



ANNEX TO THE UPDATE REPORT ON THE WORK TO SUPPORT THE IMPLEMENTATION OF THE G20 HIGH-LEVEL PRINCIPLES ON FINANCIAL CONSUMER PROTECTION

G20/OECD TASK FORCE ON FINANCIAL CONSUMER PROTECTION

Principles 4, 6 and 9

SEPTEMBER 2013

As agreed in the Action Plan of the G20/OECD Task Force on Financial Consumer Protection, endorsed by the G20 in 2012, the Task Force has developed the first set of Effective Approaches dealing with three of the ten High-Level Principles on Financial Consumer Protection, endorsed by the G20 Leaders in 2011.

This document contains the Annex to accompany the Update Report. Following the finalisation of the first set of Effective Approaches by the G20/OECD Task Force on Financial Consumer Protection which was supported by the G20 Finance Ministers and Central Bank Governors at their meeting on 19-20 July, 2013, a more detailed annex providing information on national approaches was developed and is presented here. The update report and this Annex are submitted for consideration by the G20 Leaders.

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Introduction

As agreed in the Action Plan of the G20/OECD Task Force on Financial Consumer Protection, endorsed by the G20 in 2012, the Task Force has developed the first set of Effective Approaches dealing with three of the ten High-Level Principles on Financial Consumer Protection, endorsed by the G20 Leaders in 2011.

This detailed annex providing information on national approaches is made available to accompany the Update Report, in time for the G20 Leaders Summit in St. Petersburg, September 2013. The objective of the annex is to give the reader of the Update Report the opportunity to obtain a more detailed description of how the effective approaches identified in the Update Report are linked to country specific initiatives.

The annex is based on concrete examples of policy, regulatory and supervisory approaches as identified in a member's survey of the first set of three priority principles completed by 6 March 2013.¹

On 18 March 2013, with the first draft Summary Report on Effective Approaches, drafts for each of the principles, providing a non-exhaustive description of selected national examples, were circulated to Task Force Members, thereby forming the basis for the draft annex document. Following the Task Force meeting on 10 June and subsequent approval of the Summary Report, the update report was submitted for consideration by the G20 Finance Ministers and Central Bank Governors at their meeting on 19-20 July, 2013. The Ministers and Central Bank Governors supported the work done by the G20/OECD Task Force on Financial Consumer Protection on the first set of effective approaches to support the implementation of the G20 High-Level Principles on Financial Consumer Protection and look forward to their report on other principles in 2014. The draft annex document was further developed by the Secretariat and sent to the Vice Chairs and sub-groups for comment before being circulated, in July, to members for accuracy and to link, where possible, the description of effective approaches in the annex to the effective approaches within the Summary Report.

Included in each annex document, is a reference table, which provides 'a first cut' of matching the effective approaches in the Summary Report to those country specific practices as identified in the annex. It was decided to do this exercise for the effective approaches and not for the underlying assumptions. Also it was decided to include only the country specific effective approaches and not regional or sectoral approaches.

Because some of the effective approaches in the Summary Report are based on discussions undertaken within the sub-groups or the Task Force plenary sessions, they do not necessarily refer to information gathered from the survey.

¹ In addition, members who responded to the poll of priority themes for Principle 6 Responsible Business Conduct of Financial Services Providers and Authorised Agents, providing details of relevant legislation at the jurisdictional level, were requested to update this information. Members who completed the draft survey on Principle 4 Disclosure and Transparency were subsequently asked to study this version and to consider if any additional comments are relevant and to submit them as an additional response to the survey.

