the cases provided for by the legislation on the individual deposit guarantee system;
4) Claims of individual depositors for amounts in excess of the calculated amount due in the compensation payable by the Individual Deposit Guarantee Fund;
5) Claims of the NBU in connection with a downward adjustment of the cost of security on the relevant refinancing loans provided; as well as claims of the Ministry of Finance (MoF) of Ukraine in connection with the repayable financial support provided to the bank, with the exception of contributions to the statutory capital of the bank;
6) Claims of individual clients whose payments to or from the bank have been blocked (with the exception of certified individual business entities);
7) Other claims, save for the claims that involve the subordinated debt amounts;
8) Claims that involve the subordinated debt amounts.

With the exception of the Law on Individual Deposit Guarantee, the national legislation fails to support expeditious, cost effective and equitable provisions to enable the maximum timely refund of deposits to depositors.

**Recommendation**  
As for bank resolution, the NBU should improve the banking industry monitoring system to ensure a timely response in case when a bank fails to comply with the key performance indicators. The reaction times must be faster and the period between public doubts about a bank appear and any action by the NBU – and newly the DGF – must be as short as possible.

The new Deposit Guarantee Law signed into force in March 2012 has moved the responsibility for bank resolution to the Deposit Guarantee Fund. Therefore, clear processes within the NBU and DGF should be established with regard to full and timely information exchange and communication about problem banks.

**SECTION G**  
**CONSUMER EMPOWERMENT**

**Good Practice G.1**  
*Broadly based Financial Capability Program*

a. A broadly based program of financial education and information should be developed to increase the financial capability of the population.
b. A range of organizations, including those of the government, state agencies and non-government organizations, should be involved in developing and implementing the financial capability program.

c. The government should appoint an institution such as the central bank or a financial regulator to lead and coordinate the development and implementation of the national financial capability program.

Description

Before the crisis of 2008-2009, the state institutions regulating financial markets in Ukraine paid insufficient attention to the quality of the information provided to the customers of the financial institutions. As banks started to experience liquidity problems and difficulties with fulfilling their obligations to customers, in particular, to their depositors, the National Bank of Ukraine (“NBU”) published a Note to the borrowers of the banks, a Note to a borrower who experienced difficulties and a Note to the clients, which has to be circulated by banks, in addition to the total consumer loan cost disclosure requirements attached to the NBU Regulation Nr. 168 as of May 10, 2007.

Although the notes prepared by the NBU help customers make an adequate decision on the purchased goods and services and choose a provider of these services, these notes are not published on the main page of the regulators’ websites and cannot be easily found there. State agencies don’t have sufficient institutional capacities and resources to launch financial education programs and are heavily dependent on international grants. Therefore, strong public-private partnership is necessary to ensure ongoing funding for financial literacy programs.

The Ministry of Education (MoE) decided to introduce consumer education in schools in 1999. Since then every school has obtained a right to teach sub-sources depending on the specialization of the school and age of pupils. Issues related to consumer knowledge and protection were added to the courses “Fundamentals of Economics” and ‘Fundamentals of Law” in addition to a voluntary course “Fundamentals of Consumer Knowledge” (2010) for the 8th-11th grades, which contains information, in particular, on rights and obligations of consumers. In 2008, EU-UNDP project “Consumer Society and Citizen Networks” financed the textbook for the course “Fundamentals of Consumer Knowledge” (1-12 grades), teaching materials and notebooks in the framework of the Concept of Consumer Education for Schools. More than 10,000 schools have already implemented this course in their school plan and reported useful practical application of the consumer education.

Existing materials on consumer education in schools are focused on goods with little attention to financial services and, therefore, need to be updated or replaced. Financial markets legislation framework are changing rapidly, while the textbooks can be amended only once in 5 years if there is enough financial and information support provided to the working group. In order to introduce changes to a course or prepare a new one, a working group has to draft a text, get approval from the Ministry of Education, train national coordinators, and launch a pilot project. This procedure usually takes 2 years. Then a course has to be included in the list of recommended literature for schools.

Recommendation

1) Build up a state concept of financial consumer education.
2) Design one website for financial consumer awareness where NGOs could upload their educative information and provide consultations to customers.
3) Conduct a survey among teachers and coordinators of secondary schools about their needs to improve the quality of teaching materials and tools.
4) Introduce amendments to the existing course on consumer awareness to expand and update the sections on financial services or design a new textbook on financial education for the pupils of the 5th-11th grades in the framework of the state concept of financial consumer education.
5) Prepare workbooks with the materials on basic of financial education for the elementary school (1st-4th grades) to be studied in the after-classes hours and provide necessary trainings to teachers.
6) Organize trainings on financial education for teachers and coordinators of economics and law.

Good Practice G.2

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

a. A range of initiatives should be undertaken by the relevant ministry or institution to improve people’s financial capability regarding banking products and services.
b. The mass media should be encouraged by the relevant ministry or institution to provide financial education, information and guidance to the public regarding banking products and services.

c. The government should provide appropriate incentives and encourage collaboration between governmental agencies, banking regulators, the banking industry and consumer associations in the provision of financial education, information and guidance regarding banking products and services.

**Description**

Starting from 2007, several donor-sponsored financial literacy programs have been implemented in Ukraine with active participation of the Government and NGOs. However, there is low level of continuity after a project is finished due to weak partnership between the public and the private sector.

Private market participants are interested in engagement in financial consumer education programs despite insufficient legislative incentives for consumer awareness events. A number of business initiatives on financial consumer education have already been launched and successfully implemented in Ukraine. However, the market participants expect more active state participation in resolution of social problems. In particular, banks are willing to organize educative programs for schools to raise children’s awareness of banking services, but they face difficulties in dealing with the MoE, which gives approval for all kinds of teaching events organized in schools. Thus, businesses try to approach NGOs to participate in consumer awareness contests, exhibitions and other events.

See ANNEX 1 for detailed information.

**Recommendation**

1) Create possibilities and incentives for businesses to participate in financial education programs.
2) Design one website for financial consumer awareness where NGOs could upload their educative information and provide consultations to customers.

**Good Practice G.3 Unbiased Information for Consumers**

a. Regulators and consumer associations should provide, via the internet and printed publications, independent information on the key features, benefits and risks –and where practicable the costs– of the main types of banking products and services.

b. The relevant authority or institution should encourage efforts to enable consumers to better understand the products and services being offered to consumers by banking institutions, such as providing comparative price information and undertaking educational campaigns.

**Description**

See G.2.

**Recommendation**

See G.2.

**Good Practice G.4 Consulting Consumers and the Financial Services Industry**

a. The relevant authority or institution should consult consumers, banking associations and banking institutions to help them develop financial capability programs that meet banking consumers' needs and expectations.

b. The relevant authority or institution should also undertake consumer testing with a view to ensuring that proposed initiatives have their intended outcomes.

**Description**

Private market participants are interested in engagement in financial consumer education programs despite insufficient legislative incentives for consumer awareness events (see also G.2.).

**Recommendation**

Coordination and cooperation between NBU, SCRPI and the respective associations should be enhanced.

**Good Practice G.5 Measuring the Impact of Financial Capability Initiatives**

a. The financial capability of consumers should be measured, amongst other things, by broadly-based household surveys and mystery shopping trips that are repeated from time to time.

b. The effectiveness of key financial capability initiatives should be evaluated by the relevant authorities or institutions from time to time.
<table>
<thead>
<tr>
<th>Description</th>
<th>Recommendation</th>
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<tbody>
<tr>
<td>The survey conducted by the USAID Financial Sector Development Project (FINREP) in 2010 showed that consumers of financial services in Ukraine know very little about the proposed products and services on the existing financial markets and experience difficulties in calculating basic financial formulas which allow comparing different financial instruments and products.</td>
<td>Conduct regular (e.g. annual) financial literacy survey to evaluate the effectiveness of education programs.</td>
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### SECTION H  
**COMPETITION AND CONSUMER PROTECTION**

**Good Practice H.1  
Regulatory Policy and Competition Policy**

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

**Description**

There is no such requirement in the Ukrainian legislation. Cooperation between the NBU and the AC of Ukraine is weak and there is no formal process of consultation and cooperation between the government agencies.

**Recommendation**

The NBU and the AC of Ukraine should prepare and sign a Memorandum of Understanding (MoU) that would allow the AC to use data on the banking sector collected by the NBU so that the state of competition could be properly monitored. The NBU should also reflect the work of the AC on the tying practice of life insurance with consumer credit (see Good Practice B.4) and improve its Regulation 168 on consumer credit disclosure to reflect the requirement for free choice of financial products.

**Good Practice H.2  
Review of Competition**

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

(i) monitor competition in retail banking;

(ii) conduct, and publish for general consumption, periodic assessments of competition in retail banking (such as the range of interest rates across banks for specific products); and

(iii) make recommendations publicly available on enhancing competition in retail banking.

**Description**

While the AC is required to monitor the level of competition throughout the Ukrainian economy, there is no standardized, regular and detailed monitoring of the banking industry.

**Recommendation**

The AC should – with assistance from the NBU, the banking associations and NGOs active in financial services – regularly monitor the state of competition in the banking industry and on monthly basis follow prices of basic financial products and services (see H.3 below for more details).

A jointly prepared report on the state of financial market competition should be published yearly and presented to the president's administration, the government and the relevant committees of the parliament, as well as to the public.

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

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

**Description**

There is no formal requirement to this effect.

**Recommendation**

As recommended in B.4, H.1 and H.2, the AC should be more active in monitoring prices of banking products and services and ensure that customers have free choice of financial products.

Should the AC support industry self-regulation (e.g. in the area of tied products, see B.4 for details), there should be proper monitoring of the self-regulation.

The NBU should – in cooperation with the AC – keep long-term statistics on prices of financial products and services and publish them at least on quarterly basis on its website. Besides prices of bank accounts with predefined features, prices of ATM withdrawals and deposit interest...
rates, the AC and the NBU should also define 5-7 typical loan products and publish the real interest rates for these products.

The price statistics should be widely publicized so that consumers know what an average price in the area of his interest is and could better discuss the pricing of products offered to him.
# Good Practices: Securities Sector

<table>
<thead>
<tr>
<th>SECTION A</th>
<th>INVESTOR PROTECTION INSTITUTIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Good Practice A.1</td>
<td>Consumer Protection Regime</td>
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<td>a.</td>
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on the securities market, ensures creation of the informational database on the securities market in accordance with the applicable law.

Recommendation

a. No recommendation
b. No recommendation

Good Practice A.2

**Code of Conduct for Securities Intermediaries, Investment Advisers and Collective Investment Undertakings**

a. Securities intermediaries, investment advisers and CIUs should have a voluntary code of conduct.
b. If such a code of conduct exists, securities intermediaries, investment advisers and CIUs should publicize the code to the general public through appropriate means.
c. Securities Intermediaries, Investment Advisers and CIUs should comply with the code and an appropriate mechanism should be in place to provide incentives to comply with the code.

Description

a. There are voluntary codes of conduct in the securities sector that are drafted, promulgated and enforced by the SROs. Such codes are effective in SROs whose membership is voluntary in character except for the investment associations. The existing Codes SROs:

1. Ukrainian Association of Investment Business UAIB (comprised of professional asset managers for institutional investors) has a Code of Ethics and Disciplinary Code.
2. Association of Ukrainian Stock Traders (AUST) (comprised of brokers and dealers, underwriters, asset managers) has the Code of Professional Liability.
3. Professional Association of Registrars and Depositors (PARD) has its own Code of Conduct (for registrars and depositors).


c. Those violating the norms of the Codes can be subject to disciplinary enforcement actions by the SRO. Although most of the SROs can revoke membership in the SRO but that will not revoke the professional license. However the government regulator can use the SRO’s case to bring its own case for revocation of the license. The one except is UAIB, since membership in UAIB is mandatory in order to get an asset managers license. Moreover, if a marker participant does not have membership in UAIB for 3 months from the revocation of membership, this can be a justification for asset management license revocation.

Recommendation

No recommendation

Good Practice A.3

**Other Institutional Arrangements**

a. The judicial system should provide an efficient and trusted venue for the enforcement of laws and regulations on investor protection.
b. The media should play an active role in promoting investor protection.
c. The private sector, including voluntary investor protection organizations, industry associations and, where permitted, self-regulatory organizations should play an active role in promoting investor protection.

Description

a. Article 6 of the Law of Ukraine On State Regulation of the Securities Market in Ukraine envisages a right of the NSSMC to file a lawsuit in a civil court to seek remedies for violations of the Ukrainian law on securities. Article 17 of the Law of Ukraine On Securities and Stock Market sets for that the relationship between a customer and a securities trader is based on the contract between the parties and thus by implication is enforceable in a civil court. There are no provisions by which the NSSMC would act on behalf of a specific investor, but rather it acts in the public interest to maintain the market.

The laws of Ukraine envisage a criminal liability for:
- manipulations on the stock market;
- placement of securities without registration of their issue;
- forgery of documents submitted to register issue of securities;
- violation of the procedure for maintaining a registry of registered securities holders;
- execution, sale and use of forged securities;
- illegitimate use of the insider information;
- concealing the information about issuer's activities;
- performance of professional activities on the securities market without a license.

However, none of these can be used by an investor to assert his or her individual claims or rights.

In accordance with Art. 12 of the Commercial Procedural Code of Ukraine, commercial courts are eligible to review:

1) lawsuits in disputes arising in the course of conclusion, change, termination and execution of business agreements, including to the extent of property privatization and on other grounds, except for:
   - disputes in connection with the state housing stock privatization;
   - disputes arising in the course of approval of standards and specifications;
   - disputes concerning establishment of prices for products (commodities) and tariffs for services (performance of works), unless those prices and tariffs, in accordance with law, may be established in agreement by parties;
   - disputes arising out of public and legal relations, powers to settle which have been delegated to the Constitutional Court of Ukraine and to administrative courts;
   - other disputes, powers to settle which, in accordance with laws of Ukraine and Ukraine's international treaties, have been delegated to other authorities;

2) bankruptcy proceedings;

3) lawsuits filed by authorities of the Antimonopoly Committee of Ukraine, Audit Chamber, attributed to their powers by legislative acts;

4) lawsuits arising out of corporate relations in disputes between an economic entity and its member (founder, shareholder), including a retired member, as well as between members (founders, shareholders) of economic entities, related to the incorporation, activities, management and termination of activities of that entity, except for labor relations;

5) lawsuits in disputes on the accounting of titles to securities;

6) lawsuits in disputes arising out of land relations, wherein economic entities participate, except for those, attributed to powers of administrative courts.

Parties may assign settlement of a dispute which a commercial court is eligible to settle to an arbitral tribunal, except for disputes on recognizing deeds as invalid, as well as disputes arising during the conclusion, change, termination and execution of business agreements, connected with the satisfaction of public needs; disputes, envisaged by item 4 of part one of the Commercial Procedural Code and other disputes envisaged by law. Decision of an arbitral tribunal may be challenged in the manner set forth in the Code.

b. The issues of investor protection are constantly highlighted in the mass media.

c. NSSMC Regulations on self-regulatory organizations of stock market makers stipulate that one of main functions of self-regulatory organizations is to facilitate protection of investors' rights. Self-regulatory organizations, notably UAIB, are constantly paying attention to consumer protection and UAIB publicizes the respective information on its web site. Also, a regular column Information for investor is maintained.

In 2010, Ukrainian Professional Association for Protection of Investors, Creditors and Insurers (UPAPICI) was established, whose main goal is to facilitate protection of investors and financial services consumers in Ukraine. Scope of UPAPICI's activities covers the whole financial market, including its credit, insurance and investment segments (http://upaziks.org/ua/). Also, the Stock Market Lawyers Association, whose goal is to facilitate development of the securities market, protect investments and legitimate interests of investors and other members of that market, deals with issues of protection of rights of investors who have invested into securities (www.asml.org.ua).

<table>
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<tr>
<th>Recommendation</th>
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<tbody>
<tr>
<td>a. An efficient system of inexpensive alternative dispute resolution is needed for the retail side of the securities sector.</td>
</tr>
<tr>
<td>b. No recommendation.</td>
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</tbody>
</table>
### Good Practice A.4

**Licensing**

- a. All legal entities or physical persons that, for the purpose of investment in financial instruments, solicit funds from the public should be obliged to obtain a license from the supervisory authority.
- b. Legal entities or physical persons that give investment advice and hold customer assets should be licensed by the securities supervisory authority.
- c. If a jurisdiction does not require licensing for legal entities or physical persons that give only investment advice, such persons should be supervised by an industry association or self-regulatory organization and the anti-fraud provisions of the securities laws or other consumer laws should apply to the activity of such persons.

### Description

- a. All institutions that perform activities on the stock market must obtain licenses for the pursuance of the respective type of activities. Security traders and asset managers (as professional participants of the stock market) must obtain a license and regularly report on their activities to the NSSMC. License terms and conditions establish requirements for the special education and experience of managers and specialists of such institutions.

License terms and conditions for professional activities on the stock market – institutional investors’ asset management activities (asset management activities) have been approved by Decision of the NSSMC No. 341 of 26 May 2006 and registered with the Ministry of Justice (MoJ) of Ukraine on 24 July 2006 under No. 864/12738 (as subsequently amended). License terms and conditions for professional activities on the stock market – securities trading, have been approved by Decision of the NSSMC of 26 May 2006 No. 346 and registered with the MoJ of Ukraine on 4 August 2006 under No. 938/12812 (as subsequently amended). Procedure and conditions for the issue of a license for the pursuance of separate types of professional activities on the stock market, re-execution of a license, issue of their duplicates and copy of a license have been approved by Decision of the NSSMC No. 345 of 26 May 2006 (as subsequently amended).

- b. In accordance with license terms and conditions, security traders and asset managers have to be certified in the legislatively established manner (complete the respective training, pass examinations and obtain the respective certificate).

Regulation on issuance of certificates to persons that perform professional activities with securities in Ukraine was approved by Decision of the Securities and Stock Market State Commission No. 93 of 29 July 1998 and registered with the Ministry of Justice of Ukraine on 6 October 1998 under No. 631/3071. Requirements for the availability of experience in the stock market have been established for managers of security traders and asset managers (manager of security traders – at least 3 years, asset manager– at least 2 years)


Moreover, Art. 163 of the Code of Administrative Offenses establishes liability of individuals for activities performed on the stock market without an issued license, and in case performance of such activities without a license is connected with a generation of large incomes, Art. 202 of the Criminal Code of Ukraine envisages a criminal liability as well. Art. 11 of the Law of Ukraine On Public Regulation of the Securities Market of Ukraine establishes liability of legal entities for activities performed on the stock market without the issued license.

- c. Investment advisors (IAs) are not distinguished as representatives of a stand-alone professional activity under the law. Therefore, there are no legal requirements as regards their
Securities Sector

Qualifications. Functions of investment advisors can be performed by licensed asset management companies and security traders whose licensing is discussed above.

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<th>Recommendation</th>
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<tbody>
<tr>
<td>a. No recommendations</td>
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<tr>
<td>b. Individual sales persons should be trained, qualified by examination and certified by the Commission.</td>
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<tr>
<td>c. Not applicable</td>
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<tr>
<th>SECTION B</th>
<th>DISCLOSURE AND SALES PRACTICES</th>
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<tbody>
<tr>
<td>Good Practice B.1</td>
<td>General Practices</td>
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<td>There should be disclosure principles that cover an investor’s relationship with a person offering to buy or sell securities, buying or selling securities, or providing investment advice, in all three stages of such relationship: pre-sale, point of sale, and post-sale.</td>
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<td>a. The information available and provided to an investor should inform the investor of:</td>
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<td>(i) the choice of accounts, products and services;</td>
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<td>(ii) the characteristics of each type of account, product or service;</td>
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<td>(iii) the risks and consequences of purchasing each type of account, product or service;</td>
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<td>(iv) the risks and consequences of using leverage, often called margin, in purchasing or selling securities or other financial products; and</td>
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<td>(v) the specific risks of investing in derivative products, such as options and futures.</td>
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<td>b. A securities intermediary, investment adviser or CIU should be legally responsible for all statements made in marketing and sales materials related to its products.</td>
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<td>c. A natural or legal person acting as the representative or tied-agent of a securities intermediary, investment adviser or CIU should disclose to an investor whether the person is licensed to act as such a representative and who licenses the person.</td>
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<td>d. If a securities intermediary, investment adviser or CIU delegates or outsources any of its functions or activities to another legal entity or physical person, such delegation or outsourcing should be fully disclosed to the investor, including whether the person to whom such function or activity is delegated is licensed to act in such capacity and who licenses the person.</td>
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<th>Description</th>
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<tr>
<td>a. Article 12 of the Law of Ukraine On Financial Services and State Regulation of Financial Services Markets envisages that a customer has a right to have access to the information on activities of a financial institution. Upon customer's request, financial institutions have to furnish the following information:</td>
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<td>1) information about performance indicators of a financial institution and its economic conditions, which are subject to mandatory disclosure;</td>
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<td>2) list of managers of the financial institution and its separated units;</td>
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<td>3) list of services provided by the financial institution;</td>
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<td>4) prices/tariffs for financial services;</td>
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<td>5) number of shares of the financial institution held by members of its executive body and a list of persons, shares whereof in the authorized capital of the financial institution exceed five per cent;</td>
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<tr>
<td>6) other information concerning provision of financial services and the information, the right to receive which has been legislatively safeguarded in Ukraine.</td>
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<tr>
<td>As of 09 January 2012, the Law of Ukraine On Amending Some Laws of Ukraine on State Regulation of Financial Services Markets will be in effect, which envisages that pending conclusion of a financial services contract with a customer, a financial institution has to additionally furnish him/her with the information about:</td>
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<td>1) financial service that would be offered to the customer, with the indication of a cost of that service for the customer, unless otherwise envisaged by laws on regulation of individual financial services markets;</td>
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<td>2) conditions for providing additional financial services and their cost;</td>
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44
3) procedure for paying taxes and duties at the expense of an individual as a result of his/her use of the financial service;
4) legal consequences and procedure for making settlements with the individual as a result of a pre-scheduled termination of financial service provision;
5) consumer rights protection framework employed by the financial institution and procedure for settling disputes arising in the process of financial service provision;
6) bank details (requisites) of an authority that publically regulates financial services markets (address, phone number, etc.), as well as bank details of authorities that protect consumer rights;
7) size of a remuneration for the financial institution in case it offers financial services provided by other financial institutions.

This new law goes a long way to providing the investor customer with additional information. Importantly, it obligates the financial institution to affirmatively provide the customer with information, without waiting for a request that the customer might not even know he or she should make. However, the new rules do not cover A.(iii)-(v) regarding disclosures of the risk involved, particularly the risks from using leverage or derivatives. These risk disclosures are critical for a customer to make an informed decision.

Before making a CIU’s securities purchase contract, an investor must be familiarized with an offering memorandum and CIU’s rules of regulation and receive information on the current value of the CIU’s security, and information on servicing entities’ fees. The disclosure is contained in the offering memorandum and the disclosure principles for CIU’s clients are based on informing an investor about basic features of the product and risks. The said requirements are stipulated, inter alia, in the Law of Ukraine On Collective Investment Undertakings (Unit and Corporate Investment Funds) (Section VII). In addition, the information on CIU’s activities is provided to investors by way of publishing it in the official printed media of the NSSMC and making it publicly available through the Generally Accessible Informational Data Base. Intervals at which such information is disclosed is one day, one month, one quarter, one year – depending on a type and kind of the collective investment undertaking.

b. A director of an asset management company or security trader bears liability for actions taken by the asset management company or security trader, including for actions taken by representatives of the asset management company or security trader. In addition, asset management companies bear administrative liability for compliance with the legislation on advertisements.

In case securities intermediary’s (SI) representative violates legislatively established provisions on securities trading in the course of taking actions on the basis of the power of attorney, the SI, as a legal entity, and its proxy, as an individual, bear the legislatively established liability.

The Code of Administrative Offenses envisages a possibility of imposing fines upon issuers and professional stock market makers' employees for violations committed on the stock market.

The Criminal Code also envisages a possibility of making stock market makers' employees criminally liable under the following Articles: Article 2221. Manipulations on the Stock Market, Article 223. Placement of Securities without Registration of Their Issue, Article 2231. Forgery of Documents Submitted for Registration of Securities Issue, Article 2232. Violation of the Procedure for Maintaining a Registry of Registered Securities, Article 2321. Unlawful Use of Insider Information, Article 2322. Concealment of Information about Issuer's Activities.

To strengthen liability of licensee's managers, the Commission has developed draft amendments and modifications to the Regulation On the Certification of Persons That Exercise Professional Activities with Securities in Ukraine, approved by Decision of the Commission No. 93 of 29 July 1998, more specifically: Certificate issued to the licensee's manager may be cancelled in the manner prescribed by the Commission in case the Commission cancels the license for the licensee's exercise of the respective activities on the
securities market on one of the grounds, envisaged by items 1.4-1.9, 1.13, 1.15, 1.16 of item 1, Chapter 4 of the Procedure for Suspending and Cancelling a License for Separate Types of Professional Activities on the Stock Market, approved by Decision of the Securities and Stock Market State Commission No. 432 of 23 June 2006, registered with the Ministry of Justice of Ukraine on 11 August 2006 under No. 976/12850, and by sub-items (в)-д), з), ї) of item 2, Section IX of License Terms and Conditions for the Pursuance of Professional Activities on the Stock Market Related to Institutional Investors' Asset Management Activities (Asset Management Activities), approved by Decision of the Securities and Stock Market State Commission No. 341 of 26 May 2006, registered with the Ministry of Justice of Ukraine on 24 July 2006 under No. 864/12738. The above-mentioned draft regulation is being finalized pursuant to its transmission for state registration with the Ministry of Justice of Ukraine.

c. All advertising materials must indicate the number and date of the license issuance and the issuing body. Article 25 of the Law of Ukraine On Advertising specifies that advertisement of advertising entities – securities market makers – has to contain information about the availability of a special permit, license, which ascertains to a right to exercise the respective activity on the securities market, with the indication of a number of a permit, license, date of their issue and name of their issuing body.

