



Papua New Guinea

Financial Consumer Protection Diagnostic 2018



Disclaimer

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Diagnostic Review of Financial Consumer Protection

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ABBREVIATIONS AND ACRONYMS

Agent Regulation	draft Regulation on Agents 2017
APR	Annual Percentage Rate
ASF	Authorized Superannuation Fund
ASIC	Australian Securities & Investment Commission
ATM	Automated Teller Machine
BPNG	Bank of Papua New Guinea
BPNG Act	Central Banking Act 2000
CA Act	Commercial Advertisement (Protection of the Public) Act 1976
CCF Review	Consumer & Competition Framework Review—Public Report (February 2017)
CEFI	Center for Excellence in Financial Inclusion
CGAP	Consultative Group to Assist the Poor
EDR	External Dispute Resolution
EFT Regulation	draft Regulation on Electronic Funds Transfer 2017
EIR	Effective Interest Rate
FCP	Financial Consumer Protection
FSDS	Financial Sector Development Strategy 2018-2030
F&M	World Bank Group’s Finance & Markets Global Practice
FI	Financial Institution
Findex	World Bank Global Financial Inclusion Database (2014)
FT Act	Fairness of Transactions Act 1993

GICs	General Insurance Companies
Gov PNG	Government of Papua New Guinea
HP Act	Hire-Purchase Act 1966
HP Regulations	Hire-Purchase Regulations 1968
ICCC	Independent Consumer and Competition Commission
ICCC Act	Independent Consumer and Competition Commission Act 2002
Insurance Act	Insurance Act 2000
IDR	Internal Dispute Resolution
IFC	International Finance Corporation (of the World Bank Group)
IPA	Investment Promotion Authority
KATS	Kina Automated Transfer System
KFS	Key Facts Statement
LI Act	Life Insurance Act 2000
LICs	Life Insurance Companies
LIBs	Life Insurance Brokers
MFB	Microfinance Bank
MFI	Microfinance Institution
MMO	Mobile Money Operator
Mobile Banking PS	Mobile Banking and Mobile Payments Services 2011 (Prudential Standard MBPS 1.2011)
MoU	Memorandum of Understanding
MPOS	Mobile Point of Sale
NEC	National Executive Council

NBFI	Non-Bank Financial Institution
NFIS	National Financial Inclusion Strategy, 2016-2020
NPS	National Payment System
PNG	Papua New Guinea
PNG Securities Commission	Securities Commission of Papua New Guinea
POS	Point of Sale
PR Act	Prices Regulation Act 2009
Payments Act	National Payments System Act 2013
PSP	Payment Service Provider
RAC	Regulators Advisory Committee
Retail Payments Guidelines	draft General Guidelines on Retail Payment Instruments 2017
Oversight Regulation	draft Oversight Regulation 2017
S&LS	Savings and Loan Society
S&LS Act 1961	Savings and Loan Societies Act 1961
S&LS Act 1995	Savings and Loan Societies (Amendment) Act 1995
S&LS Act 2015	Savings and Loan Societies Act 2015
SMS	Short Messaging Service
TTC	Total Cost of Credit
USD	United States Dollar
WB	World Bank
WBG	World Bank Group

Currency Equivalents
(Exchange Rate effective December 10, 2017)
US\$1 = 3.25 PNG Kina

ACKNOWLEDGMENTS

This report contains the findings from an International Finance Corporation (**IFC**) diagnostic review of the financial consumer protection (**FCP**) laws, institutions, and practices in Papua New Guinea (**PNG**). IFC is a sister organization of the World Bank (**WB**) and a member of the World Bank Group (**WBG**). The review primarily took place during a mission to PNG from October 9 to 17, 2017. The bank, non-bank financial institutions (including limited consideration of credit reporting arrangements), insurance, and payments sectors were considered. The superannuation sector was also considered at a high level.

The diagnostic review was undertaken by a joint IFC and WB team of the Finance, Competitiveness and Innovation (FCI) Global Practice team led by Philippa Roberts (Financial Sector Specialist) and including Gian Boeddu (Senior Financial Sector Specialist), Ros Grady (Senior Consultant) and Dominic Sikakau (Financial Sector Specialist). Operational support was provided by Junita Wamirao Yehirai (Program Assistant) and Jeffrey Rodney Mavu (Team Assistant) from the World Bank Country Office in PNG, with research support provided by Shakti Nambiar (Consultant). Oversight of the project was provided by Jennifer Isern (Practice Manager for East Asia and Pacific, FCI Global Practice). The team is thankful to John Vivian (IFC Resident Representative in PNG), Jonathan Kirkby (former Acting IFC Resident Representative in PNG) and Patricia Veevers-Carter (WB Country Manager for PNG), for their advice and support.

The team expresses its gratitude to the PNG authorities, including the Bank of Papua New Guinea (**BPNG**), for their strong support and assistance in relation to the mission. The team also thanks the government, industry, and civil society stakeholders with whom they met for their cooperation and collaboration.

The review was conducted as an interim step to inform planning of future WBG technical assistance as part of the pre-implementation phase of the IFC's PNG Consumer Protection Project. At the macro level, the project is expected to reinforce efforts to expand financial inclusion and strengthen the stability and integrity of the PNG financial sector. The IFC is grateful to the Department of Foreign Affairs and Trade in Australia and the Ministry of Foreign Affairs and Trade in New Zealand for the support provided to the project.

EXECUTIVE SUMMARY

The Government of Papua New Guinea (Gov PNG) made a commendable commitment to financial consumer protection (FCP). This is demonstrated by the inclusion of FCP as a key priority area in both the final draft of the Financial Sector Development Strategy 2018–2030¹ (FSDS) and the National Financial Inclusion Strategy 2016–2020 (NFIS)², and by other initiatives. This commitment is against the background of relatively low levels of financial inclusion, with only 36.96 percent of adults reported as having an account at a formal financial institution as of June 2016.³ Importantly, 85 percent of the low-income population is reported as having no access to formal financial services, with women and rural adults being especially excluded.⁴

The objective of the diagnostic review of FCP in PNG was to assess the FCP legal and regulatory framework and industry practices relevant to key parts of the regulated PNG financial sector. The aim has been to develop prioritized and tailored recommendations to support the Bank of Papua New Guinea (BPNG) to enhance the FCP framework. Implementation support for key recommendations will be provided consistently with the Action Plan to be agreed with BPNG. Specific consideration has been given to the banking, non-bank financial institutions (NBFI), insurance, and payments sectors. Preliminary consideration has also been given to the superannuation sector, with the intent of providing a more detailed assessment at a later stage.

Only those parts of the financial sector regulated by BPNG are covered in this review. Specifically, the securities and investments sectors are not within the scope of this review. This exclusion includes, for example, debt and equity investments, land trust schemes⁵, and investment schemes (some of which are potentially fraudulent) such as the pyramid or multilevel marketing schemes, which are reportedly widespread in PNG.⁶ The informal lending sector is also not within the scope of this review, except to the extent noted in some specific findings. Further consideration might be given to these issues at a later stage, as recommended below.

The review was conducted based on the revised and enhanced 2017 World Bank Good Practices for Financial Consumer Protection⁷ as well as the G20 High-Level Principles on Financial Consumer

¹ National Financial Sector Development Strategy 2018-2030, page 6 and section 3.4.1. The Strategy is awaiting final approval from the National Executive Council.

² The National Financial Inclusion Strategy 2016–2020 identifies Financial Consumer Protection as a Priority Area, with the Strategic Objective being “*To introduce and implement a consumer protection framework for regulated financial institutions*” (Part II, section 4).

³ G20 Financial Inclusion Indicators.

⁴ <https://www.bankpng.gov.pg/financial-inclusion/> .

⁵ It is understood land trusts, which are not supervised by BPNG, are growing and approaching a similar size to superannuation funds.

⁶ See, for example, the media report at <http://www.thenational.com.pg/glimpse-world-pyramid-schemes/> .

⁷ In the interest of brevity, specific sections of the Good Practices are not cited. Instead, reference is made more broadly to international good practice. Details of the new 2017 Good Practices are available here: <https://openknowledge.worldbank.org/handle/10986/28996> . For country reports, see: <http://responsiblefinance.worldbank.org/diagnostic-reviews> .

Protection⁸ and Digital Financial Inclusion.⁹ The Better than Cash Alliance *Responsible Digital Payments Guidelines* has also been considered.¹⁰ The following topics have been covered: (i) legal and regulatory framework; (ii) FCP supervision and capacity; (iii) transparency and fair treatment; and (iv) consumer complaints. A broad variety of stakeholders were consulted for the purposes of this diagnostic review, including government entities and regulators, representatives of the banking, NBF, insurance and payments sectors and industry associations.¹¹ The report reflects findings from an IFC mission to PNG from October 9 to 17, 2017, and additional background research.

Key features of PNG’s regulated retail financial sector are as follows. There is a concentrated commercial banking sector with one bank having over 50 percent of assets; a very small NBF sector; a nascent insurance industry; a payments sector, which is predominantly “cash based” (while noting that significant efforts have been made in recent years to develop the payments infrastructure and increase the usage of electronic instruments); and superannuation funds, which account for around 25 percent of PNG’s financial sector assets (second only to commercial banks).¹² Further details are in the remainder of this report.

A significant proportion of lending to individuals in PNG is also provided by unregulated money lenders at very high rates of interest. Lenders include individuals and incorporated “finance companies”, along with relatives and *wantoks*¹³, who are also important sources of credit. A key part of the unregulated market includes payday lenders providing loans to government—and some private sector—employees, with repayments deducted from salaries. It is estimated that there are around 280 businesses providing such loans, of which only a small number are finance companies or banks licensed by BPNG. Further, there is a thriving unregulated money lending sector in PNG operating outside the payday lending market. These money lenders also provide loans at extremely high rates of interest. While personal loan and payday lending rates from banks and finance companies in the formal sector range from 30–36 percent per year to 3.5 percent per fortnight (91 percent per year), unregulated lending at 20-50 percent per fortnight (i.e. 520–1,560 percent per year) has been reported.¹⁴

The FCP legal and regulatory framework is extremely limited, with significant gaps as compared to international best practice. For example, there are no disclosure requirements for credit or debit products, including those which might facilitate product comparisons; rules on unfair treatment are

⁸ http://www.fsb.org/2011/11/cos_111104a/ .

⁹ <https://www.gpfi.org/news/new-g20-high-level-principles-digital-financial-inclusion> .

¹⁰ <https://www.betterthancash.org/tools-research/case-studies/responsible-digital-payments-guidelines> .

¹¹ A list of all stakeholders consulted is included in Annex I to this report.

¹² National Financial Sector Development Strategy 2018-2030, section 2.1.

¹³ The term **wantok**, meaning “one talk” in Tok Pisin, is related to a powerful cultural social bond that links people of the same ethnic group who speak the same language. The wantok system is a social traditional welfare system that emphasizes the responsibilities that group members have to care for each other and to help each other with food, shelter, clothing, monies, work, bereavement etc.

¹⁴ See, for example, Hartshorn J’s judgment—application for specific performance, in *Finance Corporation Limited and others v The Independent State of Papua New Guinea* WS (April 2, 2014) 3.

extremely limited (for example, there are no provisions for unfair contract terms, responsible lending or abusive debt collection practices); there is no law on general insurance contracts or the protection of policyholder interests; the current payments law does not cover payments-specific FCP issues; consumer complaints and recourse provisions are very limited and in some cases not implemented; and there are very limited rules relating to confidentiality of customer information. The short to medium term approach recommended to deal with these gaps is to develop regulations or prudential standards under existing financial sector specific legislation, with priority to be given to the banking and NBF (lending) sector. In the longer term, an overarching FCP Law based on international best practice could be developed.

BPNG and the Independent Consumer and Competition Commission (ICCC) have overlapping FCP supervisory mandates. BPNG has an implicit FCP mandate under the Central Banking Act 2000, and specific FCP-related functions under other Acts. The ICCC also has an explicit FCP mandate. However, the ICCC has never had to deal with financial sector issues and does not consider that it has the capacity or resources to do so. The Insurance Commissioner has neither an explicit nor an implicit mandate covering consumer protection matters in relation to its general insurance function. For completeness, it is also noted that the Centre for Excellence in Financial Inclusion (**CEFI**), has important financial inclusion functions but does not have a regulatory or supervisory role. It is recommended that BPNG should be solely responsible for supervision of the FCP legal and regulatory framework for the banking, NBF, insurance, payments, and superannuation sectors. It is our view that BPNG is the only regulator who could realistically be responsible for FCP in the relevant sectors, as it is the regulator for all of them (other than general insurance, which is proposed to be transferred to BPNG).

BPNG's FCP supervisory capacity and resources will need considerable enhancement if it is to supervise a new FCP legal and regulatory framework. Given the limited FCP provisions at present, BPNG has understandably focussed on prudential regulation and supervision. At present, there is no separate FCP supervisory unit or department within BPNG, and there is no focus on the specialist supervisory tools, processes, and procedures that are required to supervise for an FCP legal and regulatory framework. These gaps will need to be urgently addressed as the FCP framework is developed.

There are only limited requirements regarding internal complaints handling processes and procedures for financial service providers. Even where there are existing requirements for certain provider types, they are insufficiently rigorous to ensure adequate complaints handling and contain significant gaps in coverage. As also discussed below, complaints handling approaches by financial institutions vary significantly and often appear to be slow and ineffective.

There is no comprehensive external dispute resolution (EDR) scheme, which can deal with unresolved disputes involving consumers and financial service providers outside the courts system.

Although there is legislative provision for some sector-specific EDR schemes (such as the Insurance Complaints Tribunal¹⁵ and the superannuation industry-funded complaints resolution mechanism¹⁶), they are not in place. Other sectors lack any scheme, which is supported by a relevant legal or industry-based framework. The recommendation is that BPNG, given its financial sector expertise, should be designated as the interim EDR mechanism for consumers. In the longer term, options should be considered for an independent EDR or Financial Ombudsman-type scheme.

A summary of the key recommendations is in Table 1 below. Some of these recommendations may take more time to consider and implement than others. Hence, indicative timeframes (short, medium and long-term) and priority level (high, medium, low) have been assigned to each recommendation along with institutional responsibilities. A more detailed implementation roadmap will be separately prepared and agreed with BPNG, covering implementation of the recommendations, which are to be supported by the WBG under the PNG Consumer Protection Project. It is also to be noted that although the BPNG is the primary agency responsible for implementation of the recommendations, the integration of consumer protection into the financial sector is a shared responsibility of all key public, private sector, and stakeholders, including the Gov PNG, other regulators, industry bodies, financial service providers (formal and informal), and NGOs promoting financial inclusion. A close consultation and coordination between all these stakeholders will be needed if the recommendations in this report are to be achieved.

Table 1: Key Recommendations

RECOMMENDATION	RESPONSIBLE AGENCY	PRIORITY	TIMEFRAME ¹⁷
Legal and Regulatory Framework			
FCP framework: Develop regulations or prudential standards under key financial sector-specific legislation to cover FCP recommendations below, with an appropriate transition period for implementation (e.g. 6–12 months) and consultation with stakeholders.	BPNG	As indicated below for each recommendation, with the banking and NBFI (lending) sectors being the highest priority.	As indicated below for each recommendation.
Definition of a protected “consumer”: Define a “consumer” as an individual or a small business.	BPNG	High	Short-term

¹⁵ Insurance Act 1995, Part IX.

¹⁶ Superannuation (General Provision) Act 2000, s. 49B.

¹⁷ Short-Term (1 year); Medium-Term (2 years); Long-Term (3 years).

RECOMMENDATION	RESPONSIBLE AGENCY	PRIORITY	TIMEFRAME ¹⁷
NBFIs (non-deposit takers): Require consumer lenders who do not take deposits to be licensed or more simply registered under the BFI Act, for consumer protection purposes.	BPNG	High	Short-term
FCP license/registration condition: Introduce a license/ registration condition for all regulated financial institutions to comply with FCP Laws, regulations, standards or guidelines.	BPNG and Insurance Commissioner.	High	Medium-term
FCP and payments sector: Consider FCP issues, relevant to the payments sector, in the context of the regulations and guidelines currently being prepared for the purposes of the Payments Act.	BPNG	Medium	Medium-term
FCP and superannuation sector: Conduct a detailed FCP review of the superannuation sector.	BPNG	Medium	Medium-term
FCP Law: Develop an overarching “activities based” FCP Law, which applies to all financial sector participants and is based on international best practice.	Treasury, BPNG, Insurance Commissioner, PNG Securities Commission.	Medium	Long-term
FCP and securities sector: Consider a review of FCP issues concerning the securities sector (including debt and equity investments, land trust schemes, and investment scams such as pyramid/multilevel marketing schemes).	Treasury, PNG Securities Commission.	Medium	Long-term
Hire-Purchase contracts: Consider continued relevance of the Hire-Purchase Act 1966, based on an assessment of market practices.	Treasury	Low	Long-term
FCP Supervision and Capacity			
BPNG FCP institutional arrangements: Develop options for creating an independent	BPNG	High	Short-term, with preferred option to be gradually

RECOMMENDATION	RESPONSIBLE AGENCY	PRIORITY	TIMEFRAME ¹⁷
BPNG department with specific responsibility for supervision of the FCP legal and regulatory framework, and with capacity to oversee innovations in consumer financial services.			implemented over the short to medium term.
FCP supervisory mandate: Designate BPNG as being solely responsible for supervision of the FCP legal and regulatory framework relating to the banking, NBF, insurance, payments, and superannuation sectors. This would require consequential amendments to the ICC Act and the Insurance Act.	Treasury, BPNG, Insurance Commissioner and ICC.	High	Medium-term
BPNG FCP supervisory capacity: Build BPNG capacity for FCP supervision and related process and procedures, including the development of an FCP supervisory strategy and FCP manuals and tools; and consideration of international best practice in FCP supervisory arrangements.	BPNG	High	Medium-term
BPNG FCP mandate: Provide BPNG with an explicit FCP mandate in the Central Banking Act, 2000.	Treasury, BPNG	Medium	Long-term
FCP regulatory consultations: Build consultation and collaboration mechanisms between all regulators with FCP responsibilities, including through MoUs.	BPNG, Insurance Commissioner, ICC, PNG Securities Commission.	Medium	Medium-term
Transparency and Fair Treatment			
Key Facts Statements (KFSs): Require that a standardized, comparable KFS be provided for common consumer credit products (such as fixed term loans); common insurance products (such as motor vehicle and home contents insurance);	BPNG, Insurance Commissioner.	High for fixed term credit and consumer insurance and medium for other products.	Short-term for fixed term credit and consumer insurance. Medium-term for other products.