ANNEX I

PRINCIPLE 4. DISCLOSURE AND TRANSPARENCY

Reference Table

Corresponding paragraph in the relevant “Principle” section of the Update Report	Corresponding paragraph in the relevant “Principle” section of the Annex
Key Information about the Product or Service	
5	10, 19, 29, 32, 36, 65, 82, 89, 124, 135, 142, 175, 332, 254, 321, 322, 370, 403, 411, 428, 439, 443, 474.
6	2 , 5, 15, 17, 20, 23, 34, 25, 26, 29, 31, 34, 39, 50, 51, 53, 54, 63, 64, 70, 72, 84, 85, 87, 88, 90, 113, 117, 118, 119, 125, 127, 128, 138, 121, 144, 154, 156, 158, 163, 165, 174, 175, 181, 184, 185, 186, 208, 209, 213, 215, 241, 247, 264, 266, 272, 287, 288, 292, 267, 268, 324, 325, 326, 332, 418, 436, 412, 510, 522.
7	7, 17, 35, 38, 175, 195.
8	11, 29, 36, 175.
9	17, 113, 116, 117, 118, 119, 129, 222, 265, 286.
10	5, 9, 10, 18, 21, 29, 30, 33, 34, 37, 52, 55, 58, 60, 67, 86, 89, 105, 118, 124, 133, 135, 137, 162, 171, 175, 200, 210, 219, 195, 235, 238, 239, 240, 241, 245, 250, 254, 257, 268, 260, 261, 268, 271, 286, 291, 296, 297, 298, 299, 309, 315, 461.
11	129, 316.
12	34, 37, 180, 308.
13	8, 12, 16, 18, 64, 82, 83, 87, 99, 100, 113, 118, 119, 122, 170, 175, 191, 210, 326, 327, 337,471
14	10, 39,119, 120, 194, 195, 200, 232, 234, 235, 236, 237, 238, 239, 240, 243, 248, 249, 253, 254, 261, 269, 271, 274, 246, 289, 294, 271, 460, 578, 579.
15	1, 2, 3, 4, 15, 16, 17, 22, 35, 38, 50, 51, 59, 61, 62, 67, 68, 76, 95, 120, 126, 128, 138, 141, 154, 157, 158, 160, 167, 153, 178, 192, 196, 211, 212, 214, 221, 229, 230, 233, 234, 251, 274, 292, 296, 297, 298, 302, 306, 308, 312, 313, 314, 317, 318, 320, 337, 514, 522, 525.
16	26, 32, 34, 66, 100, 113, 127, 144, 168, 175, 190, 193, 275, 287, 395.
17	8, 67, 76, 130, 136, 154, 175, 181, 183, 254, 256, 267, 277, 311, 471, 473.
18	6, 98, 181, 182, 199, 227, 330, 340, 542, 546.
19	197, 199, 310, 338, 339, 542, 543.
20	13, 20, 78, 91,179, 267, 602.
21	22.
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22	188, 304, 343, 345, 351, 358, 359, 360, 361 362, 369, 371, 375, 377, 386, 388, 390, 397, 403, 404, 407, 418.
23	61, 344, 346, 347, 348, 352, 376, 388, 405, 406, 408, 418.
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24	315, 440, 451.
25	132, 246, 307, 402, 410, 420, 422, 423, 431, 432, 439, 444, 445, 446, 581.

26	255, 267, 413, 414, 415, 416, 417, 418, 419, 421, 423, 424, 425, 426, 433, 435, 437, 438, 441, 442, 443, 444, 446, 447, 448, 449, 450, 451, 471.
27	433, 434
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28	79, 202, 272, 286, 452, 454, 455, 457, 458, 459, 460, 462, 463, 464, 467, 474, 475, 478, 480, 482, 484, 493, 494, 495, 500.
29	453, 462, 466, 467, 479, 480, 484, 497.
30	465, 468, 470, 477, 481, 483, 445, 486, 492, 496, 498, 499.
31	473.
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35	522.
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37	310, 544, 547, 549.
38	561, 562.
39	74, 217, 471.
40	504
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42	571, 572, 586, 588, 593.
43	179, 584, 587, 604.
44	23, 584, 586, 602.