Moreover, in accordance with Rules of (Terms and Conditions for) the Conduct of Activities Involving Trade in Securities (Broker, Dealer Activities, Underwriting, Securities Management), it is established that contracts concluded between the professional security trader and a customer have to contain, inter alia, bank details (requisites) of parties to the agreement (full name, ID code according to the Unified State Registry of Enterprises as Business Entities, location), as well as a number and date when a license for the pursuance of the respective type of professional activities on the stock market was issued to the trader. Also, according to provisions of the Law of Ukraine On Collective Investment Undertakings (Unit and Corporate Investment Funds) and regulations of the Commission that govern activities of CIUs, in case contracts are concluded with a depository, custodian, ALCO (in the course of conclusion of the agreement for asset management with the CIF), these agreements have to compulsorily contain bank details of parties to the agreement (full name, ID code as per the Unified State Registry of Enterprises as Business Entities, location), as well as number and date of issue of a license for the respective professional activity on the stock market.

However, the law and regulations do not specify that the market participant state with which state agency it is registered and regulated. Many participants do this, but the law is lacking in this area.

d. The new amendments effective 09 January 2012 specify that fees that will be paid to other financial institutions should be disclosed. As long as this is read broadly and requires more information than just the aggregate amount of fees, it is a good provision. If it is read narrowly then it would defeat a large part of the purpose of the rule.

Recommendation

a. Although general disclosure requirements are ok, some instruments such as housing construction funds and bonds do not contain sufficient risk warnings. The disclosure regulations should be amended to require additional risk warnings.
b. Regulations should be passed to provide for liability for misstatements by salespeople, in addition to the registered entity and its directors.
c. No recommendation

d. The new amendments should be clear that all information regarding other entities servicing an account should be disclosed, not just the amount of fees in isolation.

Good Practice B.2

Terms and Conditions

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

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<tr>
<td>a. Starting as of 09 January 2012, the Law of Ukraine On Amending Some Laws of Ukraine to the Extent of Regulation of Financial Services Markets will be in effect, which envisages that pending conclusion of a financial services contract with a client, the financial institution has to additionally furnish him/her with the information regarding the terms and conditions of the contract.</td>
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</table>

In their activities, security traders and asset management companies use a sample securities sales contact that has a template that is approved by the NSSMC of Ukraine, and complies with special legal provisions that regulate the purchase of securities on particular market segments.

There is no provision for a particular document to clarify contractual conditions. This will presumably be changed in January of 2012 to bring the disclosure of securities traders in line with the new law.

As for collective investment institutions, according to provisions of the Regulation on the Procedure for Placement, Circulation and Repurchase of Securities of Collective Investment Undertakings, approved by Decision of the Commission No. 3 of 9 January 2003, registered with the Ministry of Justice of Ukraine on 5 February 2003 under No. 92/7413 (as subsequently amended), in case securities purchase and sales agreement is signed between a CIU, asset manager and investor, the latter has to fill out an application form for the purchase of CIU’s securities, whose format is established in the above-indicated Regulation. Again, presumably this contract will be modified to be in conformity with the new law effective in January 2012.

Regulations governing activities of collective investment undertakings prescribe the following requirements – the following has to be mentioned in a contract with an appraiser, concluded in relation to a corporate investment fund: full name, location of the company managing assets of that fund and fund managers. In addition,

1. Subject of the contract – provision of real estate valuation services by the appraiser.
2. Object of asset valuation.
4. Date of asset valuation.
5. Deadline for performing asset valuation works.
6. Type of asset value subject to determining.
7. Size and procedure for the payment of works (it is prohibited to establish in the contract a size of payment for works as a share of asset value subject to valuation).
8. Procedure, format of an asset valuation report to be submitted by the appraiser, which contains opinions on the appraised real estate value, as well as actions of the parties in case of collective investment undertaking’s consent (signing of an act of acceptance and delivery of provided asset valuation services) or non-consent to findings set out in the report.
9. Liability of parties and dispute settlement procedure (scope of parties’ liabilities is determined, notably, conditions, under which the parties may waive their liabilities, as well as warnings concerning the procedure for settling disputes, which may arise between the parties in the process of contract execution).
10. Conditions for ensuring confidentiality of asset valuation findings and of the information used in the course of appraisal.
11. Validity of the agreement, grounds for the change in and termination (cancelation) of the contract – determining a moment, as of which the contract takes effect, till the moment when it is considered effective, as well as specification of grounds, on which it may be modified or terminated and actions of parties in case they make a decision to terminate the contract ahead.
of time. The agreement has to contain all essential terms and conditions, determined by laws of Ukraine.

b. Requirements for font size, spacing and readability have not been established by law.

c. Starting as of 09 January 2012, the Law of Ukraine On Amending Some Laws of Ukraine to the Extent of Regulation of Financial Services Markets will be in effect, which envisages that pending conclusion of a financial services contract with a client, the financial institution has to additionally furnish him/her with the information about:
1) financial service that would be offered to the customer, with the indication of a cost of that service for the customer, unless otherwise envisaged by laws on regulation of separate financial services markets;
2) terms and conditions for the provision of additional financial services and their cost;
3) procedure for paying taxes and duties at the expense of the individual as a result of his use of the financial service;
4) legal consequences and procedure for making settlements with the individual as a result of a pre-mature termination of financial service provision;
5) mechanism for protecting consumer rights by the financial institutions and procedure for settling disputes arising in the process of financial service provision;
6) bank details of the authority that publically regulates financial services markets (address, phone number, etc.), and bank details of authorities dealing with the protection of consumer rights;
7) size of remuneration for the financial institution in case it offers financial services, provided by other financial institutions.

In furtherance of the above-indicated legislative provision, the Commission will develop the respective regulations.

These provisions cover all of the sub-elements except C.(iii) since there is no compensation scheme in Ukraine to be used in case a brokerage house or asset manager goes bankrupt. In addition, there is no discussion of C.(vii) regarding leverage in the accounts.

**Recommendation**

<table>
<thead>
<tr>
<th>a. No recommendation</th>
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<tbody>
<tr>
<td>b. The regulations should require the terms and conditions to be in readable font and size.</td>
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<tr>
<td>c. The terms and conditions should disclose leverage and risk and the implementing regulations of the Commission should include risk in the required disclosures.</td>
</tr>
</tbody>
</table>

**Good Practice B.3**

**Professional Competence**

Regulators should establish and administer minimum competency requirements for the sales staff of securities intermediaries, investment advisers and CIUs, and collaborate with industry associations where appropriate.

**Description**

In Ukraine, only those persons who perform certain activities independently (on their own) should be licensed. Staff of a financial institution should only be certified to have a right to perform certain functions. In accordance with a Regulation On Certification of Persons Exercising Professional Activities with Securities in Ukraine, approved by Decision of the Securities and Stock Market State Commission No. 93 of 29 July 1998 and registered with the Ministry of Justice of Ukraine on 6 October 1998 under No. 631/3071, those persons shall be subject to certification who directly conduct or intend to directly conduct transactions on the securities market, as well as managers of legal entities that exercise professional activities on the securities market and have the respective permit issued by the Commission.

To be certified, the person must meet the following requirements:

a) have a specialist's certificate ascertaining to qualifications in the respective specialization, issued as per the procedure, established by the Commission;
b) not to be waived a right to occupy certain positions and pursue certain activities according to a court ruling;
c) not to have an outstanding conviction for commercial crimes and malfeasance in office.

Grounds for the refusal to issue a certificate to the person may be, as follows:

a) non-compliance of the submitted documents with requirements of this Regulation;
b) non-compliance with the established requirements;
c) dismissal of the person from work in accordance with items 2, 3, 8 of part 1, Article 40 and items 1, 2 of part 1, Article 41 of the Code of Laws on Labor in Ukraine, unless such work is not related to activities on the securities market, notably:
- in case it has been revealed that the employee does not conform to the occupied position or to the work done by him/her as a result of insufficient qualifications or health conditions, which create obstacles for the continuation of the given work, as well as in case of refusal to grant access to state secrets or cancellation of access to state secrets, unless fulfillment of function delegated to him/her does not require that access to state secrets be granted;
- employee's systemic failure, without sound reasons for that, to fulfill duties delegated to him/her by virtue of a labor agreement or employee handbook, if disciplinary or civil fines have been applied to him/her;
- theft (including petty theft) of owner's assets committed at a workplace, established by a court ruling that became effective, or by a resolution of an authority whose powers include imposition of administrative fines or application of civil enforcement measures;
- multiple gross violation of labor related obligations by a manager of the enterprise, institution, organization of all forms of ownership (branch, representative office, outlet and other separated units), by his/her deputies, chief accountant of the enterprise, institution, organization of all forms of ownership, his/her deputies, by officials of customs offices, state tax inspectorates, to whom special ranks have been assigned, as well as by officials of the State Control Auditing Service and authorities that exercise public control over prices;
- guilty actions committed by an employee who directly services pecuniary, mercantile or cultural values, if such actions give grounds for the loss of trust in him/her on the part of an owner or authority empowered by him/her.

An SI's managers have to have at least the three-year track record on the Ukrainian stock market (work experience) prescribed by Licensing regulations. The manager of a legal entity that manages institutional investor's assets has to have at least a two-year track record on the stock market, his/her two last years of work must not be related to the management of a professional market maker, who/which has been recognized bankrupt and liquidated by virtue of a court decision, or to whom/which a sanction in the form of license revocation has been imposed.

Specialists of the asset management company (its separated units), to whom powers for the exercise of institutional investors’ asset management activities have been delegated, have to be certified as per the procedure established by the Securities and Stock Market State Commission.

There are no statutory or regulatory requirements for training, qualifications and examinations for sales persons that deal with investors. The only rules regarding such persons are established by in-house company procedures.

**Recommendation**

All sales persons dealing with individual clients should be trained, qualified and licensed by the Commission.

**Good Practice B.4**

**Know Your Customer (KYC)**

Before providing a product or service to an investor, a securities intermediary, adviser or CIU should obtain, record and retain sufficient information to enable it to form a professional view of the investor’s background, financial condition, investment experience and attitude toward risk in order to enable it to provide a recommendation, product or service appropriate to that investor.

**Description**

When transactions with securities are conducted, requirements for contracts and obligations of security traders are valid, established by Rules of (Terms and Conditions for) Conduct of Activities Involving Trade in Securities: Broker, Dealer Activities, Underwriting, Securities Management, approved by Resolution of the Securities and Stock Market State Commission No. 1449 of 12 December 2006 as amended and registered with the Ministry of Justice of Ukraine on 23 January 2007 under No. 52/13319. The said rules, in particular, oblige traders to:

a) act in the best interests of clients with regard to the terms and conditions of the contract, securities legislation, securities market structure, terms and conditions for settlement and clearing, custodian services, risk of a counterpart selection and other risks;

b) take all necessary measures to reach the best possible results for the clients while executing contracts and/or one-time orders;

c) warn clients of risks associated with securities transactions and with other financial transactions if this condition is provided by the contract;
### Good Practice B.5

**Suitability**

A securities intermediary, investment adviser or CIU should ensure that, taking into account the facts disclosed by the investor and other relevant facts about that investor of which it is aware, any recommendation, product or service offered to the investor is suitable to that investor.

<table>
<thead>
<tr>
<th>Description</th>
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<tbody>
<tr>
<td>There is no requirement in Ukrainian securities laws or regulations that a securities intermediary, investment advisor or CIU should offer suitable products/services to a client.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Recommendation</th>
</tr>
</thead>
<tbody>
<tr>
<td>The law or the regulations of the NSSMC should require a broker, trader or collective investment institution to recommend only securities that are suitable to a client’s investment goals, sophistication and available assets.</td>
</tr>
</tbody>
</table>

### Good Practice B.6

**Sales Practices**

- Legislation and regulations should contain clear rules on improper sales practices in the solicitation, sale and purchase of securities. Thus, securities intermediaries, investment advisers, CIUs and their sales representatives should:
  - (i) Not use high-pressure sales tactics;
  - (ii) Not engage in misrepresentations and half truths as to products being sold;
  - (iii) Fully disclose the risks of investing in a financial product being sold;
  - (iv) Not discount or disparage warnings or cautionary statements in written sales literature;
  - (v) Not exclude or restrict, or seek to exclude or restrict, any legal liability or duty of care to an investor, except where permitted by applicable legislation.

- Legislation and regulations should provide sanctions for improper sales practices.

- The securities supervisory agency should have broad powers to investigate fraudulent schemes.

<table>
<thead>
<tr>
<th>Description</th>
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</thead>
</table>
| a. (i) No statutory prohibition or regulatory prohibition. Section VIII of the Rules of (Terms and Conditions for) Conduct of Activities Involving Trade in Securities: Broker, Dealer Activities, Underwriting, Securities Management, approved by Decision of the Securities and Stock Market State Commission No. 1449 of 12 December 2006 requires trader to act in best interests of client but does not prohibit high pressure sales tactics. The ethical codes of the self-regulatory organizations may contain prohibitions but the sanctions for violations only involve dismissal from the SRO. 
  
  (ii) See comments to (i).
  
  (iii) Yes, Section 13 of the Rules of (Terms and Conditions for) Conduct of Activities Involving Trade in Securities: Broker, Dealer Activities, Underwriting, Securities Management, approved by Decision of the Securities and Stock Market State Commission No. 1449 of 12 December 2006 as amended provides for disclosure of risk by a trader. As to CIIs, there is no statutory prohibition or regulatory prohibition. The ethical codes of the self-regulatory organizations may contain prohibitions but the sanctions for violations only involve dismissal from the SRO.
  
  (iv) No statutory prohibition or regulatory prohibition. The ethical codes of the self-regulatory organizations may contain prohibitions but the sanctions for violations only involve dismissal from the SRO.
  
  (v) No statutory prohibition or regulatory prohibition. The ethical codes of the self-regulatory organizations may contain prohibitions but the sanctions for violations only involve dismissal from the SRO. |
| b. No statutory prohibition or regulatory prohibition. The ethical codes of the self-regulatory organizations may contain prohibitions but the sanctions for violations only involve dismissal from the SRO. |
c. Yes. Under the Law of Ukraine On Public Regulation of the Securities Market in Ukraine, the NSSMC of Ukraine has the following powers:
- to send materials to law enforcement authorities as regards facts of violations that entail administrative and criminal liability, unless imposition of administrative fines for the respective violations is included into the scope of competence of the Commission;
- to impose administrative fines, penalties and other sanctions on legal entities and their employees for violations of the effective legislation, including revocation of a license to carry out the professional activity on the securities market;
- to raise an issue of dismissal of managers of stock exchanges and other institutions of the stock market infrastructure in cases of their non-compliance with the effective legislation of Ukraine, with a view to protect interests of investors and citizens.

Given the powers granted under the Law of Ukraine On Public Regulation of the Securities Market in Ukraine, the regulator has a right to temporarily appoint (for a period of up to two months) managers of stock exchanges, custodians and other entities of the stock market infrastructure, suspend or terminate access to the stock exchange for securities or trading in them on any stock exchange, stop the clearing and conclusion of securities purchase and sales contracts on stock exchanges for a certain period of time to protect the interests of the state and investors.

No statutory prohibition or regulatory prohibition. The ethical codes of the self-regulatory organizations may contain prohibitions but the sanctions for violations only involve dismissal from the SRO.

**Recommendation**
The securities laws should be amended to explicitly prohibit unfair sales practices. The Commission should enact a detailed regulation regarding sales practices for securities and CIIIs and the law should be amended to provide for sanctions for violations of these specific prohibitions.

**Good Practice B.7**

**Advertising and Sales Materials**

a. All marketing and sales materials should be in plain language and understandable by the average investor.

b. Securities intermediaries, investment advisers, CIUs and their sales representatives should ensure their advertising and sales materials and procedures do not mislead the customers.

c. Securities intermediaries, investment advisers and CIUs should disclose in all advertising, including print, television and radio, the fact that they are regulated and by whom.

**Description**
a. There is no statutory or regulatory requirement for plain language.

b. the Law of Ukraine On Advertising, Article 10 that states: “1. Unfair advertising shall be prohibited.” Further Article 7 regarding the general principles of advertising states: “1. The basic principles of advertising shall be the legality, accuracy, authenticity, use of forms and means which do not cause damage to advertising consumers.”

For collective investment institutions, Section 2.2 of Decision Nr. 1227 of the NSSMC, November 2, 2006 ‘On Approval of the Policy on Specific Features of the Exercise of Institutional Investors’ Asset Management Activities provides that asset managers will organize the advertising campaign in accordance with the advertising legislation for collective investment institutions. Asset management companies bear administrative responsibility for compliance with the legislation on advertisement.

Although these provisions seem to be vague and difficult to apply, any advertising materials dealing with the particular CII’s activities to be distributed must be approved by the asset management company that manages the assets of such CII and be furnished to the NSSMC for approval. The CII securities advertisement must indicate availability of CIU securities offering memorandum and conditions for its obtainment. The NSSMC must consider the submitted advertising materials and inform the asset management company about the approval of the advertising materials or provide a justified objection to the placement of advertising materials that are misleading or do not comply with the legislation on securities and requirements for securities advertisement, prescribed by the legislation on advertisement on the securities market. As a result, in practice, the procedure for vetting advertising to see that they are not misleading appears to be quite rigorous.
Some members of the asset management industry that were consulted during the preparation of this diagnostic pointed out that the legislation does not distinguish between advertising and sales materials. They considered it to be a legal gap that limits investors in obtaining the necessary information needed for the decision-making on the purchase and sale of securities. Requirements for a document containing basic information for investors, in particular, about investment funds, need to be legally established.

In addition, by virtue of the draft Law of Ukraine On Amending Some Laws of Ukraine to the Extent of Advertisement on the Securities Market (registered at the Verkhovna Rada of Ukraine on 24 March 2011 under Nr. 8297), developed by the NSSMC, it is proposed to amend the Law of Ukraine On Public Regulation of the Securities Market in Ukraine with provisions that would ensure adequate powers for the Securities and Stock Market State Commission in order to guarantee protection to consumers regarding advertisements concerning events in the stock market. Notably, this would include the granting of a right to apply sanctions for the violation of the law on advertisement on the stock market. Also, the draft Law of Ukraine On Advertising would be amended with provisions, which, inter alia, envisage the requirement to submit any advertisements which would be disseminated on the stock market to the NSSMC at least 15 business days prior to the date of their publication.

c. Yes. The Law of Ukraine on Advertising, Article 25(3) states: “Advertising by advertisers – equity market participants – shall contain information about the availability of a special permit, license which confirms the right for the performance of such activity in equity market with the indication of a number of the permit, license, date of issue and denomination of the body which issued this permit, license.” Thus, all advertising materials must indicate the number and issuance date of the license. Some commentators have stated that this does not include a requirement to identify the issuing body of the license. However, it is hard to see how a license could be properly stated without such identification.

**Recommendation**

a. The Commission should promulgate a regulation requiring all sales material to be in plain, understandable language.

b. The provisions in the law regarding false statements need to be amended to strengthen them so that they clearly identify what is unfair and a misrepresentation in an advertisement. In addition, the draft amendments to the law giving the NSSMC the authority to apply sanctions for violations of the law on advertisement as well as the authority to review such advertisements should be enacted. Finally, the distinction between sales materials and advertising and the rules applicable to each such be clearly set out in the law.

c. No recommendation

**Good Practice B.8 Relationships and Conflicts**

a. A securities intermediary, investment adviser or CIU should disclose to its clients all relationships that it has which impact on the client’s account, such as banks, custodians, advisers or intermediaries which are used to maintain and manage the account.

b. A securities intermediary, investment adviser or CIU should disclose all conflicts of interest that it has with the client and the manner in which the conflict is being managed.

**Description**

a. An asset management company must disclose information on entities servicing a collective investment institution (custodian, trader, auditor, appraiser, depository, asset manager) in a CII securities offering memorandum. Legislation imposes restrictions on an asset manager’s use of services of its affiliated persons.

b. There is not general requirement for the disclosure of such information, except for cases envisaged by law, although the information may be disclosed at the discretion of the entity. One area where the disclosure is required by law is for securities traders. According to NSSMC Regulation Rules of (Conditions for) the Trading in Securities (Activities of a Broker, Dealer, Underwriting, Management of Securities)), approved by Resolution of the Commission No. 449 of 12 December 2006), governing activities of SIs, in case a SI has certain interests, which, however, prevent it from executing the agreement and/or in case the SI has a customer’s one-off-job, having more beneficial conditions, the SI has to immediately
notify the customer thereof. Customer has to be warned with the help of communication channels, determined by agreement, with the subsequent mandatory written confirmation thereof. In case the Commission establishes a fact of failure to implement those conditions by the SI, validity of the license has to be terminated.

<table>
<thead>
<tr>
<th>Recommendation</th>
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<tbody>
<tr>
<td>a. The Commission should require the disclosure to a client by a registered entity of all relationships that it has that can impact on the client’s account.</td>
</tr>
<tr>
<td>b. The Commission should enact a rule requiring registered entities to disclose all conflicts of interest and how they are dealing with them.</td>
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<thead>
<tr>
<th>Good Practice B.9</th>
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<tbody>
<tr>
<td>Specific Disclosures by CIUs</td>
</tr>
<tr>
<td>a. CIUs should disclose to prospective and existing investors:</td>
</tr>
<tr>
<td>(i) the CIU’s policies with regard to frequent trading and the risks to investors from such policies;</td>
</tr>
<tr>
<td>(ii) any inducements that it receives to use particular intermediaries or other financial firms, such as “soft-money” arrangements; and</td>
</tr>
<tr>
<td>(iii) a fair and honest description of the performance of the CIU’s investments over several different periods of time that accurately reflect the CIU’s performance.</td>
</tr>
<tr>
<td>b. In addition, a CIU should provide a Key Facts Statement for each fund that it is offering to the client that succinctly explains the fund in clear language. Such document is in addition to any other disclosure documents required by law.</td>
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<table>
<thead>
<tr>
<th>Description</th>
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</thead>
<tbody>
<tr>
<td>a. (i) There are no rules or regulations regarding the disclosure of frequent trading in collective investment institutions.</td>
</tr>
<tr>
<td>(ii) There are no rules or regulations regarding the disclosure of inducements such as “soft money” arrangements received by collective investment institutions.</td>
</tr>
<tr>
<td>(iii) Description of the performance of a CII may be disclosed as of the previous period on the basis of reporting data, although there is no unified methodology as to the publication of such information. The websites of many asset managers contain sections that give performance data for the CIIs that they manage.</td>
</tr>
<tr>
<td>b. Many asset managers of CIIs provide a Key Facts Statement for each fund they manage. However, the laws and regulations do not contain requirements either as to the compulsory furnishing of such information or to the content of such a paper.</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Recommendation</th>
</tr>
</thead>
<tbody>
<tr>
<td>a. (i) The NSSMC should promulgate a regulation requiring a CIU to disclose its policies on frequent trading.</td>
</tr>
<tr>
<td>(ii) The NSSMC should promulgate a regulation requiring a CIU to disclose its policies on inducements received by a CII or its related parties for using particular intermediaries or other service entities.</td>
</tr>
<tr>
<td>(iii) The NSSMC should promulgate a regulation requiring asset managers to publicize the performance history of the funds it manages over different periods of time that accurately describes the performance of the fund.</td>
</tr>
<tr>
<td>b. The Commission should promulgate a rule requiring a CIU to provide prospective clients with a Key Facts Statement.</td>
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<table>
<thead>
<tr>
<th>Good Practice B.10</th>
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<tbody>
<tr>
<td>Specific Disclosures by Investment Advisers</td>
</tr>
<tr>
<td>a. Investment advisers should disclose to prospective and existing clients:</td>
</tr>
<tr>
<td>(i) whether the investment adviser is also registered in another capacity and whether the adviser deals with the client’s account in the second registered capacity; and</td>
</tr>
</tbody>
</table>
(ii) whether the financial instruments that the investment adviser is recommending are held in the adviser's own inventory or the inventory of a legal or natural person related to the adviser and will be bought from or sold to its own inventory or the inventory of a related party.

b. An investment adviser should provide prospective and existing clients with a Key Facts Statement for each product or service that is being offered or sold to the client that succinctly explains the product or service in clear language.

<table>
<thead>
<tr>
<th>Description</th>
<th>A stand-alone investment advisor does not exist in the Ukrainian financial system. Consequently, the activities of investment advisers are not subject to NSSMC regulations.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Recommendation</td>
<td>No recommendations.</td>
</tr>
</tbody>
</table>

### SECTION C

**CUSTOMER ACCOUNT HANDLING AND MAINTENANCE**

**Good Practice C.1**

**Segregation of Funds**

Funds of investors should be segregated from the funds of all other market participants.

| Description | For securities traders (brokers), the law and regulations on segregation are clear and detailed. According to Art. 17(7) of the Law of Ukraine On Securities and Stock Market, states that “a securities trader shall keep records of securities and cash separately per each client and separately from his own securities, cash and property, according to the requirements set by National Securities and Stock Market Commission by approval of the Ministry of Finance of Ukraine and, in cases set by the law, also of the National Bank of Ukraine. Cash and securities of clients entrusted to securities traders may not be forfeited with regard to securities traders’ liabilities, which are not connected with trader’s execution of manager functions.