RECOMMENDATION	RESPONSIBLE AGENCY	PRIORITY	TIMEFRAME ¹⁷
and common deposit/payments products (such as a transaction account with a debit card attached or an e-wallet account).			
Contractual disclosures: Require—for all consumer financial products and services— clear, simply expressed, upfront disclosures of key terms and conditions, interest rates, fees and charges, and advance notification to consumers when a provider makes key changes to these matters.	BPNG, Insurance Commissioner.	Medium	Short-term
Account statements: Mandate the provision of account statements for credit and deposit/payments products.	BPNG	Medium	Medium-term
Price comparison website: Develop a price comparison website to enable consumers to compare costs of common consumer products (starting with fixed term credit), based on information to be provided by relevant FIs.	BPNG	Medium	Medium-term
Transaction receipts: Mandate minimum requirements for transaction receipts for credit and deposit/payments products.	BPNG	Medium	Medium-term
Fair treatment principle: Introduce principles-based obligations requiring financial services providers to treat consumers fairly and take reasonable steps to ensure product suitability.	BPNG, Insurance Commissioner.	High	Short-term
Key fair treatment issues: Introduce specific restrictions and requirements to target key fair treatment issues, including: <ul style="list-style-type: none"> • Making void unfair terms in standard consumer contracts (the respective regulators 	BPNG, Insurance Commissioner.	High	Short-term

RECOMMENDATION	RESPONSIBLE AGENCY	PRIORITY	TIMEFRAME ¹⁷
<p>should also conduct a market review of a broad sample of credit and insurance product terms and conditions with a view to assess the type and prevalence of unfair terms);</p> <ul style="list-style-type: none"> • Prohibitions against unfair sales and marketing practices such as the sale of unsuitable products, and misleading and deceptive advertisements; and • Responsibility and liability requirements for staff and agents of providers. 			
<p>Insurance bundling and other unfair practices: Prohibit other specific types of unfair business conduct, including restrictions on anti-competitive credit or insurance bundling, and tying arrangements.</p>	BPNG, Insurance Commissioner	Medium	Medium-term
<p>Banks/NBFIs — Responsible lending: Require lenders to undertake sufficient affordability assessments.</p>	BPNG	High	Short-term
<p>Banks/NBFIs — Debt collection: Require bank and non-bank lenders and their debt collection agents to comply with restrictions and requirements to address abusive debt collection practices.</p>	BPNG	High	Short-term
<p>Banks/NBFIs — Account switching: Restrict fees and provider requirements that inhibit account or loan mobility.</p>	BPNG	Medium	Short-term
<p>Banks/NBFIs — Payroll deductions loans: Implement protections for consumers of such loans, including:</p> <ul style="list-style-type: none"> • Requiring lenders to be licensed or registered as recommended above, before they can offer such loans; 	BPNG, Gov PNG	High	Short-term

RECOMMENDATION	RESPONSIBLE AGENCY	PRIORITY	TIMEFRAME ¹⁷
<ul style="list-style-type: none"> Deeming unremitted payroll deductions for repayments to have been paid by the consumer (if not at fault) and prohibiting debt collection action against the consumer in such circumstances. 			
<p>Insurance — disclosures: Require that each potential policyholder be given a copy of his or her insurance policy, or have it explained to him or her in a recorded call, before insured takes up policy.</p>	BPNG, Insurance Commissioner	High	Short-term
<p>Payments — account statements: Require users of payments services to be given, or have access to, a periodic statement of account.</p>	BPNG	High	Short-term
<p>Superannuation — unremitted member contributions: Make it mandatory for an employer to pay interest in relation to unremitted member contributions.</p>	BPNG	High	Medium-term— consider in the context of the upcoming review of the Superannuation Act
<p>Superannuation — annual statements: Require that members be provided with at least an annual record of their interest in an Authorized Superannuation Fund (ASF).</p>	BPNG	Medium	Medium-term— consider in the context of the upcoming review of the Superannuation Act
Consumer Complaints			
<p>Internal complaints handling: Develop consistent complaints handling regulations or standards applicable to all regulated FIs (starting with BFI Act regulated entities) and including standards for reporting complaints data to regulators.</p>	BPNG, Insurance Commissioner	High	Short-term
<p>License condition for complaints handling: Include requirements for complaints</p>	BPNG, Insurance Commissioner	Medium	Medium-term

RECOMMENDATION	RESPONSIBLE AGENCY	PRIORITY	TIMEFRAME ¹⁷
handling in license conditions for regulated entities.			
Publication of complaints data: Consider publishing complaints data by provider name and theme on regulators’ website.	BPNG, Insurance Commissioner.	Low	Long-term
Consequential amendments: Develop consequential amendments to sector-specific provisions concerning complaints handling.	Treasury, BPNG, Insurance Commissioner.	Low	Long-term
Interim EDR scheme: Designate BPNG as the interim EDR mechanism for consumers (pending selection of ongoing EDR option).	Treasury, BPNG, Insurance Commissioner.	High	Short-term
EDR/Financial Ombudsman: Develop options for a long-term PNG EDR/Financial Ombudsman mechanism with regard to international best practice and decide on preferred option.	Treasury, BPNG	High	Medium-term
Consequential amendments: Depending on the preferred EDR scheme model, make consequential amendments to the sector-specific provisions dealing with EDR schemes.	Treasury, BPNG	Medium	Long-term—in context of review of relevant Acts
Public awareness: Conduct public awareness campaigns about available EDR scheme(s) (including BPNG as the initial EDR provider and then the preferred long-term EDR scheme). CEFI could potentially be leveraged to assist with such campaigns.	BPNG, Insurance Commissioner, CEFI	High	Short-term

FINDINGS AND RECOMMENDATIONS

I. CONTEXT FOR FINANCIAL CONSUMER PROTECTION IN PAPUA NEW GUINEA

The Government of PNG (Gov PNG) has a commendable commitment to financial consumer protection (FCP). This is demonstrated by the inclusion of FCP as a key priority area in both the Financial Sector Development Strategy (FSDS)¹⁸ and the National Financial Inclusion Strategy 2016–2020 (NFIS),¹⁹ the establishment of the public and private sector Consumer Protection Working Group for the purposes of the NFIS, the activities of the Centre for Excellence in Financial Inclusion (CEFI), and by other initiatives. The FSDS describes the relevant priority as “*the strengthening of consumer protection in the financial sector*”.²⁰ A key priority area of the NFIS, too, is “*to introduce and implement a consumer protection framework for regulated financial institutions*”.²¹ Such a framework was described as one that promotes informed decision making through transparency, fair practices, and an effective complaint handling mechanism. The aim is to build trust and competition in the formal financial sector, thus helping PNG achieve its financial inclusion goals.

The Gov PNG’s focus on FCP is consistent with the international approach. As shown by the WBG 2017 *Global Financial Inclusion and Consumer Protection (FICP) Survey*,²² a legal framework for FCP exists in 121 of 124 jurisdictions surveyed. The most common approach is to have consumer protection provisions within broader financial sector laws (e.g. a banking law; present in 94 jurisdictions). The 2017 *Global FICP Survey* also shows that jurisdictions pursue various institutional arrangement models for FCP. The most common approach is an Integrated Sectoral Financial Sector Authority model, reported by 55 responding jurisdictions (45 percent). In this model, FCP supervision responsibilities fall under multiple financial sector authorities, each responsible for all aspects of supervision (e.g., prudential and FCP) for FIs operating within a given financial subsector (e.g., banking). Eighty-six of the relevant responding jurisdictions (75 percent) report having a specialized unit—dedicated to FCP—within an institution that has a broader remit; 17 jurisdictions (21 percent) report having established the unit since 2013. However, a sound FCP framework and an overall macroeconomic and financial stability are necessary preconditions for protecting consumer interests.

FCP is especially important where there is potential for rapid innovation in financial services and their delivery channels in countries like PNG. The use of new delivery channels for financial services and FinTech can help fulfil important financial inclusion objectives. However, these innovations may

¹⁸ Financial Sector Development Strategy, page 6, section 3.4.1.

¹⁹ National Financial Inclusion Strategy 2016–2020, Part II, section 4.

²⁰ Financial Sector Development Strategy, page 6.

²¹ National Financial Inclusion Strategy 2016–2020, page 4.

²² <https://openknowledge.worldbank.org/handle/10986/28998>.

add a further degree of complexity and risk for consumers with low levels of financial literacy, who often do not understand the products being offered. This is especially likely where new product types are clustered with other products such as with airtime products. Any new measures on FCP should therefore take these innovations into consideration.

Key features of PNG's retail regulated financial sector are as follows:

Banking and NBFIs (non-bank credit providers)

The banking sector in PNG comprises four commercial banks, with Bank of South Pacific having by far the largest market share among the banks.²³ The NBFi sector comprises licensed financial institutions such as microbanks and finance companies, and savings & loan societies (S&LSs). According to the PNG Federation of Savings and Loan Societies, following a significant period of consolidation, most S&LSs are based in Port Moresby and were established by government or private sector organizations for the benefit of their employees. There are also a small number of societies in provinces outside Port Moresby, including some with rural membership.

The main retail account and loan offerings by commercial banks and microbanks include transaction and savings accounts, term deposits, secured and unsecured personal loans (including auto loans), and term loans for small enterprises. Commercial banks also offer home loans, but these make up a small portion of their portfolio. Retail credit cards have very limited penetration, and are offered only by one bank. The bulk of personal lending provided to individuals by licensed finance companies is by way of short-term loans to salaried employees, which are repayable through direct salary deductions. They also offer longer-term personal loans as well as unsecured and secured business loans. The only deposit product that licensed finance companies can offer to retail customers is a term deposit. S&LSs typically offer retail general and special purpose savings accounts, personal loans (secured wholly or at least partially by deposited savings) and home loans. Credit facilities are also offered by major retailers to their customers, including in the form of payday loans.²⁴

The unregulated payday lending sector in PNG is significant, with repayments being deducted directly from the borrower's salary. Licensed financial institutions are a source of credit for only a

²³ As in its last annual report BSP reported a 55% share of total loans made by PNG banks—Bank of South Pacific Ltd Annual Report 2016, page 14. (ANZ is reportedly second as of March 2017, at around 26% - www.businessadvantagepng.com/how-does-bsp-measure-up-to-australian-banks/). In 2016, BSP also reported holding a 53% share of total banking assets in PNG.

²⁴ <http://homecentres.brianbellonline.com/customer-credit/> and see also <http://www.courts.com.pg/services/>. The Review team was able to interview only one of these lenders, and their application form refers to the credit they provide as being 'consumer credit/hire-purchase'. However, the accompanying documentation that was made available for review seems to document the credit as a loan secured by a chattel mortgage. The provider staff interviewed could not otherwise confirm whether and how they comply with hire-purchase statutory requirements in their processes and documentation.

small portion of borrowing undertaken by individuals in PNG,²⁵ with a significant proportion being provided by unlicensed money lenders (both individuals and incorporated “finance companies”), with relatives and *wantoks* also being an important source of credit.²⁶ It was identified some years ago that one quarter of PNG individuals obtained credit from unlicensed moneylenders.²⁷ Official statistics are not available, but the mission team were told that the unregulated lending sector may range from 40–50 to approximately 280 registered businesses that offer short-term (payday) loans to government employees and to some private sector employees. These loans are repaid through deductions made directly by the employer from the borrower’s salary. For government employees, a fee of approximately 5 percent of the repayment amount is apparently payable to the relevant government ministry, and passed on to the borrower. As noted previously, while personal or payday lending rates in the formal sector appear to be in the range of 30-91 percent per year, unregulated lending at 20–50 percent per fortnight (i.e. 520–1,560 percent per year) has been reported.

There is also a widespread unregulated moneylending practice in PNG at extremely high rates of interest, which is not part of the abovementioned payday lending sector. For example, the mission team were told that it is common in Port Moresby for individuals (e.g. sole traders) to provide short term loans to the public at extremely high rates and fees.

Insurance

The life and general insurance markets are in their infancy in PNG, with available figures indicating extremely low levels of coverage.²⁸ The types of products offered to consumers include life insurance as well as loan protection, home and contents, motor vehicle, funeral cover, and medical insurance. There are four life insurance companies in PNG and 12–13 general insurers, although there are reports of only three being active and one being the subject of a winding up petition. One of the strategic objectives of the NFIS is that microinsurance should reach 1.5 million people.²⁹ Developments in the microinsurance sector, with family life and hospital cover microinsurance products being offered through mobile phones by Capital Life Insurance Limited, in partnership with BIMA and Digicel, are of interest.³⁰ Payments are made using Digicel prepaid airtime credit. Also, since 2015, the Life Insurance Corporation (PNG) Limited has been offering a microinsurance product to customers of the Women’s Micro Bank Limited.³¹

²⁵ National Financial Inclusion Strategy 2016-2020, pages 16-17.

²⁶ Typically, persons having a close social bond with the borrower.

²⁷ National Financial Inclusion Strategy 2016-2020, pages 16-17.

²⁸ Current statistics for life and general insurance were not available but the final draft of the PNG Financial Sector Regulatory Strategy Report indicates that the life insurance sector had assets of 437 million Kina (US\$182 million) as of December 31, 2014 (1.2% of financial sector assets) and the general insurance sector had assets of 963.3Kina (US\$371 million) as of 2011 (2.5% of financial sector assets).

²⁹ National Financial Inclusion Strategy 2016–2020, page 4.

³⁰ <https://www.familylifepng.com/> .

³¹ <http://ntilic.com.pg/meri-laip-insurans-plan/> .

Box 1: “BIMA” Branded “Family Life” Life Insurance and “Hausik” Hospitalization Insurance

The BIMA Family Life product was launched in PNG in July 2014, and the “Hausik” product in March 2015.

The Family Life policy offers three different tiers of cover, and provides both life and permanent disability cover. The Hausik policy also has three tiers of cover, and provides a fixed amount of money for each night spent in hospital. Details of the policies, and the terms and conditions, are available at <https://www.familylifepng.com/>. The target market is low-income clients, with around 90 percent of clients never having used insurance before.

As of October 17, 2017, approximately 500,000 BIMA branded policies had been issued, with approximately 215,000 policyholders and 350,000 active policies. The premium income at the time for both policies was around 15M Kina with a claims payout ratio of around 50 percent per year (as advised by the insurer).

The policies are distributed through three channels: field agents, a call centre that is reportedly one of the largest in PNG, and via a USSD menu on mobile phones. There are around 86 field agents and around 80 at the BIMA call center as of October 17, 2018.

Both policy types are renewable monthly, and paid for through Digicel mobile phone pre-paid or post-paid airtime in 20 monthly instalments, or one monthly deduction with a post-paid account in the case of the Hausik policy.

Source: <https://www.familylifepng.com/about-us> and BIMA and Capital Insurance interviews.

Another potentially unregulated area relates to the life “insurance” offered by at least one finance company under a self-insurance arrangement. This cover is not underwritten by a licensed life insurer. A direction was also issued in November 2000 by BPNG to S&LSs, prohibiting unlicensed insurance activities that were being carried on by some S&LSs.³² It is, however, unclear if—and to what extent—these activities are still taking place.

Payments

Although the PNG retail payments sector is still largely based on paper instruments (cash and cheques), a range of alternatives and facilities are available in the urban and peri-urban centers.³³

The country is developing an extended network of EFTPOS and ATM machines, which allow the usage of payment instruments like debit cards and a limited number of credit cards. Access to bank accounts is now also available through mobile phone applications (mobile banking), internet banking and telephone banking, while national remittance services are provided by banks, PostPNG, and other providers. Mobile banking is being used as a key mechanism to allow the financial inclusion of PNG’s

³² Direction 03/2000 Insurance Activity.

³³ See BPNG description of the PNG Payments System at <https://www.bankpng.gov.pg/payment-system/payment-system-in-png/>.

underbanked and unbanked population. Currently, there are limited e-wallet type services provided by mobile network operators (**MNOs**). However, this may change in the future as trust in the use of non-banks for payments purposes grows; the required Internet and telecommunications infrastructure develops; and agent networks can be realistically established with appropriate liquidity arrangements and other safeguards.³⁴

The availability of retail payments services may be expected to develop in the future, given the significant developments in PNG’s retail payments system infrastructure and regulatory framework. These developments have included the passage of the National Payments System Act 2013, the ongoing development of related regulations, and the introduction of interbank electronic clearing and settlement of payments offered via the Kina Automated Transfer System (KATS). Additionally, the authorities have progressed in shifting government payments on to an electronic basis and, most importantly, the BPNG has started developing a retail electronic payments system to facilitate interoperability among card networks and allow banks to be fully interoperable with other payment service providers and their customers.³⁵

Superannuation

As indicated in the FSDS, superannuation funds comprise a significant proportion of PNG’s financial sector, with total assets under management being over 25 percent of financial sector assets.³⁶ The two main funds—Nambawan Super Limited (NSL) and Nasfund—are reported as having over 90 percent of all superannuation funds under management. Contributions are compulsory for both employers and employees in firms of over 15 employees, with employers being required to contribute 8.4 percent and employees 6 percent of the employee’s pay.^{37,38}

Credit reporting

PNG’s commercial banks and licensed finance companies, as well as various microbanks and S&Ls, participate in a ‘Credit & Data Bureau’. The bureau also provides access to credit reports to other entities offering goods or services on credit, such as utility companies and telecommunications providers. The bureau’s consumer credit reports cover matters such as personal details, including those relating to employment, credit applications, and credit defaults. The credit providers met are generally of the view that the bureau arrangements have been working well from a lender perspective

³⁴ The leading example is the Digicel Cellmoni product, although this product seems to be available mainly to electronic resellers – see <https://www.digicelgroup.com/pg/en/mobile/plans-services/services/cellmoni.html> .

³⁵ Financial Sector Development Strategy, section 3.3.

³⁶ Financial Sector Development Strategy, section 2.1.3.

³⁷ Superannuation (General Provisions) Act, 2002, sections 76 and 77.

³⁸ Although this Report does not cover land trusts (which are not regulated by BPNG or any other financial sector regulator), it is worth noting that the Financial Sector Development Strategy indicates that they are growing in importance to the point where their assets under management have potential to be similar in size to those of superannuation funds and suggests that prudent management of the funds is essential (section 2.1.3, paragraph 26).

and have contributed to a reduction in loan defaults. The contractual Code of Conduct, which applies to the bureau and its members, is discussed in section II.

Tables 2 and 3 below provide an overview of the regulated financial sector in PNG and related key laws.

Table 2: Overview of the PNG Financial Sector as of December 31, 2016

INSTITUTION TYPE	NUMBER	REGULATOR / MINISTRY	KEY LAWS
Commercial banks	4	BPNG/Treasury	Banking and Financial Institutions Act
Licensed financial institutions including microbanks and finance companies (LFIs)	12	BPNG/Treasury	Banking and Financial Institutions Act
Savings & Loan Societies	22 ³⁹	BPNG/Treasury	Savings and Loan Society (Amendment) Act 1995 Savings & Loan Society Act 2015 (<i>not yet in force</i>)
Authorised Trustees (ATs)	4	BPNG/Treasury	Superannuation (General Provisions) Act 2000
Licensed investment managers (LIMs)	5	BPNG/Treasury	Superannuation (General Provisions) Act 2000
Licensed superannuation fund administrators (LFAs)	3	BPNG/Treasury	Superannuation (General Provisions) Act 2000
Life insurance companies (LICs)	4	BPNG/Treasury	Life insurance Act 200
Life insurance brokers (LIBs)	4	BPNG/Treasury	Life insurance Act 200
Authorised money changers	9	BPNG/Treasury	Central Banking Act 2000
Money remitters	1	BPNG/Treasury	Central Banking Act 2000
Foreign exchange dealers (AFEDs)	2	BPNG/Treasury	Central Bank Act
Authorised mobile network operator	1	BPNG/Treasury	Mobile Banking and Mobile Payments Services Regulation 2011

³⁹ The mission team was advised that as of October 10, 2017, there were 21 licensed savings & loan societies, of which 17 were operative.

General insurance companies (GICs)	12-13 ⁴⁰		Insurance Act 1995
General insurance brokers	6 -7		Insurance Act 1995
<i>Source—all FIs other than general insurers: BPNG Annual Report 2016—The Financial System Table, p. 21</i>			
<i>Source—data on general insurers: Insurance Commission</i>			

Table 3: Overview of Financial Sector Assets and Deposits as of December 31, 2016

Total assets (K billion)	47.9
Banking industry (%)	76%
Authorised Trustees (%)	23.3%
LICs (%)	0.8%
Total deposits (K billion)	27.9
Commercial banks (%)	94.9
LICs (%)	2.1
SLSs (%)	2.4
Microbanks	0.7
Total loans outstanding (K billion)	17.5
<i>Source—all FIs other than general insurers: BPNG Annual Report 2016—The Financial System Table, page 21. Data on general insurance assets not available.</i>	

⁴⁰ One general insurer is the subject of a winding up petition by the Insurance Commission. There are also anecdotal reports that only three general insurers are really active in PNG, with QBE being the largest.