1. KEY INFORMATION ABOUT THE PRODUCT OR SERVICE

1.1 KEY INFORMATION THAT INFORMS THE CONSUMER OF THE FUNDAMENTAL BENEFITS, RISKS AND TERMS OF THE PRODUCT

Australia

1. In Australia the Corporations Act 2001 provides requirements for disclosure for financial products and the provision of financial advice. A Financial Services Guide (FSG) must usually be prepared by the person who will provide a financial service. When a client buys a financial product, a Product Disclosure Statement (PDS) must usually be prepared by or on behalf of the issuer or seller of the financial product. A PDS must contain sufficient information so that a retail client may make an informed decision about whether to purchase a financial product. If a client is provided with personal advice, a Statement of Advice (SOA) must usually be prepared.

2. The Australian Government has introduced page limits and prescribed content for PDSs for certain financial products as part of the simplification of disclosure. For example, summary information on fees, risks and benefits for Margin Lending products is provided over the equivalent of four A4 pages in concise, plain English.

3. The National Consumer Credit Protection Act 2009 sets out disclosure requirements for credit providers and lessors. This includes disclosure through credit guides, quotes, proposal documents, key fact sheets, warning notices about alternatives and minimum repayment statements. The disclosure requirements help consumers make effective decisions about their borrowing and leasing, understanding their rights and understanding the contracts that are being offered to them.

4. The Australian Securities and Investments Commission (ASIC) have developed Good Disclosure Principles to help in preparing a PDS (for example, that disclosure should be timely and relevant).

5. Product disclosure should be clear, concise and effective and provide the key information that a consumer needs to know in order to make an informed financial decision.

6. For best practice, disclosure should be developed with the input of professional document designers and consumer tested to ensure that it is working as intended.

7. As a means of keeping primary disclosure short enough so that consumers are more likely to actually engage with, read, and understand the documents additional information can be “incorporated-by-reference”, either in separate documents or online.

8. Information provided online can be further tailored to a specific audience and presented in an interactive format, which can make it more effective. The Australian securities regulator, ASIC, has established standards and gives industry guidance to facilitate online disclosure.

Canada

Banking sector

9. To ensure consumers have the information they need, the federal financial institution statutes require federally regulated financial institutions to disclose to consumers the terms and conditions on financial products and services before entering into an agreement, and at relevant points of time.

Legislation, regulation, and industry codes of conduct apply to products such as credit agreements (including credit cards, lines of credit and mortgages)², deposit accounts³, debit cards⁴, other deposit type instruments⁵ and principle protected notes⁶ among others.

10. The federal financial institution statutes require all disclosure to be made in language, and presented in a manner, that is clear, simple and not misleading. Also, financial institutions are generally required to provide advance notice to consumers regarding any changes to the terms and conditions of a financial product.

11. Further, federally regulated financial institutions are responsible for ensuring that their agents and intermediaries comply with legislation and regulations with respect to disclosures and other consumer provisions.

12. While the federal financial institutions statutes set out requirements that notices, documents and other information be provided by federally-regulated financial institutions, the *Electronic Documents Regulations*⁷ allow institutions to meet these requirements while allowing for communication in electronic format. For example, before proceeding with electronic communications to any addressee, financial institutions would have to receive express consent, which can be revoked. The Regulations also specify conditions regarding the provision and receipt of electronic notices, documents and other information to addressees (e.g. providing a confirmation of consent without delay), as well as the requirements for electronic signatures.