In order to conduct activities on securities management, a client’s money shall be deposited on a separate current bank account of the securities trader separately from the securities trader own funds and other clients’ funds according to the terms of the securities management agreement. Securities trader should report to clients on funds utilization and has a right to use clients’ funds if it is envisaged by the agreement with a client.

In addition, Item 2 of Section XV of Rules of (Terms and Conditions for) Conduct of Activities Involving Trade in Securities: Broker, Dealer Activities, Underwriting, Securities Management, approved by Decision of the Securities and Stock Market State Commission No. 1449 of 12 December 2006 envisages that arrangement of securities and liabilities' record keeping has to ensure segregation of the information about a security trader and each client separately. Item 4 states that the monies of clients should be place in separate accounts: “The trader shall keep separate accounts for the monies of customers handed over to the trader for the performance of transactions with securities, the monies of customers under the concluded contracts, and own monies.” 3

However, in regards to collective investment institutions, the law and regulations are not very robust and are dispersed around a number of sections of the Law of Ukraine on Collective Investments. Segregation is regulated by Article 22 of the Law of Ukraine On Collective Investment Undertakings (Unit and Corporate Investment Funds) which only requires that the assets of the CII be “accounted by the [asset manager] separately from its own business performance.” Article 33 provides that if an asset manager is declared bankrupt, then the assets of the CII shall not be included in the liquidation assets of the asset manager. Article 51 provides that “the depository shall not use CII assets in that depository's own transactions.” While, Article 52 provides that “the unit investment trust bankroll shall be entered on a special bank account held by the asset manager, separately from the asset manager's own money and from the accounts of other unit investment trusts.” Finally, Article 53 states that a CII shall not be responsible for a depository’s obligations. |

3 The team acknowledged during the second visit in March 2012 that a requirement on segregation of funds was strengthened by the NSSMC.
Securities Sector

There is no provision in the law that a CII’s asset will not be part of a custodian’s assets if the custodian goes bankrupt. Nor is there a provision that the CII’s assets shall themselves be kept in a separate account from the asset manager. A clear, irrevocable statement of segregation is needed to protect CII assets.

**Recommendation**
The law should be amended to provide for more robust segregation of asset provisions for CIIs. In particular, the Law on CII should provide that cash on an account with a custodian bank be accounted separately and cannot be included in the assets of a bank in the course of bank’s operations and bankruptcy proceedings.

**Good Practice C.2**

**Contract Note**

a. Investors should receive a detailed contract note from a securities intermediary or CIU confirming and containing the characteristics of each trade executed with them, or on their behalf.

b. The contract note should disclose the commission received by the securities intermediary, CIU and their sales representatives, as well as the total expense ratio (expressed as total expenses as a percentage of total assets purchased).

c. In addition, the contract note should indicate the trading venue where the transaction took place and whether (i) the intermediary for the transaction acted as a broker in the trade, (ii) the intermediary or CIU acted as the counterparty to its customer in the trade, or (iii) the trade was conducted internally in the intermediary between its clients.

**Description**
a. Section III-VIII of Rules of (Terms and Conditions for) Conduct of Activities Involving Trade in Securities: Broker, Dealer Activities, Underwriting, Securities Management, approved by Resolution of the Securities and Stock Market State Commission No. 1449 of 12 December 2006 provides for the details of the purchase or sale contract in securities with a trader. This is entered into ahead of time and is the contractual basis for the trade. There does not appear to be a requirement for a follow up document verifying that the trade has been completed and at what price, although the information will appear in the periodic statements or online if the client has an online account.

b. The initial contract sets out the commission and costs of the transaction, but it does not appear that this must also be expressed as a ratio of the total cost of the transaction.

c. The contract note sets out the role of the trader and whether the transaction was internal. It is not clear if the contract states in advance where the transaction will take place or if this is stated in a follow up document. However, discussions with market participants indicated that there are not many brokerage clients currently in Ukraine. Much of the trading is done on the internet or by phone and the brokers and clients communicated often as to the status and details of the trades.

As for the CII’s activities, in the event of CII's securities placement on the stock exchange, the information on the trading floor is stated in the offering memorandum; otherwise such information is not disclosed to a client.

**Recommendation**
The Commission should promulgate a rule requiring that securities brokers provide a client with a contract note, written or electronically (if the client so elects) detailing the conditions of any trade by them for the client after the sale or purchase has been completed. CII clients should receive a confirmation that they have purchases a unit or share of the CII and the terms of the purchase.

**Good Practice C.3**

**Statements**

a. An investor should receive periodic, streamlined statements for each account with a securities intermediary or CIU, providing the complete details of account activity in an easy-to-read format.

(i) Timely delivery of periodic securities and CIU statements pertaining to the accounts should be made.

(ii) Investors should have a means to dispute the accuracy of the transactions recorded in the statement within a stipulated period.

(iii) When an investor signs up for paperless statements, such statements should also be in an easy-to-read and readily understandable format.

b. If a legal or natural person who provides only investment advice to customers also holds client assets, the client statements should be prepared by and sent from the custodian for the assets and not from the investment adviser.
a.(i) There are no regulations on the delivery of periodic statements to customers. The law and regulations provide that the contracts with brokers and traders and their customers will set forth the reporting duties. Article 17(6) of the Law of Ukraine on Securities and Securities Market provides that an agency agreement, a commission agreement or an agreement on securities management shall be concluded with a securities trader in writing. The rights and obligations of a securities trader with regard to his client, the terms of conclusion of agreements regarding securities, the procedure of reporting by the trader to the client as well as the procedure and terms of paying a fee to the trader shall be determined in the agreement concluded between them.

Section V.2. of the Rules of (Terms and Conditions for) Conduct of Activities Involving Trade in Securities: Broker, Dealer Activities, Underwriting, Securities Management, approved by Resolution of the Securities and Stock Market State Commission No. 1449 of 12 December 2006 of provides that the contract between and a customer and a broker can contain the provisions for reporting on a “once-off” order. In addition, upon customer's request, security trader has to furnish the information about conditions of execution of any one-off-jobs assigned by the customer.

There is also no requirement for periodic reporting to customers of CIIs. Information is given to the NSSMC and is published on the asset managers’ websites and in the mass media, (Articles 48-49 of the Law of Ukraine On Collective Investment Undertakings (Unit and Corporate Investment Funds). Data submission formats have been approved by Resolutions of the Securities and Stock Market State Commission of Ukraine No. 216 and No. 201) for data asset managers submit to the NSSMC, but there is no statutory or regulatory obligation to send statements to customers.

a.(ii) Investors may lodge a complaint either with the Securities and Stock Market State Commission of Ukraine, if it disagrees with data shown in the statement, or with other state authorities or with courts-of-law. Records of some disputed contracts are maintained under Part XIV Section 13 Rules of (Terms and Conditions for) Conduct of Activities Involving Trade in Securities: Broker, Dealer Activities, Underwriting, Securities Management, approved by Resolution of the Securities and Stock Market State Commission No. 1449 of 12 December 2006, which requires that the organization of the contract log maintenance must ensure the separability of the information on contracts disputed by the parties (hereinafter referred to as the “disputed contracts”), although this does includes primarily broker to broker disputes.

a.(iii) There are no rules for easy to read formats.

b. Due to the fact that there is not a separate registrant category for investment advisors in Ukraine, this is not relevant.

Recommendation

There should be an affirmative requirement in the law or regulations that a broker/trader or asset manager must send periodic statements to customers or allow them to sign up for electronic statements pursuant to the format approved by the NSSMC.4

Good Practice C.4

<table>
<thead>
<tr>
<th>Prompt Payment and Transfer of Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>When an investor requests the payment of funds in his or her account, or the transfer of funds and assets to another securities intermediary or CIU, the payment or transfer should be made promptly.</td>
</tr>
</tbody>
</table>

Description

Art. 44 of the Law on CII provides for maximum 7 days between submission of a redemption order and transfer of funds.

Recommendation

The law should require prompt payment of funds by all securities market participants and provide for penalties for failure to do so, similarly to the rules for Pillar III pension funds.

Good Practice C.5

<table>
<thead>
<tr>
<th>Investor Records</th>
</tr>
</thead>
<tbody>
<tr>
<td>a. A securities intermediary, investment adviser or CIU should maintain up-to-date investor records containing at least the following:</td>
</tr>
<tr>
<td>(i) a copy of all documents required for investor identification and profile;</td>
</tr>
<tr>
<td>(ii) the investor’s contact details;</td>
</tr>
<tr>
<td>(iii) all contract notices and periodic statements provided to the investor;</td>
</tr>
</tbody>
</table>

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4 The team acknowledged during the second visit in March 2012 that a requirement on periodic statements was strengthened by the NSSMC.
### Securities Sector

<p>| | |</p>
<table>
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<tbody>
<tr>
<td>(iv)</td>
<td>details of advice, products and services provided to the investor;</td>
</tr>
<tr>
<td>(v)</td>
<td>details of all information provided to the investor in relation to the advice, products and services provided to the investor;</td>
</tr>
<tr>
<td>(vi)</td>
<td>all correspondence with the investor;</td>
</tr>
<tr>
<td>(vii)</td>
<td>all documents or applications completed or signed by the investor;</td>
</tr>
<tr>
<td>(viii)</td>
<td>copies of all original documents submitted by the investor in support of an application for the provision of advice, products or services;</td>
</tr>
<tr>
<td>(ix)</td>
<td>all other information concerning the investor which the securities intermediary or CIU is required to keep by law;</td>
</tr>
<tr>
<td>(x)</td>
<td>all other information which the securities intermediary or CIU obtains regarding the investor.</td>
</tr>
</tbody>
</table>

**b.** Details of individual transactions should be retained for a reasonable number of years after the date of the transaction. All other records required under a. to j. above should be retained for a reasonable number of years from the date the relationship with the investor ends. Investor records should be complete and readily accessible.

### Description

**a.** There are no specific laws or regulations regarding the maintenance and preservation of account records, although discussions with industry participants state that all brokers and asset management companies practice general recording keeping as a necessity. Nonetheless, the scope of the recording keeping and the length records are kept in all likelihood varies from entity to entity.

**b.** Detailed records of individual transactions are required to be maintained pursuant to Parts XIV, XV and XVI of the Rules of (Terms and Conditions for) Conduct of Activities Involving Trade in Securities: Broker, Dealer Activities, Underwriting, Securities Management, approved by Resolution of the Securities and Stock Market State Commission No. 1449 of 12 December 2006. There is no specific time frame for maintaining the records. The time frame for keeping records on an investor is established by separate legal provisions and/or by in-house company papers, depending on the status of a document.

### Recommendation

The NSSMC should promulgate a regulation requiring specific records to be maintained by asset managers for CIIs and by brokers. In addition, a time period for retention should be a part of the regulation.5

### SECTION D

**PRIVACY AND DATA PROTECTION**

**Good Practice D.1** *Confidentiality and Security of Customers’ Information*

Investors of a securities intermediary, investment adviser or CIU have a right to expect that their financial activities will remain private and not subject to unwarranted private and governmental scrutiny. The law should require that securities intermediaries, investment advisers and CIUs take sufficient steps to protect the confidentiality and security of a customer’s information against any anticipated threats or hazards to the security or integrity of such information, and against unauthorized access to, or use of, customer information.

### Description

Law of Ukraine on Protection of Personal Data (“Law on Personal Data”) came into effect in January 2011. Article 24 provides that personal data shall be protected by the state. Article 13(2) of the Law on Personal Data also provides that the records in a personal database must be maintained in a safe, secure manner. Article 11 provides that a personal database can only be created with the consent of the subject person or by law. Article 14 provides that dissemination and transfer of the information can only be done with the subject person’s consent. There are exceptions for court orders, law enforcement and national security.

From comments by finance sector, the introduction of the law by members of the industry has been uneven since it is new and not fully understood by all of the participants in the finance sector.

Article 42 of the Law of Ukraine On Securities and Stock Market stipulates that record-keeping of registered securities may be disclosed to participants of the depository system of Ukraine:

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5 The team acknowledged during the second visit in March 2012 that a requirement on maintaining investor records was strengthened by the NSSMC.
- upon written request of the information owner or pursuant to his/her written permission, except for cases envisaged by paragraphs three and four hereof;
- pursuant to a court ruling;
- upon written request of authorities of the prosecutor's office, security service, internal affairs, state tax service, Securities and Stock Market State Commission and Antimonopoly Committee of Ukraine, other state authorities – in accordance with law and as regards transactions in registered securities record keeping systems, conducted by a specific legal entity or individual within a specific period of time.

Participant of the depository system of Ukraine is prohibited from furnishing information about customers of another participant of the depository system of Ukraine, even if their data are indicated in customer's documents and agreements.

Persons guilty of violation of the procedure for disclosing and using the information about the record keeping of registered securities are liable in accordance with law.

**Recommendation**

No recommendations. The Law on Personal Data should be implemented as quickly as possible.

**Good Practice D.2  Sharing Customer’s Information**

Securities intermediaries and CIUs should:

(i) inform an investor of third-party dealings in which they are required to share information regarding the investor’s account, such as legal enquiries by a credit bureau, unless the law provides otherwise;

(ii) explain how they use and share an investor’s personal information;

(iii) allow an investor to stop or "opt out" of certain information sharing, such as selling or sharing account or personal information to outside companies that are not affiliated with them, for the purpose of telemarketing or direct mail marketing, and inform the investor of this option.

**Description**

Article 14 of Law on Data Protection, the customer must consent to any transfers of information or disclosures of personal information which would involve the disclosures set forth in (i) and (ii). When permission is given, the individual can still require notification and explanation each time there is a transfer under Article 21. There is no automatic sharing so all sharing will need to be done with an opt-in approval.

An example where notification is not given due to law enforcement or national security reasons would be in accordance with Art. 12 of the Law of Ukraine On Prevention and Counteraction to Legalization (Money Laundering) of Incomes Derived Illegally or Terrorism Financing, employees of a person subject to a primary financial monitoring, such as a trader or asset manager, who have furnished the Specially Authorized Body with the information about the financial transaction, are prohibited from notifying thereof those persons who have participated (are participating) in its conduct, as well as any third persons.

**Recommendation**

No recommendations

**Good Practice D.3  Permitted Disclosures**

a. If there are to be any specific procedures and exceptions concerning the release of customer financial records to government authorities, these procedures and exceptions should be stated in the law.

b. The law should provide for penalties for breach of investor confidentiality.

**Description**

a. Article 10 of the Law on Data Protection provides various areas where data can be disclosed based on the work relation of the user with the subject person and the consent of the subject person. Article 14 provides that the distribution or transfer of the information can only be done with the subject person’s consent.

An example of where disclosure can be made would be, in accordance with item 5, Section XII of the Regulation, employees of the entity maintaining the registry have a right to have access to the information kept in the registry system only within the limits, established in the employees' job descriptions. Only those persons who are directly involved in ensuring maintenance of the respective registry system are entitled to have access to the information in the registry system. However, in accordance with item 3, Section X of the Regulation On the Procedure for Maintaining Registries of Registered Securities Holders, approved by Resolution of the Commission No. 1000 of 17 October 2006 (hereinafter referred to as the Regulation), a person maintaining the registry is not entitled, inter alia, to furnish the
information to persons requesting it, within the volumes that are larger than those prescribed by this Regulation.
b. The Law on Data Protection states that breaches of confidentiality are punishable pursuant to law, but does not appear to relate to any specific law or court.

**Recommendation**
No recommendations.

### SECTION E DISPUTE RESOLUTION MECHANISMS

#### Good Practice E.1 Internal Dispute Settlement

| a. | An internal avenue for claim and dispute resolution practices within a securities intermediary, investment adviser or CIU should be required by the securities supervisory agency. |
| b. | Securities intermediaries, investment advisers and CIUs should provide designated employees available to investors for inquiries and complaints. |
| c. | Securities intermediaries, investment advisers and CIUs should inform their investors of the internal procedures on dispute resolution. |
| d. | The securities supervisory agency should provide oversight on whether securities intermediaries, registered investment advisers and CIUs comply with their internal procedures on investor protection rules. |

**Description**

a. Requirements for internal dispute resolution procedures and for employees must be incorporated into in-house papers of asset management companies and security traders in accordance with their Licensing Conditions.

b. Formal rules regarding designated employees for customer complaints are also incorporated into in-house papers in accordance with their Licensing Conditions.

c. Starting as of 09 January 2012, the Law of Ukraine On Amending Some Laws of Ukraine to the Extent of Regulation of Financial Services Markets will be in effect and will require notification of dispute resolution procedures.

d. Compliance with such procedures is ensured by the NSSMC within the framework of inspections of license holders.

**Recommendation**
No recommendations.

#### Good Practice E.2 Formal Dispute Settlement Mechanisms

There should be an independent dispute resolution system for resolving disputes that investors have with their securities intermediaries, investment advisers and CIUs.

| a. | A system should be in place to allow investors to seek third-party recourse, such as an ombudsman or arbitration court, in the event the complaint with their securities intermediary, investment adviser or CIU is not resolved to their satisfaction in accordance with internal procedure, and it should be made known to the public. |
| b. | The independent dispute resolution system should be impartial and independent from the appointing authority and the industry. |
| c. | The decisions of the independent dispute resolution system should be binding on the securities intermediaries and CIUs. The mechanisms to ensure the enforcement of these decisions should be established and publicized. |

**Description**

The industry associations, UAIB, AUST and PARD, have a voluntary arbitration system that plan participants can use. However only the PARD system appears to be used on a regular basis between market participants. Retail investors apparently find the arbitration too expensive for small claims. The only other recourse retail investors have is through the courts.

**Recommendation**
A financial system wide Ombudsman should be established to handle retail financial customer disputes.

### SECTION F GUARANTEE SCHEMES AND INSOLVENCY

#### Good Practice F.1 Investor Protection
<table>
<thead>
<tr>
<th>Description</th>
<th>Securities Sector</th>
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</thead>
<tbody>
<tr>
<td><strong>a.</strong> There should be clear provisions in the law to ensure that the regulatory authority can take prompt corrective action on a timely basis in the event of distress at a securities intermediary, investment adviser or CIU.</td>
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<td><strong>b.</strong> The law on the investors’ guarantee fund, if there is one, should be clear on the funds and financial instruments that are covered under the law.</td>
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<td><strong>c.</strong> There should be an effective mechanism in place for the pay-out of funds and transfer of financial instruments by the guarantee fund or insolvency trustee in a timely manner.</td>
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<tr>
<td><strong>d.</strong> The legal provisions on the insolvency of securities intermediaries, investment advisers and CIUs should provide for expeditious, cost-effective and equitable provisions to enable the timely payment of funds and transfer of financial instruments to investors by the insolvency trustee of a securities intermediary or CIU.</td>
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</tr>
<tr>
<td><strong>Description</strong></td>
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<tr>
<td><strong>a.</strong> The NSSMC’s authority is limited. It may apply a number of sanctions (including cancelation of a license) to asset management companies and security traders in case of reduction in the authorized capital and equity below the legally established size. As for CIIs, in case of a sharp fall in the value of net assets, the NSSMC may stop circulation of CIU's securities until the situation is settled. Under Article 7(26) of the Law on the State Regulation of the Securities Market, the NSSMC has the authority to specify, in accordance with the law, the specific features of the procedure of the reorganisation and liquidation of professional members of the securities market (except for banks).</td>
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<tr>
<td><strong>b.</strong> There is no law on an investor’s guarantee fund. However, there is a Draft Law of Ukraine On Investment Guarantee Fund on the Stock Market (reg. # 9069 of 23 August 2011) that has been submitted to the Verkhovna Rada of Ukraine. The Draft Law envisages creation and framework for the operation of the Fund, whose funds would cover compensation payouts to investors who have lost their investments. The compensation scheme envisaged by the draft law covers investments (funds and/or securities, transferred to the security trader on the basis of the securities management agreement, as well as funds invested into securities of collective investment undertakings, issued with the help of public (open) placement. Investments do not include the profit that has been generated or may be generated as a result of made investments. The main source of funds that would be channelled to the Fund, would be registration fees and current contributions paid by Fund members. The draft law enumerates the situations where compensation payouts are paid to investors. The following persons would be members of the Investment Guarantee Fund: (i) security traders who have obtained a license for the exercise of securities management activities; (ii) corporate investment funds, whose shares have been issued by means of a public (open) placement; and (iii) asset management companies that manage assets of a unit investment fund, whose investment certificates have been issued by means of a public (open) placement.</td>
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<tr>
<td><strong>c.</strong> Since there is no guarantee fund, this is not relevant.</td>
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<tr>
<td><strong>d.</strong> There are no specific provisions for a prompt, expeditious payment or transfer of funds for a market participant. However the assets of a CII and trader are segregated. In accordance with the Law of Ukraine On Collective Investment Undertakings, CII’s assets are not included into the liquidation estate of the asset management company in case of its bankruptcy. Under Article 53 the CIIs assets cannot be used to satisfy the custodians commitments. According to Art. 17 of the Law of Ukraine On Securities and Stock Market, customers' cash and securities, transferred by security traders into management, may not be foreclosed on security trader's liabilities, not connected with his/her discharge of management functions. Moreover, Art. 46 of the Law of Ukraine On Recovering Debtor's Solvency or On Debtor's Recognition as Bankrupt, bankruptcy specifics of stock exchange market makers have been established. In addition, in accordance with part seven of Art. 46 of the said Law, securities and other customers' assets, transferred into management by the stock exchange market maker and not held by him/her, are not included into the liquidation estate.</td>
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<tr>
<td><strong>Recommendation</strong></td>
<td>The NSSMC should put into place an effective means for the liquidation of a market participant and an expeditious payout to its customers.</td>
</tr>
<tr>
<td><strong>SECTION G</strong></td>
<td>CONSUMER EMPOWERMENT</td>
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</table>
| Good Practice G.1 | **Broady based Financial Capability Program**  
| --- | ---  
| a. | A broadly based program of financial education and information should be developed to increase the financial capability of the population.  
| b. | A range of organizations—including government, state agencies and non-governmental organizations—should be involved in developing and implementing the financial capability program.  
| c. | The government should appoint an institution such as the central bank or a financial regulator to lead and coordinate the development and implementation of the national financial capability program.  

| Description | There is no broadly based program for financial education and information in the Ukraine. Each regulatory agency and trade association conduct individual financial education programs but they are not coordinated across the financial sector.  

| Recommendation | A broad based financial capability program for the entire financial sector should be implemented. This could be done through an industry wide ombudsman.  

| Good Practice G.2 | **Using a Range of Initiatives and Channels, including the Mass Media**  
| --- | ---  
| a. | A range of initiatives should be undertaken to improve people's financial capability.  
| b. | This should include encouraging the mass media to provide financial education, information and guidance.  

| Description | a. There is a range of consumer education initiatives in Ukraine that are undertaken by each regulatory agency, the trade associations and non-governmental organizations. They have been spread out over a period of time and fluctuate with available funds for the programs and the emphasis put on investor education at any given time.  

b. The mass media covers financial matters and has a standing relationship with governmental agencies regarding information on the financial sector. Individual business TV channels broadcast programs on the securities market and invite experts to participate in them. Business mass media, in particular, a daily official printed issue of the National Securities and Stock Market Commission "Vidomosti DKTsPFR" ("NSSMC's Bulletin"), production and internship journal "Rynok tsinnyh paperiv Ukrayiny" ("Securities Market of Ukraine"), newspaper "Tsinny papery Ukrayiny" ("Ukraine's Securities"), bulletin "Tsinny papery Ukrayiny" ("Ukraine's Securities"), newspaper “Investment Newspaper” ("Investytsiyna Gazeta"), “Business”, “Ekonomicheskiye Izvestiya” (“Economic News”), etc., have permanent columns dealing with the securities market.  

| Recommendation | No recommendations  

| Good Practice G.3 | **Unbiased Information for Investors**  
| --- | ---  
| a. | Financial regulators should provide, via the internet and printed publications, independent information on the key features, benefits and risks—and where practicable the costs—of the main types of financial products and services.  
| b. | Non-governmental organizations should be encouraged to provide consumer awareness programs to the public regarding financial products and services.  

| Description | a. Yes. In execution of Regulation of the Cabinet of Ministers of Ukraine No. 898 of 12 August 2009, National Securities and Stock Market Commission ensures review of applications from citizens, received via a telephone "hot line" of the Ukrainian government. The official web site of the National Securities and Stock Market Commission has such pages as Investors' Rights Protection, Stock Market Development, etc., in which the above-mentioned information is indicated. The whole information that in accordance with law is subject to mandatory disclosure by stock market makers, which is public and available for every investor, is posted in the informational database of the National Securities and Stock Market Commission on the securities market, accessible for the general public.  

b. The Ukrainian legislation has encouraged the use of trade associations and self-regulatory organizations to help educate the financial sector in general and investors in securities and CII.  

| Recommendation | a. No recommendation  

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61
<table>
<thead>
<tr>
<th>Good Practice G.4</th>
<th>Measuring the Impact of Financial Capability Initiatives</th>
</tr>
</thead>
<tbody>
<tr>
<td>a. The financial capability of consumers should be measured through a broad-based household survey that is repeated from time to time.</td>
<td></td>
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<tr>
<td>b. The effectiveness of key financial capability initiatives should be evaluated.</td>
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</tbody>
</table>

**Description**

a. There is no standard, repeated household survey of consumer capabilities in Ukraine. However, surveys on financial stability are held from time to time. Amongst professional market makers, such surveys are held with the help of self-regulatory organizations and professional unions. Amongst the general public, such surveys are held with the help of international projects, organizations, and social research institutes.

b. The effectiveness of key capability initiatives is not evaluated on a systematic basis.