II. LEGAL AND REGULATORY FRAMEWORK

Context

Good practice suggests that either a stand-alone legal framework for financial consumer protection (FCP) or FCP-specific provisions in the general legal framework, are necessary to effectively address consumer protection issues specific to the financial sector. Although there is no one-size-fits-all approach, and some countries continue to adopt only a general consumer protection law, a stand-alone FCP legal framework or specific FCP provisions in broader laws or regulations allow flexibility to address issues specific to the financial sector. This approach also facilitates complementarity with other regulatory measures that typically apply to the financial sector, such as prudential regulation.

The legal and regulatory framework should cover key consumer protection principles. There should be a focus on issues such as transparency and disclosure, business conduct, data protection, and recourse mechanisms. Further, there should be provisions addressing issues specific to different types of consumer products. They should include responsible lending requirements for credit products and provisions addressing the risks with payments products. These include the need to safeguard customer funds held in e-wallets issued by non-banks and to deal with agent-related risks, and unauthorized and mistaken transactions. The scope of the framework's application should also be clear (for example, the term "consumer" should be clearly defined).

Ideally, the legal and regulatory framework should apply to all FIs on a "level playing field" (activities) basis, rather than with reference to the type of institution. Such an approach can minimize the risk of regulatory arbitrage, and provide consistency and ease of compliance, and understanding by industry and consumers alike. Where protections for consumers are found in multiple laws (e.g. covering different sub-sectors), regulators should ensure they are comprehensive enough to cover all relevant consumer protection issues and harmonize their provisions to the greatest extent possible. This is so that consumers using different types of financial service products are protected based on similar consumer protection principles as far as appropriate.

Key Findings

Although important financial sector reforms have been made, or are proposed for PNG, the overall legal and regulatory framework for FCP requires significant attention given its fragmentation and significant gaps and overlaps. There are scattered consumer protection provisions in various financial sector laws, which are summarized in Annex 3. The key laws are described below.

Banking and NBFIs (non-bank credit providers)

The Banking and Financial Institutions Act 2000 (BFI Act) contains provisions concerning deposit advertisements; misleading advertising about banking business; false inducements to make deposits; secrecy of protected documents and information; and the use of the word “bank” and related terms. However, even these limited provisions would not cover the informal lending sector described above as they do not take deposits.

The new Savings and Loans Act 2015 (S&LS Act 2015), the commencement date for which has not yet been fixed, will replace the 1961 Savings and Loan Societies Act (S&LS Act 1961) as amended by the Savings and Loan Societies (Amendment) Act 1995. The new Act, similar to the current Act, will contain some similar provisions as those in the BFI Act, but will also have more detailed provisions dealing with the business of S&LSs, including their dealings with consumers in relation to deposits and loans. The new Act will also introduce some significant changes to the operation of S&LSs, including imposing stricter prudential requirements, while allowing them greater flexibility with regard to product offerings and administration (such as the ability to set their own interest rates) and allocating the registration function currently undertaken by BPNG to the Investment Promotion Authority (IPA). However, BPNG will retain its supervisory responsibilities for S&LSs.

The Hire-Purchase Act 1966 (HP Act) also contains important provisions relating to disclosure, terms charges, statutory rebates, repossessions, the reopening of inequitable transactions, and implied warranties and conditions. However, it is not clear who is responsible for the supervision of compliance with this Act, which is silent on the subject. Though reference to a “Minister” has been made, it is not clear as to which Minister is being referred to. Further, it is understood that there are two providers of credit for retail purchases in PNG. While the review team was able to meet one of these lenders, the staff interviewed could not confirm whether and how they comply with the HP Act requirements in their processes and documentation. The provider’s application form refers to the credit it provides as being ‘consumer credit/hire purchase’. However, the accompanying documentation that was made available for review seems to document the credit as a loan secured by a chattel mortgage and the team was not provided with, for example, a hire-purchase agreement/documentation comprising a summary of financial obligations as contemplated under the HP Act. It, therefore, could not be assessed whether they are in fact providing hire-purchase arrangements and, if so, the extent to which they comply with the HP Act. More generally, industry participants suggested that offerings of hire-purchase arrangements, such as in relation to vehicle finance, have declined significantly (e.g. replaced by chattel mortgage arrangements).

The abovementioned entities that provide consumer credit products in PNG, but do not take deposits, are not subject to any financial sector licensing or FCP requirements. These lenders are subject only to company and business name registration requirements with the IPA and the abovementioned legislation of general application such as the CA Act, the FT Act and the PC Act. In practice, however, this has not resulted in any substantive scrutiny of their activities.

Credit reporting

Credit reporting in PNG is also unregulated, although a contractual code of conduct applies. There is currently no PNG law covering the bureau or the handling of credit reporting information by the bureau or its members. However, there is a contractually binding Code of Conduct, which covers some of the matters suggested by international best practice for legislation. Examples include provisions requiring a borrower's consent to a member obtaining a credit report and provisions providing a consumer with some access and correction rights. The code also provides for a 'Complaints Committee' to decide on alleged breaches of the Code of Conduct, which can be accessed by individual complainants as well as bureau members. The code specifies timeframes and escalation arrangements for the committee and provides for the Chairman to have a casting vote. However, the Complaints Committee has apparently never been convened. It was further noted in discussions with institutions that when consumers raised issues of inaccurate information, they were generally referred to the institution that purportedly provided the information to get it rectified. By way of example, one institution noted that it receives several complaints a year from consumers regarding the accuracy of their credit files and that it always refers them to the relevant third-party institution. Importantly, the code does not contain restrictions on credit providers concerning the use and disclosure of the information provided by the bureau. The contractual nature of the code also means that consumers do not have any direct legal rights to enforce it.

Insurance

The Life Insurance Act 2000 (LI Act) includes the protection of policyholders in its statement of purposes and contains various provisions relating to FCP matters. They include provisions concerning licensing, disclosures, statutory funds, responsibility for agents, insurable interests, the duty of disclosure, a 14-day cooling off period, secrecy of protected documents and information, and use of words related to "*life insurance*"⁴¹. It is understood that the LI Act will be reviewed in 2018, although the status of the review is not known.

The Insurance Act 1995 (Insurance Act) makes provision for the licensing of businesses, which provide "*general insurance*". However, unlike the LI Act, the Insurance Act does not contain any statement of purpose, or a particular focus on the interests of policyholders. There is almost a complete lack of provisions designed to protect policyholders (for example, requiring that policy terms be provided in advance or concerning insurance contracts and there is no provision for a policyholder protection fund). There is provision for the establishment of an Insurance Complaints Tribunal, but it has never

⁴¹ Life Insurance Act 2000, see especially Parts III, XI and XV.

been established.⁴² Further, the policy framework provided for by the Act has never been promulgated by the Head of State.⁴³

The Financial Services Development Strategy proposes that responsibility for the supervision of the general insurance industry be transferred to BPNG.⁴⁴ It is also understood that the Insurance Act was reviewed and draft amendments and a final report were provided under a 2015 World Bank project for Technical Assistance to PNG concerning the Financial Services Development Strategy. It is unclear as to when, or if at all, these amendments will be introduced.

The Insurance Act review was undertaken following recommendations in the 2010 PNG FSP and in a 2007 ICCG review of the insurance industry. It focused on the Insurance Commissioner's functions and powers and prudential issues rather than matters of concern to policyholders (such as disclosures, claims management, and insurance contracts). Given the very small size of the general insurance market, such issues were not considered a priority at the time. Nevertheless, it is suggested that this approach should be reconsidered with a holistic review of the Insurance Act undertaken, which covers FCP issues as well as prudential matters.

There are also some gaps in the regulation of insurance activities. The mission team was made aware of:

- Loan protection insurance products provided at the risk of the lender rather than being underwritten by a licensed insurer;
- Medical and hospital insurance, which is simply regulated as "general insurance"; and
- Hospital cover being provided under a life insurance licence rather than a general insurance licence. It is understood that there is some ambiguity regarding the definitions of "life insurance" in the LI Act and "insurance" in the Insurance Acts, which can create confusion as to which is applicable.

Payments

The National Payments System Act 2013 (Payments Act), does not itself contain FCP provisions, but provides for BPNG to formulate general or specific rules or guidelines for the purposes of ensuring that users of payment services and instruments are treated fairly and transparently.⁴⁵ There is also provision for BPNG to make orders, guidelines, and take other relevant measures to protect users of

⁴² Insurance Act 1995, Part IX.

⁴³ Insurance Act 1995, s. 26.

⁴⁴ Financial Sector Development Strategy 2018–2030, paragraph 70.

⁴⁵ National Payments System Act 2013, s. 3.

electronic payment instruments.⁴⁶ Much of the proposed Payments Act consumer protection framework is contained in the draft *General Guidelines on Retail Payment Instruments* (2017).

Retail Payments Guidelines; the draft Oversight Regulation (2017) (**Oversight Regulation**); the draft Regulation on Electronic Funds Transfer (2017) (**EFT Regulation**); and the draft Regulation on Agents (2017) (**Agents Regulation**). It is understood that these regulations are close to finalization.

Also, relevant to the payments context, is the **Mobile Banking and Mobile Payments Services 2011 (Prudential Standard MBPS 1.2011)**, which was issued under s. 27 of the BFI Act (**Mobile Banking PS**). Importantly, the purpose of the Mobile Banking PS is stated to include “*consumer protection*”, and Boards of relevant banks and non-banks must have policies and procedures for consumer protection covering specified topics.⁴⁷ However, there are no requirements as to the detail that must be in place in these policies and procedures e.g. as to exactly the nature, timing, content, and format of the disclosures which must be made, how the information must be protected; or standardized complaints procedures. There are also no requirements relating to payments specific matters such as unauthorised and mistaken transactions or electronic contracts and disclosures. However, non-banks are required to match any e-money in circulation with an amount in a trust account with a commercial bank.⁴⁸ It should be noted that the Mobile Banking PS may be superseded by the abovementioned draft Guidelines and Regulations.

Superannuation

The Superannuation (General Provisions) Act 2000 (Superannuation Act) includes the protection of policyholders in its statement of purposes and contains various provisions relating to FCP matters (like the approach in the LI Act). The Act includes provisions on licensing; the responsibilities of trustees; statutory covenants; annual disclosures as to the performance of an ASF; investments; member contributions and the rights of members; secrecy of protected documents and information, and the use of words related to a “*superannuation fund*”.⁴⁹ There is also provision for the establishment of an industry complaints scheme, but it is understood that it has not been established.⁵⁰ The policy framework for the Superannuation Act is to be reviewed by a Task Force, with recommendations to be provided by no later than end-2019.⁵¹

Other laws and codes relevant to consumer protection

⁴⁶ National Payments System Act 2013, s. 26.

⁴⁷ Mobile Banking and Mobile Payments Services 2011 (Prudential Standard MBPS 1.2011), Part II, ss. 1 and 3 and Part III(1)(d).

⁴⁸ Mobile Banking and Mobile Payments Services 2011 (Prudential Standard MBPS 1.2011), Part III, s. 2(d).

⁴⁹ Superannuation (General Provisions) Act 2000, Parts 8,9 and 14–16.

⁵⁰ Superannuation (General Provisions) Act 2000, s. 49B.

⁵¹ National Sector Development Strategy 2018 – 2030, paragraphs 81– 83.

There are also other laws of general application, which have the potential to overlap with any FCP provisions that are in financial sector laws. They include:

- **The Independent Consumer and Competition Commission Act 2002 (ICCC Act)**, which provides the ICCC with broad consumer protection functions in relation to “services”.⁵² The term “services” is broadly defined and specifically includes banking, credit, and insurance services.⁵³ While there are only very limited specific consumer protection provisions applying to services, the ICCC Act provides for the declaration of entities to be “regulated”, which in turn can lead to the imposition of price controls and service standards. However, it is understood that these powers have not been exercised in relation to financial services. It is also understood that the ICCC is supportive of BPNG taking on responsibility for FCP.
- **The Personal Property Securities Act 2012**, which came into force in May 2016. The Act primarily relates to the formation and enforcement of security interests and the priority of competing interests. The enforcement provisions on Part VIII are of specific relevance to consumers. For example, there is a requirement for the secured party to act in a commercially reasonable manner when disposing of collateral. Further, the rights and remedies of the secured party on default are specified.⁵⁴
- **The Prices Regulation Act 2009 (PR Act)** provides for the setting of maximum prices of goods and services, which could include financial services.⁵⁵
- **The Commercial Advertisement (Protection of the Public) Act 1976 (CA Act)**, which is of general application and prohibits the publication of broadly defined “*unfair statements*”.⁵⁶
- **The Fairness of Transactions Act 1993 (FT Act)**, which is also of general application and provides for the review by the Court of “*unfair transactions*”.⁵⁷

There are some industry Codes of Conduct relevant to FCP, which are primarily focussed on the industry in question rather than the relationship with customers. They include:

- **The Savings and Loans Code of Conduct for Directors and Committee Members** developed by BPNG.

⁵² Independent Consumer and Competition Commission Act 2002, ss. 6 and 106.

⁵³ Independent Consumer and Competition Commission Act 2002, s. 44(1).

⁵⁴ Personal Property Securities Act 2012, ss. 100 and 96 respectively.

⁵⁵ Prices Regulation Act 2009, ss. 10 and 21.

⁵⁶ Commercial Advertisement (Protection of the Public) Act 1976, ss. 2 and 3.

⁵⁷ Fairness of Transactions Act 1993, s. 5

- The **Rules of the PNG Association of Finance Companies Inc**, which includes in its objectives the promotion of ethical standards but does not provide for any specific FCP provisions.
- The contractual **Code of Conduct for Credit and Data Bureau Limited's Operation in PNG**, which also applies in PNG. The code is discussed further above.

There is no overarching privacy or data protection law in PNG, although the Constitution protects the right to privacy.⁵⁸ There are scattered provisions concerning confidentiality and security of information in various laws. They include provisions in the Mobile Banking PS requiring Boards to have processes to protect the secrecy and confidentiality of customers' accounts. The proposed regulations and guidelines to be made under the Payments Act also cover these issues. Further, the common law applicable in PNG may require bankers to protect the confidentiality of customer information.

There is a need for overarching data protection laws or regulations, which reflect international best practice and apply on a uniform basis to different parts of the financial sector. This is especially important given that the volume, variety, and velocity of personal data, which is being collected and processed for traditional and innovative digital financial services, is continuously increasing, with a commensurate rise in confidentiality and security risks. It is also important given the variability and frequently wide scope of privacy consents and notifications currently included by institutions in PNG. Any new law or regulation should cover issues such as the collection, use and disclosure of personal information; the need for informed consent when data is to be used for purposes other than the original purpose of collection; access and correction rights; security standards; privacy policies and a prohibition on using data for discriminatory purposes.

The details of PNG's customary law have not been considered for the purposes of this review. At independence, the Constitution directed Parliament to enact a legislation that would declare and provide for the development of the underlying law of Papua New Guinea. This was a mandate to establish rules for the development of PNG's own common law.⁵⁹ Section 20 of the Constitution gave customary laws a central role in the country's legal system by making them part of the underlying law. The Underlying Law Act 2000, in turn, provides for a hierarchy of laws, placing customary law above the common law. Further, the Act limits the common law that may be used to the common law of England in force immediately before September 16, 1975. The Act's definition of customary law, on the other hand, is not similarly frozen in time and place.⁶⁰

⁵⁸ Constitution of Papua New Guinea, section 49.

⁵⁹ Ottley, Bruce L, "*Reconciling Modernity and Tradition: PNG's Underlying Law Act*" [2002] ALRCRefJl 5; (2002) 80 Australian Law Reform Commission Reform Journal 22.

⁶⁰ Underlying Law Act 2000, s. 6.

Conclusion on legal and regulatory framework

The abovementioned laws and codes in PNG do not provide complete coverage of the transparency and fair treatment, data protection, and consumer recourse provisions, which underpin international best practice. For example, there are no pre-contractual or contractual disclosure requirements for credit or debit products; there are very limited rules relating to confidentiality of customer information; the consumer complaints provisions are very limited and in some cases not implemented; there are no controls over debt collection practices; there is no law on general insurance contracts or the protection of policyholder interests; the current payments law does not cover either the general or payments-specific FCP issues; there is no provision requiring FIs to take responsibility for their agents (other than in relation to life insurance), and there is no overarching law relating to data protection (although there are a few rules relating to confidentiality of customer information in the payments context). Further details of these gaps are discussed in the sections below.

Against this background, possible options for a new FCP legal and regulatory framework have been considered. These are set out in Annex 1.

Recommendations

Regulations or prudential standards should be developed by BPNG under key financial sector-specific legislation to cover the FCP issues identified in this report. Short-term priority should be given to implementation of the recommendations concerning contractual disclosures, unfair terms and complaints handling, with other recommendations to follow. Given the likely complexity of the new requirements, there should be an appropriate transition period before industry is required to comply with them (e.g. 6–12 months). There should also be consultation with relevant stakeholder groups as the new rules are developed. This should include the new Regulators Advisory Committee provided for by the NFIS.⁶¹ The RAC consists of representatives of BPNG, the Insurance Regulatory Authority, the ICCG and the National Information and Communications Technology Authority. The recommendation that BPNG take the lead role in developing the FCP framework is consistent with the NFIS, which states that BPNG should have this role.⁶²

FCP rules that are applicable to the banking and NBFIs (lending) sectors should be of immediate priority. The banking and NBFIs sectors are considered to be the most important given the scale of these sectors, the number of consumers affected, the extent of concerns about market practices, and the current FCP laws and regulations, which are very limited.

⁶¹ National Financial Inclusion Strategy 2016–2020, page 40.

⁶² National Financial Inclusion Strategy 2016–2020, page 42.

For other sectors, key recommendations in this report should ideally be implemented through regulations made under the relevant Act, although the position is not entirely clear with the Insurance Act. Further,

- **Insurance sector:** The recommendations made in relation to the life insurance sector should also be considered in the upcoming review of the Life Insurance Act, which is understood to be proposed for 2018. The Insurance Act was the subject of a 2015-review of prudential provisions. It is suggested that when this review is reactivated, it should also take into account the FCP recommendations made in this report.
- **Payments sector:** FCP issues relevant to the payments sector should be considered in the context of the regulations and guidelines currently being prepared for the purposes of the Payments Act. It is understood that this is a high-priority exercise.
- **Superannuation sector:** The current review of the superannuation sector was a high-level one given the time available and a more detailed and overall review of FCP issues is required. It is considered to be a short-term priority given the scale of the superannuation sector. The results of the review could then be considered in the context of the upcoming policy review of the Superannuation Act, as provided for in the FSDS.⁶³

New FCP regulations and standards should apply in relation to a “consumer” who is either an individual or a small business. The term “small business” will need to be clearly defined. This is commonly done by reference to the assets or annual turnover or employees of the entity in question. It is considered that small businesses (such as sole traders and small partnership microenterprises) need to be covered on the basis that they are as likely as individuals engaging with FIs in a personal capacity to have an imbalance in bargaining power and information deficiencies compared to an FI. Further, it is likely to be very difficult to distinguish between a personal and a business purpose of a financial facility as far as individuals and microbusinesses are concerned.

Consumer lenders who do not take deposits should be required to be licensed or registered under the BFI Act. They should further be required to comply with any FCP provisions applicable to banks and finance companies, which take deposits. As mentioned above, this may be within the ambit of the power to make regulations prescribing specified financial activities as “*banking business*” for the purposes of the Act (see para. (b) of the definition in s. 3(1)).