13. The Financial Consumer Agency of Canada (FCAC) is mandated with ensuring that federally-regulated financial institutions adhere to the consumer provisions of the legislation governing financial institutions and their public commitments. The Financial Consumer Agency of Canada (FCAC) also assists individual consumers with enquiries about financial services and undertakes consumer education activities to help ensure that consumers in the financial sector marketplace are well-informed. To this end, the FCAC publishes a number of on-line tools, tip sheets, and other products to keep consumers well informed.⁸ The FCAC's online "Banking Package Selector tool" allows a consumer to compare features and find the account that best suits their needs.⁹

Securities sector

14. Security issuers are subject to disclosure obligations at the moment of authorization and on an ongoing basis, which is fully in line with IOSCO standards.¹⁰

² <http://laws-lois.justice.gc.ca/eng/regulations/SOR-2001-101/index.html>

³ <http://laws-lois.justice.gc.ca/eng/regulations/SOR-2001-101/index.html>

⁴ <http://www.fcac-acfc.gc.ca/eng/industry/obligation/codeCond/debitCardCode-eng.asp>

⁵ <http://laws-lois.justice.gc.ca/eng/regulations/SOR-2011-98/index.html>

⁶ <http://laws-lois.justice.gc.ca/eng/regulations/SOR-2008-180/index.html>

⁷ <http://laws-lois.justice.gc.ca/eng/regulations/SOR-2010-239/page-1.html>

⁸ <http://www.fcac-acfc.gc.ca/eng/consumers/banking/index-eng.asp>

⁹ <http://www.fcac-acfc.gc.ca/eng/resources/toolcalculator/banking/index-eng.asp>

¹⁰ The Canadian regulatory framework deals with conflicts of interest primarily by way of disclosure requirements set forth in the following National Instruments (NI): NI 41-101 General Prospectus Requirements (NI 41-101) NI 44-101 Short Form Prospectus Distributions NI 44-102 Shelf Distributions NI 45-106 Prospectus and Registration Exemptions NI 51-102 Continuous Disclosure Obligations; NI 71-102 Continuous Disclosure and

15. Protection of investors who would like to subscribe or purchase securities of an issuer which is, generally, a business corporation or an investment fund, is achieved by ensuring that they have access to accurate and up-to-date information. Prospectuses are a key source of information for investors and are generally required across the country.¹¹ A prospectus must provide full, true and plain disclosure of all material facts relating to the securities being issued. It must disclose all material facts likely to affect the value or the market price of the securities to be distributed.

16. Since 2010, the regulation applicable to conventional investment funds¹² mandates the production of a summary disclosure document named Fund Facts document and the requirement for it to be made available on a fund's website.

17. The Fund Facts document must also be delivered or sent to investors free of charge upon request. The Canadian Securities Administrators (CSA) designed the Fund Facts document to make it easier for investors to find and use key information. It is in plain language, no more than two pages double-sided and highlights key information important to investors, including past performance, risks and the costs of investing in a fund.

18. Under securities legislation, a dealer is required to provide the investor that is subscribing to securities on the primary market with a copy of the prospectus within two days of the subscription. The following are some examples of other ways to obtain a prospectus:

- The investor can ask its dealer representative for a copy of the prospectus before purchasing the security.
- Many reporting issuers post their prospectus on their website.
- It is also possible for the investor to visit the SEDAR website, which is a database containing, among other things, statutory documents related to a large number of business corporations and investment funds, including prospectuses.¹³

19. Registrants are also expected to present disclosure information to clients in a clear and meaningful manner in order to ensure clients understand the information presented. Registrants should ensure that investors can readily understand the information. These requirements are consistent with the obligation to deal fairly, honestly and in good faith with clients.

20. Other initiatives include a National TV and Web campaign www.5bonnesquestions.ca (5 good questions). This campaign focuses on Consumers' responsibility to ask the right questions AND the Authorized Agent's responsibility/obligation to give key information. A new series of brochures (Securities and Insurance) have recently been developed on "Choosing Investments"/ "Choosing an

Other Exemptions Relating to Foreign Issuers and National Instrument 81-101 Mutual Fund Prospectus Disclosure (NI 81-101) which is aimed at providing investors with meaningful and effective mutual fund disclosure.

¹¹ The conditions are harmonized under NI 41-101.