**Recommendation**

No recommendations. The systematic measurement and evaluation of financial capability measures should take place as part of an overall financial education initiative.
## Good Practices: Insurance Sector

<table>
<thead>
<tr>
<th>SECTION A</th>
<th>CONSUMER PROTECTION INSTITUTIONS</th>
</tr>
</thead>
</table>
| **Good Practice A.1** | **Consumer Protection Regime** The law should provide for clear rules on consumer protection in all matters of insurance and there should be adequate institutional arrangements for implementation and enforcement of consumer protection rules.  
  a. There should be specific provisions in the law, which create an effective regime for the protection of retail consumers of insurance.  
  b. The rules should prioritize a role for the private sector, including voluntary consumer organizations and self-regulatory organizations. |

### Description

Consumer protection law in the Ukraine is fragmented and does not appear to adequately address consumer protection issues in insurance. The law “On Consumer Rights Protection” is an overarching law governing consumer protection but it does not specifically deal with insurance services.

The Law On Financial Services and State Regulation of Financial Markets establishes protection of the interests of financial service consumers as a purpose of regulation of non bank financial institutions but until recently few specific provisions appear to be dedicated to protecting the rights of consumers.

The recently amended Article 12 now requires insurers to disclose the following before completing a transaction:

1. The price of the product;
2. The terms and price of any additional services provided;
3. A procedure for payment of the taxes and charges levied on the client as a result of the receiving the service;
4. In cases of early termination of the rendering of the financial services, a procedure for payments to settle services;
5. The means for resolving consumer disputes;
6. Contact information for the state financial services regulator;
7. Information on commissions or fees received by the financial institution if it offers services of another financial institution.

The Civil Code (Article 979-999) also contains some provisions but in general these are higher level legal concepts regarding insurance rather than specific provisions setting minimum consumer standards.

The Law on Insurance establishes some requirements for what insurance contracts should contain but defers much of the detail to the contract itself.

The insurance authority requires each insurer to establish rules for each particular kind of insurance that they provide and the regulator may register or reject the rules but a common complaint is that the regulatory authority provides only a cursory review of the rules and that insurance knowledge to conduct such reviews by the regulator is lacking.

Policies are not in plain language including policies for compulsory classes of insurance which are approved by the Cabinet of Ministers.

There is not an established means of arbitrating or mediating insurance disputes under the law although one industry association has recently established an industry based arbitration body and another has established an industry based mediation and arbitration facility.

The court system appears to be very slow and is said to lack insurance knowledge.

Insurance agents (and until recently claims adjusters) are unlicensed and there is no legally enforceable code of conduct or training requirements for these occupations, nor specific provisions regarding the handling of complaints or the oversight of agents by insurers.

The law does not recognize a role for voluntary consumer organizations or self-regulatory organizations though it does provide for the establishment of industry associations to pursue industry interests.
**Recommendation**
The responsibility and requirements for consumer protection in insurance law should be more clearly defined and delineated. The Law on Insurance should be subject to a comprehensive review in this regard. If this does not occur consumer confidence in insurance markets will continue to remain low.

The recently endorsed G20 High Level Principles for Financial Consumer Protection (http://www.oecd.org/dataoecd/58/26/48892010.pdf) may provide guidance in undertaking such as task.

Additional guidance is provided in International Association of Insurance Supervisors Insurance Core Principle 18 – Intermediaries and 19 – Conduct of Business (http://www.iaisweb.org/Principles-39).

**Good Practice A.2**

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

**Description**

Article 16 of the Law “On Insurance” sets out the essential conditions of a voluntary insurance contract. The basic provisions require the contract to include:

1) The name and address of the insurer;
2) The name, birthdate and address the insurant and the insured person;
3) The subject of the contract;
4) An amount of the sum insured/or amounts of insurance benefits;
5) A list of insured accidents (events);
6) Premiums and time frames for payment;
7) An insurance tariff;
8) The term of the contract;
9) The place of the contract;
10) Conditions and procedures for disbursing the insurance benefit;
11) Grounds for refusing to disburse the insurance benefit;
12) Conditions and procedures for disbursing the surrender value and the conditions for disbursing bonuses and profits.
13) The conditions for changing the sum insured and or insurance benefits;
14) The rights and obligations of the insurer and the insurer beneficiary and insured person;
15) The liability of the parties;
16) A reference that the insurant is familiar with the model rules and conditions of insurance for the type of insurance.

The law also requires that insurer familiarize the insurant with these terms and conditions. These provisions appear to set many of the specific features for the insurance contract in the contract itself. Given the asymmetric information relationship of insurers dealing with retail consumers, this can result in consumers with low levels of financial understanding being taken advantage of. Particularly in an environment where agents are not licensed.

Many other jurisdictions define many more minimum contractual requirements in legislation. This practice has resulted from decades of case law experience.

**Recommendation**
The Law on Insurance should be amended to include more specific protections for retail consumers related to contracts of insurance.

Examples of more specific protections that should be considered include:

1) A requirement that for retail consumer insurance contracts (e.g. insurance contracts entered into by an individual whose main purpose is unrelated to the persons trade, business or profession) be in plain language;
2) Establishment of cooling off periods for certain life insurance contracts;
3) A requirement that misrepresentation on the part of an insurer with regard to an insurance contract must be material in order for the insurer to deny a claim;
4) Clearer specification under Article 26 of the Law of the Ukraine of the “other circumstances” under which an insurance contract may envisage refusal of insurance benefits to retail insurance consumers. Standard plain language policies for major types of insurance purchased by retail consumers should be established and approved by the regulator. This includes policies for compulsory classes that are already approved by the regulator. The regulator should also have the power to approve the use of policies that deviate from standard policies for non-compulsory classes in special circumstances provided the policies meet the requirements of the law and plain language requirements.

<table>
<thead>
<tr>
<th>Good Practice A.3</th>
<th>Codes of Conduct for Insurers</th>
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<tbody>
<tr>
<td>a. There should be a principles-based code of conduct for insurers that is devised in consultation with the insurance industry and with relevant consumer associations, and that is monitored and enforced by a statutory agency or an effective self-regulatory agency.</td>
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<tr>
<td>b. If a principles-based code of conduct exists, insurers should publicize and disseminate it to the general public through appropriate means.</td>
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<tr>
<td>c. The principles-based code should be augmented by voluntary codes for insurers on such matters specific to insurance products or channels.</td>
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<tr>
<td>d. Every such voluntary code should likewise be publicized and disseminated.</td>
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</table>

**Description**

A compulsory principle based code of conduct among insurers does not currently exist although a voluntary code exists with one of the insurance associations. No code of conduct exists for insurance agents or adjusters.

An additional complication in the market and towards the achievement of a code is a large number of insurers (perhaps as many as 400) who exist largely for tax reasons rather than for the provision of “real” insurance services.

These insurers affect industry confidence, are said to represent a significant market conduct risk to the system as well as prudential risk. They also make it difficult to establish industry consensus on issues like a code of conduct, best practice standards for treatment of consumers, or industry based standards and guidelines.

**Recommendation**

That NCRFSM, consumer groups and industry associations be encouraged to participate in the development and implementation of a code.

The regulator should also examine means of facilitating consolidation of the market by reducing the number of insurers who do not provide “real” insurance services.

The code should be consistent with IAIS and G20 principles on fair treatment of consumers.

The industry should be required to implement the code, publicize its existence and disseminate information on it generally and with each specific insurance transaction.

<table>
<thead>
<tr>
<th>Good Practice A.4</th>
<th>Other Institutional Arrangements</th>
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<tr>
<td>a. Prudential supervision and consumer protection can be placed in separate agencies or lodged in a single institution, but allocation of resources between prudential supervision and consumer protection should be adequate to enable the effective implementation of consumer protection rules.</td>
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<tr>
<td>b. The judicial system should provide credibility to the enforcement of the rules on financial consumer protection.</td>
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<tr>
<td>c. The media and consumer associations should play an active role in promoting consumer protection in the area of insurance.</td>
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**Description**

Funding for NCRFSM is controlled through the state budget process.

In the past concerns have been expressed about the need to make NCRFSM more independent of central budget and to increase its resources with a view to ensuring that it can attract and hold sufficient competent staff and building up its information retrieval processing and analysis capabilities.
Until recently consumer protection appears to have been a lower priority responsibility than other authority responsibilities.

The court system does not appear to be an effective means to resolve consumer issues. The time taken to go through the courts can be lengthy. Enforcement of court decisions can also be very difficult. Changes have recently been introduced which may help improve enforcement through the Law “On Enforcement Proceeding” but it is too soon to tell.

The media are active in consumer protection issues but there is already a low level of consumer confidence in insurance markets.

**Recommendation**

Changes should be implemented to increase NCRFSM’s financial and operational independence and also its transparency and accountability.

The latter might be addressed by establishment of a supervisory plan for the public which includes performance indicators and an expanded annual report. The annual report should include information on the state of the market from a consumer protection perspective. It should discuss market conduct trends and insurance related issues like scams, it should also report on the real outcomes of consumer protection activities.

Establishment of a regulatory body which is seen by consumers as credible independent and properly funded is perhaps the most important way of increasing consumer confidence in insurance markets and enabling growth.

**Good Practice A.5**

**Bundling and Tying Clauses**

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

**Description**

A frequent consumer complaint related to loan agreements is the requirement for a consumer to purchase related insurance (e.g. credit insurance, property insurance) from a specific insurer in order to receive the loan (usually a bank owned insurer).

In circumstances when there is not a bank owned insurer, banks make referrals to specific insurers for lucrative commissions (e.g. up to 80 percent of the transaction).

A recent change to the industry is that lenders maintain a list of at least two life insurers and five non-life insurers from which the consumer may select to provide their insurance coverage. This is intended to increase consumer choice.

**Recommendation**

A clear prohibition of this practice (coercive tied selling) should be established and the regulatory authority should have adequate enforcement tools to ensure it is implemented. One approach may be to prohibit the payment of a referral commission. If the practice is to be permitted then it should be controlled by limiting the commission paid by the insurer to the bank to specified level (i.e. 40 percent of the premium).

**SECTION B**

**DISCLOSURE & SALES PRACTICES**

**Good Practice B.1**

**Sales Practices**

a. Insurers should be held responsible for product-related information provided to consumers by their agents (i.e. those intermediaries acting for the insurer).

b. Consumers should be informed whether the intermediary selling them an insurance contract (known as a policy) is acting for them or for the insurer (i.e. in the latter case the intermediary has an agency agreement with the insurer).

c. If the intermediary is a broker (i.e. acting on behalf of the consumer) then the consumer should be advised at the time of initial contact with the intermediary if a commission will be paid to the intermediary by the underwriting insurer. The consumer should have the right to require disclosure of the commission and other costs paid to an intermediary for long-term savings contracts. The
| Description | The Law on Insurance establishes an obligation on insurers to familiarize the consumer with the terms and conditions of insurance. No comprehensive set of consumer protection standards associated with sales of insurance products currently exists. Information on complaints suggests that insurance contracts are difficult for ordinary consumers to understand and can contain onerous conditions which consumers have little ability to change. A common complaint is that insurance contracts use unreasonably onerous proof of loss procedures or unjustifiable response time frames as a condition of the contract. Proper disclose of terms and conditions at point of sale and plain language policies, therefore, take on increased importance. Most insurance agents represent a single insurer although some represent multiple insurers. The law doesn't require insurance agents to adhere to a code of conduct, but it requires them to meet some suitability requirements, including no criminal record. They are not required to be registered with the state and are only accountable to the insurers they represent. It appears that liability to the policy holder lies with the insurance company if the terms of the contract are misrepresented by an agent but this is not certain. Brokers are required by law to act in the interest of prospective policy holders and are forbidden to receive commissions from insurers. They therefore have a very limited share of the retail market. |
| Recommendation | All intermediaries should be licensed and regulated by the Supervisory authority and the register should be available to the public. Insurance agents should be required to meet educational and product knowledge standards as well as personal suitability requirements and to adhere to an industry code of conduct. This need is particularly important with respect to the sale of life insurance products. Professional liability insurance for life agents should be required. The insurance company should be ultimately responsible for the conduct of its agents but agents should also have some liability for the policies they sell with respect to misrepresentation or malfeasance. Insurers and agents should be made legally accountable for meeting a code of conduct and required to demonstrate that they have appropriate systems for monitoring conduct and resolving complaints (e.g. internal complaint management procedures and internal ombudservices). Systematic oversight of the market conduct of insurers should occur through on-site examination of market conduct policies, reporting and controls. The regulator should also be involved in the establishment of best practices for market conduct in consultation with the industry. Implementation of appropriate sanctions (e.g. administrative penalties) should be considered for violation of market conduct requirements. |
These requirements would be a major step for the industry and should be phased in stages (beginning with registration of agents) over a reasonable period of time (e.g. four years).

**This need is Good Practice B.2**

**Advertising and Sales Materials**

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

**Description**

The Law “On Advertising” requires insurers to obtain a special permit to advertise.

There is no requirement that advertisements be easy to read but Article 11 of the Law “On Financial Services and State Regulation of the Financial Services Markets” requires that information and data be accurate.

Article 24 includes additional requirements prohibiting information on expected dividends or future profits.

**Recommendation**

The issuance of a special permit should be conditional on the advertisement being in plain language as well as requiring the information and data being accurate.

**Good Practice B.3**

**Understanding Customers’ Needs**

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

**Description**

The Law “On Insurance” requires the insurer to familiarize the insurant with the terms and conditions of the insurance. The law provides little other guidance.

**Recommendation**

A code of conduct for insurance intermediaries should be developed and legally enforced. The code should include understanding consumer needs as a basic requirement. At a minimum such a code should require the intermediary to:

1) evaluate clients’ needs;
2) disclose material information relevant to the purchasing decision;
3) conduct all insurance activities in a competent manner;
4) protect clients’ interests and privacy; and
5) carry on the business of insurance in good faith - act with honesty and decency of purpose and a sincere intention to represent the client’s best interest.

Industry associations should be encouraged to develop procedures to be implemented across their distribution networks on how client needs should be evaluated for specific insurance products.

**Good Practice B.4**

**Cooling-off Period**

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

**Description**

Cooling off periods for long-term savings products are not required.

**Recommendation**

Cooling off periods should be considered for longer term savings products so that consumers can reverse the effects of high-pressure sales practices. Typically these apply for up to 14 days after the contract becomes effective or a shorter period after the contract is sent out. They should be implemented through amendment to the Law on Insurance, See A2).

**Good Practice B.5**

**Key Facts Statement**

A Key Facts Statement should be attached to all sales and contractual documents, disclosing the key factors of the insurance product or service in large print.
| Description | The Law on Insurance makes no reference to Key Facts statements but some industry participants suggest that they attempt to provide product information in simple consumer friendly form. |
| Recommendation | Implementation of Key Facts statements should appear at the front of all retail proposals and policy documents for long-term savings and investment products. |
| Good Practice B.6 | **Professional Competence**  
  a. Sales personnel and intermediaries selling and advising on insurance contracts should have sufficient qualifications, depending on the complexities of the products they sell.  
  b. Educational requirements for intermediaries selling long-term savings and investment insurance products should be specified, or at least approved, by the regulator or supervisor.  
| Description | There are no requirements for formal education or qualifications for insurance agents or claims adjusters in Ukraine. Insurance brokers are licensed but the system is very new and subject to some training. |
| Recommendation | All intermediaries should be required to meet minimum licensing qualifications including education and product knowledge requirements. These requirements should be developed by the Supervisory authority in consultation with industry associations and consumer groups. |
| Good Practice B.7 | **Regulatory Status Disclosure**  
  a. In all of its advertising, whether by print, television, radio or otherwise, an insurer should disclose: (i) that it is regulated, and (ii) the name and address of the regulator.  
  b. All insurance intermediaries should be licensed and proof of licensing should be readily available to the general public, including through the internet. |
| Description | Advertisements require a special permit and the permit number must be disclosed in the advertisement but there is no requirement to provide the name and address of the regulator.  
Insurance agents are not licensed and the requirement to license adjusters has only recently been announced so there is no requirement for proof of licensing. Brokers must disclose that they are licensed. |
| Recommendation | Insurers should be required to disclose in all of their advertising the name of the regulatory authority as well as the permit number.  
Insurance agents and adjusters should be licensed and the supervisory authority should require that intermediaries to give customers information on their licensing status. |
| Good Practice B.8 | **Disclosure of Financial Situation**  
  a. The regulator or supervisor should publish annual public reports on the development, health, strength and penetration of the insurance sector either as a special report or as part of the disclosure and accountability requirements under the law governing it.  
  b. Insurers should be required to disclose their financial information to enable the general public to form an opinion with regards to the financial viability of the institution.  
  c. If credible claims paying ability ratings are not available, the regulator or supervisor should periodically publish sufficient information on each insurer for an informed commentator or intermediary to form a view of the insurer’s relative financial strength. |
| Description | Article 33 of the Law of the Ukraine “On Financial Services and the State Regulation of the Financial Services Markets in Ukraine” requires NCRFSM to publish in the media basic information from its annual report. The authority also maintains a website which provides some information. The website includes sections on financial services markets and on protection of the rights of consumers but appears to be still under construction.  
Insurers must also publish financial statements annually. Effective January 1, 2012, these statements are required to meet international financial reporting standards. |
The authority does not currently publish financial information on individual insurers, however, under Article 12 of the LFS clients have the right to access information on the activities of a financial institution from the institution including data on financial performance, the managers and its organization, services provided, prices and fees, number of shares held by members of the executive body, the list of shareholders who own more than 5 percent.

**Recommendation**  The supervisory authority should be encouraged to increase the amount of information it provides on the state of markets and concerning the financial position of individual insurers. This would be consistent with international best practices.

### SECTION C  CUSTOMER ACCOUNT HANDLING AND MAINTENANCE

<table>
<thead>
<tr>
<th>Good Practice C.1</th>
<th>Customer Account Handling</th>
</tr>
</thead>
<tbody>
<tr>
<td>a.</td>
<td>Customers should receive periodic statements of the value of their policy in the case of insurance savings and investment contracts. For traditional savings contracts, this should be provided at least yearly, however more frequent statements should be produced for investment-linked contracts.</td>
</tr>
<tr>
<td>b.</td>
<td>Customers should have a means to dispute the accuracy of the transactions recorded in the statement within a stipulated period.</td>
</tr>
<tr>
<td>c.</td>
<td>Insurers should be required to disclose the cash value of a traditional savings or investment contract upon demand and within a reasonable time. In addition, a table showing projected cash values should be provided at the time of delivery of the initial contract and at the time of any subsequent adjustments.</td>
</tr>
<tr>
<td>d.</td>
<td>Customers should be provided with renewal notices a reasonable number of days before the renewal date for non-life policies. If an insurer does not wish to renew a contract it should also provide a reasonable notice period.</td>
</tr>
<tr>
<td>e.</td>
<td>Claims should not be deniable or adjustable if non-disclosure is discovered at the time of the claim but is immaterial to the proximate cause of the claim. In such cases, the claim may be adjusted for any premium shortfall or inability to recover reinsurance.</td>
</tr>
<tr>
<td>f.</td>
<td>Insurers should have the right to cancel a policy at any time (other than after a claim has occurred – see above) if material non-disclosure can be established.</td>
</tr>
</tbody>
</table>

### Description

It is unclear whether or not regular periodic statements are provided unless they are provided for in contract. Article 12 of the LFS gives the client access to information on the activities of the financial institution. A regulation under Article 16 of the Law On Insurance requires insurers to keep personal records on the details of life insurance contracts. It appears however that in order to access this information the request must be made by the consumer.

Article 28 sets out procedures for termination and for early termination of an insurance contract. Essentially contracts may be terminated at the end of term, for non-payment of premiums, and in the event of insurer liquidation. Insurers can’t terminate a contract early without the agreement of the insurant unless otherwise specified in the contract. Parties must also provide 30 days notice.

Article 12 of the LFS, to be enforced in January 2012, requires that the procedure for dealing with disputes be set out in the contract but there does not appear to be a requirement for renewal notices.

Reasons for refusing insurance benefits and rights and obligations for non-performance of obligations appear to be defined in the contract rather than the law.

**Recommendation**  Consideration should be given to establishing a provision in the Law on Insurance that requires statements on life insurance contracts be provided annually. In addition a provision should be included in the law requiring breaches of consumer obligations be material before a policy may be denied (see A2).

### SECTION D  PRIVACY & DATA PROTECTION
### Good Practice D.1

**Confidentiality and Security of Customers’ Information**

Customers have a right to expect that their financial transactions are kept confidential. Insurers should protect the confidentiality and security of personal data, against any anticipated threats, or hazards to the security or integrity of such information, and against unauthorized access.

| Description | Under Article 20 of the Law on Insurance the insurer is required to keep secret information concerning the insurant and the insurant’s property except in cases envisaged by the law of the Ukraine. |
| Recommendation | None |

### SECTION E

**DISPUTE RESOLUTION MECHANISMS**

### Good Practice E.1

**Internal Dispute Settlement**

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

| Description | There do not appear to be any formal requirements for insurers to establish internal dispute settlement mechanisms. |
| Recommendation | The law should require insurers to establish internal dispute resolution policies. The features of these policies should include single point of contact for consumers, documented procedures for dealing with sales and claims disputes and independent reporting on the status of complaints to the institutions board.

These requirements should be periodically examined as part of regulatory onsite examinations to determine whether or not they are being complied with. |

### Good Practice E.2

**Formal Dispute Settlement Mechanisms**

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

| Description | The State Commission for Financial Services Markets Regulation recently published on its website for public discussion a Draft Law On Out-of-Court Dispute Resolution for Consumers of Financial Services (except banks). The Draft provides for establishment of a financial agents (ombudsman) service.

Two industry associations have also recently introduced industry based services to mediate or arbitrate consumer disputes. |
| Recommendation | NCDFS and the industry should be encouraged to continue the development of an ombudservice and that the development of the framework should be based on international principles and best practices for such services.

At a minimum the ombudservice should adhere to the principles of independence, fairness, accessibility, accountability and transparency for such services. In addition, its scope of services and methods and remedies should be clearly defined. |
<table>
<thead>
<tr>
<th><strong>SECTION F</strong></th>
<th><strong>GUARANTEE SCHEMES AND INSOLVENCY</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Good Practice F.1</strong></td>
<td><strong>Guarantee Schemes and Insolvency</strong></td>
</tr>
<tr>
<td>a.</td>
<td>With the exception of schemes covering mandatory insurance (and possibly long-term insurance), insolvency guarantee schemes are not to be encouraged for insurance because of the opaque nature of the industry and the scope for moral hazard. Strong governance and prudential supervision are better alternatives.</td>
</tr>
<tr>
<td>b.</td>
<td>Nominal defendant arrangements should be in place for mandatory insurances such as motor third party liability insurance to cover situations where there is no insured guilty party.</td>
</tr>
<tr>
<td>c.</td>
<td>Assets covering life insurance mathematical reserves and investment contract policy liabilities should be segregated or at the very least earmarked, and long-term policyholders should have preferential access to such assets in the event of a winding-up.</td>
</tr>
</tbody>
</table>

**Description**

There currently do not appear to be guarantee schemes for non-compulsory products. And there are no nominal defendant arrangements in place.

There is a fund for third party motor liability which covers accidents due to uninsured drivers and unidentified drivers. It also covers losses associated with the failure of an insurer.

According to Article 31 of the Law “On Insurance” life insurance reserves may not be used for paying any liabilities except those associated with life insurance agreements and are accounted for separately.

Creditor claims under insurance agreements appear to have priority in the event of insurer bankruptcy.

**Recommendation**

None

<table>
<thead>
<tr>
<th><strong>SECTION G</strong></th>
<th><strong>CONSUMER EMPOWERMENT</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Good Practice G.1</strong></td>
<td><strong>Broadly based Financial Capability Program</strong></td>
</tr>
<tr>
<td>a.</td>
<td>A broadly based program of financial education and information should be developed to increase the financial capability of the population.</td>
</tr>
<tr>
<td>b.</td>
<td>A range of organizations—including government, state agencies and non-governmental organizations—should be involved in developing and implementing the financial capability program.</td>
</tr>
<tr>
<td>c.</td>
<td>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.</td>
</tr>
</tbody>
</table>

**Description**

Insurance related programs for financial education and information appear to be lacking. Given that the insurance market in the Ukraine appears to be one which is fixed at an early stage of development and that agents are not regulated by the state, financial education programs are extremely important to ensuring that retail consumers are not taken advantage of.

More consumer information is also needed on the state of insurance markets on how particular insurance products work and on potential problems and scams.

**Recommendation**

Consideration should be given to establishing an industry Ombudsman with the responsibility for providing unbiased consumer information on the state of the retail financial services markets. In addition, Government should be encouraged to establish a clear financial education strategy.

**Good Practice G.2** | **Unbiased Information for Consumers**
**Insurance Sector**

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

**Description**

Insurance products are not well understood by the average consumer and there appear to be few unbiased resources available to help them understand general insurance products.

The supervisory authorities website does makes the legislation available to the public and has some general information available on its website and it appears that it will provide some information on protection of financial consumer rights but it is a work in progress. Product specific information other than that received in advertisements, from individual insurers or perhaps the media appears to be hard to find.

One industry association provides financial information on its members and both provide information on their arbitration processes.