A licence condition should also be imposed on FIs providing services to consumers, which require compliance with any FCP laws, regulations, standards or guidelines. This should allow BPNG to take

⁶³ Financial Sector Development Strategy 2018–2030, paragraphs 81– 83.

action in relation to the licence if this condition was breached, without necessarily having to take court action.

In the longer term, development of an overarching FCP law, which meets international best practice standards, should also be considered. Such a law should apply to all financial sector participants based on the activities they conduct (such as lending), rather than their institution type.

Consideration should be given to conducting a review of FCP issues relevant to the securities industry. Only those parts of the financial sector regulated by BPNG are covered in this review. As such, the securities sector is not within the scope of this review. This exclusion includes, for example, debt and equity investments, land trust schemes⁶⁴, and investment scams such as the pyramid/multilevel marketing schemes, which are reportedly widespread in PNG.⁶⁵ This proposal is made with regard to the desirability of having a “level playing field” in the FCP legal and regulatory framework.

In the longer term, consideration should be given to the continued relevance of the HP Act, based on an assessment of market practices. From the limited review undertaken for the purposes of this diagnostic, it is not entirely clear that hire-purchase products are still being offered in PNG (although it may be the case that they are still being offered but inconsistently with the HP Act). If the market assessment suggests that they are, then it is considered appropriate that there should be a review of the Act. In this context, consideration could be given to regulating retail providers of hire-purchase facilities in the same way as NBFIs which do not take deposits.

⁶⁴ It is understood that land trusts, which are not supervised by BPNG, are growing and approaching a similar size to superannuation funds.

⁶⁵ See, for example, the media report at <http://www.thenational.com.pg/glimpse-world-pyramid-schemes/>.

III. FCP SUPERVISION AND CAPACITY

Context

The mandate of the relevant financial consumer protection (FCP) supervisory authority should be clear and there should not be any overlaps or inconsistencies between institutional mandates. Regardless of the institutional arrangements for FCP, it is important that a FCP supervisory authority has a clear legal mandate to supervise FCP—one which does not conflict or overlap with the mandate of other authorities. Although in some countries, a general consumer protection agency is responsible for FCP, this is not a recommended approach. Such an agency may lack the necessary resources, skills, and expertise to be able to focus effectively on the financial sector given the breadth of its responsibilities.

Good practice suggests it is important to have either a specialized agency for FCP or a specialized unit within the overall financial industry supervisor. Regardless of the model chosen, it is important that such a unit/agency is independent from the relevant prudential supervision unit/agency, while coordinating and communicating appropriately with each other regarding their respective activities. The need for independence is driven by concerns related to a potential conflict of interest between prudential and market conduct/FCP oversight. Such a conflict may arise, for example, where measures to protect financial consumers could be detrimental to the profit of a financial institution or could potentially affect its soundness indirectly.

The consumer protection regulator's enforcement powers and tools, and the actions taken against FIs by the regulator, should create a credible threat of enforcement. In particular, the supervisor should have a wide range of civil and administrative enforcement powers, and supervisory tools, processes, and procedures specific to consumer protection.

Box 2: International Examples of Financial Consumer Protection Supervisory Arrangements

There is no single model of institutional arrangement for FCP supervision that is optimal in all countries. Regardless of the model, it is important that there is a balanced allocation of resources between consumer protection and the prudential supervisory authorities (or respective departments, if these two functions are under the same authority).

When a single authority (e.g., a central bank) covers both consumer protection and prudential regulation and supervision, the two functions should be distinct and at similar hierarchical levels, with preferably different reporting lines. These arrangements can minimize potential conflicts of interest and imbalance in decision making and resource allocation, while also allowing staff specialization for greater effectiveness. Such a structure has been adopted in many countries. Some examples are provided below:

- **Armenia:** In Armenia, the Consumer Protection Department was initially established as a division within the Financial System Stability and Development Department but later it transitioned into being a separate department.⁶⁶
- **Brazil:** The Central Bank of Brazil, when creating the Conduct Supervision Department in 2013, placed it at the same hierarchical level as the prudential supervision departments.
- **France:** In 2010, the banking and insurance supervision authorities were merged into a single independent institution within Banque de France, the Banking Commission. Within this institution, a separate department for supervision of business conduct was created, which was hierarchically equivalent to the prudential supervision departments and reported directly to the Secretary General of the Commission.⁶⁷
- **Georgia:** In 2017, a new Consumer Protection Department was created within the Central Bank of Georgia, reporting directly to the Governor so as to ensure its independence.⁶⁸
- **Malaysia:** FCP is a policy priority of Bank Negara Malaysia (BNM), as demonstrated by the establishment of a separate Consumer and Market Department within BNM.⁶⁹ The department is responsible for the formulation of FCP policy and regulation, supervision of a wide range of financial institutions from an FCP perspective and consumer education activities. Consumer complaints are dealt with by the Ombudsman for Financial Services, which is a non-profit organization established by BNM.⁷⁰
- **Peru:** In Peru, a Consumer Protection Unit was created in 2005 as an internal unit within a broader Department. However, it was legally structured as a “unit” and lacked the legal protections provided to deputy superintendencies within the Superintendence.⁷¹ Following increasing concerns about conflicts of interests, the Consumer Protection Unit was re-structured as deputy superintendency at the same organizational level as others.
- **Philippines:** The Financial Consumer Protection Department in Banko Sentral Ng Pilipinas (BSP) reports to the Deputy Governor responsible for the Supervision and Examination Sector, and is separate from the supervisory departments.⁷² The department’s core functions include policy initiation, market conduct regulation, complaints handling, and financial education.⁷³
- **Portugal:** In Portugal, the Banking Conduct Supervision unit was first created within the Banking Supervision Department in 2007. Over time, the unit was provided with clear, specific functions, and responsibilities separate from prudential supervision. In addition, even though it was within the Banking Supervision Department, to avoid conflicts of interests, the deputy director of the Banking Conduct Supervision unit reported directly to the Vice Governor of the Banco de Portugal, bypassing the director of the Banking Supervision Department. The unit became an

⁶⁶ J. Chien, *Establishing a Financial Consumer Protection Supervision Department—Key Observations and Lessons Learned in Five Case Study Countries*, 2014.

⁶⁷ See Organigram, available at https://acpr.banque-france.fr/fileadmin/user_upload/acp/L_ACP/Organisation/201703-Organigramme-acpr-fr.pdf.

⁶⁸ See Organigram, available at https://www.nbg.gov.ge/uploads/structure/2014/2017/f/struktura_eng.pdf.

⁶⁹ http://www.bnm.gov.my/documents/2017/BNM_Org_Structure_03102017_en.pdf.

⁷⁰ <http://www.ofs.org.my/en/>.

⁷¹ J. Chien, *Establishing a Financial Consumer Protection Supervision Department—Key Observations and Lessons Learned in Five Case Study Countries*, 2014.

⁷² http://www.bsp.gov.ph/about/org_ses.asp.

⁷³ http://www.bsp.gov.ph/about/advocacies_fin_fcag.asp.

autonomous, stand-alone department in 2011 when the Supervision Department was split into Prudential Supervision and Banking Conduct Supervision.⁷⁴

Key Findings

BPNG has an implicit consumer protection mandate under the Central Banking Act 2000 (CBA) as well as specific functions under other Acts. The objectives of BPNG under the CBA include, in summary, the formulation of financial regulation and prudential standards to ensure financial system stability and the promotion of an efficient national and international payments system.⁷⁵ Under its related functions, BPNG may “*regulate banking, credit and other financial services as empowered by this Act or any other law of the Independent State of Papua New Guinea*”.⁷⁶ BPNG also has express functions and powers under specific laws, including the BFI Act⁷⁷, the LI Act⁷⁸, the Payments Act⁷⁹, and the Superannuation Act⁸⁰. It is considered that these provisions might be relied on for the purposes of BPNG supervising new FCP provisions. Further details of these provisions are in Annex 2.

The Insurance Commissioner does not have either an implicit or explicit mandate covering FCP matters. Unlike the LI Act, the Insurance Act does not contain any statement of purpose, or indeed a focus on the interests of policyholders. Further, the policy framework provided for by s. 26 has never been promulgated by the Head of State. Also, there is almost a complete lack of FCP provisions designed to protect policyholders. Further details of this Act, which is under review as noted above, are in Annex 3.

The Insurance Commissioner has very limited resources to supervise any new FCP framework, which might be developed. They have only five active supervisory staff and on-site reviews have only commenced in the last few years. Although it is understood that a capacity-building program was undertaken around 2014, it only related to prudential matters rather than policyholder concerns (given the small size of the market). Against this background, the FSDS recommends for responsibility for the supervision of the general insurance industry to be transferred to BPNG.⁸¹ BPNG would thus become responsible for both the LI Act and the Insurance Act.

⁷⁴ J. Chien, *Establishing a Financial Consumer Protection Supervision Department—Key Observations and Lessons Learned in Five Case Study Countries*, 2013.

⁷⁵ Central Banking Act 2000, s. 7.

⁷⁶ Central Banking Act 2000, s. 8(1)(c).

⁷⁷ Banking and Financial Institutions Act 2000, s. 5.

⁷⁸ Life Insurance Act 2000, s. 12.

⁷⁹ National Payments System Act 2013, s. 3.

⁸⁰ Superannuation (General Provisions) Act 2000, s. 7.

⁸¹ Financial Sector Development Strategy 2018–2030, paragraph 70.

The ICCC also has an FCP mandate, but limited capacity or resources to fulfil it. The ICCC Act provides for the ICCC to have consumer protection functions in relation to “services”. The term “services” is broadly defined and specifically includes banking, credit, and insurance services.⁸² The ICCC is the subject of the *Consumer and Competition Framework Review: Public Report and Recommendations* published in February 2017 for public comment (**CCF Review**).⁸³ Recommendation 53 of the CCF Review is to the effect that “financial services” should not be exempted from PNG’s general consumer protection laws. However, this approach is not consistent with aspects of the FSDS, which recognize the ICCC’s limited capacity to address issues specific to the financial sector.⁸⁴ Further, it is understood from mission meetings that the ICCC does not have the resources to handle FCP matters, especially given its very broad mandate under the ICCC Act.

The role of the Centre for Excellence in Financial Inclusion (CEFI) is also mentioned for completeness. CEFI is an incorporated association described as “the industry apex organization for coordinating, advocating and monitoring all financial inclusion activities in PNG”.⁸⁵ It was launched by the Prime Minister in 2013 and has been endorsed by NEC. It works in collaboration with BPNG, the Departments of Finance, Treasury and National Planning and Monitoring, industry and technical, and development partners. CEFI does not have an explicit regulatory or supervisory role, although it appears to be involved in policy development. The FSDS further proposes that it plays a role in channelling consumer complaints to the appropriate enforcement agencies (see below in Part IV).⁸⁶

If BPNG is to be responsible for supervision of a new FCP legal and regulatory framework, then its FCP capacity and resources will need to be enhanced. Further, an FCP-focussed supervisory structure and process should be developed. Given the limited FCP provisions at present, BPNG has understandably focussed on prudential regulation and supervision. At present, there is no separate FCP supervisory unit or department within BPNG. Separation from prudential supervision is desirable because of the potential conflicts of interest between prudential and FCP supervisory functions. Further, consumer protection and prudential supervision require different types of supervisory profiles, skills and approaches, with the latter focusing more on quantitative skills and analysis of an institution’s financial soundness, and the former on qualitative skills and assessment of how an institution deals with consumers.

Recommendations

⁸² Independent Consumer and Competition Commission Act 2002, ss. 6, 44 and 106.

⁸³ It is understood the final version of the CCF Review is under preparation and, when completed, will be submitted to the National Executive Council for approval. In the meantime, work is underway on the preparation of a National Competition Policy, with support from the Asian Development Bank.

⁸⁴ Financial Sector Development Strategy, paragraphs 5 and 54

⁸⁵ <http://www.thecefi.org/about/overview> .

⁸⁶ See <http://www.thecefi.org/about/stakeholders> .

BPNG should be solely responsible for supervision of the FCP legal and regulatory framework relating to the banking, NBFI, insurance, payments and superannuation sectors. If this recommendation is accepted, the ICCA Act should be amended in the longer term so that the consumer protection provisions do not apply to financial services. Consequential amendments would also need to be made to the Insurance Act. These recommendations would make best use of BPNG’s financial sector expertise and minimize the risk of overlapping mandates and regulatory frameworks, with all the resulting inefficiencies and confusion for industry and consumers. They are also consistent with the NFIS, which states that BPNG should take the lead in developing the FCP framework.⁸⁷ It is also to be noted that BPNG is the only regulator, which could realistically be responsible for FCP in the relevant sectors, as it is the regulator for all of them (other than general insurance, which is proposed to be transferred to BPNG⁸⁸).

In the longer term, consideration should also be given to amending the BPNG Act to provide BPNG with an explicit FCP mandate. The amendment should make it clear that BPNG’s functions include the protection of both individual and small business consumers of all types of financial products and services. This mandate should apply on a “level playing field” basis to all types of entities regulated by BPNG.

BPNG’s expertise in relation to FCP supervision should be deepened along with developing the new FCP legal and regulatory framework. Apart from well-developed supervisory manuals, there is also a need for staff to use many of the specific tools relevant to this area (such as mystery shopping, customer focus groups and surveys, review of advertising materials and a systematic analysis of customer complaints).

Options should be developed for creating a BPNG department with specific responsibility for supervision of the FCP legal and regulatory framework, and with capacity to oversee innovations in financial services provided to consumers. It is beyond the scope of this report to consider all such options, but it is recommended that they be developed as a matter of high priority. In relation to innovations in the financial sector, it is noted that several regulators have introduced formal “regulatory sandboxes” to help them work with industry, and especially on innovations in financial products and services, and their providers. Put simply, a regulatory sandbox is usually a “safe house” where pilots of specified types of innovative financial products and services can take place with the support of financial sector regulators.⁸⁹

⁸⁷ National Financial Inclusion Strategy 2016–2020, page 42.

⁸⁸ Financial Sector Development Strategy 2018–2030, paragraph 70.

⁸⁹ Many countries have established such sandboxes, with 2016 being an especially busy year. Relevant countries include Abu Dhabi, Australia, Indonesia, Malaysia, Singapore, Thailand, the United Kingdom and the United States of America. The form and approach in each country varies but there appears to be an international trend for regulators to establish rule-based “regulatory sandboxes” to support technological innovations.

There should also be a mechanism for close consultation and collaboration between all relevant regulators on FCP related policy, regulatory, and supervisory matters, such as an MoU. It is especially important that there be such arrangements between BPNG and ICCC while ICCC still has a statutory role in relation to consumer protection in the financial sector. An MoU between BPNG and the Insurance Commissioner is also highly desirable, unless the general insurance supervision function is to be transferred to BPNG in the short term. Consideration might also be given to an MoU between BPNG and the PNG Securities Commission. An MoU between relevant regulators should clearly state the respective roles and provide for regular liaison meetings; consultation on shared policy and regulatory issues; sharing of information on matters of common interest (subject to obligations of confidentiality and security); cooperation in relation to compliance and enforcement matters as necessary, and exchange of information about systemic complaints issues and complaints data. There should also be provision for the establishment of joint task forces on appropriate matters and coordination of operational matters such as on-site supervision visits and relevant media releases. The MoU should be regularly reviewed and amended as necessary. Such MoUs could exist in addition to the proposed Financial Services Council to be established under the FSDS.

IV. TRANSPARENCY AND FAIR TREATMENT

Context

Proportionate disclosure requirements can help foster a more informed consumer marketplace and facilitate financial inclusion. Disclosure requirements should focus both on provision of specific/individualized information at the pre-contractual, contractual, and post-contractual stages of a financial institution's dealings with a consumer and on disclosures in sales and advertising materials. It is important that disclosure requirements are proportionate in terms of reflecting the risks of the relevant activity, the literacy/capability level of the relevant consumers, and do not impose compliance costs that outweigh their intended benefits.

Disclosures can also enable product comparisons and encourage competition. The focus should be on disclosures, which reflect key information, are easily understandable, and for pre-contractual disclosures, are comparable between providers. This is especially important for consumers with low levels of financial capability and in relation to innovative financial services (such as mobile money).

Potential differences in the nature and method of delivery of digital financial services such as payment products and services should also be considered in developing disclosure requirements. For example, there should be flexibility to allow for electronic contracts and disclosures. Disclosure requirements should allow for delivery of information to consumers through a variety of channels (such as mobile communications, websites, call centers, ATMs, and agents) while also ensuring that necessary information is still made available to consumers effectively. Further, there should be provision for applications and supporting documents to be provided by consumers electronically and for contracts to be established electronically.

A further key consumer protection concern is that financial institutions and their staff, and other intermediaries, do not engage in unfair business practices. The aim is to ensure that at all stages of the relationship with consumers, FIs treat consumers fairly and avoid abusive or otherwise inappropriate business conduct. Specific issues in this context include ensuring that FIs do not include unfair terms in their contracts; undertake proper training and screening of agents, retail sales officers and other intermediaries so that they are competent to meet FCP and fair business requirements; do not engage in misleading and deceptive conduct, high-pressure sales and discrimination during the sales process (including through their agents); appropriately address conflicts of interest that may arise in processes affecting consumers; ensure that advice, recommendations or offerings of financial products to consumers are suitable for those consumers' circumstances; do not inappropriately limit consumers' ability to cancel a financial product or switch to another financial product; protect consumers' funds and other assets from risks of internal or external fraud and misuse and address

such risks appropriately if they eventuate; and do not engage in abusive or unfair debt collection practices.

There is also a need to ensure that features of specific types of products are considered in developing fair treatment and business conduct standards. For example, crucial consumer protection issues for credit products include ensuring that credit providers engage in responsible lending and take reasonable measures to determine affordability of credit they offer to consumers; that they do not make inappropriate unsolicited offers for credit (such as by sending consumers direct marketing offers for 'pre-approved' credit or sending credit cards to consumers who have not requested them); that they do not charge unfair fees, or unfairly retain interest, on early repayment of a loan; and that they do not charge excessive default costs or engage in inappropriate enforcement conduct when consumers go into arrears on their loans. For deposit accounts, key concerns include ensuring that consumers are not inappropriately charged maintenance fees on inactive accounts; that automatic overdraft facilities (with associated fees and charges) are not applied to accounts without consumers' agreement; and that anti-competitive fees are not applied on account closures. For term deposits, key issues are that providers should not impose unfair fees or inappropriate restrictions on early withdrawal and that consumers are clearly notified of the applicable interest rate on any roll-over of the term deposit. For payment products and services, crucial consumer protection issues include ensuring that there is interoperability between providers; that consumers' funds are safeguarded regardless of whether a bank or a non-bank is providing the service and that there are fair rules for dealing with mistaken and unauthorized transactions. For insurance products, prompt processing of claims is a key concern as is the need for fair rules on how and when a claim may be made. For superannuation products, access to the relevant fund is critical.

Box 3: Key Facts Statements

A 'key facts statement' (KFS) refers to a standardized one or two-page document written in easy-to-read print and plain language, which describes key aspects of a financial product. A KFS does not replace the terms and conditions for a financial product or service, but is rather required to be given to a consumer prior to starting a contractual relationship with a financial institution (e.g. opening an account or signing a loan agreement).

A KFS should aim to help consumers better understand the key features, terms and conditions of the product or service. It should provide them with useful information in the process of acquiring a financial product, and during the life of the financial product. The standardization of the KFS across providers allows for comparability of similar product offers from different providers.