¹² National Instrument 81-101 *Mutual Fund Prospectus Disclosure* (<http://www.lautorite.qc.ca/files/pdf/reglementation/valeurs-mobilieres/81-101/2012-04-30/2012avril30-81-101-vofficielle-en.pdf>)

¹³ See NI 81-101, sections 2.1 and 2.3.1, 3.1(1.1) and 3.3(1) ¹³ and its Companion Policy¹³. Further amendments are to be issued in 2013 http://www.lautorite.qc.ca/files/pdf/bulletin/2012/vol9no25/vol9no25_6-2.pdf (page 236)

Investment Dealer or Representative” and the CSA also has a library of online brochures on “Investment Basics and “Working with an Adviser”.

Insurance sector

21. In the province of Quebec, insurance contracts must contain what has been discussed between the parties. The insurer shall remit the policy to the client, together with a copy of any application made in writing by the client or on his behalf¹⁴. In addition, the product must be described to the client and the client must also be aware of any particular exclusion of coverage.¹⁵ The “Distribution without a representative” (DWR) regime allows a person (the distributor), pursuing activities in a field other than insurance, to offer, as an accessory, for an insurer, an insurance product which relates solely to goods sold by the person. The distributor must describe the product to the client and explain the nature of the guarantee and the exclusions. The distributor must also give the client a copy of the distribution guide, which must describe the product offered, state the nature of the guarantee and all exclusions and be drafted clearly and simply.

Chile

22. Financial services providers should attach to any application for a credit or credit card a summary sheet describing the principal terms and conditions of credit, under the provisions of the Law on Protection of Consumer Rights. In the case of mutual funds and investment funds subject to supervision of the Superintendence of Securities and Insurance, this information is contained in the internal regulations and the subscription contracts. Additionally, in the case of mutual funds, the information is also contained in the "Prospectus". In the case of portfolio management (PM), the contracts signed between the customers and the PM brokers/managers must contain such information.

23. The Superintendence of Pensions offers members of the pension system and unemployment insurance all the information necessary for them to exercise the right to remain with or change the Pension Fund Administrator (AFP) of their choice. This information includes fees charged, profitability of the pension funds and quality of service delivered by the AFP to affiliates, among others. Additionally, the AFP should provide information of fund performance and administration costs on a quarterly basis to members.

24. In general terms, the Law on Protection of Consumer Rights sets forth the obligation of all contracts to be written in the Spanish language, with a minimum font size, and the provision of a summary sheet with the main terms and conditions of the contract. The contracts should also share information on customer rights for situations and procedures related to extrajudicial collections.

25. With respect to deposits, the requirements for interest rates, fees, prepayments, etc., are set out in various laws and regulations. These requirements can be found in the Law on Money Credit Operations, the Law on Protection of Consumer Rights and the regulations of the Central Bank and the Superintendence of Banks and Financial Institutions (SBIF).

26. With respect to credit products, the Law on Protection of Consumer Rights establishes the obligation for credit providers to report the annualized interest rate, called the Equivalent Annual Charge

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http://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=2&file=/CCQ_1991/CCQ1991_A.html

¹⁵ See sections 28, 38, 39 of An Act respecting the distribution of financial products and services (the Distribution Act). See also Regulation respecting the pursuit of activities as a representative, section 6.

(SAC). The SAC should be reported in the summary sheet, in quotes and in all advertisement. The calculation is regulated by the Consumer Information Regulations of Law 20.555. Credit providers should also detail the charges related to commissions and insurance, indicating which charges are required by law and which are voluntary.

France

27. General principles involve:

- untrue, misleading statements, omission of necessary information is prohibited (all sector) by article L121-1 II of the consumer code
- prior to the conclusion of a contract, a financial institution, whether bank or insurance, or their intermediaries, has to inform the consumer of the main features of the product/contract it sells. In French regulation, the burden of proof (to prove that the information has been supplied) rests with the financial institution (L. 111-2 §1 Consumer Code)
- according to article 1135 civil code a fair fulfilment of an agreement requires not only to perform what is expressed but also all the consequences that equity usage or law require.