**Recommendation**

As part of a financial education strategy, the government authorities should be encouraged to develop information packages on standard insurance products. Consideration should also be given to establishing a general consumer information responsibility with a financial services industry Ombudsman’s office.

**Good Practice G.3**

**Measuring the Impact of Financial Capability Initiatives**

a. Policymakers, industry and advocates should understand the financial capability of various market segments, particularly those most vulnerable to abuse.

b. The financial capability of consumers should be measured through a broad-based household survey that is repeated from time to time.

c. The effectiveness of key financial capability initiatives should be evaluated.

**Description**

There do not appear to be surveys and or regular assessments conducted by the industry or the regulator in this area.

**Recommendation**

Assessment of financial capability should be conducted on a regular periodic basis (e.g. every five years).
### Good Practices: Credit Unions/Pawn Shops

<table>
<thead>
<tr>
<th>SECTION A</th>
<th>CONSUMER PROTECTION INSTITUTIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Good Practice A.1.</strong></td>
<td>Consumer Protection Regime</td>
</tr>
<tr>
<td></td>
<td>The law should provide for clear rules on consumer protection in the area of credit unions/pawn shops, and there must be adequate institutional arrangements for implementation and enforcement of consumer protection rules.</td>
</tr>
<tr>
<td></td>
<td>a. There should be specific provisions in the law, which create an effective regime for the protection of consumers of credit unions/pawn shops</td>
</tr>
<tr>
<td></td>
<td>b. There should be a government authority responsible for implementing, overseeing and enforcing consumer protection in the area of credit unions/pawn shops.</td>
</tr>
<tr>
<td></td>
<td>c. The supervisory authority for credit unions/pawn shops should have a register which lists the names of credit unions/pawn shops.</td>
</tr>
<tr>
<td></td>
<td>d. There should be coordination and cooperation among the various institutions mandated to implement, oversee and enforce consumer protection and financial sector regulation.</td>
</tr>
<tr>
<td></td>
<td>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 to consumer protection in the area of credit unions/pawn shops.</td>
</tr>
<tr>
<td><strong>Description</strong></td>
<td>The Civil Code provides rules on consumer protection. Articles 1054.1 and 1054.3 state that financial institutions are obliged to provide loans to the borrower in volumes and on the terms, established by the credit agreement, and the borrower is obliged to pay back credit and interest on the bank credit.</td>
</tr>
<tr>
<td></td>
<td>The Law on Consumers’ Rights Protection (LCRP) No. 1023-XII dated May 12, 1991 addresses basic consumer issues such as the quality and safety of goods and services, information concerning goods and services, prohibition of unfair business practices, judicial protection of consumer rights and liability for violation of consumer rights protection legislation. It applies equally to banks and non bank credit institutions, including credit unions and pawn shops. The LCRP is general in nature, and focuses on non-financial goods and services. However recent court ruling of the Constitutional Court clarified that the LCRP covers the protection of consumers of credit services and applies to the relationship between creditors and consumers when conducting and executing of a consumer credit agreement. Thus the LCRP covers only consumer lending A decision of the Constitutional Court of Ukraine is binding on the territory of Ukraine.⁶</td>
</tr>
<tr>
<td></td>
<td>These rules are implemented by the State Consumer Rights Inspectorate (SCRPI) of Ukraine, a state authority in charge of consumer protection.⁷ However the institutional capacity of the SCRPI to deal with consumer loans issued by credit unions and pawn shops is very limited.</td>
</tr>
<tr>
<td></td>
<td>Furthermore, the protection of interests of consumers of financial services is part of the statutory mandate of State Commission for Financial Services and Markets Regulation (Financial Services Regulator - NCRFSM) under Art. 19 (2) of the Law On Financial Services and State Regulation of Financial Markets (LFS) No.2664-III dated July 12, 2001. The LFS establishes general legal principles in the area of provision of financial services and the regulation and oversight of the financial services market in Ukraine. However, FSR lacks specific tools at hand to protect consumers of financial services.</td>
</tr>
<tr>
<td></td>
<td>Another issue is that the definition of “consumer” can be found in the LCRP, according to which a consumers are only natural persons.⁸ However the LFS lacks a definition of “consumer”, referring only to consumers as “participants” of the financial services markets, which, inter alia, include consumers.</td>
</tr>
</tbody>
</table>

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⁶ CONSTITUTIONAL COURT OF UKRAINE Ruling on the consumer rights protection with regard to credit services (Case No. 1-26/2011)

⁷ Until April 2011, the responsible central executive body was the State Committee for Technical Regulation and Consumer Policy (SCTRCP). Decree of the President of Ukraine No. 370/2011 of April 6, 2011 “On optimizing the system of central bodies of the state executive power” provides the establishment of the State Consumer Protection Inspectorate of Ukraine. On April 13, 2011, the Charter of the State Consumer Protection Inspectorate was approved with Decree of the President of Ukraine No. 465/2011.

⁸ Article 2 Item 22 of the LU-CRP
However the LFS provides for the establishment of the NCRFSM, a central executive agency in charge of regulation of financial services markets. The Law dated 2 June 2011 “On Amendments to Several Laws of Ukraine regarding Regulation of Financial Services Market” which becomes effective on 8 January 2012 introduces the term prudential supervision\(^9\) as being an integral part of general supervision based on an regular assessment of general financial condition of institutions, systemic activity results and quality of its management, compliance with applicable standards and other requirements that limit the risks in transactions with financial assets.

The framework for the establishment, licensing and supervision of business conduct of credit unions is governed by the Law on Credit Unions. This Law defines organizational, legal and economic grounds for establishment and operation of credit unions in Ukraine and their associations and the rights and liabilities of members of credit unions and their associations. Credit unions are organized as non-profit organizations. Credit unions are registered in the State Register of Financial Institutions maintained by the NCRFSM. A list of registered credit unions is available to the public.

There have been discussions in the credit union sector on the establishment of a deposit guarantee scheme as in the case of banks. Currently, there are no such schemes in place at the legislative level. The National Association of Credit Unions in Ukraine has put a mandatory stabilization program in place for its 150 member credit unions. In addition, the AUCU Stabilization Fund which operates as a financial institution under the Law on Credit Unions offers a voluntary deposit insurance program that’s available to all credit unions. Currently about 50 credit unions participate in the program accounting for 20% of the total number of depositors and 17% of total assets. AUCU does an on-site monitoring before a credit union is allowed to join the stabilization fund. In addition, an on-site inspection of each member takes place every year and members are also required to transmit monthly reports to AUCU. The size of the stabilization fund is rather low amounting to 0.3% of total deposits and there is no oversight on the activities of AUCU. In addition, almost 50 credit unions united in the Deposit Protection Program to perform supervision of their operations, provide liquidity, training and other consulting services.

In many cases, credit unions are affiliated with banks or oriented on consumer loans which do not justify the special regulatory regime of credit unions anymore. Also internal control mechanisms within credit unions do not work properly.\(^{10}\)

There exists a legislative gap as regards to the declaration of bankruptcy of credit unions. According to Art. 209 of the Commercial Code, only business entities are able to declare bankruptcy. However, under Art. 1 of the Law on Credit Unions, a credit union is a non-profit organization. This makes it impossible for credit unions to declare bankruptcy and meet the claims of their existing creditors. The NCRFSM removes insolvent credit unions from the State Register of Financial Institutions to prevent them from mobilizing additional funds. However the difficulty remains that there is no provision to wind-up credit unions through a formal insolvency process.

In summary, the legislative framework is fragmented and state supervision and self-regulatory supervision is weak. NCRFSM faces severe resource and capacity restraints.

However the financial regulation and supervision of pawn shops is still weaker. No specific law regulates pawn shops although the LFS considers pawn shops as financial institutions falling under the supervision of the NCRFSM. Order of the NCRFSM dated April 26, 2005 N 3981 and NCRFSM Resolution 565/10845 provide only a minimal definition of the activities of pawn shops.

**Recommendation**

As regards to credit unions, enhanced cooperation between all relevant parties, including NCRFSM, SCRI and the professional associations should be put in place. However a prerequisite would be the strengthening of capacities of all these institutions by provisioning adequate resources.

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\(^9\) See Amendment to Art. 29 of FSR

\(^{10}\) The World Bank team learned during its second visit to Ukraine in March 2012 that Art. 15 of the LFS was amended with a new paragraph added which envisages establishment of an Internal Audit department/Internal Auditor in each financial company reporting to the Supervisory Board.
Protecting the interests of consumers of financial services is one of the objectives of NCRFSM. Nevertheless, NCRFSM should have specific powers and tools at hand to protect consumers of financial services. Several different options have been identified to enhance the effectiveness of consumer protection and market conduct in the non-bank institutions sector of Ukraine:

1. Establish an independent department within the NCRFSM responsible for the consumer protection in the area and set up a Consumer Protection and Financial Education Coordinating Committee responsible for coordination the work in this regard with similar departments of the other regulators (NBU, NSSMC)
2. Found a new independent agency for consumer protection in financial services covering the whole financial market
3. Task the Consumer Protection Agency (SCRPI) with consumer rights protection across all financial sectors.

Option 1 seems to be the most practical and feasible way forward in dealing with consumer protection supervision of regulators.

The existing legal framework for consumer protection of non bank financial institutions, especially credit unions needs to be strengthened to provide for a consistent and effective consumer protection system. Specialized legislation should be put in place to govern pawn shops.

There should be a general statutory deposit guarantee scheme in place for credit unions. Because of the fragmented situation of the Ukrainian credit sector thoughts should be given to the incorporation of credit unions into the Deposit Guarantee Fund of the banking sector. However, this possibility should only be envisaged by the regulator if there was a similar regulatory regime in place for credit unions as applied to banks in order to ensure the efficiency of the system. As a consequence, a single approach would have to be adapted as regards to all deposit taking financial institutions by moving the regulatory powers over credit unions to the NBU.

Considerations should be given to enlarging the definition of the term “consumer” along the lines of the EU definition and incorporate it into the respective legislative acts.

Moreover, the Commercial Code/Law on Credit Unions should be revised in order to provide for an orderly mechanism for winding up insolvent credit unions.

**Good Practice A.2**

**Code of Conduct for Credit Unions/ Pawn Shops (Customer Protection Code)**

- **a.** There should be a principles-based Code of Conduct for credit unions/pawn shops that is devised in consultation with the industries involved, and is monitored and enforced in the last resort by a statutory agency.  
- **b.** The statutory Code should be limited to good business conduct principles. It should be augmented by voluntary codes on matters specific to the industry (banks, credit unions, pawn shops, other non-bank credit institutions).  
- **c.** The operation of voluntary codes should be monitored by a statutory agency, and the Annual Report of that agency should comment on the operation of those codes.

**Description**

Currently, there exist no Codes of Conduct applicable to credit unions or pawn shops. However, Art. 1 Part 9 of the LFS stipulates the possibility that regulators delegate their authorities for developing and implementing rules of conduct in financial service markets to self-regulatory organizations (SROs). Two credit union associations have been established so far (Ukrainian National Credit Union Association, All Ukrainian Credit Union Association), however, they do not have a SROs as envisaged in Article 16 of LFS.

**Recommendation**

There should be principles-based Codes of Conduct for credit unions and pawn shops. Each Code should be prepared by the industry and supervised by the industry associations. Such Codes would bring many advantages to consumers, especially because the credit union or pawn shop could not violate essential principles without facing consequences. In order for SROs to be effective, membership in the industry association should be mandatory.

**Good Practice A.3**

**Other Institutional Arrangements**

- **a.** Whether credit unions/pawn shops are supervised by a financial supervisory agency, the allocation of resources between financial supervision and consumer protection should be adequate to enable their effective implementation.
b. The judicial system should ensure that the ultimate resolution of any dispute regarding consumer protection matter with a credit union/pawn shop is affordable, timely and professionally delivered.

c. The supervisory authority for credit unions/pawn shops should encourage media and consumer associations to play an active role in promoting consumer protection regarding credit unions/pawn shops.

Description

The NCRFSM is responsible for prudential and market conduct supervision of credit unions and pawn shops. Nevertheless, NCRFSM does not have specific tools at hand to protect consumers of financial services.

The Ukrainian court system is reportedly slow and very unpredictable in its decisions. The General Courts dealing with claims related to financial services are lacking expertise in financial and economic matters.

Two associations are active in the credit union sector. However, the credit union sector is very fragmented. Since membership is not mandatory, only half of the 638 credit unions are members of an association (as of mid-2011). Similar issues also exist for pawn shops.

Recommendation

Increased awareness of consumer rights in all three areas could be ensured by strengthening links among credit unions, industry professional associations and NCRFSM. However a prerequisite would be the strengthening of capacities of all such institutions by provisioning adequate resources. A similar approach would be helpful for pawn shops.

To educate their consumers, industry associations should engage in initiatives that would increase disclosure of pre-contractual information to consumers (e.g. through regular product comparison of credit unions in the press or on websites) and require the disclosure of clear complaints procedures within credit unions themselves and disclosure of all the available channels for submission of complaints in the codes of conduct and the general contract terms and condition of credit unions.

Good Practice

A.4 Registration of Credit Unions/Pawn Shops

All credit unions/pawn shops that extend any type of credit to households should be registered with a financial supervisory authority.

Description

According to the Law on Credit Unions, credit unions are financial institutions. All financial institutions are required to register with the NCRFSM. Regulation Nr. 1099 of June 22, 2004 specifies the requirements for credit unions in order to receive the status of financial institutions and be registered in the State register of financial institutions. The LFS also defines pawn shops are financial institutions, subject to supervision by the NCRFSM.

Recommendation

No recommendation.

SECTION B DISCLOSURE AND SALES PRACTICES

Good Practice B.1 Information on Customers

a. When making a recommendation to a consumer, a credit union/pawn shop should gather, file and record sufficient information from the consumer to enable the credit union/pawn shop to render an appropriate product or service to that consumer.

b. The extent of information the credit union/pawn shop gathers regarding a consumer should:

(i) be commensurate with the nature and complexity of the product or service either being proposed to or sought by the consumer; and

(ii) enable the credit union/pawn shop to provide a professional service to the consumer in accordance with that consumer’s capacity.

Description

According to Art. 6 of the Law on “Organization, Formation, and Circulation of Credit Histories” (Law No. 2704-IV of 2005), users of the credit bureaus may be banks, nonbank financial institutions and other business entities that provide services on a deferred payment or provide goods on credit. Credit unions do not use credit bureaus as frequently as banks and thus not gather as much information and setting up credit histories of consumers. Reportedly, this is due to the high tariffs for the use of credit bureaus. Another issue is the inability of credit unions to submit information to the credit bureaus. Pawn shops also do not access the services of credit bureaus.

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11 Order of State commission for regulation of markets of financial services of Ukraine on August, 28, 2003 №41
### Recommendation

Credit officers of credit unions should conduct interviews to understand the personal/household balance sheet composition and the risks their customer is facing to avoid overexposure of the consumer to changes in interest rates and to avoid endangering his or her credit history and future ability to borrow. They should also advise the client to access their credit history from the credit bureau. These practices should be described in detail in the internal procedures of the credit unions, and the principles and the entitlements of consumers to such treatment and service should be included in the code of conduct of the industry.

### Good Practice B.2

**Affordability**

a. When a credit union/pawn shop 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.

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.

When offering a new credit product or service significantly increasing the amount of debt assumed by the consumer, the consumer’s credit worthiness should be properly assessed.

### Description

The legislation does not stipulate any requirements for gathering, processing and keeping of the information received from a consumer in order to ensure that the institution’s recommendations on a financial product or service is appropriate. However, according to the Law dated 2 June 2011 “On Amendments to Several Laws of Ukraine regarding Regulation of Financial Services Markets”12, a client of a financial institution will receive additional information regarding the financial services provided by that financial institution. In particular, before signing the contract, the financial institution must provide for a correct understanding of the financial product or service without putting pressure on the consumer to purchase.

There is no requirement in the law that deals with the matter of suitability of a product or service and the responsibility credit unions are facing in this regard. Current provisions only ensure that sufficient information is provided to ensure a correct understanding of the consumer of a financial product or service before signing the contract.

The LCRP stipulates that the consumer must be provided with sufficient information about the costs associated with the loan and the loan agreement execution service, loan period, service and repayment options. The Law “On Amendments to Several Laws of Ukraine regarding Regulation of Financial Services Market” No. 3462-V1 which enters into force on January 8, 2011 further specifies the information a client of a financial institution will now receive regarding all financial services provided by that financial institution. Before entering into a financial services agreement with the client, the financial institution must, among other things, provide the client with the terms and price of the additional services provided, the taxes and charges levied at the expense of the client as a result of receiving the financial services, and in cases of early termination, the consequences of the same and a procedure for payments to settle the services.

According to Art. 7 of the Law on Credit Unions, a credit union shall operate on the basis of a Charter, which shall include inter alia terms and conditions of granting credits to the members of a credit union. Additionally the two associations of credit unions issue guidelines regarding transparency, disclosure and freedom of entry and exit to credit unions. However, only about 50% of all credit unions (totaling 638 at the 2 Q of 201113) are members of such associations.

In many cases the information is not provided in full to the consumers. The difference between banks and credit unions is often unclear. Additionally consumers often do not know the difference between deposit-taking and a member share.

### Recommendation

Special attention should be given to the training of credit officers of credit unions and pawn shops. They should conduct interviews to understand the personal/household balance sheet composition and the risks their customer is facing to avoid overexposure of the consumer to changes in interest rates and to avoid endangering his or her credit history and future ability to borrow.

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12 On 2 June 2011, the Parliament of Ukraine adopted Law “On Amendments to Several Laws of Ukraine regarding Regulation of Financial Services Markets” No. 3462-VI. According to the official web site of the Parliament of Ukraine, the Law becomes effective on 8 January 2012.

13 Statistical data of FRS
borrow. These practices should be described in detail in the internal procedures of each credit union and pawn shop.

**Good Practice B.3 Cooling-off Period**

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

**Description**

According to Art. 11 paragraph 6 of the LCRP a consumer has the right to withdraw, within 14 calendar days, his/her consent to conclusion of a consumer loan agreement without giving reasons—and without penalty. The period is calculated from the delivery of a copy of the concluded agreement to the consumer. Withdrawal of the consent requires a written notice of the consumer within the cooling-off period. However, this provision only applies to consumer loans.

**Recommendation**

Cooling-off periods should apply to all financial products with a long-term commitment. They should apply to both loans and investments (such as insurance) where the commitment period is more than two or five years, respectively.

**Good Practice B.4 Bundling and Tying Clauses**

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

**Description**

Credit unions (but not pawn shops) often require that borrowers obtain a life insurance policy as collateral for a long-term consumer loan. Art. 11 paragraph 5 of the LCRP specifies that requiring the customer to conclude another agreement with the loan provider as a pre-condition for receiving a loan is considered an unfair condition in loan agreements, except where conclusion of such an agreement is required by legislation and/or where expenses on such an agreement are explicitly provided for in the total loan cost for the consumer.

**Recommendation**

Credit unions should clearly provide customers with separate prices of each product in a bundle, as well as any discount available if purchased as a bundle from the same credit union. These requirements should be included in a Code of Conduct stating that compulsory tying of financial products or their availability exclusively in bundles are prohibited sales practices.

**Good Practice B.5 Key Facts Statement**

- a. A credit union/pawn shop should have a Key Facts Statement for each of its accounts, types of loans or other products or services.
- 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 financial product or service, and allowing consumers the possibility of easily comparing products offered by different institutions.

**Description**

There is no requirement for a harmonized, simple fact sheet to be provided to customers to facilitate comparability of similar products’ conditions, especially costs, risks and contractual obligations.

**Recommendation**

The industry associations for credit unions and pawn shops should develop key facts statements, summarizing the key terms and conditions for each basic consumer financial product.

**Good Practice B.6 Advertising and Sales Materials**

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

According to Art. 11 of LFS financial institutions are prohibited from disseminating advertising and any other information that contains false data on their activities in the sphere of financial services. That provision is a special rule for financial institutions, but it does not cover all financial services market participants.

The Law on Advertising of 3 July 1996, No. 39, foresees requirements for advertising for services associated with raising funds from individuals.\(^\text{14}\) However, the Law doesn’t vest the NCRFSM and/or the NBU with the authority to control such advertising (only the National Securities and Stock Market Commission is a “monitoring agency” according to Art. 26) and no clear sanctions are being provided.

In a draft proposal published on 15 August 2011 the NCRFSM proposes a draft Law “On Amending Some Legislative Acts of Ukraine on Advertising in the Financial Services Area” which foresees defining the concept of advertising in the financial services market. Additionally the NCRFSM (and NBU) will be authorized to control such advertising.

However, in the current legislation there is not yet a concept of advertising as well as a determined appropriate control over the proliferation of advertising in the financial services market.

### Recommendation

There should be a clear legal definition of advertising in the financial services market. Furthermore the NCRFSM (and the NBU) should have the authority to control such advertising within their competences as already set out in the draft legislative proposal of the NCRFSM. Furthermore, clear sanctions for the dissemination of such advertising should be provided.

<table>
<thead>
<tr>
<th>Good Practice B.7</th>
<th><strong>General Practices</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Customer Practices</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Description</strong></td>
<td>Customer disclosure and sales practices should be included in the credit unions/pawn shops’ code of conduct and monitored by the supervisory authority.</td>
</tr>
<tr>
<td><strong>Recommendation</strong></td>
<td>See recommendation A.2.</td>
</tr>
</tbody>
</table>

### Good Practice B.8

**Disclosure of Financial Situation**

a. The relevant supervisory authority should publish annual public reports on the development, health, strength and penetration of the credit unions/pawn shops, either as a special report or as part of the disclosure and accountability requirements under the law that governs these.

b. Credit unions/pawn shops should be required to disclose their financial information to enable the general public to form an opinion regarding the financial viability of the institution.

| Description | Art. 33 of the LFS requires NCRFSM to disclose basic provisions of its annual reports in mass media. Credit unions and pawn shops are obliged to report to the NCRFSM on a quarterly basis as well as submit an annual report to the NCRFSM.\(^\text{15}\) Moreover, the Law of Ukraine *On Accounting* obliges the financial companies to publish annual reports on their own websites and in printed mass media. |
| Recommendation | The NCRFSM should prepare and publish annual public reports on the development, health, strength and penetration of the credit unions/pawn shops. The requirement for credit unions and pawnshops to publicly disclose their financial information on an annual basis should be enforced. |

### SECTION C

**CUSTOMER ACCOUNT HANDLING AND MAINTENANCE**

<table>
<thead>
<tr>
<th>Good Practice C.1</th>
<th><strong>Statements</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>a.</strong></td>
<td>Unless a credit union/pawn shop receives a customer’s prior signed authorization to the contrary, the credit union/pawn shop should issue, and provide the customer free of charge, a monthly statement of every account the credit union/pawn shop operates for the customer.</td>
</tr>
</tbody>
</table>

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\(^{14}\) See Art. 24

\(^{15}\) FSR Instruction on Reporting, January 19, 2004 by N 69/8668
b. Each such statement should: (i) set out all transactions concerning the account during the period covered by the statement; and (ii) provide details of the interest rate(s) applied to the account during the period covered by the statement.

c. Each credit card statement should set out the minimum payment required and the total interest cost that will accrue, if the cardholder makes only the required minimum payment.

d. Each mortgage or other loan account statement should clearly indicate the amount paid during the period covered by the statement, the total outstanding amount still owing, the allocation of payment to the principal and interest and, if applicable, the up-to-date accrual of taxes paid.

e. A credit union/pawn shop should notify a customer of long periods of inactivity of any account of the customer and provide a reasonable final notice in writing to the customer if the funds are to be treated as unclaimed money.

f. When a customer signs up for paperless statements, such statements should be in an easy-to-read and readily understandable format.

Description
Applicable laws do not provide requirements for monthly statements regarding every account the credit union operates for the consumer.

Recommendation
A rule should be put in place requiring credit unions to comply with this good practice.

Good Practice
C.2

Notification of Changes in Interest Rates and Non-interest Charges

a. A customer of a credit union/pawn shop should be notified in writing by the bank of any change in:

(i) The interest rate to be paid or charged on any account of the customer as soon as possible; and

(ii) A non-interest charge on any account of the customer a reasonable period in advance of the effective date of the change.

b. If the revised terms are not acceptable to the customer, he/she should have the right to exit the contract without penalty, provided such right is exercised within a reasonable period.

c. The credit union/pawn shop should inform the customer of the foregoing right whenever a notice of change under paragraph a. is made by the credit union.

Description
Art. 1056 of the Civil Code stipulates that – in case of a variable interest rate – the creditor has the right to unilaterally increase or shall be obliged to decrease the interest rate in accordance with the terms and conditions established in the credit agreement. The creditor must notify in writing the borrower, guarantor or other person about the change of the interest rate no later than 15 calendar days before the date on which the new rate will apply.

On 16 October 2011 the Law on Amending Certain Laws Regulating Relations between Creditors and Consumers of Financial Services entered into force. It amended the LCRP and requires creditors to notify the consumer where his/her right to claim under the consumer loan agreement are transferred to a third party (such as collection agencies).

Recommendation
The recent amendment will allow consumers to be better informed regarding their new credits. The provision should be extended to all financial services, not just consumer loans.