The KFS should clearly indicate all, or at least key fees and charges related to a financial product,

and inform consumers about their basic rights, including the resolution mechanisms available in the event of a complaint. For example, for consumer loans, a KFS should include: (1) total amount of the loan; (2) amounts of monthly payments; (3) final maturity of the loan; (4) total amount of payments to be made; (5) fees, including prepayment and overdue penalty fees, possible taxes for remittances, and any other charges that could be incurred; (6) any required deposits or advance payments; (7) if the interest rate is variable, the basis on which the rate varies; (8) any additional insurance that is required (such as personal mortgage insurance); (9) any prepayment penalty; and (10) if the credit is used to finance a product, the cash price of the product without financing charges.

In a jurisdiction lacking such disclosure, KFSs could first be established for basic retail financial products such as personal loans and basic savings accounts, and later for more complex products such as mortgage loans, life insurance policies, and collective investment funds. Development of a KFS should include appropriate consultation and testing with industry and consumer stakeholders. It is also important that KFSs be available at least in the language(s) most spoken in the location where the financial product is offered. Finally, it is important that adequate supervisory mechanisms (e.g., targeted visits, ad hoc or systematic reviews, mystery shopping) are established to ensure that providers give and explain KFS to their customers at required stages.

Several countries have implemented KFSs and equivalent documents. In the context of consumer credit these include, for example, Australia’s “Key Facts Sheets” for home loans and credit cards; Peru’s “Hoja Resumen” (Summary Sheet) for consumer loans; the Philippines’ “Disclosure Statement”; Rwanda’s “Key Facts Statement” for fixed term consumer loans; and South Africa’s “Pre-Agreement Disclosure” for consumer credit products.

Key Findings

Cross-cutting issues — transparency:

There are currently few requirements to provide pre-contractual disclosures, such as in the form of summary disclosure documents, to assist consumers to compare and assess financial products, including with regard to cost. The FT Act contemplates that a court can find a transaction to be unfair if it was not entered into on equal footing, and information that affects the fairness of the transaction, was not disclosed to the disadvantaged party prior to the transaction or immediately after.⁹⁰ However, the Act does not provide any further detail regarding the kinds of disclosures that may be relevant in a consumer context and does not appear to have driven any specific pre-contractual disclosure practices in the financial sector. While, as discussed below, there are some very limited

⁹⁰ FT Act, s. 5.

financial product-specific requirements to provide terms and conditions, FIs are generally not subject to any financial sector-specific requirements to provide consumers with disclosures covering the costs and features of products that would facilitate assessment and comparison of products prior to contracting with a provider. In a credit context, the only legislative requirements in this regard seem to be found in the HP Act, which requires dealers to provide would-be hirers with a statement at least 24 hours before entering into an agreement that summarizes the financial obligations under a proposed agreement.⁹¹ However, as discussed above, it is not clear as to what extent the Act continues to be relevant to consumer credit activities in PNG and whether it is being followed or enforced even in the context of such activity.

There is also no available mechanism through which financial sector consumers can compare the price of common financial services (such as a fixed term consumer loan). Apart from disclosure requirements, regulators can assist consumers in comparing the price of products by developing price comparison websites, based on information to be provided by relevant FIs. These sites need to be carefully designed and are most effective when they enable consumers to easily search and compare standard, commonly available financial services. Various countries have such websites although in some cases they are provided by the private sector.⁹²

In the absence of regulatory requirements, FIs generally have not developed consistent practices to make available standardized summaries in relation to credit and non-credit financial products. In discussions with FIs, they consistently acknowledged the lack of uniform standards for pre-contractual disclosure, and expressed enthusiasm for introducing requirements for summary documents, viewing them as a way to increase consumer understanding about products and their rights and obligations. Institutions repeatedly noted such a lack of understanding, as demonstrated by the frequent need for extensive explanations by staff and by the lack of awareness about product costs and features being a significant cause of consumer complaints. Such documents could also encourage consumers to shop around, which does not appear to be a widespread practice at present.

There also do not appear to be obligations on FIs requiring advance notification of changes to terms and conditions or fees and charges and interest rates. One financial institution indicated that there were trade practice requirements of general applications requiring a month's notice of changes to prices, but it is not clear which provisions they were referring to. In the absence of any detailed requirements for advance notice of changes to product terms and pricing, FIs have adopted a range of approaches to making unilateral changes and generally do not seem to provide individual notice of such changes. For example, institutions variously advised, and indicated in their terms and conditions, that they may notify contractual changes through newspaper advertisements, by displaying notices

⁹¹ HP Act, s. 5 and Sch. 1, Form 1.

⁹² They include Australia, Canada, Hungary, Ireland, Malaysia, Mexico, Norway, and the United Kingdom.

at branches, by posting to consumers or in other ways that they deem appropriate. For example, one bank's terms and conditions state that a notice of change is "deemed" to come to a consumer's attention merely by being displayed in branches or advertised or notified in any other mode the bank deems fit. Even terms and conditions referring to the provision of individual notices sometimes reference this only as an option, rather than indicating that individual notice will, in fact, be provided for certain types of changes.

There are very limited requirements for contracts or other documentation to be provided in languages other than English. Further, the industry practice is generally to make documents available only in English. The HP Act gives hirers the right to request that prescribed documents (such as hire-purchase agreements and various notices and statements required under the Act) be translated into a "prescribed language", defined as "Tok Pisin and Hiri Motu".⁹³ Dealers must display conspicuous notices in those languages on their premises advising the public regarding such translation rights.⁹⁴ However, there do not appear to be any equivalent legal requirements applying to other financial products and services. Bank and non-bank lenders, for example, generally indicated that their credit terms and conditions and related documentation are prepared only in English, some suggesting that it is not necessary to do so in other languages because borrowers are usually educated and can read English. While one bank has translated its mobile money terms and conditions into the other official languages, it has not yet done so for its credit products. Some industry representatives raised the potential difficulty of translating technical concepts into Tok Pisin and Hiri Motu⁹⁵, but also acknowledged the importance of being able to describe and communicate relevant concepts particularly in Tok Pisin to facilitate consumer understanding. One bank noted that its staff sometimes has to explain technical credit product terms verbally to consumers in part due to a lack of understanding in English. An MFI acknowledged that non-English speaking consumers acquiring credit and deposit products need a great deal of assistance in understanding product terms (including through church and community groups).

Sector-specific issues – transparency:

Banking and NBFIs

There are only limited legal requirements for provision of terms and conditions and copies of consumer agreements are not always provided automatically to consumers. The ICC Act which, as

⁹³ HP Act, s. 52.

⁹⁴ HP Regulations, rr. 4 and 6.

⁹⁵ This view is consistent with the World Bank's experience with recent financial literacy surveys where there was difficulty in translating financial terms into Tok Pisin and in particular in Hiri Motu by local linguistic experts due to lack of vocabulary in local languages. A glossary of financial terms was developed to support the surveys. It would be useful to update this glossary to include any new financial services/products in PNG.

discussed above, would seem to apply to financial services, provides that “[t]he State recognizes that consumers, in their capacity as consumers, have the ...right to information”.⁹⁶ However, it is understood that there has not been any practical enforcement of consumer protection aspects of the Act, such as this generic right to information, with regard to financial services. The only specific contractual disclosure requirements with regard to credit products appear to be in the HP Act, which provides a hirer with the right to receive a copy of the agreement within 21 days of contract entry⁹⁷ (rather than in advance of contract formation).⁹⁸ Other than recent and forthcoming disclosure requirements in relation to payments products as discussed below, there do not currently appear to be any disclosure requirements that apply to deposit products. Only some FIs make terms and conditions for their credit and deposit products available before application (some include these on application forms) on their websites or in branches. Several credit providers indicated that they provide copies of the final loan agreement, including terms and conditions, only on loan disbursement and some do so only on request.

There are also limited obligations with regard to clarity and transparency of consumer agreements.

The only specific form and content requirements regarding credit products are also found in the HP Act, which specifies reasonably comprehensive content requirements for the agreement, including the inclusion of certain key information in tabular form, as well as requiring a printed agreement and related documents to be in a minimum font size.⁹⁹ Other than these requirements, there do not appear to be specific clarity or form and content requirements for terms and conditions. A sample of terms and conditions from various banks and finance companies suggests that credit and account terms and conditions tend to be difficult to read given factors such as small font sizes (often smaller than fonts in other accompanying documents, such as in application forms) and confusing layouts. For example, one bank’s terms and conditions are printed in a light red font, while a finance company’s terms and conditions are both printed in a small font and surrounded by design elements on the same page that further de-emphasize those terms (e.g. multicolored graphics that promote the product).

Interest rates and fees frequently do not appear to be disclosed in advance to consumers and there are currently no legal requirements to do so. For example, while a smaller bank displays rates and fees and charges for both credit and deposit products on its website, and indicated that it also does so in branches, a larger bank displays only rates and fees for deposit products and advises consumers that loan fee details are available on application. A finance company also noted that it does not generally advertise its rates and they advise consumers at the time of entering into the loan agreement. It was also suggested in discussions that the high interest rate environment in PNG is at

⁹⁶ ICC Act, s. 105(1)(d).

⁹⁷ HP Act, s. 10.

⁹⁸ HP Act, s. 7.

⁹⁹ HP Act, ss. 7 and 51.

least in part due to a lack of adequate disclosure of such rates. Although draft regulations under the new S&LS Act 2015 have not yet been made public, it is understood that they will contain specific requirements for S&LSs to publicize their interest rates (under the new regime, S&LSs will be permitted to apply market rates rather than being restricted to certain pre-approved rates). However, such requirements would obviously be confined to a small number of credit providers.

With very limited exceptions, there are also no requirements to disclose credit costs in a manner that would assist consumers to understand the cost of the credit, such as through an effective interest rate (EIR) or clear disclosures of interest and other charges. The HP Act mandates disclosure of details such as total charges and the difference between the cash price of the goods and the total amount payable under the hire-purchase agreement.¹⁰⁰ Credit providers are otherwise not subject to any specific disclosure requirements to inform consumers regarding the total cost of credit. It also does not appear to be consistent industry practice to disclose cost elements in a clear, easy to understand manner. For example, a major finance company discloses the loan amount and repayment amount without also disclosing itemized or total amounts for fees and interest charges.

There are currently no requirements requiring provision of periodic statements of account, although these are generally provided on request. Consumers appear to usually have a contractual right (though not mandated by any legislation) to receive statements on loans and accounts free of charge, and fees are charged for additional copies. However, banks and finance companies indicated that statements tend to be provided only on request rather than giving consumers an upfront choice as to these being delivered automatically by mail or through electronic channels. Practical limitations of the PNG mail system were noted, including the lack of postal addresses for many individuals. Respondents also suggested that while institutions agree to send statements to certain places, in practice such statements are frequently not delivered.

Also, currently there are no requirements for the provision of receipts or their form and content. Although a small sample of receipts were provided by FIs—and these seem reasonably comprehensive—the sample was not sufficient to determine likely current practices.

Insurance

There is no requirement for prior disclosure of policy terms and conditions in relation to either life or general insurance, and it does not seem to be a market practice. The exception on market practice is with regard to one provider of mobile phone-based microinsurance services, who makes policy terms available on the USSD platform on the customer's phone—or the internet—if the policyholder

¹⁰⁰ HP Act ss. 5 and 7.

has a smart phone (which is rare). However, even then, it is not clear if policyholders get the policy terms before they agree to take up the policy, which may be done via an agent or a call center. The only relevant requirement in the legal and regulatory framework is that general insurance policy terms must be issued within 30 days of inception of the insurance risk.¹⁰¹ The LI Act does not even have this requirement. This is a fundamental gap, as policyholders should be made aware of the terms of a policy, key exclusions, and the premium payable before they take up the policy. This is especially important in a market such as PNG's where there is limited financial capacity and a very small insurance market with a consequential need to build up trust in the use of such products.

Payments

The Payments Act does not cover disclosure issues but a detailed regime is provided for in the draft EFT Regulation. The draft contains requirements relating to disclosure of terms and conditions in an *“appropriate manner in websites, brochures and registration forms”*. These terms and conditions must be provided before a transaction occurs. Further, terms and conditions must not be amended except by prior notice, although the notice period is not specified. There is also provision for transaction receipts to be provided.¹⁰² The Mobile Banking PS also requires that a provider have policies in place that address mandatory disclosures of terms and conditions.

The abovementioned disclosure requirements could be enhanced. For example, there are no requirements for standardized forms of disclosure (such as Key Facts Statements); for disclosure of daily limits on transactions; for statements of account (although they may be provided on request and in some cases for a fee); and guidance as to the language in which disclosure documents are to be provided.

Superannuation

In the time available, there was no opportunity to undertake a full review of the FCP legal and regulatory framework applicable to superannuation products, or related unfair market practices. However, in a disclosure context, there is no obligation—under the Superannuation Act—to provide members with periodic statements as to their interest in the relevant ASF. There is a requirement to provide members with an annual statement of the financial and management performance of an ASF, but this does not extend to details of a member's individual entitlements.¹⁰³ However, it is understood that at least the two largest funds allow members to access their current balance via SMS.

¹⁰¹ Insurance Act, s. 31.

¹⁰² Draft Regulation on Electronic Funds Transfer, s. 6 and Part V.

¹⁰³ Superannuation (General Provisions) Act 2000, s. 56.

Nevertheless, it would be preferable if members were provided with at least an annual record that they could keep of their interest in an ASF.

Cross-cutting issues — fair treatment:

There are currently no financial-sector specific fair treatment requirements and only limited requirements under general law, which are not subject to current supervision. The FT Act permits a court to reopen a transaction that was not genuinely mutual or was manifestly unfair to a party. Transactions deemed to be so include: where a party did not understand the transaction and no genuine effort was made to explain it to them; a transaction where an ordinary person was not likely to exercise true freedom of choice; or a transaction in certain circumstances where a party lacked information affecting the fairness of the transaction; or where a person is affected by a significant mistake or miscalculation for which he or she could not reasonably be held responsible.¹⁰⁴ While allowing consumer recourse against an FI through the courts in the event of such a transaction, the Act does not otherwise prohibit particular unfair conduct. It is also understood that the FT Act has not been subject to regulatory supervision in a financial sector context. Although the ICCA Act contains some provisions dealing with consumer protection, these generally concern matters related to goods and do not address fair treatment issues in the services context. The CA Act prohibits unfair (defined as misleading or deceptive) statements but only in advertising.

There is currently no specific restriction on unfair contract terms. Financial service providers seem to include terms in their agreement that could result in significant unfairness to consumers. Examples of such terms include:

- **Imposition of new fees:** Provisions allowing new fees to be imposed as determined by the FI from time to time without any prior disclosure.
- **Unilateral changes:** Unlimited discretion to make unilateral changes to fees and rates without specifying any right for the consumer to withdraw from the product without penalties that would otherwise apply (e.g., in the case of a loan, on early repayment). As noted above, one bank's terms and conditions also state that a notice of change is "deemed" to come to a consumer's attention merely by being displayed in branches or advertised or notified in any other mode the bank deems fit.
- **Exclusions of liability and indemnities:** Very broad exclusions of liability, not expressly taking into account negligence or misconduct by the FI, and general indemnities for costs incurred by the FI (e.g. in connection with lending).

¹⁰⁴ Fairness of Transactions Act ss. 4 and 5.

- **Broad information consents:** Examples include providing that an FI may disclose a customer’s information for any reason that it “may deem” to be reasonable or necessary or provide general disclosure consent without sufficient details of circumstances in which it may occur.
- **Warranties as to understanding:** Requiring the consumer to warrant that they have not only read but also “understood” the terms and conditions.

Other product-specific examples are described below. It was also noted in industry discussions that there is a renewed focus by institutions in minimizing legal risk through terms and conditions in part due to increased litigiousness by consumers due to a deteriorating economy. This could lead to even more imbalance being introduced in standard terms and conditions.

Product suitability requirements are lacking. Financial service providers generally do not appear to be subject to specific obligations to ensure suitability of financial product-related advice and recommendations or ensure the appropriateness of product offerings. The necessity of such requirements varies depending on the complexity and risk of the products involved. Product-specific gaps are discussed below.

There is currently no regulation of staff and agent remuneration or incentives to ensure these do not encourage inappropriate conduct, such as aggressive sales practices, or give rise to conflicts of interest, such as promoting unsuitable products. For example, incentives are paid to some loan referrers, such as car dealers, and to some private sector employers for the purposes of introducing credit business, such as payday loans.

Some lenders, particularly, in the unregulated sector, charge apparently abusive interest rates. While interest rates in PNG generally appear to be high, the disparity between rates on deposits and on loans was noted repeatedly in discussions.¹⁰⁵ As noted above, rates on payday loans offered by banks and licensed finance companies range from 30-91 percent per year. Further, it seems that informal lenders charge interest rates that are extremely high, with rates of up to 1,560 percent per year having been noted.

There are no controls over debt collection practices and there are reports of extremely aggressive practices by unregulated lenders. Regulated institutions repeatedly noted that informal lenders engage in extremely abusive practices, including making threats, engaging in physical violence against debtors and their families, and damaging their property. However, even in a regulated context,

¹⁰⁵ Also see, for example, the discussion in National Research Institute, *Issues Paper #13: Bank interest rate margins in Papua New Guinea* (March 2015).

institutions may engage in unfair conduct. For example, while institutions offering payday loans claimed that they would pursue the employer rather than the borrower for overdue payments—if they confirm that these are due to a failure to remit salary deductions—they also indicated that consumers may continue to be pursued. One credit provider said that a consumer will continue to receive SMSs when an amount is overdue. It is also not clear if in such circumstances, a consumer would not be default listed with the bureau.

There are also no controls on the charging of excessive collection or enforcement expenses and default charges to debtors. Several lenders' terms and conditions include clauses giving them significant latitude to on-charge enforcement costs to debtors. Such costs are not limited to what is reasonable—for example, one bank provides for a full costs indemnity and a finance company states simply that additional charges will be added to the account. In addition, lenders can charge significant default fees and interest. For example, one lender charges a flat fee of K20 every fortnight a payday loan is overdue. There are other lenders who charge default interest at a 6 percent margin above the standard rate on home loans or at 35 percent per year on the amount overdue for payday loans.

Sector-specific issues — fair treatment:

Banking and NBFIs

There are currently no responsible lending requirements other than prudential requirements. Regulated lenders indicated that they require various levels of documentation, such as pay slips and bank statements, to assess affordability and similar documentation and information in a business context. Assessing business income tends to be a more difficult exercise, particularly for cash-based small businesses. Some lenders make use of debt serviceability ratios but there do not appear to be uniform approaches in this regard. In the context of salary-based lending, several lenders seemed to rely quite heavily on caps—the 50 percent cap imposed by legislation for salary-based lending to government employees, and an equivalent cap applied internally by some lenders (usually also at 50 percent) for salary-based lending to private sector employees. Some lenders indicated that the internal cap could be overridden by lending staff and some lenders noted that there is often a delay in government payrolls being updated with new salary deductions. Consequently, the current payroll information does not necessarily reflect a consumer's latest financial position and whether he or she will in fact be within the cap.

The need for affordability requirements in relation to credit products is becoming more pronounced given increasing levels of indebtedness and propensity to take up additional credit. Several institutions reported non-performing personal lending rates (reflecting the proportion of their portfolio that is overdue by 90 days) in the range of 7–10 percent. One institution reported that 24–

25 percent of its lending portfolio was overdue at least by 30 days. There may also be an increasing need for responsible lending to take into account loan suitability for purpose. Several industry participants noted that credit demand and the propensity to borrow for daily living needs, and to meet traditional obligations has increased significantly among the PNG public, while there continues to be a lack of savings habits. A significant portion of consumer lending appears to be for living or family expenses, such as school fees, health-related costs, funeral costs, etc. While some loan products seem intended for specific purposes only, it is not clear if lenders more generally consider the suitability of lending arrangements for specified needs.