Good Practice
C.3

Customer Records

A credit union/pawn shop should maintain up-to-date records in respect of each customer of the credit union/pawn shop that contain the following:

(i) a copy of all documents required to identify the customer and provide the customer’s profile;

(ii) the customer’s address, telephone number and all other customer contact details;

(iii) any information or document in connection with the customer that has been prepared in compliance with any statute, regulation or code of conduct;

(iv) details of all products and services provided by the credit union/pawn shop to the customer;

16 Law on Amending Certain Laws Regulating Relations between Creditors and Consumers of Financial Services No. 7351 adopted on 22 September 2011.
<table>
<thead>
<tr>
<th>Credit Unions/Pawn Shops Sectors</th>
</tr>
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<tbody>
<tr>
<td>(v) a copy of all correspondence from the customer to the credit unions/pawn shops 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;</td>
</tr>
<tr>
<td>(vi) all documents and applications of the credit union/pawn shop completed, signed and submitted to the credit union/pawn shop by the customer;</td>
</tr>
<tr>
<td>(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 credit union/pawn shop; and</td>
</tr>
<tr>
<td>(viii) any other relevant information concerning the customer.</td>
</tr>
</tbody>
</table>

A law or regulation should provide the minimum permissible period for retaining all such records and, throughout this period, the customer should be provided ready access to all such records free of charge or for a reasonable fee.

### Description
NCRFSM Instruction No. 116 of November 11, 2003 foresees a list of Internal Policies and Procedures that credit unions need to develop, including provisions regarding circulation, record keeping, processing and use of documents and other information as well as the access and storage of such information in an integrated information system. A similar instruction should be prepared for pawn shops. The financing monitoring legislation partially addressed the information which should be recorded by credit unions and pawnshops (Art. 5-6 of the Law of Ukraine On Prevention of Money Laundering and Terrorist Financing).

### Recommendation
A requirement for credit unions and pawn shops to comply with this good practice should be strengthened.

### Good Practice C.4

**Credit Cards**

a. There should be legal rules on the issuance of credit cards and related customer disclosure requirements.

b. Credit unions, as credit card issuers, should ensure that personalized disclosure requirements are made in all credit card offers, including the fees and charges (including finance charges), credit limit, penalty interest rates and method of calculating the minimum monthly payment.

c. Credit unions should not be permitted to impose charges or fees on pre-approved credit cards that have not been accepted by the customer.

d. Consumers should be given personalized minimum payment warnings on each monthly statement and the total interest costs that will accrue if the cardholder makes only the requested minimum payment.

e. Among other things, the legal rules should also:

   (i) restrict or impose conditions on the issuance and marketing of credit cards to young adults (below age of 21) who have no independent means of income;

   (ii) require reasonable notice of changes in fees and interest rates increase;

   (iii) prevent the application of new higher penalty interest rates to the entire existing balance, including past purchases made at a lower interest rate;

   (iv) limit fees that can be imposed, such as those charged when consumers exceed their credit limits;

   (v) prohibit a practice called “double-cycle billing” by which card issuers charge interest over two billing cycles rather than one;

   (vi) prevent credit card issuers from allocating monthly payments in ways that maximize interest charges to consumers; and

   (vii) limit up-front fees charged on sub-prime credit cards issued to individuals with bad credit.

f. There should be clear rules on error resolution, reporting of unauthorized transactions and of stolen cards, with the ensuing liability of the customer being made clear to the customer prior to his or her acceptance of the credit card.

g. Credit unions/pawn shops and issuers should conduct consumer awareness programs on the misuse of credit cards, credit card over-indebtedness and prevention of fraud.

### Description
There are apparently no statutory or regulatory requirements in respect to the Good Practice C.4 on credit cards since there is no legal mechanism for issuance of cards by credit unions. In addition, there exists no Code of Conduct that deals with those matters. Pawn shops do not issue credit cards.

### Recommendation
A rule should be in place requiring credit unions to comply with these good practices.
### Good Practice C.5  
**Debt Recovery**

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

### Description

Under Art. 11 of the LCRP a creditor must inform the consumer about the assignment of his/her rights under the consumer contract to third parties such as debt collection companies.

During the financial crisis, banks (and to a much smaller extent credit unions) started assigning their claims under loan contracts to debt-collection agencies. Activities of debt collection companies in Ukraine are not regulated by law and these companies have reportedly been behaving quite aggressively.

Reportedly, the assignment of claims by credit unions to third parties is rarely undertaken (unlike in the case of banks).\(^{17}\)

However one issue arises with collection of debts by pawn shops. In the absence of adequate legislation, pawn shops are used (often by banks) as a vehicle for making consumer loans on residential property. Whereas banks are prohibited from evicting delinquent borrowers from their primary residences, no such rules apply to pawn shops.

### Recommendation

The activities of debt collection agencies should be regulated by law. Pawn shops should also be prohibited from making loans secured by real estate.

### SECTION D PRIVACY AND DATA PROTECTION

#### Good Practice D.1  
**Confidentiality and Security of Customers’ Information**

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

### Description

Art. 302 of the Civil Code and Art. 11 of the Law “On Information” prohibit the collection, storage, use and dissemination of confidential information about an individual without its consent, except in cases determined by law and only in the interests of national security, economic prosperity and human rights.

According to the Law on Personal Data Protection\(^{18}\) which is in effect since January 2011, information disclosure to third parties without the borrower’s consent is prohibited. Nevertheless, financial institutions find ways to evade the provision by including clauses in contracts under which consumers agree to such proceedings.

### Recommendation

Consumer awareness of their rights as regards to confidentiality and security of their information should be increased by NCRFSM, SCRPI and the media. Codes of Conduct established by the

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17 FINREP Report – Financial Services Consumer Protection in Ukraine: Legal Analysis, September 2011  
18 Law No. 2297-VI “On Protection of Personal Data”, dated June 1, 2010
Credit Unions/Pawn Shops Sectors

<table>
<thead>
<tr>
<th>Good Practice</th>
<th>Credit Reporting</th>
</tr>
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<tbody>
<tr>
<td>D.2</td>
<td>a. Credit reporting should be subject to appropriate oversight, with sufficient enforcement authority.</td>
</tr>
<tr>
<td></td>
<td>b. The credit reporting system should have accurate, timely and sufficient data. The system should also maintain rigorous standards of security and reliability.</td>
</tr>
<tr>
<td></td>
<td>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.</td>
</tr>
<tr>
<td></td>
<td>d. Proportionate and supportive consumer rights should include the right of the consumer (i) to consent to information-sharing based upon the knowledge of the institution’s information-sharing practices; (ii) to access his or her credit report free of charge (at least once a year), subject to proper identification; (iii) to know about adverse action in credit decisions or less-than-optimal conditions/prices due to credit report information; (iv) to be informed about all inquiries within a period of time, such as six months; (v) to correct factually incorrect information or to have it deleted and to mark (flag) information that is in dispute; (vi) to reasonable retention periods of credit history, for instance two years for positive information and 5-7 years for negative information; and (vii) to have information kept confidential and with sufficient security measures in place to prevent unauthorized access, misuse of data, or loss or destruction of data.</td>
</tr>
<tr>
<td></td>
<td>e. The credit registries, regulators and associations of credit unions/pawn shops 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.</td>
</tr>
</tbody>
</table>

Description

There are currently six credit bureaus operating in the market which are regulated by the NCRFSM. However, the supervision of credit bureaus is not a priority of the NCRFSM. The first bureau was only set up in 2007. Therefore, the credit bureaus are still in the phase of gathering information. Reportedly, credit bureaus are struggling in accessing information from government sources. Some credit bureaus have been established under the auspices of a single bank, thus making them less than credible to the market.

According to Art. 6 of the Law on “Organization, Formation, and Circulation of Credit Histories” (Law No. 2704-IV of 2005), users of credit bureaus may be banks, non-bank financial institutions and other business entities that provide services on a deferred payment or provide goods on credit. Credit unions are using credit bureaus not as frequently as banks do in order to gather information and setting up credit histories of consumers. Reportedly, this is due the tariffs for the use of credit bureaus that credit unions cannot afford and a lacking capability of submitting information. Since membership in credit unions is restricted, credit unions often do not feel they need the service of a credit bureau.

Individuals can access their credit history once a year free of charge and may dispute the information kept in his/her file. As regards to confidentiality, the new Law on Personal Data Protection has further contributed to consumer protection provisions in this area.

Recommendation

Consideration should be given to the best approach regarding the regulation and supervision of credit bureaus. One option could be to shift the regulatory/supervisory powers to the NBU.

SECTION E DISPUTE RESOLUTION MECHANISMS

Good Practice E.1 Internal Complaints Procedure

Complaint resolution procedures should be included in the credit unions/pawn shops’ code of conduct and monitored by the supervisory authority.

Description

In accordance with the Law on Amendments to Several Laws of Ukraine regarding Regulation of Financial Services Market (which enters into force on January 8, 2012) the financial institution will have to provide the client of financial services with the information about mechanisms for the
Credit Unions/Pawn Shops Sectors

protection of consumer rights by the financial institution and procedures for dispute settlement mechanisms.

At the current stage, there is no Code of Conduct for credit unions or pawn shops.

Recommendation

The mentioned amendment is considered as a positive step. However, there needs to be further clarification in the Codes of Conduct for credit unions and pawn shops. Additionally, reference to this description should be made in the general contract terms of credit unions and pawn shops.

Good Practice E.2

Formal Dispute Settlement Mechanisms

a. A system should be in place that allows customers of a credit union/pawn shop to seek affordable and efficient recourse, such as an ombudsman, in the event the complaint of one or more of customers is not resolved in accordance with the procedures.

b. The role of an ombudsman or equivalent institution in dealing with consumer disputes should be made known to the public.

c. The ombudsman or equivalent institution should be impartial and act independently from the appointing authority, the industry and the parties to the dispute.

d. The decision of the ombudsman or equivalent institution should be binding upon credit unions/pawn shops. The mechanisms to ensure the enforcement of these decisions should be established and publicized.

Description

Currently, the consumer has the choice of submitting a complaint, which is unresolved at the individual credit union level, to the NCRFSM or the SCRPI (as far as consumer loans are concerned). Both authorities are lacking resources in order to be able to deal effectively with consumer complaints.

The total number of complaints received by the NCRFSM increased dramatically during 2009 and 2010, although it fell in 2011 as a number of credit unions were de-registered.

<table>
<thead>
<tr>
<th># of Complaints</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total complaints</td>
<td>2705</td>
<td>10529</td>
<td>11181</td>
<td>3040</td>
</tr>
<tr>
<td>Regarding credit unions</td>
<td>884</td>
<td>4384</td>
<td>5406</td>
<td>351</td>
</tr>
</tbody>
</table>

In 2009 72% of all complaints were filed by individuals versus about 54% in 2010.

The main reasons for complaints of customers of credit unions were the non-repayment of deposits by credit unions as a result of the financial crisis as well as frequent fraudulent activities of credit unions, resulting in the misuse of credit union’s funds. The number of complaints regarding credit unions declined in 2011. This is due to the fact that most problematic credit unions were removed from the State Register of Financial Institutions to prohibit them from collecting any further share contributions. If the credit union is then no longer registered as a financial institution, then it is no longer supervised by the NCRFSM. This provides for a very unsatisfactory situation for the consumer since depositors are left unpaid.

No complaint data is available for pawn shops.

There is no ombudsman operating in the credit union or pawn shop sector and dealing with consumer disputes.

The NCRFSM recently published on its website a draft Law “On Out-of-Court Dispute Resolution for Consumers of Financial Services” (except banks). The draft provides for the establishment of a financial agent (ombudsman) service requiring associations of non-bank financial institutions which comprise at least 10% of the market participants to establish such a service. The consumer is free to choose which ombudsman he/she wants to turn to even if the financial institution is not member of the respective association of the ombudsman. Ombudsmen shall only consider consumer claims up to an amount of 200 minimum wages (approximately UAH 200,000) but the decisions taken will be non-binding.

19 Until August 31 2011
### Recommendation
There should be a clear institutional structure to deal with financial consumer complaints. The capacity of complaint handling institutions should be strengthened by provisioning adequate resources.

A statutory ombudsman covering all consumer financial services should be established. The ombudsman should be impartial and act independently from the appointing authority, the industry and the parties to the dispute. Furthermore, the decision of the ombudsman – at least up to a limited amount - should be binding upon credit unions and mechanisms to ensure the enforcement of these decisions should be established.

Another option would be setting up industry-based ombudsmen for credit unions and pawn shops. In that case, membership in a credit union or pawn shop association should be mandatory in order to provide for a consistent approach throughout the credit union sector.

The new proposed law by NCRFSM would lead to increased confusion in the market, since it would allow consumers to “shop around” for a financial ombudsman. There would be no control over the number of ombudsmen in place and decisions would be non-binding.

### SECTION F  CONSUMER EMPOWERMENT

#### Good Practice F.1
**Broadly based Financial Capability Program**

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

#### Description
The access of consumers to financial education is rather low at present. In addition, resources devoted to financial capability initiatives are scarce.

In fall 2011 a financial literacy survey was conducted by USAID/FINREP. The survey found that almost two thirds of the respondents consider themselves financially literate. However, only 22 percent of those surveyed could correctly answer five out of seven simple mathematical questions necessary to be able to manage one’s finances. More than half answered three or fewer questions correctly.

At the same time, Ukrainian consumers are not very interested in news about the financial sector. Over 43 percent of respondents stated that they do not follow financial news at all. The most frequently cited sources are newspapers, magazines and television (66 percent), friends (19 percent), and specialized websites (17 percent).

#### Recommendation
A broadly based program of financial education and information should be developed to increase the financial capability of the population, involving all stakeholders.

#### Good Practice F.2
**Using a Range of Initiatives and Channels, including the Mass Media**

| a. | A range of initiatives should be undertaken by the relevant ministry or institution to improve people's financial capability, and especially from low-income communities. |
| b. | The mass media should be encouraged by the relevant ministry or institution to provide financial education, information and guidance to the public, including on credit unions/pawn shops and the products they offer. |
| c. | The government should provide appropriate incentives and encourage collaboration between governmental agencies, credit union/pawn shop regulators, the industry and consumer associations in the provision of financial education, information and guidance to consumers. |

#### Description
NCRFSM developed a leaflet for consumers on credit unions, including the legal framework of credit unions and their activities and how to choose a credit union. The brochure also deals with information on effective savings and borrowing as well as information on how to plan a family budget and can be downloaded from the NCRFSM website. However no similar leaflet is available for customers of pawn shops.
NCRFSM also provides for a telephone hotline for consumers. AUCU has started an “Open credit union” in 2008 introducing 20 indicators on credit unions. The data of the participating credit unions is published on AUCU website. During the financial crisis, AUCU introduced a hotline for consumers (free of charge) to assist consumers in identifying registered credit unions as well as supplying them with more general information on credit unions. However, the hotline was closed in the Fall of 2011 because of the low level of inquiries.

All Ukrainian Credit Union Association published information for consumers of credit unions on its website.

In summary, unbiased information for consumers is scarce and badly coordinated.

**Recommendation**
The government should provide appropriate incentives and encourage collaboration between governmental agencies, the financial regulator, and industry and consumer associations in the provision of financial education, information and guidance to consumers.

**Good Practice F.3**

**Unbiased Information for Consumers**

a. Consumers, especially the most vulnerable, should have access to sufficient resources to enable them to understand financial products and services available to them.

b. Supervisory authorities and consumer associations should provide, via the internet and printed publications, independent information on the key features, benefits and risks - and where practicable the costs - of the main types of financial products and services, including those offered by credit unions/pawn shops.

c. The relevant authority should adopt policies that encourage non-government organizations to provide consume awareness programs to the public regarding financial products and services, including those offered by credit unions/pawn shops.

**Description**
See Good Practice F.2.

**Recommendation**
See Good Practice F.2.

**Good Practice F.4**

**Consulting Consumers and the Financial Services Industry**
The relevant authority or institution should consult consumer associations and credit union/pawn shop associations to help them develop financial capability programs that meet the needs and expectations of financial consumers, especially those served by credit unions/pawn shops.

**Description**
AUCU stabilization fund collaborates with a Canadian program (funded by the Canadian International Development Agency, CIDA) in training credit officers properly as regards to financial education. Unfortunately such initiatives are very rare and do not cover the entire credit union sector. No similar programs are available for pawn shops.

**Recommendation**
Coordination and cooperation between NCRFSM, SCRPI and the respective associations should to be enhanced.

The requirements on education, experience or integrity that the credit officers and points of sale representatives are obliged to satisfy should be formalized and agreed upon within the industry associations.

**Good Practice F.5**

**Measuring the Impact of Financial Capability Initiatives**

a. Policymakers, industry and consumer advocates should understand the financial capability of various market segments, particularly those most vulnerable to abuse.

b. The financial capability of consumers should be measured, amongst other things, by broadly-based household surveys and mystery shopping trips that are repeated from time to time.

c. The effectiveness of key financial capability initiatives should be evaluated by the relevant authority from time to time.

**Description**
In fall 2011 a financial literacy survey was conducted by USAID/FINREP. Over a two week period, face-to-face interviews were conducted with 2014 adults aged 20-60 from across all regions of Ukraine. The survey consisted of 64 questions, covering the respondent’s self estimation of his/her financial literacy, consumer understanding of basic financial calculations,
<table>
<thead>
<tr>
<th>Recommendation</th>
<th>Knowledge of financial terminology and legal rights regarding financial products, use of financial services and financial behavior and social-demographic characteristics.20</th>
</tr>
</thead>
</table>

20 USAID/FINREP, Consumer Lending in Ukraine: Surveying the Landscape, September 2011
## Good Practices: Private Pensions Sector

<table>
<thead>
<tr>
<th>SECTION A</th>
<th>CONSUMER PROTECTION INSTITUTIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Good Practice A.1</strong></td>
<td><strong>Consumer Protection Regime</strong></td>
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<td></td>
<td>The law should recognize and provide for clear rules on consumer protection in the area of private pensions and there should be adequate supporting institutional arrangements:</td>
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<tr>
<td></td>
<td>a. There should be specific provisions in the law, which create an effective regime for the protection of consumers who deal directly with pension management companies and members/affiliates of occupational plans.</td>
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<td></td>
<td>b. There should be a general consumer protection agency or a specialized agency, responsible for the implementation, oversight and enforcement of pension consumer protection, as well as data collection and analysis (including inquiries, complaints and disputes).</td>
</tr>
<tr>
<td></td>
<td>c. The law should provide, or at least not prohibit, a role for the private sector, including voluntary consumer organizations and self-regulatory organizations, in respect of consumer protection regarding private pensions.</td>
</tr>
</tbody>
</table>

### Description

a. The Law of Ukraine “On Non-state Pension Provision” provides for the regulatory structure for private pensions in the Ukraine, sometimes referred to as Pillar III pensions. The Law provides for the formation, registration, and operation of private pension funds (hereinafter referred to as non-state pension funds and abbreviated as “NPF”) and the administrator that operates the funds. In addition, it sets forth rules for the asset manager for the fund that regulated by the National Securities and Stock Market Commission (“NSSMC”) and the custodian bank that is regulated by the National Bank of Ukraine (“NBU”) and the NSSMC.

Pillar III is a system in transition. NPFs are organized as separate legal entities with the status of non-profit institutions and have only been required to be licensed since January 2005. There are estimated to be approximately 100 plans covering approximately 500,000 participants. Total plan assets are estimated at 1,114 million UAH which represents a small fraction of the current pension system assets and participants.

The government envisages a much greater role for Pillar III participants in future years. In recognition of this future role, the President of the Ukraine signed the Law of Ukraine “On Pension Reform Legislative Measures”. The legislation attempts to strengthen the framework for NPFs hoping to participate in Pillar II in the future and for the operation of Pillar III.

Significant growth of the system represents a major challenge for the sector and potentially for the protection of consumers that will require continued monitoring. The bank understands that additional reforms to strengthen the sector are planned for the future; more amendments to the Pillar III regulatory structure are currently being drafted. Some of these include:

1. Provisions intended to strengthen NPF operations such as (i) new requirements on NPF Board members and (ii) procedures for record keeping of pension money in individual pension accounts of fund participants;
2. Special licensing and other requirements for NPFs seeking to participate in Pillar II; and
3. Additional requirements on asset management companies and custodians operating in Pillar III, including expanding the powers of the NCRFSM.

b. Licensing and regulation of the non-state pension funds is performed by two state authorities. The National Commission for Regulating Financial Services Markets (“NCRFSM”) is the agency charged with regulating the non-state pension funds. It approves the foundation of the funds, provides licenses to the Administrator and supervises their operations. The NCRFSM inspects the NPFs for compliance with applicable laws and regulations and takes enforcement action where needed. It handles all consumer complaints related to the funds and collects data from the funds for the purpose of supervision and statistical analysis.

c. The law recognizes a role for industry associations in the financial sector. The National Association of Non-State Pension Funds of Ukraine and Non-state Pension Fund Administrators (“NAPFA”) is a voluntary association of funds and their administrators. At
present, NAPFA has more than 50% of licensed NPF administrators, which enables it to articulate and support interests of voluntary pension plan members, and to cooperate with state authorities. The NSSMC, inter alia, (i) issues licenses to the Asset Manager and Custodian of the NPFs; (ii) sets marginal commission of the Asset Manager and the Custodian of the NPF upon approval of the NCRFSM; (iii) provides formula for net assets and profit calculation of the NPF upon approval of the NCRFSM; (iv) sets requirements for the regular reports submitted by the Asset Manager and the Custodian of the NPF; and (v) regulates and controls the activities of the Custodian of the NPF together with the NBU.

NAPFA actively participates in the development of legislative and normative documents in the voluntary pension sector area. It is a member of working groups, Civil Councils, which are incorporated with state authorities that exercise regulation in the voluntary pension sector area. It also cooperates with self-regulatory organizations and unions of other market entities. It actively participates at round tables, discussions, cooperates with the mass media to the extent of non-state pension provision.

Recommendation
No Recommendations

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

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

Description
a. None of the laws or regulations related to NPFs requires a Code of Ethics for NPFs, the entities that service them or the natural persons who work on their behalf. There are some provisions that create duties on the part of companies that service the funds. The existing requirement in Article 21.4 of the Law on NPFs that the administrator shall act in interests of fund participants only covers administrators and thus does not go far enough in creating such a general ethical framework for the other entities related to the pension fund and their affiliated persons. However, NSSMC Resolution 1227 Section IV 1.2 requirement that an asset manager act in the interests of an institutional investor (in this case a pension fund) that it services does create a broad-based framework for asset managers. Nonetheless, to protect NPF depositors and participants' rights and interests, NAPFA has adopted a Code of Conduct and a Code of Disciplinary Enforcement Measures, whose fulfillment is controlled by the NAPFA's Disciplinary Committee. Membership is not mandatory.

b. NAPFA places its Code of Conduct on its website and provides it to individual pension plan participants who become aware of the Code and request a copy of the it.

c. In case association members breach the Code of Conduct, NAPFA's Disciplinary Committee and NAPFA's Board make a decision on the application of enforcement measures to the member that broke the Code. However, so far there have been no instances that an association member has broken the Code. In addition, since the membership in NAPFA is voluntary the strongest sanction that can be taken against a member is to terminate the ex-member’s license. Therefore the system does not provide a strong incentive to registrants to obey the law.

Recommendation
a. Since membership in the NAPFA is not mandatory and does not apply to all administrators and non-state pension funds, the Code of Conduct should be incorporated in regulations issued by the NCRFSM so that it is binding on all registrants.
b. NAPFA and the NCRFSM should publicize the Code of Conduct by putting it on their websites and including it in all financial education programs that they provide.
c. Disciplinary proceedings against members of NAPFA have limited effect since membership is not mandatory. The Code should be enforced through the NCRFSM.

Good Practice A.3 Other Institutional Arrangements

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

Description
a. The judicial system has not proven to be an effective venue for retail investors due to the high cost involved. As a result, many disputes go unresolved.
### Private Pensions Sector

<table>
<thead>
<tr>
<th>Good Practice A.4</th>
<th>Licensing</th>
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<tbody>
<tr>
<td>a. All private pension funds should be obliged to obtain a license from the supervisory authority.</td>
<td></td>
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<tr>
<td>b. The entities that act for and provide support to a private pension fund should obtain a license from the supervisory authority.</td>
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</table>

### Description

| a. In accordance with Ukrainian laws, a NPF is a legal entity that has a status of a non-profit organization. To commence activities, a NPF has to be registered as a legal entity and entered into the State Registry of Financial Institutions, maintained by the NCRFSM. |
| b. The NPF administrator, asset manager and custodian bank that service the NPF are also separate legal entities which are obliged to have the respective licenses. NCRFSM issues licenses to entities that intend to pursue NPF administration activities. License for carrying out activities on the securities market (NPF asset management and custodian services) is issued by the NSSMC. The custodian bank of a NPF must have a bank license issued by the NBU and a license of the NCRFSM for the performance of the custodian's depositary activities. |

### Recommendation

| a. No recommendation |
| b. No recommendation |

### SECTION B

**DISCLOSURE AND SALES PRACTICES**

### Good Practice B.1

<table>
<thead>
<tr>
<th>General Practices</th>
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<tbody>
<tr>
<td>There should be disclosure principles that cover an investor’s relationship with a person offering a private pension fund in all three stages of such relationship: pre-sale, point of sale, and post-sale.</td>
</tr>
</tbody>
</table>

| a. The information available and provided to an investor should inform the investor of: |
| (i) the choice of accounts; |
| (ii) the characteristics of each type of account or service; and |
| (iii) the risks and consequences of purchasing each type of account. |

| b. A private pension fund and entities acting on its behalf should be legally responsible for all statements made in marketing and sales materials related to its products. |

| c. A natural or legal person acting as the representative of a private pension fund or entity acting on its behalf should disclose to an investor whether the person is licensed to act as such a representative and who licenses the person. |

| d. If a private pension fund or an entity acting on its behalf delegates or outsources any of its functions or activities to another legal entity or physical person, such delegation or outsourcing should be fully disclosed to the investor, including whether the person to whom such function or activity is delegated is licensed to act in such capacity and who licenses the person. |

### Description

| a. Under the Law on NPFs, plan participants are given information regarding the fund and the various schemes that are provided by the fund. The contents of the documents that are provided to the participant are set out in Article 55 and the details of the pension schemes that are to be provided are in Article 59. The basic terms of the scheme are laid out in Article 59(2), but there is no requirement that the Administrator of the fund include a discussion of the risks and consequences of a particular scheme offered by the fund. |

| b. An administrator is liable by Article 31(1) for damages caused by its actions. It is not clear if this would include actions of services providers who violate the sales rules. Under Article 54(6) the agent service providers are responsible for any actions foreseen by the agreement between the agent and the NPF. |
c. There is no requirement that an individual sales person of an Administrator of a fund be licensed to act as a sales person. Nonetheless, the license of the administrator for which the sales person is selling must be disclosed in the documents given to a prospective participant before signing.

Advertising materials disseminated by voluntary pension plan entities should contain the information about a license issued to those entities, more specifically: license number, date of issue and its validity period, as well as a name of authority that issued it and/or its series, number and date of issue of the certificate of registration of the financial institution.

d. The identity of the asset manager and custodian bank are included in the documents given to a prospective participant in a fund. However, there is no requirement that there be disclosure of any other persons with whom the Administrator has entered into a contract for services to the fund.

**Recommendation**

a. No recommendation
b. Individual sales people should be licensed and held liable for misconduct in their sales activity.
c. No recommendation
d. The regulations should be modified to fully disclose all entities that provide services to a pension account and their fees.

**Good Practice B.2 Terms and Conditions**

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

**Description**

a. Article 55(6) of the Law on NPFs provides that the plan, its investment policy and a contract must be given to a potential plan participant when the participant signs to become a part of the plan.
b. There are no specific rules on the ease of readability of the contract and related documents.
c. (i) Fees and commissions are paid to the NPF administrator, asset manager and custodian bank at the expense of pension assets, which is stipulated in the Law of Ukraine "On Non-State Pension Provision". Amount of fees and commissions is envisaged by agreements for NPF servicing by an administrator, asset manager, and custodian bank. Regulations envisage an amount of marginal tariffs on fees and commissions paid to service companies: Regulation on the Approval of Marginal Tariffs on the Payment of NPF Administration Services, Regulation on Activities of a NPF Custodian Pertaining to Transactions with NPF Assets, Procedure for Estimating Tariffs on Custodian's Services and Their Marginal Size, Regulation on Fees and Commissions Paid for the Provision of NPF Asset Management.
   (ii) There is no requirement that the complaints procedure be disclosed.
   (iii) There is no pension guarantee system in Ukraine and thus no disclosure regarding it.
   (iv) See (i)
   (v) See (i)
   (vi) See (i)
   (vii) Under the Law on NPFs there can be no restrictions on the transfer of funds to another NPF and therefore there should be no restrictions on the contract or sales presentations.
<table>
<thead>
<tr>
<th>Good Practice B.3</th>
<th>Contracts</th>
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<tbody>
<tr>
<td><strong>Description</strong></td>
<td>Article 56 of the Law on NPFs provides for the content of information that should be in the contract that is part of the documents given to the potential participant at the time of signing. The law does not specifically require the participant to sign a document that he or she has read the contract.</td>
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<tr>
<td><strong>Recommendation</strong></td>
<td>No recommendation.</td>
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<tr>
<th>Good Practice B.4</th>
<th>Key Facts Statement</th>
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<tbody>
<tr>
<td><strong>Description</strong></td>
<td>The Law on NPFs does not require that a Key Facts Statement be given to a potential plan participant or the contents thereof. At the time of the signing of the contract, the potential participant does receive an explanatory note regarding the contract.</td>
</tr>
<tr>
<td><strong>Recommendation</strong></td>
<td>A regulation should be promulgated requiring the preparation of a Key Facts Statement for each private pension fund and scheme within the pension fund. The law should require that the Key Facts Statement be given to a potential fund participant prior to the participant’s agreement to participate in the fund.</td>
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<th>Good Practice B.5</th>
<th>Relationships and Conflicts</th>
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<tr>
<td><strong>c.</strong></td>
<td>A private pension fund should disclose to its investors all relationships that it has which impact on the client’s account, such as banks, custodians, advisers or intermediaries which are used to maintain and manage the account.</td>
</tr>
<tr>
<td><strong>d.</strong></td>
<td>A private pension fund should disclose all conflicts of interest that it has with the client and the manner in which the conflict is being managed.</td>
</tr>
<tr>
<td><strong>Description</strong></td>
<td>The Law on NPFs does not require (a) that all relationships be disclosed to a potential participant or (b) that the NPF or Administrator disclose all conflicts of interest and how they are handled.</td>
</tr>
<tr>
<td><strong>Recommendation</strong></td>
<td>a. The law should require that the private pension fund disclose all relationships that it has which have an impact on the client’s account.</td>
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<tr>
<td></td>
<td>b. The law should require that all conflicts of interest of the founders, administrator, asset manager, custodian or any other entity servicing the participant’s account be disclosed to the client prior to and after participating in the fund.</td>
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<tr>
<th>Good Practice B.6</th>
<th>Cooling-off Period</th>
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<tbody>
<tr>
<td><strong>Description</strong></td>
<td>There is no “cooling off” period provided in the Law on NPF or related regulations. This would enable a participant to change his or her mind within a short time after signing a contract.</td>
</tr>
<tr>
<td><strong>Recommendation</strong></td>
<td>The law should provide for a reasonable cooling off period. Two weeks or fourteen days is common.</td>
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<tr>
<th>Good Practice B.7</th>
<th>Advertising and Sales Materials</th>
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<tbody>
<tr>
<td><strong>a.</strong></td>
<td>Pension management companies should ensure their advertising and sales materials and procedures do not mislead the customers.</td>
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</tbody>
</table>
b. All marketing and sales materials of pension management companies should be easily readable and understandable by the average public.

c. The pension management company should be legally responsible for all statements made in marketing and sales materials related to its products, and for all statements made by any person acting as an agent for the company.

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<th>Description</th>
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<tr>
<td>a. Article 53(7) of the Law on NPFs forbids a person engaging in advertising for an NPF from, among other things, using incomplete or unreliable information on services of the non-state pension provision. Moreover, all advertising materials are subject to approval by the NCRFSM.</td>
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<tr>
<td>b. There is no specific requirement that sales and advertising material be easy to read and understand.</td>
</tr>
<tr>
<td>c. Article 53(6) states that “Advertisers disseminating any information or data associated with provision of services in the non-state pension system shall be liable for the authenticity of this information/data according to the law. If the administrator is conducting its own advertising activity, then it should be covered by this provision.</td>
</tr>
</tbody>
</table>

In addition, Article 54(6) of the Law on NPFs provides that:

> “Persons, providing agency services to the pension funds, bear responsibility for improper realization of powers, provided to them in accordance with the provisions of agreement, concluded with them and pursuant to the law.”

This distinctly leaves the impression that it is the “agency persons” conducting sales who are liable to participants for sales misrepresentations and not the administrators with whom they have a contract for providing the sales services. However, the agency persons or companies may not have the financial resources to make participants whole. In fact, this provision reduces the incentive of an administrator to supervise the activities of the sales people for the funds they administer. The law should create liability for agency persons conducting sales but it should not insulate the administrator from its responsibilities to oversee the sales activity of the agency persons. The law should be amended to clarify that the administrator has liability for the conduct of its agency persons conducting sales and promotions.

Moreover, the standard of liability for sales activity should be based on the prohibitions against fraud and improper sales practices set forth in the Law on NPFs rather than on the contract that the agency persons conducting sales have with an administrator. The Law on NPFs should contain a fraud and improper sales practice standard for liability that is applicable to all persons promoting the pension fund, regardless of their contractual relationship with the administrator.

<table>
<thead>
<tr>
<th>Recommendation</th>
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<tbody>
<tr>
<td>a. No recommendation</td>
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<tr>
<td>b. A regulation should be promulgated requiring that information be easily readable and in plain language.</td>
</tr>
<tr>
<td>c. The Law on NPFs should be amended to provide for liability for administrators for the actions of their internal sales persons and sales persons hired on a contractual basis.</td>
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<tr>
<th>Good Practice B.8</th>
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<tr>
<td><strong>Professional Competence</strong></td>
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<tr>
<td>a. Marketing personnel, officers selling and approving transactions, and agents, should have sufficient qualifications and competence, depending on the complexities of the products they sell.</td>
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<tr>
<td>b. The law should require agents to be licensed, or at least be authorized to operate, by the regulator or supervisor.</td>
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<th>Description</th>
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<tbody>
<tr>
<td>a. Sales persons selling NPFs for administrators that have an agency contract with the administrator must be disclosed to the NCRFSM. However, these individuals do not need to pass an exam or prove their competence to the regulatory authorities. Some NPF administrators provide their own in-house training and qualifications for their sales staff, but this is not uniform throughout the industry.</td>
</tr>
<tr>
<td>b. Sales people of administrators or third party sales entities are not licensed by the NCRFSM.</td>
</tr>
</tbody>
</table>
### Private Pensions Sector

| Recommendation | a. Sales people should be required to pass a competency exam.  
b. Sales people should be licensed by the NCRFSM. |
|----------------|-------------------------------------------------------------------------------------------------|
| **Good Practice B.9** | **Know Your Customer**  
The sales officer should examine important characteristics of any potential customer, such as age, employment prospects and financial position, and be aware of the customer’s risk appetite and his or her long-term objectives for retirement, and recommend relevant financial products accordingly. |
| **Description** | There are no requirements for administrators of NPFs to obtain information from potential plan participants in order to recommend specific schemes of the plan that meet the needs and goals of the potential plan participant. This may happen on an information basis or internally within some plan administrators, but it is not uniform through the pension industry. |
| **Recommendation** | The NCRFSM regulations should require that administrators obtain basic information on the potential participants to determine what their investment objectives and financial experience are. |
| **Good Practice B.10** | **Suitability**  
A private pension fund should ensure that, taking into account the facts disclosed by the investor and other relevant facts about that investor of which it is aware, any recommendation, product or service offered to the investor is suitable to that investor. |
| **Description** | There is no legal requirement that NPF administrators evaluate a potential participant and only recommend the plan schemes that are suitable to the potential participant’s financial goals and circumstances. |
| **Recommendation** | NCRFSM regulations should require administrators to recommend to potential participants the schemes of the pension plan that best meets their needs and financial objectives. |
| **Good Practice B.11** | **Sales Practices**  
d. Legislation and regulations should contain clear rules on improper sales practices in the solicitation, sale and purchase of securities. Thus, securities intermediaries, investment advisers, CIUs and their sales representatives should:  
(i) Not use high-pressure sales tactics;  
(ii) Not engage in misrepresentations and half truths as to products being sold;  
(iii) Fully disclose the risks of investing in a financial product being sold;  
(iv) Not discount or disparage warnings or cautionary statements in written sales literature;  
(v) Not exclude or restrict, or seek to exclude or restrict, any legal liability or duty of care to an investor, except where permitted by applicable legislation.  
e. Legislation and regulations should provide sanctions for improper sales practices.  
f. The securities supervisory agency should have broad powers to investigate fraudulent schemes. |
| **Description** | a. The rules and regulations on sales practices for NPFs are not well developed.  
(i) There is no provision regarding the use of high sales tactics regarding NPFs.  
(ii) Article 53(7) of the Law on NPFs provides that advertisers cannot use insufficient or inaccurate information.  
(iii) There is no provision that requires a risk warning in regards to NPFs.  
(iv) There are no rules regarding disparaging written warning or cautionary statements in the written sales literature.  
(v) There are no explicit rules regarding the restriction of legal liability or duty of care.  

b. The Law on NPFs does not contain sanctions for violations of the law regarding pension funds. The sanctions provisions are contained in the LFS in Articles 40 (administrative sanctions), and Articles 41 and 43 regarding fines. Article 40 of the LFS has a broad list of administrative sanctions that can be brought against a regulated entity, such as penalties, suspend or invalidate the license, suspend management and orders to eliminate violations, among others.  

Article 43 of the Law on the NCRFSM creates liability for natural persons that work in pension funds. The sanctions are in the form of penalties that can be levied against natural persons and
they are extremely low, ranging from 20 to 50 non-taxable individual minimum income amounts that are imposed on a sole trader or an official of a legal entity. Such low fines have not proven a deterrent for natural persons preventing them from engaging in fraudulent conduct.

There are no sanctions for natural person or entities that are not registered with the NCRFSM. These violations would need to be referred to the criminal authorities for investigation and prosecution.

c. Investigations of regulated entities are covered by NCRFSM Regulation No. 96, “On the conduct of inspections.” There is no separate regulation for investigations outside of the inspection procedures. The procedure for bringing a case for sanctions against an entity or person registered with the NCRFSM is Regulation No. 125, “On the policy for applying sanctions.” Although these regulations provide a means of investigating violations of the administrative regulations of the NCRFSM, they do not contain a number of investigative tools that would be necessary to uncover large-scale fraud that would in all likelihood involve entities and persons that are not regulated by the NCRFSM. For example the Law on NPFs and the LFS do not give the NCRFSM the authority to require the production from third parties (non-supervised entities) of: (i) records or statements, (ii) banking records, (iii) telephone records or (iv) internet records, including e-mail. In order to investigate a small or large-scale misappropriation of assets of a pension fund or fraudulent sales practices of the fund, these investigative tools would be necessary.

Recommendation
a. The laws should specify what constitutes improper sales activity for non-state pension funds.
b. The sanctions that are applicable to actions of sales people should be clarified to extend to non-registered entities and persons that provide services to an NPF.
c. The law should be amended to give enhanced investigative techniques to the NCRFSM.

SECTION C
CUSTOMER ACCOUNT HANDLING AND MAINTENANCE

Good Practice C.1 Segregation of Funds
a. Funds of investors should be segregated from the funds of all other market participants.
b. The Board of Directors of the NPF and the Administrator should have a duty to ensure that the funds of the NPF are only used for the benefit of the NPF and its participants.

description
a. The multiple articles in the Law on NPFs that isolate the assets of the NPFs from those of the entities and persons associated with the NPFs are confusing and piecemeal in nature.
Article 44(7) of the Law on NPFs provides that the custodian cannot use assets in fund account as credit resources; Article 47(5) provides that pension assets cannot be pledged as collateral [by whom]; Article 47(5) provides that the assets can only be used for purposes of Article 48 and cannot be seized for liabilities of founders and other related parties; Article 47(7) provides that pension fund assets cannot be seized or confiscated if legally obtained; and Article 48(2) provides that fund assets cannot be included in liquidation mass of custodian if it is declared bankrupt. As a result of the patchwork of provisions, the law is susceptible to different interpretations and does not cover a number of important issues regarding the assets. As currently written, the law does not specifically cover the segregation of fund assets during the bankruptcy of Founders and other related parties of a NPF, even though Article 4 of the Law on NPFs states that the NPF system is operated on the basis of, among other things, the principle of segregation of pension assets. Finally, it does not cover the activities of an intermediary that works on behalf of a pension fund. The legal status of funds during the intermediation process also needs to be clarified in the Law on NPFs or other securities market related laws.

The Law on NPF needs to clearly state the legal relationships related to the assets of the fund. The law needs to clearly state which entity holds legal title to the assets of the NPF: the custodian, asset manager or NPF itself and how title is treated during the course of the intermediation process. The law also needs to state the legal character of the interest the participant has in the assets and the rights that are associated with that interest.

b. Article 14(1)(8) of the Law on NPFs requires that the Board of Directors monitor the proper use of pension fund assets. However, the Board does not have its own Secretariat to carry out this function. Instead, it relies on the Administrator to conduct this activity, which is a conflict since the Board is required to oversee the Administrator. Article 21(6) of the Law
on NPFs does not create a duty for the Administrator to act in a fiduciary capacity with the NPF in regards to the use of fund assets.

**Recommendation**

- a. The Law on NPFs needs to be amended to clearly set out the segregation of pension fund assets, the rights of the NPF to take possession of the assets, the rights of the participants to the assets in the NPF and the protection of the assets in the event of the bankruptcy of entities servicing the fund or holding the assets for investment purposes.
- b. The fiduciary duties of the Board of Directors of an NPF and the Administrator need to be set out more clearly in the law and regulations.

**Good Practice C.2**

**Statements**

- a. Customers or occupational plan members should receive a regular streamlined statement of their account that provides the complete details of account activity (including investment performance on a standardized basis) in an easy-to-read format, making reconciliation easy.
- b. Customers should have a means to dispute the accuracy of any transaction recorded in the statement within a reasonable, stipulated period.
- c. When customers sign up for paperless statements, such statements should be in an easy-to-read and readily understandable format.

**Description**

- a. Once in a year, a statement of an individual pension account is sent by the pension plan administrator to each voluntary pension plan member free of charge. At any time, such a statement is sent for a fee to the pension plan member upon his/her written request; currently, the fee is 6 UAH. In case such a statement is necessary for the member to close a pension contract or to sign a life pension insurance contract, it is provided to the member free of charge. Moreover, simultaneously with payouts, members that receive regular pension payments from the fund receive a statement of an individual pension account free of charge. Information in such a statement is set out in plain language. The NCRFSM establishes requirements as to the content and format of the statement.
- b. There are no formal regulations regarding disputes over accuracy of statements. However, a pension plan participant who has doubts regarding the information contained in his/her statement may at any time apply to an administrator with a request for clarifications. If needed, a participant of a pension plan member may also apply at any time to the NCRFSM.
- c. There are no specific rules on electronic statements, although some administrators of NPFs allow plan participants to access their accounts online. The on-line accounts appear to be clear and straightforward.

**Recommendation**

- a. No recommendation
- b. No recommendation
- c. As more and more accounts are accessed online, it might be helpful if the law or regulations explicitly provided that all customer financial information received or accessed electronically is easy to read and in plain language.

**Good Practice C.3**

**Prompt Payment and Transfer of Funds**

When an investor requests the payment of funds in his or her account, or the transfer of funds and assets to another pension fund, the payment or transfer should be made promptly.

**Description**

The payment or transfer should be made promptly. Article 58(4) of the Law on NPFs provides for penalties for untimely transfer or funds. It states that “in case of untimely transfer of fund participant’s pension money the administrator shall pay, from its own resources, the penalty at the double rate of the National Bank of Ukraine applied to the amount of transfer for each day of the delay according to the procedure established by the State Commission on Regulating Financial Service Markets of Ukraine.”

**Recommendation**

No recommendation

**Good Practice C.4**

**Investor Records**

- a. A private pension fund’s manager should maintain up-to-date investor records containing at least the following:
  - (i) a copy of all documents required for investor identification and profile;
  - (ii) the investor’s contact details;
  - (iii) all contract notices and periodic statements provided to the investor;
  - (iv) details of advice, products and services provided to the investor;
(v) details of all information provided to the investor in relation to the advice, products and services provided to the investor;
(vi) all correspondence with the investor;
(vii) all documents or applications completed or signed by the investor;
(viii) copies of all original documents submitted by the investor in support of an application for the provision of advice, products or services;
(ix) all other information concerning the investor which the pension fund is required to keep by law;
(x) all other information which the pension fund obtains regarding the investor.

b. Details of individual transactions should be retained for a reasonable number of years after the date of the transaction. All other records required under a. to j. above should be retained for a reasonable number of years from the date the relationship with the investor ends. Investor records should be complete and readily accessible.

| Description | a. Record keeping for an NPF is governed by NCRFSM Order No. 1660, 20 July 2004, on Regulation on administering the non-state pension fund. The regulation requires that all documents in (i-x) be maintained, with the possible exception of (iv and v) since no advice is given during the period of the participation in the NPF regarding investments. The asset manager for the fund makes the investment decisions. It is not clear if all advertisements are required to be maintained in the NPF record keeping system.

b. The records are kept for 10 years in the NPF archive after the termination of the participant’s contract with the fund and can be obtained on request under the regulation.

| Recommendation | a. No recommendation. The regulation could be clarified as to the maintenance of the NPF’s records in regards to sales and advertising.

b. No recommendation

| SECTION D | PRIVACY AND DATA PROTECTION

| Good Practice D.1 | Confidentiality and Security of Customers’ Information

a. The financial activities of any customer of a pension management company should be kept confidential and protected from unwarranted private and governmental scrutiny.

b. The law should require pension management companies to ensure that they protect the confidentiality and security of personal information of their customers against any anticipated threats or hazards to the security or integrity of such information, and against unauthorized access to, or use of, customer information that could result in substantial harm or inconvenience to any customer.

| Description | a. Article 36(2)(6) of the Law on NPFs requires that a confidentiality clause be put in the contract between the fund and the Asset Manager. In addition to the provisions in the laws related to NPFs, Law of Ukraine on Protection of Personal Data (“Law on Personal Data”) came into effect in January 2011. From comments by pension industry participants, the introduction of the law by members of the industry has been uneven. Article 11 provides that a personal database can only be created with the consent of the subject person or by law. Article 14 provides that dissemination and transfer of the information can only be done with the subject person’s consent. These provisions are applicable to the databases held by Administrators and other service providers of NPFs.

b. Section 6.1 of NCRFSM Order No. 1660, 20 July 2004, on Regulation on Administering the Non-state Pension Fund provides that the personal data held by an NPF administrator should be protected from loss, theft, unauthorized disclosure, copying and other attempts to use the data in an unauthorized fashion. The data can only be released by court order or other operation of law under Section 4.5.9. The staff of an NPF administrator must obey an administrator’s internal rules and the laws regarding the confidentiality of pension plan participant data. Under Section 4.5.10, staff of the administrator can only have limited access to participant person data for specific uses related to the staff member’s job. Further, the Law on the NCRFSM in Article 31 states that the NCRFSM must treat personal data it receives in the course of its supervision as a professional secret. Under Article 30(4), staff can only access the data for their business...
functions. Article 13(2) of the Law on Personal Data also provides that the records must be maintained in a safe, secure manner.

**Recommendation**

The provisions of the Law on Protection of Personal Data should be integrated into the systems of NPFs more quickly.

**Good Practice D.2 Sharing Customer’s Information**

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<tr>
<td>a.</td>
<td>Pension management companies should inform the consumer of third-party dealings for which the pension management company intends to share information regarding the consumer’s account.</td>
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<td>b.</td>
<td>Pension management companies should explain to customers how they use and share customers’ personal information.</td>
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<td>c.</td>
<td>Pension management companies should be prohibited from selling (or sharing) account or personal information to (or with) any outside company not affiliated with the pension management company for the purpose of telemarketing or direct mail marketing.</td>
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<tr>
<td>d.</td>
<td>The law should allow a customer to stop or —opt out of the sharing by the pension management company of certain information regarding the customer, and the pension management company should inform its customers of their opt-out right.</td>
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<td>e.</td>
<td>The law should prohibit the disclosure of information of customers by third parties.</td>
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**Description**

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<tr>
<td>a.</td>
<td>There are no specific provisions in the pension laws related to sharing of information. The reason as stated by industry participants is that information about pension plan depositors and a member is confidential and may not be used for other purposes. Section 4.5.1 of NCRFSM Order No. 1660, 20 July 2004, on Regulation on administering the non-state pension fund provides that the information maintained in the personified record keeping system may be disclosed by the administrator only to the registered persons and government bodies within their competence.</td>
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<td>b.</td>
<td>There is nothing in the requirements for the content of a pension contract that requires notification of sharing of information, again for the same reason as a.</td>
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<td>c.</td>
<td>Selling information is prohibited under Section 4.5.1 of NCRFSM Order No. 1660, 20 July 2004, on Regulation on administering the non-state pension fund. Moreover, Section 4.5.9 provides that release of the information from the personified record keeping system, documents and data defined in item 4.1 of this regulation may be effected only under orders of the bodies of inquest, investigation and prosecutor; court findings, orders and decisions; acts of the other government bodies in cases explicitly provided by the law.</td>
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<td>d.</td>
<td>No opt-in or out needed due to blanket prohibition. But in Article 14 of Law on Data Protection, the customer must consent to any transfers of information or disclosures of personal information.</td>
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<td>e.</td>
<td>As stated earlier, there is a prohibition on such sale without the consent of the subject person. However, this prohibition does not cover information held by the asset manager, custodian or service agents who work for the administrator of the fund, particularly engaging in sales activities for the fund.</td>
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**Recommendation**

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<tr>
<td>a.</td>
<td>No recommendation</td>
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<td>b.</td>
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<td>c.</td>
<td>No recommendation</td>
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<tr>
<td>d.</td>
<td>No recommendation</td>
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<tr>
<td>e.</td>
<td>The Law on Data Protection, Law on NPFs and other laws should be tightened up to include service providers and other persons affiliated with the fund in their confidentiality provisions.</td>
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**Good Practice D.3 Permitted Disclosures**

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<td>a.</td>
<td>The law should state specific procedures and exceptions concerning the release of customer financial records to government authorities.</td>
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<tr>
<td>b.</td>
<td>The law should provide for penalties for breach of confidentiality laws.</td>
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<tr>
<td>a.</td>
<td>Section 4.5.9 of NCRFSM Order No. 1660, 20 July 2004, on Regulation on administering the non-state pension fund provides that release of the information from the personified</td>
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</table>
Private Pensions Sector

record keeping system, documents and data defined in item 4.1 of this regulation may be
effected only under orders of the bodies of inquest, investigation and prosecutor; court
findings, orders and decisions; acts of the other government bodies in cases explicitly
provided by the law. Article 10 of the Law on Data Protection provides various areas where
data can be disclosed based on the work relation of the user with the subject person and the
consent of the subject person. Article 14 provides that the distribution or transfer of the
information can only be done with the subject person’s consent.

b. The penalties for breach of confidentiality are found in Article 31 of the Law on the
NCRFSM, which provides in subsection 2 that any unauthorized disclosure of any data shall
be subject to prosecution.