Charging of significant fees in the event of loan prepayment seems to be a common practice in the market, potentially restricting mobility and resulting in unfair consumer outcomes. Approaches vary, for example, from a bank charging a flat fee calculated as three months' worth of interest to another institution prohibiting prepayment for the first six months of a loan term and then charging a flat fee of 2 percent or 4 percent of the outstanding balance, depending on the remaining term. Another example is of a major finance company requiring payment of all outstanding interest unless the borrower is refinancing with the same lender, in which case they are charged 10 percent of the remaining interest. Another finance company reported that 80 percent of its payday lending-customers refinance their existing loan with the same lender.

Payday loans repaid through salary deductions appear to be affected by a range of concerns. Some of these are also discussed to some extent elsewhere in the report. They include:

- Employers' delay or failure to remit salary deduction payments to lenders, including by prioritizing some lenders over others, which has potential to cause consumers to go into default and continued to be pursued by debt collection staff or agents.
- Employer records of existing deduction arrangements not being up-to-date, potentially causing lenders to approve new loans that exceed lending caps or, more generally, that are not affordable.
- Employers—and employer payroll staff—receiving incentives associated with payday lending that may be conducive to inappropriate conduct (such as prioritizing particular lenders' deductions and allowing marketing of payday lending to staff).

Interest is calculated on a flat basis by some lenders rather than on a reducing balance basis. A bank suggested that the market practice tends to be for banks to charge interest on a reducing daily balance basis and for NBFIs to do so on a flat basis. However, it seems that at least one bank continues to charge interest on a flat basis in relation to its payday lending product.

Unfair terms and conditions in credit and deposit account contracts also seem to be common.

Identified examples in the market include:

- **Restrictions on early repayment:** Contractual restrictions on making early repayments and interest rebates on early repayment being entirely at the discretion of the credit provider, with the consumer not having any entitlement to such rebates.
- **Broad events of default:** Onerous events of default, such as on a borrower's temporary suspension of employment, or resignation, regardless of whether repayments are still being made.
- **Broad loan recall and account closure rights:** A right to recall a loan at any time is the lender's absolute discretion (in addition to already having broad events of default allowing termination for breach) or a right to close an account with short notice at full discretion.
- **Assignment:** Unlimited rights for a lender to assign the consumer's debt to a third party.
- **Set-off:** Unlimited set-off rights for an account provider.
- **Broad enforcement rights:** Purporting to give credit providers unfettered consent to enter the borrower's premises to repossess goods and very broad contractual rights of seizure and sale, and in legal proceedings.
- **Early withdrawal fees:** One institution noted that it charges both a flat administration fee and a variable break fee in the event of early withdrawal of a term deposit, but it is not clear whether this is confined to actual loss.

There are currently no requirements governing the handling of inactive or dormant deposit accounts. Periodic maintenance fees are typically charged on accounts. Respondents further expressed concerns that many accounts in PNG are inactive and balances can be eroded by fees continuing to be charged by account providers. As a result, balances may also go into a negative amount. However, it is noted that some banks are moving away from maintenance fees to transaction-based fees.

There do not currently appear to be any restrictions or rules relating to inappropriate direct marketing or unsolicited offering of credit. Institutions indicated, for example, that FIs advertise offers of payday loans through SMS blasts targeting individual employers' employees, with one finance company noting that 80 percent of its payday lending-customers refinance their existing loans. The CA Act does not address such issues. Some terms and conditions for accounts also

contemplate the provision of incidental overdrafts (fees may apply at the discretion of the institution) without this being brought clearly to the account holder's attention.

Insurance

There are major gaps in the regulation of unfair practices. They include lack of provisions for either general or life insurance, which cover unfair terms or product suitability; there are no provisions requiring general insurers to take responsibility for staff, agents, and other intermediaries (and there are acknowledged problems with supervising agents in the field) and, in the case of general insurance, there are no provisions relating to insurance contracts.¹⁰⁶

There is also evidence of market practices that evoke concern. Particular reference is made to potentially unfair terms in policies, such as the following:

- **Life claims:** Require that a life claim be made within two months of death (this seems a very short period given the need to obtain a death certificate as well as deal with funeral arrangements and figure out how to make a claim).
- **Hospital claims:** Require a hospitalization claim to be made on the second night of admission to a hospital (again this seems an unreasonably short period).
- **Changes:** Allow policy terms to be changed without prior notice.
- **Acknowledgment regarding policy terms:** Contain an acknowledgment that the policyholder has read the terms and conditions of the policy on application, though it seems that they will not have received the policy at that time (if ever).
- **"Good health":** Include a confirmation that the insured is in "*good health*" at the time of registration without explaining what that term means.

Payments

The payments regulatory framework covers some, but not all of the fair practices issues mentioned above. In particular, there is no provision for unfair terms in contracts (although the limited FT Transactions Act provisions would apply) or product suitability requirements.

Superannuation

¹⁰⁶ In contrast see Part XV of the Life Insurance Act.

There is a major concern about employers not remitting superannuation contributions (made by either the employer or the employee) to the relevant superannuation fund. It is an offence under the Superannuation Act for an employer not to remit these contributions and an ASF may (but is not obliged to) require the payment of penal interest at the prescribed rate on any outstanding interest.¹⁰⁷ It is understood that BPNG is taking this issue very seriously and has a team of four officers seeking to address the issues.

Recommendations

Cross-cutting recommendations — transparency:

Short Term

In the short term, specific disclosure requirements should be introduced, prioritizing the following:

- **Overarching format and manner of disclosure requirements:** These provisions should mandate legibility, simple and clear expression, and language requirements for financial product-related documentation.
- **Pre-contractual disclosure:** Standardized KFS requirements and associated requirements, such as for disclosure of EIRs, should be introduced for common credit, deposit, and payments products to facilitate comparability. Priority should be given to products currently presenting the most pressing issues for consumers in the market, such as fixed term credit and certain consumer insurance policies. These should cover content (including local language requirements), format, manner and timing of such disclosures, and related obligations to explain their contents. Development of KFSs should be supported by appropriate consumer testing and industry consultations.
- **Contractual disclosures:** There should be requirements for disclosures of key terms and conditions, interest rates, and fees and charges for all consumer financial products and services as well as disclosure of information about key product features and risks and dispute resolution mechanisms. Such disclosures should be made available in languages other than English as appropriate (e.g. both Tok Pisin and Hiri Motu). These disclosures would be in addition to the KFSs recommended above. There should also be a requirement to ensure that the consumer is given a copy of the final contract. Both pre-contractual and contractual disclosures should, with appropriate agreement from the consumer, be permitted to be made electronically. Consideration should be given to additional product-specific disclosure requirements, targeting

¹⁰⁷ Superannuation (General Provisions) Act 2000, ss. 78 and 79.

issues unique to certain products (such as further payments-specific disclosure requirements in the draft Regulations).

- **Notices of change:** Requirements should be introduced mandating FIs to comply with minimum notification requirements (with regard to timing and manner of change, including individual notice) for existing customers when making unilateral changes to fees and charges and terms and conditions.

Medium to Long Term

The provision of statements of account for credit and deposit or transaction products should be mandated. These should cover form, content, and timing of free periodic statements of account, together with requirements for account balances to be provided on request.

Develop a price comparison website. This website should enable consumers to compare costs of common consumer products (starting with fixed term credit), based on information to be provided by relevant FIs.

Mandate minimum receipt requirements. Consideration should be given to development of minimum form and content requirement standards for transaction receipts. These new rules should take into account the extent to which it may be sufficient for information to be provided subsequently through a statement.

Ensure electronic disclosures and contracts are valid. Given the development of digital financial services, provision should be made allowing for electronic disclosures and contracts. It is especially important that required disclosure documents can be delivered electronically with the consumer's consent. Any such disclosure should, however, be in a form that the consumer can keep for future reference.

Cross-cutting recommendations — fair treatment

Short Term

In the short term, principles-based obligations should be introduced requiring that financial services providers treat consumers fairly and take reasonable steps to ensure product suitability. Specifically:

- **Fair treatment:** The principles-based fair treatment requirement should reflect concepts such as ensuring that consumers are dealt with fairly, honestly and without discrimination, and financial services are provided with due care, skill, and diligence.
- **Suitability:** The product suitability requirement should be along the lines that FIs should take reasonable steps (having regard to matters such as the complexity and risk of financial products) to ensure they only recommend financial products that are suitable for consumers, having regard to consumers' financial circumstances, needs, and objectives.

Specific restrictions and requirements to target key fair treatment issues should also be implemented, including:

- **A prohibition against unfair terms in standard consumer contracts:** Relevant provisions should define what is an “unfair term” (and include exclusions where appropriate, such as in relation to pricing), provide examples of terms, which are always considered to be unfair or which are more likely to be unfair and specify the consequences of a term being unfair, including what regulatory action may be taken.

It is also recommended that in the short term, BPNG and other relevant regulators, such as the Insurance Commissioner, conduct a review of a broad sample of consumer contracts for financial products (including loan, account, payment, and insurance product terms and conditions) with a view to assess the type and prevalence of unfair terms. Such a review would inform the initial formulation of unfair terms provisions, including examples that may be included in those provisions, and of any guidance to be issued alongside them to clarify the requirements for industry. A review of standard terms and conditions for unfair terms should also be part of the ongoing risk-based supervisory process and as part of any product approval process. However, it is not considered that BPNG should always “*approve*” the terms of new products and services, or review all current standard form contracts. This is because of BPNG’s resource constraints, the possibility that this would be seen as implicit approval of the product by BPNG and given the desirability of not stifling innovation, and with a view to not causing market distortions.

- **A prohibition against unfair sales and marketing practices:** Such practices may include mis-selling, misrepresentations, and aggressive high-pressure sales. These should be supplemented by requirements to have in place adequate, formal sales policies and procedures reflective of regulatory requirements, controls to ensure these are followed by staff and agents, and rules for direct marketing and restrictions on unsolicited product offers to prevent practices such as consumer harassment and pressure selling, and inappropriate use of consumer information.

- **Responsibility and liability requirements for staff and agents:** These should include requirements to ensure that staff and agents that undertake any activities impacting consumers have appropriate competence to undertake their roles and are appropriately trained (such as in relation to regulatory obligations and internal procedures, pricing, risks and features of products and ability to assess suitability of products, and provide any necessary explanations to consumers). They should also include specific requirements for FIs to have compensation policies for staff and agents that minimize conflicts of interest. These are likely to need to be supplemented by regulatory guidance rather than prescriptive provisions, and developed, following more extensive review of existing compensation practices. Financial service providers should be clearly liable for the actions and omissions of their agents as well as staff.

Medium to Long Term

In the medium term, additional restrictions on specific types of unfair business conduct should be introduced, including:

- **Additional specific requirements on product suitability.** Product-specific rules may need to be developed, following further analysis by BPNG and other regulators as to existing practices, including with regard to investment advice and unsolicited product offers.
- **Restrictions on anti-competitive product bundling and tying arrangements.** General restrictions could be included in the short term, but more targeted restrictions should reflect additional study by BPNG and other regulators as to existing practices.

Sector-specific recommendations — transparency and fair treatment:

Banking/NBFI sectors

In the short term, requirements should be introduced to make available standardized, comparable KFSs for fixed term credit products and deposit accounts. Consideration can then also be given in future to developing KFSs for continuing credit products, such as credit cards, particularly if they become more prevalent.

Requirements should also be introduced requiring provisions of periodic statement of loan and deposit accounts. Consumers should be given a choice as to whether these should be provided by mail or electronically, or be made available for collection or download where this is not practical for the consumer. The statements should show details of all debits and credits to deposit accounts and repayments and loan increases for credit accounts, as well as any interest paid or received, and fees charged.

The loan-related product suitability requirements recommended above should specifically require that lenders undertake affordability assessments. These should comprise reasonable inquiries and verification of information to facilitate an appropriate assessment that a loan will be affordable for a consumer so that they will be able to repay it without substantial hardship.

Bank and non-bank lenders and their debt collection agents should be required to comply with restrictions and requirements to address abusive debt collection practices. These should include, for example, prohibitions against making false statements or engaging in conduct that harasses or embarrasses debtors when undertaking debt collecting; requirements for credit providers to be responsible for the conduct of third party debt collectors as well as their own debt collection staff; and ensuring that debtors' personal information is kept confidential and not misused. Such measures will have greater impact if, as discussed above, they can be applied to the unregulated sector that appear to be engaging in the most egregious practices in this context.

Measures should be implemented to prevent consumer harm, specifically affecting borrowers of loans repaid through payroll deductions. Such measures include:

- Lenders being prohibited from providing credit repayable through payroll deductions unless they are appropriately licensed as recommended above and thus subject to FCP.
- Lenders receiving repayments through payroll deductions being prohibited from pursuing the debtor when a delay in repayments is due to the non-remittance of a salary deduction by the employer. Repayments deducted from the payroll but unremitted by the employer, without the consumer being at fault, should be deemed to have been made by the consumer. Lenders should be prohibited from undertaking any debt collection or enforcement action against the debtor or listing any default against the debtor with the bureau.

Fees and provider requirements that inhibit account or loan mobility should be restricted. These include ensuring that consumers have the right to close an account or prepay a loan at any time, without being subject to unreasonable procedural requirements, and restricting fees payable on account closure or loan prepayments to reasonable administrative costs and direct loss.

The recommendations concerning other fair treatment issues are as stated in the Cross-cutting recommendations. It needs to be considered how these can be most effectively achieved with regard to credit and deposit products given the gaps in the existing legal framework—relevant options are canvassed in Annex 1, with Option 3 potentially being the most realistic.

Insurance

In the short term, require that each potential policyholder be given a copy of the insurance policy before he or she takes up the product. In the case of policies applied for through a call center, this information could be explained orally, provided the call is recorded. The policy terms should include a clear statement of the risks covered, the premium, key exclusions, the term of the cover, how to make a claim, and how disputes are dealt with.

Consideration should be given to also requiring that a Key Facts Statement for common insurance products (such as motor vehicle and home contents insurance) be provided to potential policyholders when a policy is issued. A Key Facts Statement should be short (1–2 pages), simply expressed and standardized to enable comparability of products.

Payments

In the short term, requirements for a periodic statement of account should be introduced for payments products. At a minimum, consumers should be given access to such a statement, such as via email, website or SMS. The statement should show the details of all payment transactions in the relevant period, any interest paid or received, and any fees charged. This will provide a useful record of transactions for the consumer, enable the consumer to identify any potentially fraudulent transactions, and be helpful in dealing with any complaints.

It is also recommended that in the longer term there be a requirement to make available a standardized, comparable Key Facts Statement for common payments products (such as a transaction account with a debit card attached).

The recommendations concerning other fair treatment issues are as stated in the Cross-cutting recommendations. This might be achieved in the payments context by making rules under the Payments Act.

Superannuation

The following recommendations are made for consideration in the context of the upcoming review of the Superannuation Act:

- Make it mandatory for interest to be paid by an employer in relation to unremitted member contributions; and
- Require that members be provided with at least an annual record that they can keep of their interest in an ASF.

V. CONSUMER COMPLAINTS

Context

Effective consumer redress through internal dispute resolution (IDR) and EDR mechanisms is an essential element of an effective financial consumer protection (FCP) framework. Such systems should be transparent, accessible, and ideally free to the consumer. Effective redress assists in ensuring that substantive consumer protection measures are themselves effective (such as by resulting in mitigation and in compensation where appropriate and bringing about changes in behaviour and industry practice). Once financial institutions' IDR systems mature, ideally most financial consumer complaints would be successfully resolved without the need for recourse to an EDR scheme. Nevertheless, there remains a need for an independent EDR scheme for those complaints that are not resolved through the IDR system. Hence, it is important to address both IDR and EDR as interrelated elements of an effective end-to-end dispute resolution framework for financial consumer complaints.

Key Findings — Internal Complaints Handling

Cross-cutting issues:

There are only limited requirements regarding internal complaints handling processes and procedures for FIs. As discussed for specific sectors below, even where there are existing requirements for certain provider types, they are insufficiently rigorous to ensure adequate complaints handling and contain significant gaps in coverage. As also discussed below, complaints-handling approaches by FIs vary significantly and often appear to be slow and ineffective.

BPNG requires quarterly reporting on internal complaints handling by regulated institutions but it is not clear that such information is being leveraged fully for supervision. BPNG's report format does not mandate that financial institutions provide extensive details about individual complaints nor does it seem to require data on standardized indicators, such as regarding types of complaints. Such data could facilitate identification by BPNG of systemic complaints issues for supervisory purposes. BPNG indicated that when there increases in reported complaints are observed it raises these with institutions. It sometimes also queries the lack of resolution of an individual complaint based on reporting, such as where resolution appears to be significantly slow. However, such queries currently seem to be raised on a relatively ad hoc basis. For example, a major finance company noted that it reports its complaints as required but was not aware of BPNG having raised issues with it in the past because of such reporting.

Sector-specific issues:

Banking and NBFIs

Neither banks and finance companies nor S&LSs appear to be currently subject to specific internal complaints handling rules, and current complaints handling practice appear inadequate in many cases. Several banks and finance companies confirmed having internal complaints handling policies and processes. However, the banks' internal complaints handling processes, for example, were repeatedly noted by industry participants as lacking clarity, being slow, and making it difficult for consumers to have their complaints resolved. A major bank noted that deficiencies in its complaint handling had, in fact, caused consumers to complain repeatedly, with some threatening legal action due to a lack of resolution after long periods. A financial capability survey in two provinces also suggests some consumers' reluctance to attempt to have their complaints resolved, which may in part, be due to a lack of trust or awareness of complaints handling processes.¹⁰⁸

Channels for receiving complaints also vary among institutions and it is not always clear to consumers how they can submit a complaint. For example, one institution indicated that complaints are accepted in writing submitted at branches. This practice could discourage some consumers from making a complaint, due to factors such as physical location or low literacy. Frequently, documentation does not provide clear information about rights and processes for complaint submission.

Payments

Although the Payments Act does not have any provisions concerning internal complaints handling, there are high-level provisions in the Mobile Banking PS, and in draft regulations and guidelines. However, these provisions do not cover all payments products and they differ between themselves. The Mobile Banking requires PSPs to have in place policies that address complaint redressal mechanisms, including a help desk and a complaint register and escalation procedures for lodging complaints.¹⁰⁹ However, there is no guidance as to the detail that must be in those procedures and no requirements as to how a consumer is to be made aware of them. The draft EFT Regulations, in contrast, require customers to be informed of information relating to complaints, investigation, and

¹⁰⁸ Most participants in the survey that reported having had a dispute with an FI, indicated that they did not endeavour to resolve the issue with the financial institution and mostly did nothing to pursue it or only consulted family or friends—*Financial Inclusion and Financial Capability in Morobe and Madang Provinces, Papua New Guinea* (June 2015) 69.

¹⁰⁹ Mobile Banking and Mobile Payments Services Standard—MBPS 1/2011, Part III, 1(d).

resolution procedures in their terms and conditions¹¹⁰ and there are detailed provisions on the investigation and resolution procedure in Part VI. The draft ‘General Guidelines on Retail Payments Regulations’ simply requires an issuer to have general policies concerning complaints, refund demands and disputes, and to include details of how to lodge a complaint.¹¹¹

Insurance

The Insurance Act contains useful provisions concerning internal complaints procedures for general insurers, but compliance is not being actively supervised. A licensed insurer, broker, and loss adjuster must have written policies and procedures approved by the Insurance Commissioner. Further, at the time of policy issue and renewal, the insurer or broker must make information available to the policyholder as to how to lodge complaints and disputes, details of the procedures requiring them to be resolved within a maximum of 30 days, and details of the Insurance Complaints Tribunal, which has not been established (see below).¹¹² However, given the limited on-site supervision visits the Insurance Commission has been able to undertake, no data is available as to the extent of compliance.