If the violation is by the Administrator, the only sanctions are in Articles 41-43 of the Law on
the NCRFSM. There is nothing in the Law on NPFs. In addition Article 43 of the Law on the
NCRFSM creates liability for natural persons that work in pension funds. The sanctions are in
the form of penalties that can be levied against natural persons and they are extremely low,
ranging from 20 to 50 non-taxable individual minimum income amounts that are imposed on
a sole trader or an official of a legal entity. Such low fines have not proven a deterrent for
natural persons preventing them from engaging in fraudulent conduct.

The Law on Data Protection states that breaches of confidentiality are punishable pursuant to
law, but does not appear to relate to any specific law or court.

Recommendation

a. No recommendation
b. The penalties and sanctions for violations of the Law on NPF should be stated more clearly
and with stronger penalties.

SECTION E

Dispute Resolution Mechanisms

Good Practice E.1

Internal Dispute Settlement

a. An internal avenue for claim and dispute resolution practices within the pension
management company should be required by the supervisory agency.
b. Pension management companies should provide designated employees available
to consumers for inquiries and complaints.
c. The pension management company should inform its customers of the internal
procedures on dispute resolution.
d. The regulator or supervisor should conduct oversight as to whether pension
management companies comply with their internal procedures regarding
dispute resolution.

Description

a. Legislation does not require that pension plans have internal dispute resolution and claims
settlement procedures. However, pension plans are interested that disputes/claims be
resolved/settled with depositors and members at the level of the pension plan itself.
b. There are no formal rules regarding designated employees for customer complaints.
Nonetheless, many administrators have employees who deal with pension plan members' 
claims pursuant to the administrator’s internal procedures.
c. There is no formal regulation for giving customers notice of dispute resolution procedures.
d. The NCRFSM supervises the procedure regarding internal complaints at registered entities.

Recommendation

The NCRFSM should promulgate a regulation setting forth the procedure for handling
customer complaints internally.

Good Practice E.2

Formal Dispute Settlement Mechanisms

A system should be in place that allows consumers to seek third-party recourse in the
event they cannot resolve a pensions-related issue with their employer or a pension
management company.

Description

The industry association, NAPFA, has a voluntary arbitration system that plan participants can
use. However it is rarely, if ever used, particularly by plan participants. Otherwise, plan
participants only have recourse through the courts.

Recommendation

The government should consider the implementation of an ombudsman for the entire financial
system or for each component sector of the system.
SECTION F  
GUARANTEE SCHEMES AND SAFETY PROVISIONS

Good Practice F.1  

Guarantee and compensation schemes are less common in the pensions sector than in banking and insurance. There are more likely to be fiduciary duties and custodian arrangements to ensure the safety of assets.

a. There needs to be a basic requirement in the law to the effect that pension management companies should seek to safeguard pension fund assets.
b. There should also be adequate depository or custodian arrangements in place to ensure that assets are safeguarded.

Description

a. The current legislation in Ukraine does not provide for a guarantee scheme for NPFs in Ukraine. Nonetheless, the Law on NPFs states that the pension system is based on the system of segregation of assets. The regulatory structure is set up to maintain the segregation and it is the basis for the safeguarding of customer assets, in addition to the use of a custodian. Other legislatively established safety mechanisms related to pension assets include, among others:
   1) system of internal mutual control between companies that service pension plans and the pension plan board over the discharge of their functions and compliance with laws;
   2) establishment of guidelines for the use of pension assets;
   3) establishment of guidelines for the investment of pension assets and restrictions on each guideline;
   4) establishment of requirements for transactions with pension assets and requirements for the quality of assets;
   5) control, including control exercised by state authorities, over the change in the net value of a unit of pension assets of the pension plan;
   6) maintenance of individual accounts whereof funds of pension plan members are kept; and
   7) establishment of marginal tariffs on the payment of administrator's services, services of the asset management company and pension plan custodian.

b. All NPF’s must have their assets held by a custodian. The current difficulties with the legal system for segregation of assets are set forth in Good Practice C.1. The custodians of an NPF are banks licensed by the National Bank of Ukraine and also receive a license to act as a custodian from the NCRFSM.

Recommendation

a. No recommendation
b. The law should ensure that the assets of the pension funds in custodian banks are segregated sufficiently so that the assets can be distributed to the fund in the event of a bank’s bankruptcy.

SECTION G  
CONSUMER EMPOWERMENT

Good Practice G.1  
Disclosure of Development of Pension Industry

a. The regulator or supervisor should publish annual public reports on the development, health and strength of the pensions industry either as a special report or as part of its disclosure and accountability requirements under the law that governs these.
b. All pension management companies should disclose information regarding their financial position and profit performance.

Description

a. The NCRFSM is annually required to disclose in the official mass media their report on the development and activities of financial services markets (considering legislative requirements as to the protection of state and professional secrets). If needed, such a report may contain the information about regulator's actions taken against certain financial institutions, including pension plans.

Moreover, every quarter, core indicators of pension plan activities are published. Core indicators, published on the web site of the State Committee for Regulating Financial Services Markets, include: total number of members and depositors, total amount of pension contributions as of the quarter under report, total amount of pension payouts, net value of assets as of the end of the period under report, net value of a unit of pension contributions as
of the end of the period under report, performance indicators as of the period under report (change in the net value of assets, change in the net value of a unit of pension contributions, profit/loss, change in the number of members and depositors, etc.), structure of the pension plan investment portfolio. However, no analysis is generally done on the data. 

In addition, every quarter, the majority of pension plans also publish on their websites the information about core indicators of pension plan activities.

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<tr>
<td>a. The NCRFSM should issue an analytical report into addition to all of the data it publishes every quarter that analyzes the data, such as pointing out existing trends in the market.</td>
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<td>b. No recommendation</td>
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**Good Practice G.2 Broadly based Financial Capability Program**

d. A broadly based program of financial education and information should be developed to increase the financial capability of the population.

e. A range of organizations—including government, state agencies and non-governmental organizations—should be involved in developing and implementing the financial capability program.

f. The government should appoint an institution such as the central bank or a financial regulator to lead and coordinate the development and implementation of the national financial capability program.

**Description**

There is no broadly based program for financial education and information in the Ukraine. Each regulatory agency and trade association conduct individual financial education programs but they are not coordinated across the financial sector.

**Good Practice G.3 Using a Range of Initiatives and Channels, including the Mass Media**

a. A range of initiatives should be undertaken to improve people's financial capability.

b. The mass media should be encouraged by the relevant authority to provide financial education, information and guidance to the public, including on the private pensions sector.

c. The government should provide appropriate incentives and encourage collaboration between governmental agencies, the supervisory authority for private pensions, the private pension industry and consumer associations in the provision of financial education, information and guidance to consumers, particularly on the private pensions sector.

**Description**

a. There is a range of consumer education initiatives in Ukraine that are undertaken by each regulatory agency, the trade associations and non-governmental organizations. They have been spread out over a period of time and fluctuate with available funds for the programs and the emphasis put on investor education at any given time.

b. The mass media covers financial matters and has a standing relationship with governmental agencies regarding information on the financial sector.

c. There is collaboration between the various actors in the financial sector which is more or less intensive depending on the period of time and the focus of the regulatory institutions at differing times. Representatives of state regulators participate at round tables, seminars. They publish the information about voluntary pension plan services. In 2004-2005, representatives of the NCRFSM participated in a series of TV programs, where they gave answers to questions raised by viewers concerning voluntary pension plans. In their comments, representatives of state authorities furnish information about main principles of a specific financial product/service, clarify mechanisms for the provision of services, features of products/services, explain rights and obligations of both potential depositors, members and financial institutions that provide services, inform about different types of risks inherent to a particular product/service.

**Recommendation**

No recommendations
<table>
<thead>
<tr>
<th>Good Practice G.4</th>
<th>Unbiased Information for Consumers</th>
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<tbody>
<tr>
<td><strong>a.</strong> Financial regulators and consumer associations should provide, via the internet and printed publications, independent information on the key features, benefits and risks—and where practicable the costs—of the main types of financial products and services, including private pensions.</td>
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<td><strong>b.</strong> The relevant authority should adopt policies that encourage non-government organizations to provide consumer awareness programs to the public in the area of pensions.</td>
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<td><strong>a.</strong> In their presentations, representatives of state authorities do not give preferences to separate types of financial products/services, nor do they provide a comparative analysis of individual financial market entities.</td>
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<td><strong>b.</strong> The Ukrainian legislation has encouraged the use of trade associations and self regulatory organizations to help educate the financial sector in general and individual participants regarding the area of NFPs.</td>
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| Recommendation | No recommendations |

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<thead>
<tr>
<th>Good Practice G.5</th>
<th>Measuring the Impact of Financial Capability Initiatives</th>
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<td><strong>c.</strong> The financial capability of consumers should be measured through a broad-based household survey that is repeated from time to time.</td>
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<tr>
<td><strong>d.</strong> The effectiveness of key financial capability initiatives should be evaluated.</td>
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<tr>
<td><strong>a.</strong> There is no standard, repeated household survey of consumer capabilities in Ukraine. However, Surveys on financial stability are held from time to time. Amongst professional market makers, such surveys are held with the help of self-regulatory organizations and professional unions. Amongst the general public, such surveys are held with the help of international projects, organizations, and social research institutes.</td>
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<tr>
<td><strong>b.</strong> The effectiveness of key capability initiatives is not evaluated on a systematic basis.</td>
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| Recommendation | No recommendations. The systematic measurement and evaluation of financial capability measures should take place as part of an overall financial education initiative. |
ANNEX 1: Financial Education

1. **Financial consumer awareness is relatively low in Ukraine.** For example, the survey conducted by the USAID Financial Sector Development Project (FINREP) in 2010 showed that consumers of financial services in Ukraine know very little about financial products and services and experience difficulties in doing simple calculations.

2. **The role of the state in the provision of financial education remains limited and fragmented**[21]. The main activities include the publication by the National Bank of Ukraine (“NBU”) of leaflets such as a *Note to the borrowers of the banks, a Note to a borrower who experienced difficulties* and a *Note to the clients*; and the publication on the State Financial Services Regulator's website of a *Guide for credit unions’ members*.

3. **State agencies lack the institutional capacity and resources to undertake effective financial education programs and are heavily dependent on international grants for the financial education work which they undertake.** Strong public-private partnerships need to be developed to maximize the prospects of ongoing funding being provided for financial literacy programs. For example, the State Financial Services Regulator published the *Guide for credit unions’ members* as a result of its participation in the GIZ/DGRV project on *Development of Rural Credit Cooperatives*. The regulator does not have sufficient funds to cover the costs of disseminating consumer publication or of undertaking educational programs. Since 2007, several donor-sponsored programs have been implemented in Ukraine, with the active participation of the Government and NGOs (see Table 10). However, there is very limited sustainability after project funding has come to an end, partly as a result of the absence of effective partnerships between the public and private sectors.

4. **Private market participants are interested in engaging in financial consumer education programs.** A number of private sector initiatives on financial consumer education have been launched and successfully implemented in Ukraine (see Table 11). In addition, banks are willing to organize educational programs for schools to raise children’s awareness of banking services, but they face difficulties in dealing with the Ministry of Education (MoE), which gives approval for teaching events organized in schools.

Financial Education in Schools

5. **Introducing financial education programs in schools is one the most effective means of equipping the next generation to choose the financial products and services which are suitable for them and to exercise their rights.** Many teachers recognize the need for financial literacy programs in schools and are keen that these programs should include practical elements (for example, what to do if my rights are abused; or what clients should know about the obligations of financial services providers).

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[21] During the second visit of the team in March 2012, it was acknowledged that the NBU set up a working group on development of Program and Action Plan for Consumer Financial Literacy Improvement.
6. The Ministry of Education introduced consumer education into schools in 1999. Issues related to financial consumer knowledge and protection were added to the courses “Fundamentals of Economics” and “Fundamentals of Law”. In addition, a voluntary course “Fundamentals of Consumer Knowledge” was introduced in 2010 for the 8th-11th grades: this contains information on, in particular, the rights and obligations of consumers. In 2008, an EU-UNDP project “Consumer Society and Citizen Networks” financed the textbook for the course “Fundamentals of Consumer Knowledge” (1-12 grades), together with teaching materials and notebooks. More than 10,000 schools have implemented this course in their school plan and feedback from schools has been positive.

Table 1: Overview of Financial Education Initiatives in Ukraine which have been funded or conducted by International Organizations

<table>
<thead>
<tr>
<th>Donor</th>
<th>Objectives</th>
<th>Description</th>
<th>Results</th>
</tr>
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<tbody>
<tr>
<td>EU-UNDP project “Consumer Society and Citizen Networks”</td>
<td>Promote responsible corporate citizenship and enlist the support of the business sector in achieving a more sustainable and equitable global economy.</td>
<td>Apr 2006 – Dec 2009 Budget - $3.15 million</td>
<td>1) Contest “Youth tests quality” (started in November 2009) in cooperation with “Foxtrot home appliances” and TM “Bel Shostka Ukraina” (members of UN Global Impact Network). 2) Developed a new concept of consumer education in Ukrainian secondary schools and a detailed syllabus for consumer education courses, outlined specific recommendations for teachers and prepared school notebooks. 3) From December 2007 to January 2008, in cooperation with EPSI Rating, Swedish agency of consumer satisfaction measurement the CSCN Project conducted the first pioneering survey on the level of satisfaction of Ukrainian consumers covering five service sectors of the Ukrainian market, in particular retail banks and general insurance. 4) National public awareness program “New Ukrainian Consumer” through TV and radio channels. Apart from public service announcements and social advertising, the Campaign features a number of educational and general interactive programmes. 5) Consumer portal <a href="http://www.consumerinfo.org.ua">www.consumerinfo.org.ua</a> launched in June, 2007. 6) Handbook “Consumer Essentials” (2008) as a voluntary course for Ukrainian colleges as part of the Bachelor degree in Economics. More than 3000 schools and 50 universities have volunteered to implement the course (now – more than 10,000).</td>
</tr>
</tbody>
</table>
### Annex 1: Financial Education

<table>
<thead>
<tr>
<th>Initiative</th>
<th>Description</th>
<th>Start Date</th>
<th>Activities</th>
</tr>
</thead>
</table>
| Polish Development Assistance implemented by Microfinance Centre together with the Ukrainian Association of Credit Unions | Raise awareness, increase engagement and build skills of the most promising stakeholders in Ukraine. | July-Dec 2007    | 1) 33 training-of-trainers workshops with the participation of teachers, credit unions’ staff, rural citizens, handicapped people and others.  
2) National conference.  
3) Strategy to improve financial capabilities of Ukrainian citizens. |
| UN Global Compact Network                                                 | Enhance social responsibility of business, in particular in the area of consumer protection and consumer awareness. | Launched in April 2006 | 1) 160 members in Ukraine, including 7 banks, 2 credit unions, 2 insurance companies and 1 asset-management company.  
2) 38 companies in Ukraine prepared nonfinancial reports during 2005-2010.  
3) Concept of the National Strategy of the Social Responsibility of Business in Ukraine to be implemented by 2015.  
4) Course “CSR” for university students. |
| USAID Ukraine National Initiatives to Enhance Reforms (UNITER)            | Strengthen the organizational capacity of leading Ukrainian NGOs to better represent citizens and drive the reform agenda through more effective advocacy, monitoring and activism | N/A              | 1) Grant to the Centre for CSR Development (CSR Centre) of $199,990 to create enabling environment for CSR development in Ukraine. CRS Centre has organized 2 exhibitions of social projects. |
| USAID FINREP                                                              | Assist Ukraine in rebounding from the economic and financial crisis and in establishing a sound financial sector. | October 2009 – October 2012 Budget - $12.4 million | 1) Financial Literacy Survey (2,000 respondents and Focus Groups discussions in 6 cities).  
2) Distribution of financial literacy materials (including 27,000 copies of the Pension Investment Glossary).  
3) Online Financial Awareness Toolkit free of charge, which is available free of charge, which includes a mortgage calculator, mortgage glossary, information on payments cards and other materials.  
4) A series of media programs to provide journalists with essential knowledge and new insights into the financial sector. |
5) Workshops to help Ukrainians understand the pension reform.
6) Other research initiatives.

Table 2: Selected Business Initiatives on Consumer Awareness

<table>
<thead>
<tr>
<th>Initiators</th>
<th>Description of Projects</th>
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</table>
| Platinum Bank       | 1) Launched project “Platinum Posidelki” - regular discussions of banks and bank services with children of 7-14 years old to increase their financial literacy. This project took 3rd place at the exhibition of social projects CSR Market Place (2011).  
2) Launched project “PB-Perspective Education Technologies” in cooperation with teachers of Fundamentals of Economics (2011).  
3) Code of Conduct “Platinum Standards”. |
| UniCredit Bank      | 1) All-Ukrainian Student Olympics which tests knowledge of banking business and finance. Participants have to submit a presentation on 1 of the 5 offered topics, take on the role of a client manager and take on role of CEO of a big bank. |
| ProCredit Bank      | 1) Open Bank Day on International Savings Day with lectures on savings.  
2) “School ProCredit”, with the aim of helping pupils of 2nd-4th grades to understand finances and banking. The course offers 9 classes per a year on savings, payment cards and other topics. At the end of the year pupils receive a certificate of “Young Banker”. More than 3000 pupils from 72 schools participate in this project.  
3) Brochure “How to understand banking services” (2008). |
| Credit Union “Vygoda” | 1) Seminar-training on financial literacy in Kalush (2010) with the participation of 25 members of credit unions and other stakeholders. |
ANNEX 2: Key Laws and Institutions

Institutional Arrangements

The State Consumer Rights Protection Inspectorate (SCRPI) has overall responsibility for consumer protection issues in Ukraine and as part of its overall mandate deals with complaints it receives. However, the existing legal system in Ukraine provides financial consumer protection only in the area of consumer credit.

The National Bank of Ukraine (NBU) as the prudential supervisor of the banking industry also deals with some of the consumer protection issues. However, this has been a voluntary decision of the NBU, not a legal requirement as the NBU's authorizing mandate is one of financial stability and to protect creditors and depositors.

The State Commission for Regulation of Financial Services Markets (NCRFSM) is a central executive agency funded entirely from the central government budget. The commission has been operational since 2004. It has both regulatory and supervisory responsibilities and special executive status. Protecting the interests of consumers of financial services is one of the objectives of NCRFSM as stated in the Law on Financial Services and State Regulation of Financial Markets.

National Securities and Stock Market Commission (NSSMC) –The NSSMC is responsible for regulating the securities markets as a whole and does not take a position when there is a dispute between parties in the securities market. Nonetheless, it does receive investor complaints, attempts to resolve them and, if warranted, can bring an enforcement action to stop securities violations. For redress against a financial institution, investors must turn to arbitration or the courts.

The Individual Deposit Guarantee Fund is established as a special government institution that is vested with powers of state control in the area of individual deposit guarantee and protection.

There are four separate industry associations in the banking sector:

Association of Ukrainian Banks (AUB) is the first and the largest association comprised of 94 banks. The AUB has its own Arbitration Court registered in 2005.

Ukrainian Credit and Banking Union was initially established to consolidate banks in Kiev and Kiev region but in 2005 the Union expanded its activities to the other regions of Ukraine. Currently 92 financial institutions hold membership in the Union.

Forum for Leading International Financial Institutions (FLIFI) was founded in 2010 to serve the interests of foreign financial institutions operating in Ukraine. Currently the Forum comprises 17 banks and has several working groups and a Private Banking Club.

Independent Association of Banks in Ukraine was established in 2011 with the participation of 69 banks.

The League of Insurance Organizations of Ukraine: This is the main insurance association. It has approximately 130 members and its management board is comprised of senior representatives of the larger Ukrainian companies. The association has a small secretariat and publishes some data on the Ukrainian insurance market.
Annex 2: Key Laws and Institutions

**The Ukrainian Federation of Insurance:** This is a relatively new association of roughly 18 larger insurers accounting for approximately 40 percent of the conventional (not tax driven) insurance market.

**The Association of Ukrainian Insurers:** This is an association with approximately 27 small insurers and one larger insurer.

**The Federation of Insurance Intermediaries of the Ukraine:** This is an association of approximately 20 insurance brokers which was established in 2003.

**Ukrainian National Credit Union Association and All Ukrainian Credit Union Association** – are two credit union associations each having approximately 150 members and therefore covering about 50 percent of all credit unions in the sector.

**AUCU Stabilization Fund** - operates as a financial institution under the Law on Credit Unions and offers a voluntary deposit insurance program that’s available to all credit unions.

**Ministry of Labor and Social Policy (MoLSP) of Ukraine** – oversees the Pillar I Solidarity Fund and will also oversee the Pillar II Fund when it is created.

**The National Association of Non-State Pension Funds of Ukraine and Non-state Pension Fund Administrators (NAPFA)** – is the industry association for the Non-state Pension Funds and their Administrators.

**Ukraine Association of Investment Businesses (UAIB)** – industry association.

**Securities Market Partnership (AFP)** – industry association.

**Ukrainian Association of Stock Traders (AUST)** – industry association.

**Professional Association of Registrars and Depositories (PARD)** – industry association.

**Legal Framework**

**The Law of Ukraine on Consumers’ Rights Protection (LCRP) (1991):** addresses basic consumer issues such as the quality and safety of goods and services, information concerning goods and services, prohibition of unfair business practices, judicial protection of consumer rights and liability for violation of consumer rights protection legislation. It applies equally to banks and non-bank credit institutions. However, the LCRP is general in nature, and focuses on non-financial goods and services. In fact, the Law covers only consumer lending.

**The Law on Financial Services and State Regulation of Financial Markets (LFS) (2001):** provides an overview of financial services regulation, the roles of various supervisors and details specific rules regarding the operation of the State Commission for Regulation of Financial Services Markets (NCRFSM).
Annex 2: Key Laws and Institutions

Additional Laws and Regulations

- The Civil Code of the Ukraine
- The Criminal Code of Ukraine
- The Law on Banks and Banking of 7 December 2000: Defines the structure of the banking system, economic, organizational and legal fundamentals for establishment, operation, reorganization, and liquidation of banks.
- The Law on the National Bank of Ukraine of 20 May 1999: Establishes the legal basis for activities of the National Bank of Ukraine, which is the regulatory body for banks in Ukraine.
- The Law of the Ukraine on Insurance - It sets out prudential supervision requirements, insurance contract requirements and some requirements regarding insurance brokers and licensing.
- Law of Ukraine on State Regulation of the Securities Market in Ukraine (1996) vis the fundamental law vesting the NSSMC with the power to regulate the stock market.
- Law of Ukraine on Collective Investment Institutions (2001)
- The Law on Credit Unions - defines organizational, legal and economic grounds for establishment and operation of credit unions in Ukraine and their associations, and the rights and liabilities of members of credit unions and their associations.
- The Enactment of the President of the Ukraine on Regulation on the State Commission of Ukraine for Regulating Financial Services Markets (EP): This sets out the different responsibilities of NCRFSM with respect to insurance.
- The Law of Ukraine On Amending Several Laws regarding Regulation of Financial Services Markets (3462-VI). This law revises Article 12 of the LFS imposing several additional disclosure requirements on financial institutions before they enter into an agreement with a consumer.
- Law of the Ukraine On Mandatory State Pension Insurance (2004) stipulated payment of benefits depending on work periods and earnings from which insurance contributions are paid. The law also defined sources of financing of different pension programs separating budget of the pension fund from the state budget.
- NBU Regulation Nr. 168 on Real Cost of Loan Disclosure Policy of May 10, 2007
- NBU Regulation Nr. 368 On Approval of the Instruction on the Procedure of the Regulation of Activities of Banks in Ukraine of August 28, 2001
Annex 2: Key Laws and Institutions

- **NBU Regulation Nr. 223 On Performance of Transactions with Special Payment Instruments**, dated April 30, 2010, that spells out general requirements of the NBU on special payment instruments.
- **NBU Regulation Nr. 492 of the Account Opening, Operating and Closing Procedure Applicable to Foreign Exchange and Local Currency Accounts** (2003)
- **NCRFSM Instruction Nr. 69 on Reporting**, January 19, 2004
- **NCRFSM Instruction Nr. 116** of November 11, 2003 foresees a list of Internal Policies and Procedures that credit unions need to develop.
- **NCRFSM Instruction Nr. 1099** of June 22, 2004 provides for a policy for the entry of information about credit unions into the State Financial Institution Register.

- In addition there are numerous other regulations, proclamations and rules that touch on the detailed business of financial institutions regulation.

**Draft Laws**

- **While the supervisory authority had been working on substantial revisions to the insurance statutes since 2006, this project was shelved in 2010**. A new draft is said to have been under preparation over the last year and is expected to be passed before the end of the year.
- **Draft Law On Out-of-Court Dispute Resolution for Consumers of Financial Services** - The NCRFSM recently published on its website for public discussion a Draft Law On Out-of-Court Dispute Resolution for Consumers of Financial Services (except banks).