The Life Insurance Act contains very limited provisions on members’ complaints. There is a requirement that a licence holder (an insurer but not a broker) provide a policyholder, on request, with “*approved*” policies and procedures concerning complaints and the resolution of disputes.¹¹³ However, it is not clear who should approve these policies and procedures. Importantly, there are also no requirements as to the nature of the policies and procedures, which should be followed, or any requirement for reporting complaints statistics to BPNG. Ideally, a policyholder, too, would be advised of complaints and disputes policies and procedures when they become a policyholder, and automatically, if they make a complaint or it is not resolved to their satisfaction.

Superannuation

The Superannuation Act provisions on members’ complaints are virtually identical to those in the LI Act.¹¹⁴ The same concerns, as mentioned above in relation to the LI Act, apply here.

Recommendations — Internal Complaints Handling

In the short term, consistent IDR requirements should be developed that apply to all FIs, commencing with entities regulated under the BFI Act as discussed above. These requirements should not only oblige institutions to have documented IDR procedures, but should also establish

¹¹⁰ Draft EFT Regulation, s. 21 (4)(f).

¹¹¹ Guidelines on Retail Payments Procedures, s. 9.2 (a) and (b) and 9.4(d).

¹¹² Insurance Act 1995, s. 47.

¹¹³ Life Insurance Act 2000, s. 60 (3)(d).

¹¹⁴ Superannuation (General Provisions) Act 2000, s. 56(3)(d).

detailed minimum standards for such procedures. Standards should cover matters such as ensuring that FIs appropriately raise awareness among consumers of complaint rights and processes; facilitate lodgment of complaints through all relevant channels (such as in writing, and via email, social media and telephone); and have investigation and resolution processes that are free, effective and timely, and keep consumers adequately informed. FIs should also be required to retain adequate complaints records to assist consideration of systemic complaints issues so that providers can use complaints data for their own internal risk-management and improvement. There should also be requirements for FIs to provide periodic reports on complaints to the relevant supervisor.

In the medium to longer term:

- **Requirements for having compliant IDR processes should be included in license conditions.** This would follow a similar approach to that already undertaken in relation to licensing for general insurers (although these are not currently enforced).
- **Standards should also be developed for more effective complaints reporting by FIs to BPNG (and other applicable regulators) and BPNG should consider publishing complaints data on its website.** There should be standardized reporting, which captures information that will be useful for BPNG's and other regulators' supervisory activities, including appropriate complaints classifications and indicators. Complaints information published by the regulators could include aggregated statistics and related analyses on consumer complaints organized by theme or financial institution that could increase awareness among consumers and have a deterrent effect on providers.¹¹⁵
- **There may also be a need for consequential amendments to the abovementioned sector-specific provisions dealing with complaints to ensure consistency with any new regulatory requirements.** These amendments might be considered in the context of the upcoming reviews of the relevant Acts, and in finalizing the draft payments related regulations and guidelines.

Key Findings — External Dispute Resolution

Cross-cutting issues:

Although provision has been made in legislation for some sector-specific EDR schemes, these are not in place and other sectors lack any scheme supported by a relevant legal or industry-based

¹¹⁵ Examples of regulators that have published such information include the Consumer Financial Protection Bureau in the USA, the Central Bank of Brazil and Mexico's Condusef.

framework. As discussed below, the EDR schemes provided for in general insurance and superannuation laws, have not yet been implemented.

Courts are not an effective EDR alternative and consumers do not currently have any other realistic option from any of the regulators, industry associations or any civil society body. Industry participants noted that consumers have increasingly sought redress against FIs through court proceedings, with such proceedings incurring significant legal costs and taking a long time to be resolved.

Some EDR options for PNG's financial sector have been raised in previous consultations between government, industry, and other stakeholders but further analysis and consideration of possible options is needed before a long-term approach is selected. Entities that have been identified as potentially undertaking an EDR-related role include:

- **BPNG:** One option is a dedicated financial consumer complaints department or 'bureau' to be established within BPNG. Potential advantages of having BPNG take on a more concrete EDR role include that it already has significant public visibility and trust; is respected by financial institutions; has internal financial sector expertise; and is already acting as the default EDR avenue for some consumers. Potential concerns with the EDR function being housed within the regulator include that resources could over time be diverted away from supervisory activities to complaints handling as complaint volumes grow; potential internal conflicts may arise between complaints handling and supervisory functions and priorities; and complaints handling requires certain dispute resolution skills and competencies that differ from the supervisory skill set of existing BPNG staff. Although it has also been suggested in discussions that having BPNG undertake this function could assist in leveraging complaints data for the purposes of supervision, the same result could be achieved through appropriate reporting lines between BPNG and any other designated EDR mechanism.
- **CEFI:** It has also been proposed that CEFI act as a conduit and clearing-house for consumer complaints by receiving complaints from financial consumers that have not been successfully resolved by their FI and referring them to the relevant regulator, such as BPNG, the PNG Securities Commission, and the Insurance Commissioner, for resolution. This approach could also work if CEFI were to refer complaints to a new EDR scheme rather than the regulators. An additional proposal raised in discussions was for CEFI to undertake an initial level of complaints mediation and, if this fails, to then pass on complaints to a relevant EDR mechanism. While CEFI is currently government-funded it is ultimately likely to be funded by the financial sector, although the proposed basis of this funding model does not yet seem to be confirmed. Potential advantages of CEFI undertaking this role include that it could combine its intended role of building public awareness of consumer protection rights and responsibilities with educating consumers about

complaint rights and processes, and it could leverage its internal financial sector expertise. However, potential concerns with having CEFI undertake a complaints-taking—and even more so a complaints mediation—role include: that it may face resourcing constraints in dealing with complaints volumes (including ensuring it has adequate number of staff skilled in individual dispute investigation and resolution); the potential complexity for consumers in having CEFI undertake the initial capture and investigation of a complaint for this to be then followed up and investigated further by a regulator or a separate EDR mechanism; lack of effective powers to resolve complaints; and, particularly, depending on how its industry and governance arrangements develop, a potential perception that it is not sufficiently independent.

- **Separate EDR mechanism:** Another potential approach raised in discussions involved establishing a new, separate entity, such as a financial sector ‘ombudsman’, to deal with individual complaints. Key issues with this option include: how to ensure that the new mechanism has sufficient, clear powers to investigate and resolve complaints and make binding decisions; the possible need for a legislative framework, which may not be realistic in the near future (although an appropriate legal underpinning would ultimately need to be ensured for any selected alternative); funding arrangements; and the need for the entity to be independent in practice and also viewed as independent and impartial by the public and by financial institutions.

Other EDR options that have been noted in discussions include:

- **ICCC:** Having a complaints resolution unit within the ICCC. However, the same limitations discussed with BPNG playing a similar role would apply with the additional difficulty of the ICCC not having financial sector expertise.
- **ADR Centre:** Leveraging the ‘National Court Alternative Dispute Resolution Centre’ that currently provides mediation services for court-ordered mediation. However, potential limitations with this option (given the current ADR Centre model) include: the need for a court to order the ADR Centre’s involvement; that the ADR Centre would not be free for consumers; and that it is not clear the ADR Centre has the required financial sector expertise.

Sector-specific issues:

Banking and NBFIs

There is no overall EDR scheme, which applies to banks and NBFIs. BPNG has been dealing with complaints from banks and NBFIs on an ad hoc basis, relying on its position as regulator and on moral suasion to seek such complaints resolved. However, it does not have the power to make binding decisions in relation to complaints and, if a complaint is not resolved, can only advise consumers to

seek redress through the courts. BPNG also does not currently have dedicated complaint handling officers and so must use supervisory resources. The Standard Rules under the S&LS Act 1995¹¹⁶ indicate that disputes between its members and an S&LS concerning the business of an S&LS shall be referred to the Registrar (currently the BPNG Governor) for a decision. The S&LS Act 2015 Act that is not yet in force contains a similar provision.¹¹⁷ However, it seems to be understood under the current Act that such disputes exclude complaints by members relating to the products offered by an S&LS.

Insurance

The Insurance Act provides for an Insurance Complaints Tribunal in relation to general insurance, but it has not been established. The statutory Insurance Complaints Tribunal is provided with functions *“to consider disputes and complaints referred to it by policyholders of general insurance policies and affected third parties.”*¹¹⁸ The Tribunal can make binding decisions and it is an offence not to comply. A party to a dispute (other than a licensed insurer, broker or loss adjuster) can appeal to the National Court. While these provisions are potentially very useful, the Tribunal has never been established.

There is no provision in the Life Insurance Act for an EDR scheme.

Payments

There is no overall EDR scheme, which applies in the payments context. However, the draft EFT Regulation requires the mandated complaints procedure to contain information relating to the customer’s right to refer a complaint to BPNG or a body authorized by BPNG, if the customer is not satisfied with the outcome of a complaint.¹¹⁹ BPNG does not have any power to make a binding decision on a complaint.

Superannuation

The Superannuation Act provides for the establishment of an industry complaints body, but it has not been established. In this regard, section 49B briefly provides that *“All ASFs shall subscribe to an industry funded complaints resolution mechanism to the satisfaction of the Central Bank”*.¹²⁰ Such a mechanism has not been established, and there do not seem to be any plans to do so.

¹¹⁶ Standard Rules for Savings and Loan Societies (S&LS Act 1995), s. 60.

¹¹⁷ S&LS Act 2015, s. 44.

¹¹⁸ Insurance Act 1995, Part IX and s. 53 as to functions.

¹¹⁹ Regulation on Electronic Funds Transfer, s. 31(1)(b).

¹²⁰ Superannuation (General Provision) Act 2000, s. 49B.

Recommendations — External Dispute Resolution

Cross-cutting issues:

Short Term

BPNG should be designated as the interim EDR mechanism for consumers through regulations and standards under sector-specific legislation to the extent feasible. This should be only an interim arrangement to ensure that complaints are being addressed as adequately as practicable as soon as possible, while any final EDR mechanism (whether within or separate from BPNG) is planned and ultimately implemented. The legislative basis for such implementation would be equivalent to that discussed above for implementing new FCP requirements. It will need to be considered carefully to what extent it will be possible to make complaints decisions legally binding on financial institutions (particularly in the absence of a statute providing it with relevant powers) rather than BPNG having to rely on its regulatory status and moral suasion more generally and accepting the potential limitations of such an approach. The potential issues with BPNG undertaking this role canvassed in the findings above will need to be addressed. These include, importantly, the need for BPNG to build internal staff capacity and related processes and procedures. Other relevant matters include avoiding potential conflicts with supervisory functions. This issue could, in part, be addressed through physical separation of the complaints team from the supervisory departments and by ensuring that supervisory resources are not diverted to the complaints function.

There will also be a need to increase consumer awareness of the relevant complaints mechanism. BPNG could leverage CEFI for this purpose, for example, through CEFI undertaking public awareness campaigns and referring individual complaints brought to their attention. However, careful consideration will need to be given to CEFI's role.

Financial service providers should be required to publicize to consumers their rights to refer complaints to EDR. This should include both obligations to build awareness through disclosure documents and service channels generally as well as ensuring that the availability of EDR is highlighted through each institution's IDR process.

Longer Term

The authorities should develop options for a long-term EDR approach and then decide on and implement the preferred option. Potential, realistic EDR options, such as those noted above, should be assessed with regard to international best practices for financial sector EDR. Once a decision is made on the preferred long-term EDR scheme, implementation should proceed with an appropriate transition from the interim EDR function.

Regardless of the selected EDR schemes, a key aspect of its implementation will be ensuring adequate access for consumers in more remote areas of PNG. One suggestion made in this regard was to leverage existing government arrangements, such as allowing complaints to be received and forwarded by provincial government officials based in relevant areas. Full use should also be made of other channels to lodge complaints, where they are available (such as telephone, email, social media and via branches).

In the longer term, and depending on the preferred EDR scheme model, there will be a need for consequential amendments to the sector-specific provisions dealing with external dispute resolution schemes. This includes amendments to the abovementioned provisions concerning the Insurance Complaints Tribunal and the proposed industry-funded superannuation scheme. Again, these amendments might be considered in the context of the upcoming reviews of the relevant Acts.

Box 4: Models of Alternative Dispute Resolution Schemes

The following are three key examples of types of alternative dispute resolution schemes that have been implemented in other jurisdictions:

- **Financial ombudsman established by financial services association:** Decisions by such an ombudsman may or may not be made binding under legislation but, if they are not, in order to be effective, their findings will be followed by financial institutions as part of a self-regulation model, such as by financial institutions committing contractually to be bound. In countries such as Germany, an industry-based ombudsman structure for each part of the financial sector has proven effective. In case of taking the approach that the ombudsman structure is established by the industry, attention should be paid to ensure that potential conflicts of interest are addressed as well as providing the scheme with effective powers. Also, consumer mistrust or skepticism regarding impartiality and fairness may need to be addressed (in substance as well as through appropriate information dissemination).
- **Statutory independent financial ombudsman:** Such an ombudsman would have functions and powers established under national laws, such as the power to make binding decisions. Its membership would be appointed by a relevant government authority. For example, the UK enacted legislation establishing an independent ombudsman institution, while Armenia legally requires financial institutions to join a central bank-approved ombudsman scheme with binding rules for all member institutions. A single statutory ombudsman would make it easier for consumers to identify to which agency they should submit their inquiries and complaints. While this model could have the advantage of allowing clearly defined objectives and legal mandate, it would require the investment of sufficient public resources.
- **Complaints handling structures established within the regulatory or supervisory agency:** A third model involves establishing of a complaints handling structure within a regulatory and supervisory agency. For example, in the case of Spain, there are complaints departments in the three financial sector regulators. While this model has the advantage of leveraging existing institutional arrangements, the challenge is to ensure independence of the function within such a structure, avoid conflicts of interest, allocate sufficient resources (without taking resources away from other supervisory functions, including with regard to consumer protection) and ensure that the function has sufficient and appropriate powers to deal with individual complaints effectively.

Annex 1: Possible Options for New FCP Legal and Regulatory Framework

OPTION	ADVANTAGES	POSSIBLE DISADVANTAGES	COMMENTS
<p>Option 1: An “activities based” overarching Financial Consumer Act (FCP Act), which meets international best practice standards. Such a law should apply to all financial sector participants based on the activities they conduct (such as lending), rather than their institution type.</p> <p>It would be important that the relevant supervisor (BPNG—see below) would have a clear FCP mandate, and adequate supervision and enforcement powers.</p> <p>Such a law could be framed on the basis that it states principles, which apply to all parts of the financial sector, with specific regulations applying as necessary to different products and services (e.g. deposits, credit, insurance and superannuation products).</p>	<p>The key advantages of such a law would be:</p> <ul style="list-style-type: none"> • Properly framed, it would provide a consistent, level playing field for all financial sector participants, with consequential benefits for competition. • Having a single “one-stop shop” for FCP legislation would provide clarity for supervisors, industry, and consumers as to the applicable law. • There is potential for lower compliance costs for industry if the same rules apply to all parts of the financial sector. • The law could be designed so that it is flexible enough to cover innovations in the financial sector. • The risks of regulatory arbitrage between different parts of the financial sector would be avoided. 	<p>Potential disadvantages are:</p> <ul style="list-style-type: none"> • Time—an FCP Act would take considerable time to design and draft for the PNG context and would need to be the subject of an extensive consultation process. There could also be delays in the Parliamentary process. • This would be a “big bang” approach, rather than an incremental approach to deal with key issues, which might be more realistic. • BPNG might not have the capacity and resources to supervise an overarching FCP Act. 	<p>Although an FCP Act may be a long-term objective, it is probably not realistic in the short term.</p>

<p>Option 2: Industry Code(s) of Conduct covering FCP issues. Such a code would be enforceable as a matter of contract by consumers and also by industry members in relation to each other, with regular compliance reports to BPNG.</p>	<ul style="list-style-type: none"> • An industry code may build trust and confidence in the relevant part of the financial sector, especially if it is in some way “endorsed” by BPNG. • Speed: A code would not need to go through Parliament and is likely to be relatively quick to prepare. • A code can be used to inform consumers of their rights and responsibilities and how to approach dealing with FIs. • There are numerous precedents, which could be referred to in the drafting process. They include, for example, Codes of Banking Practice in Australia, the Philippines, South Africa and Hong Kong. • There are also precedents for codes relating to Digital Financial Services, such as the GSMA Code of Conduct 	<ul style="list-style-type: none"> • A Code of Practice could only be enforced through the courts or a “naming and shaming” process. • Not all participants in an industry may agree to be bound by a code (e.g. unregulated lenders). • Financial sector industry associations are not well established in PNG, so they may not have the resources to undertake such a project. • Similarly, there does not appear to be a financial sector consumer association in PNG, which could be involved in the development of a code and be represented on its governing Board. • A code is not likely to cover the entire financial sector, so there would be different rules applying to different parts. 	<p>This approach is not recommended at this stage.</p>
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	for Mobile Money Providers ¹²¹ and the Better than Cash Alliance <i>Responsible Digital Payments Guidelines</i> . ¹²²	<ul style="list-style-type: none"> • Consumers may not, in fact, trust a code prepared by industry. 	
<p>Option 3: Prudential standards or regulations on FCP issues are developed under existing Acts on an incremental, prioritized, and consistent basis.</p> <p>For example, the BFI Act makes provision for prudential standards to be made by BPNG concerning the conduct of the affairs of an Authorized Institution “<i>with integrity, prudence and professional skill</i>” (ss.3 and 27).</p> <p>The LI Act and the Superannuation Act also provide for regulations to be made concerning consumer protection matters (ss. 50 and 46 respectively).</p> <p>The Insurance Act also has a general regulation making power, which might be relied on for FCP purposes</p>	<ul style="list-style-type: none"> • The highest priority FCP reforms could be implemented quickly (such as disclosures to consumer borrowers). • Consumers are more likely to trust reforms initiated by BPNG. 	<ul style="list-style-type: none"> • There is a risk that this approach would lead to inconsistencies between the regulations applicable to different parts of the financial sector. However, if BPNG is the only regulator involved, it should be possible to minimize this risk. • Local legal advice would be needed as to the power to make the necessary FCP reforms using regulations and prudential standards under existing laws. 	It is considered that this is the most realistic approach for the short term.

¹²¹ <https://www.gsma.com/mobilefordevelopment/programmes/mobile-money/policy-and-regulation/code-of-conduct> .

¹²² <https://www.betterthancash.org/tools-research/case-studies/responsible-digital-payments-guidelines> .

<p>(s. 75). However, this should be confirmed by local law advice.</p> <p>This approach could be supported by FCP related licence conditions, which could be required under s. 10(7) of the BFI Act.</p> <p>A related aspect of this option is to require all lenders, regardless of whether they take deposits, to be subject to a “light touch” registration or licensing scheme. This could be done by drafting regulations prescribing specified financial activities as “<i>banking business</i>” for purposes of the Act (see para. [b] of definition in s. 3[1]). The current capital requirements applicable to banks and licensed financial institutions could potentially be modified for non-deposit taking institutions under s. 53 (see also ss. 12 and Schedule 3). However, these issues would need to be subject to local law advice.</p>			
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Annex 2: List of Consulted Institutions

Public Sector
Bank of Papua New Guinea
Centre for Excellence in Financial Inclusion
Consultative Implementation and Monitoring Council
Department of Treasury
Independent Consumer and Competition Commission
Insurance Commissioner
Investment Promotion Authority
Financial Services Providers
ANZ Papua New Guinea
Bank South Pacific
BIMA PNG
Capital Insurance Group
Courts (PNG) Limited
Credit and Data Bureau
Fincorp Finance Corporation
Kina Bank
Moni Plus Ltd
Nambawan Super Ltd

Nationwide Microbank (MiBank)
PNG Microfinance Limited (PML)
QBE Insurance (PNG) Limited
Teachers Saving and Loan Society Limited
Westpac Bank
Mobile Network Operators
Bemobile/Vodafone
Industry Associations
PNG Federation of Savings and Loan Societies
Other Institutions
Allens Linklaters

Annex 3: Key FCP Laws and Regulations

Sector/Topic	Name of the Law/Regulations/ Framework/Guidelines	Responsible Institution	Topics Covered
Constitution of Papua New Guinea			The Constitution protects the right to privacy (section 49) but does not otherwise deal with matters relating to financial consumer protection (FCP).
General			
Bank of Papua New Guinea (BPNG)	Central Banking Act 2000 (BPNG Act)	BPNG	The objectives of BPNG include, in summary, the formulation of financial regulation and prudential standards to ensure financial system stability and the promotion of an efficient national and international payments system. (s.7). Under its related functions, BPNG may “ <i>regulate banking, credit and other financial services as empowered by this Act or any other law of the Independent State of Papua New Guinea</i> ”. (s. 8(1)(c)).
Independent Consumer and Competition Commission (ICCC)	Independent Consumer and Competition Commission Act 2002 (ICCC Act). <i>Note: The ICCC and the ICCC Act are the subject of the Consumer and Competition Framework Review: Public Report and Recommendations published in February 2017 for public comment. It is understood the final version of the CCF Review is under</i>	ICCC	The ICCC Act provides for the ICCC to have consumer protection functions in relation to “ <i>services</i> ” (ss.6 and 106). The term “ <i>services</i> ” is broadly defined and specifically includes banking, credit and insurance services (s. 44(1)). The consumer protection provisions in the ICCC Act primarily relate to goods, although there are some provisions, which relate to services. All relevant provisions apply to a “ <i>consumer</i> ”. This term is defined to include any person who acquires goods or services

Sector/Topic	Name of the Law/Regulations/ Framework/Guidelines	Responsible Institution	Topics Covered
	<p><i>preparation and, when completed, will be submitted to the National Executive Council for approval. In the meantime, work is underway on the preparation of a National Competition Policy, with support from the Asian Development Bank (ADB).</i></p>		<p>for “<i>personal, domestic or household use or consumption</i>” (s. 103).</p> <p>The ICCC Act FCP provisions, which relate to financial services, include those which provide a statement of consumer rights (s. 105) and which provide the ICCC with functions relating to price regulation, licensing and industry regulation, the protection of consumer’s interests and complaints (s. 6). Importantly, the ICCC Act provides for the declaration of entities to be “<i>regulated</i>”, which in turn can lead to the imposition of price controls and service standards.</p>
Fair transactions	<p>Fairness of Transactions Act 1993 (FT Act)</p>	<p>Not known</p>	<p>This is an Act of general application, which provides for the review by the Court of “<i>unfair transactions</i>” (s. 5). The concept of “<i>fairness</i>” under the Act is intended to be read liberally and relates to “<i>just and equitable distribution ... of the rights, privileges, advantages, benefits and duties, obligations and disadvantages of the transaction in proportion and relative to a party’s standing in or contribution to the transaction, and according to business principles and practices ...</i>” (s. 4)</p>
Commercial advertising	<p>Commercial Advertisement (Protection of the Public) Act 1976 (CA Act)</p>	<p>ICCC</p>	<p>This is an Act of general application, which prohibits the publication of “<i>unfair statements</i>” (s.3). This term is broadly defined and includes (in summary), materially untrue, inaccurate, misleading or unreasonable statements or representations (s.2).</p>

Sector/Topic	Name of the Law/Regulations/ Framework/Guidelines	Responsible Institution	Topics Covered
Prices regulation	Prices Regulation Act 2009 (PR Act)	ICCC	The PR Act provides for the setting of maximum prices of goods and services (as well as goods), which could include financial services (ss. 10 and 21).
Personal property securities	Personal Property Securities Act 2012 (PPSA)	IPA	The PPSA came into force in May 2016. The Act primarily relates to the formation and enforcement of security interests and the priority of competing interests. The enforcement provisions are provisions of specific relevance to consumers (Part VIII). For example, there is a requirement for the secured party to act in a commercially reasonable manner when disposing of collateral (s. 100) and the rights and remedies of the secured party on default are specified (s. 96).
Banking			
Entities conducting “banking business” as defined in s. 3 of the Banks and Financial Institutions Act 2000 (s.3). The definition is to the effect that the term means the business of taking money on deposit and using it to lend to others or to finance other activities of the business. The term also includes any other prescribed financial activities. Both traditional banks and deposit-taking finance companies are covered.	Banks and Financial Institutions Act 2000 (BFI Act)	BPNG	<p>The purpose of the BFI Act is stated to include (in summary) the promotion of the general stability of the financial system, the regulation of Authorized Institutions, the protection of depositors, the regulation of certain names and descriptions and related purposes (s.2). The functions of the Central Bank are also relevantly stated to include (in summary) the protection of depositors and sound practices by Authorized Institutions in relation to “<i>prudential matters</i>” (s.5).</p> <p>The BFI Act requires all entities that carry on “<i>banking business</i>” to be licensed, and the BPNG has broad</p>

Sector/Topic	Name of the Law/Regulations/ Framework/Guidelines	Responsible Institution	Topics Covered
			<p>powers to impose conditions and to revoke or suspend a licence (Part III).</p> <p>There are, however, only very limited provisions expressly relating to consumer protection matters (such as transparency, fair treatment, and consumer complaints). They include provisions concerning:</p> <ul style="list-style-type: none"> • Deposit and banking business advertising (ss. 49 to 51) • Restrictions on the use of “<i>protected information</i>” and “<i>protected documents</i>” (s.53) • Use of the word “<i>bank</i>” (or its derivatives) (s.63) <p>BPNG might, however, be able to exercise its powers to make prudential standards in relation to FCP matters. This is because such standards can be made in relation to “<i>prudential matters</i>” (s.27). This term is very broadly defined to include matters, which relate to the conduct of the affairs of an Authorized Institution in such a way “<i>not to cause or promote instability in the Papua New Guinea financial system</i>” and “<i>such that they are conducted with integrity, prudence and professional skill</i>” (s.3). It is also to be noted that BPNG’s functions expressly include encouraging and promoting sound practices in relation to “<i>prudential matters</i>” (s. 5 (3)(c)). There is also an</p>

Sector/Topic	Name of the Law/Regulations/ Framework/Guidelines	Responsible Institution	Topics Covered
			<p>express reference to the need for BPNG to “<i>promote, encourage and enforce proper standards of conduct and sound and prudent business practices including by the issue of prudential standards</i>” and to “<i>suppress or aid in suppressing illegal, dishonourable or improper practices</i>” (ss. 5(\$)(b) and (c)).</p> <p>Regulations can also be made under the BFI Act, which are required or necessary or convenient for the purposes of the Act (amongst other things) (s.53). Monetary amounts specified in the Schedules may also be amended by regulation (s.55).</p>
<p>Savings and Loan Societies</p>	<p>Savings and Loan Societies Act 1961 as amended by 1995 Act.</p> <p>Savings and Loan Societies Act 2015 (S&LSs Act 2015) is expected to commence soon by a commencement date that has not yet been set. Regulations are currently being developed under the Act.</p> <p><i>Note: Section references are to the S&LSs Act 2015, given that it is expected to commence soon.</i></p>	<p>BPNG</p>	<p>Relevant provisions of the S&LSs Act 2015 are similar to those in the BFI Act, except in that they concern S&LSs and their members rather than banks and their depositors. See the provisions concerning BPNG functions (s 5); Licensing (Part III); deposit advertising (Part VII); secrecy (Part VIII) and the use of the name “<i>savings and loan society</i>” or “<i>credit union</i>” (s. 46).</p>

Sector/Topic	Name of the Law/Regulations/ Framework/Guidelines	Responsible Institution	Topics Covered
Other Non-Bank Financial Institutions (NBFIs)			
NBFIs providing both credit and deposit products	BFI Act	As for BFI Act	As for BFI Act
Credit providers who do not also take deposits (including pay-day loans, informal money lending arrangements, providers of lease facilities and any other form of credit)	No regulation	No regulation	No regulation
Lease and factoring products	No regulation	No regulation	No regulation
Hire-purchase products	Hire-Purchase Act 1966 (HP Act)	Not clear—a reference to the “Minister” is made, but it is not clear which Minister is being referred to.	<p>Although it does not contain any sort of licensing or registration requirements for providers of hire-purchase products (HP products), the HP Act contains important provisions relating to:</p> <ul style="list-style-type: none"> - Disclosure of a summary of financial obligations (s.5); - Limits on hire-purchase agreements (HPAs) relating to household equipment (s.6) - The contents of an HPA (s. 8) - A statement of advice to hirers (s.10); - Warranties and conditions (s.11 and 12); - The documents to be provided to the hirer (ss.10 and 13); - Early completion (s. 17) - Voluntary returns (s. 18) - Repossessions (s 19 – 23) - Guarantees (ss. 24 and 25) - Insurance (ss. 26-20)

Sector/Topic	Name of the Law/Regulations/ Framework/Guidelines	Responsible Institution	Topics Covered
			<ul style="list-style-type: none"> - Limits on terms charges (ss. 30 – 31) - Minimum deposits (ss. 32- 36) - Reopening of inequitable transactions (s.37)
Payments			
<p>Providers of “payments services” and “payments instruments”.</p> <p>The term “payments instruments” is broadly defined to include services enabling cash deposits and withdrawals; “payment instruments”, money remittances and any other functions relating to the transfer of money. The term “payments instruments” is also broadly defined and includes cheques, drafts, money orders, credit, debit and stored-value cards, travellers’ cheques, and any other instrument or device to make payments or transmit money) (s. 2).</p>	<p>National Payments System Act 2013 (Payments Act)</p>	<p>BPNG</p>	<p>BPNG’s functions relevantly include ensuring that “Users of payments services and instruments are treated fairly and transparently” (s. 3(1)(b)).</p> <p>Payments service providers are also required to be licensed under the Payments Act, and the BPNG has broad powers to set licensing criteria and withdraw or suspend a licence (ss. 4 to 6). However, banks and other FIs providing payments services or issuing payments instruments under the BFI Act do not need to be licensed (s. 4(5)).</p> <p>There are also separate licensing provisions for the issue of electronic money by any entity other than a bank within the meaning of the BFI Act (s. 28).</p> <p>The Payments Act does not contain specific provisions concerning financial consumer protection matters (such as disclosure and transparency of terms and fees; safeguarding users’ funds; mistaken or unauthorised transactions; data protection or system security). There is, however, provision for orders, guidelines and other relevant measures to be made by</p>

Sector/Topic	Name of the Law/Regulations/ Framework/Guidelines	Responsible Institution	Topics Covered
			BPNG to protect users of electronic payment instruments (s.26).
Payments Act Regulations	Draft Payments Act Regulations and Guidelines	BPNG	<p>Much of the proposed Payments Act consumer protection framework is contained in the draft regulations listed below. It is understood that they are close to being finalized. They are:</p> <ul style="list-style-type: none"> - Draft General Guidelines on Retail Payment Instrument (2017) - Draft Oversight Regulation (2017) - Draft Regulation on Electronic Funds Transfer (2017) - Draft Regulation on Agents (2017)
<p>Providers of “mobile banking” services. The term “mobile banking” is defined, in summary, to cover the use of electronic equipment to transfer funds and the related term “mobile payment service” covers the use of such equipment to make payments (Part I s.4).</p>	<p>Mobile Banking and Mobile Payments Services 2011 (Prudential Standard MBPS 1.2011) (Mobile Banking PS).</p>	BPNG	<p>The Mobile Banking PS is issued under s. 27 of the BFI Act. Importantly, the purpose of the Mobile Banking PS is stated to include “consumer protection” (Part I, s.2).</p> <p>There is also a requirement for the Board of a bank or a non-bank providing mobile banking or mobile payments services to develop policies and procedures for “consumer protection” (Part II, ss. 1 and 3). These policies and procedures are required to address customer identification; secrecy and confidentiality; mandatory disclosures of terms and conditions, risks and responsibilities; a help desk; and a complaints register (Part III(1)(d)). However, there are no requirements as to the detail that must be in place in</p>

Sector/Topic	Name of the Law/Regulations/ Framework/Guidelines	Responsible Institution	Topics Covered
			<p>these policies and procedures e.g. as to exactly the nature, timing, content, and format of the disclosures, which must be made; how information must be protected; or standardized complaints procedures. There are also no requirements relating to matters such as unauthorised and mistaken transactions.</p> <p>Non-banks are also required to maintain an amount at least equivalent to e-money in circulation in a trust account with a commercial bank (Part III, s. 2(d)).</p> <p><i>Note: if the above mentioned Payments Act guidelines and regulations are issued or made, then the Mobile Banking PS would need to be significantly amended, or repealed given the overlap in many areas.</i></p>
Life Insurance			
<p>The term “<i>life insurance business</i>” is defined in the Life Insurance Act to refer, in broad terms, to the issuing and undertaking of liability under “life policies” (ss. 6 and the related definition of a “life policy” in s.3 of the Life Insurance Act 2000).</p>	<p>Life Insurance Act 2000 (LI Act). <i>Note: The mission team was told that the LIA is to be reviewed in 2018.</i></p>	BPNG	<p>The purposes of the LI Act include the prudent management of life insurers and life insurance agents (s.2). This focus on the interests of policyholders is reinforced by the statement of the functions of BPNG under the Act (s.12)).</p> <p>There is provision for the licensing of life insurers and brokers, and the BPNG has broad powers to impose conditions, revoke or suspend a licence (Part III). Life insurance agents are not required to be licensed or registered, but an insurer is required to ensure that</p>

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			<p>their agents meet fit and proper criteria, can perform their duties in a fit and proper manner, meet any prudential standards and have the necessary skill, experience, expertise and resources (s. 21).</p> <p>There are various provisions in the LIA relating to FCP matters. They include provisions concerning:</p> <ul style="list-style-type: none"> • Annual disclosure of information about the insurer to policyholders (s.60); • Statutory funds, with obligations to manage such a fund in the interests of policyholders (Part XII); • Life policies such as those concerning insurable interests; the insured’s duty of disclosure; interests on claims; a 14-day cooling off period; disclosure of reasons for non-acceptance; forfeiture of policies and protection of the interests of the insured (Part XV); • Secrecy of protected documents and information (s. 137); and • The use of words related to “<i>life insurance</i>” (s. 149). <p>Importantly, regulations may be made concerning “<i>trade practices, disclosure of information to policyholders, pricing or consumer protection matters</i>” to be complied with by licence holders or life insurance agents, amongst others (s. 50). BPNG also has power</p>

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			<p>to issue prudential standards in relation to “<i>prudential matters</i>”, which can include the conduct of business with “<i>integrity, prudence and professional skill</i>” (ss. 3 and 48). There is also a general power to make regulations (ss. 143).</p> <p>The BPNG also has powers to issue notices or directions and to obtain information (Parts IV and V).</p>
General Insurance			
<p>The term “<i>general insurance</i>” is broadly defined as follows in the Insurance Act 1995:</p> <p><i>““general insurance business” means—</i></p> <p><i>(a) the business of undertaking liability by way of insurance (including re-insurance) in respect of any loss or damage, including liability to pay damages or compensation, contingent on the happening of a specified event; and</i></p> <p><i>(b) any business incidental to general insurance,</i></p> <p><i>but does not include—</i></p>	<p>Insurance Act 1995 (Insurance Act).</p> <p><i>Note: it is understood the Insurance Act was recently reviewed and draft amendments have been prepared. However, the current status of these amendments is not known.</i></p>	<p>Insurance Commissioner (s.5)</p> <p><i>Note: The Financial Sector Development Strategy proposes that responsibility for the supervision of the general insurance industry be</i></p>	<p>The Insurance Act makes provision for the licensing of businesses, which provide “<i>general insurance</i>”.</p> <p>However, unlike the LI Act, the Insurance Act does not contain any statement of purpose, or indeed a particular focus on the interests of policyholders. Further, the policy framework provided for by s. 26 has never been promulgated by the Head of State. There is almost a complete lack of provisions designed to protect policyholders (for example requiring that policy terms be provided in advance; dealing with claims management; and the lack of provision for a policyholder protection fund). There is, however, a guarantee fund to be used for the purposes of discharging the liabilities of a licensed insurer or broker (s. 27). There is provision for the establishment of internal complaints processes approved by the Commissioner and for the establishment of an</p>

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<p>(c) life insurance business; and (d) accident insurance business undertaken solely in connection with life insurance business; and (e) any prescribed insurance business.</p>		<p>transferred to BPNG.¹²³</p>	<p>Insurance Complaints Tribunal, but it has never been established (Part IX).</p> <p>A further complication is that the general insurance industry is supervised by the Office of the Insurance Commissioner within the Department of Treasury, rather than by BPNG, which administers the LI Act. However, this may change under the proposal to transfer to BPNG responsibility for supervising the Insurance Act.</p>
Superannuation			
	<p>Superannuation (General Provisions) Act 2000 (Superannuation Act).</p> <p><i>Note: The policy framework for the Superannuation Act is to be reviewed by a Task Force, with recommendations to be provided by no later than end-2019.¹²⁴</i></p>	<p>BPNG</p>	<p>The purpose of the Superannuation Act is stated to include to “provide for the protection of the interests of the members of superannuation funds”. This focus on the interests of members is reinforced by the statement of the functions of BPNG under the Act (s.7). They are stated to include “promoting, encouraging and enforcing proper standards of conduct and sound and prudent business standards in the superannuation industry” and also “suppressing or aiding in the suppression of illegal or improper practices” (s. 7(1)(e) and (g)).</p> <p>There is provision for the licensing of trustees, investment managers and fund administrators, and</p>

¹²³ Financial Sector Development Strategy 2018–2030, paragraph 70.

¹²⁴ National Sector Development Strategy 2018–2030, paragraphs 81–83.

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			<p>BPNG has broad powers to impose conditions, revoke or suspend a licence (Part 3).</p> <p><i>Note: There are no requirements in PNG for financial planners or investment advisers who advise on superannuation matters to be licensed or trained or to avoid conflicts of interest.</i></p> <p>There are various provisions in the Superannuation Act relating to FCP matters. They include provisions concerning:</p> <ul style="list-style-type: none"> • The responsibilities of trustees (Part 8); • The establishment of an industry funded complaints resolution mechanism (s. 49B) <i>Note: Such a mechanism has not yet been established;</i> • The duties and liabilities of directors of licence holders (Part 9); • Annual disclosures as to the performance of an ASF (s. 56); • Statutory covenants to be complied with by ASFs (s. 72) • Investments by an ASF (including requirements for “arm’s length” investments (s. 74) • Prohibitions on provisions which indemnify or limit the liability of trustees (s.73);

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			<ul style="list-style-type: none"> • Restrictions on the activities of ASFs, including in relation to the lending of money (s. 75); • Member contributions (Part 14); • ASF transfer entitlements (Part 15); • Rights of members in relation to matters such as withdrawal of their entitlements and protection of their contributions (Part 16) • Secrecy of protected documents and information (s. 104); and • The use of words related to “<i>superannuation fund</i>” (s. 149). <p>Importantly, regulations may be made concerning “<i>trade practices, disclosure of information to members, pricing or consumer protection matters</i>” to be complied with by ASFs or licence holders, amongst others (s. 45). BPNG may also issue investment guidelines (s. 46). BPNG also has power to issue prudential standards in relation to “<i>prudential matters</i>”, which can include the conduct of business with “<i>integrity, prudence and professional skill</i>” (ss. 3 and 43). There is also a general power to make regulations (ss. 110).</p> <p>The BPNG also has powers to issue notices or directions and to obtain information (Parts 4 and 5).</p>