Insurance sector

28. Pre contractual information: as general rules for all type of contracts, the insurer must provide the potential client with an information sheet on the price and guarantees before signing the contract (Article L112-2 Insurance code).

29. Article L. 112-4 provides that every insurance policy shall disclose:

- the nature of the risks insured,
- the point at which the risk is guaranteed and the warranty period,
- the amount of this guarantee,
- the premium or assessment.

30. The regulation specifies that exclusions should be limited (L. 113-1) and written in a very apparent manner (L. 112-4).

31. All information, including advertising, relating to a contract of life insurance or an endowment contract are accurate, clear and not misleading. Advertising should be clearly identified as such. (Article L132-27 Insurance Code)

32. Before the life insurance contract is signed, the insurer must provide the subscriber with an information notice indicating the main provisions of the contract, (Article L. 132-5-2 Insurance code). The contract must give detailed information, including on costs and units of account (i.e. R. 132-3 and R. 132-4 insurance code). Article L132-5-1 insurance code allows to the policy holder a cooling-off period of 30 days.

33. The information notice is required to begin with a short-form document (“encadré” – maximum 1 page) of the main information about the policy (A. 132-8 Insurance code).

34. The French Prudential Supervisory Authority (Autorité de contrôle prudentiel or ACP), has issued in October 2010 a Recommendation concerning the use as units of account of structured financial instruments that carry a risk of mis-selling, to set out the conditions in which insurers and insurance intermediaries can comply with their legal and regulatory obligations in terms of specific information.

Banking sector

35. As a general principle all commercial information including advertising that are untrue, misleading or that omit necessary information is prohibited (article L121-1 consumer code).

36. All advertising, regardless of the medium, which focuses on consumer credit and indicates an interest rate or quantitative information related to the cost of credit, stated clearly, accurately and prominently the listed information using a representative simple (article L L311-4 consumer code).

37. According to article L311-6 consumer code prior to the conclusion of the consumer credit agreement, the creditor or credit intermediary gives to the borrower the information needed to compare different offers and allowing the borrower a clear understanding of the extent of his commitment.

38. According to article L312-1-1 of the monetary and financial code information on main conditions of services has to be given to the client prior to signing the deposit account agreement.

Securities sector

39. Concerning investments in financial instruments : Investment services providers (including Portfolio Management companies) must ensure that all information that they address to clients, including marketing information, satisfies the conditions laid down in the Monetary and financial code (L. 533-12) states that:

40. All the information, including communications of a promotional nature, that is sent to clients, including potential clients, by an investment service provider, shall have a content which is fair, clear and not misleading. Communications of a promotional nature shall be clearly identifiable as such.

41. Investment service providers shall communicate to their clients, including their potential clients, information that enables them to have a reasonable understanding of the nature of the investment service and the specific type of financial instrument proposed, as well as the risks associated therewith, thus enabling them to make their investment decisions in full knowledge of the facts.”

42. In addition, there are specific provisions concerning marketing communications in a public offer or in an admission to trading on a regulated market. The obligation for issuers to communicate all advertisements to the AMF before these are disseminated is set out in the General Regulation of the AMF that states (article 212-28):

“Any advertisement, regardless of form or method of dissemination that relates to a public offer or an admission to trading on a regulated market shall be communicated to the AMF before being disseminated. Such advertisement shall:

- State that a prospectus has been or will be published and indicate where investors are or will be able to obtain it;*
- Be clearly recognisable as advertisements;*
- Contain not false or misleading statements;*

- *Contain information that is consistent with the information in the prospectus, if the prospectus is to be published at a later time;*
- *Contain a notice drawing the reader’s attention to the section of the prospectus on risk factors;*
- *Where applicable and at the request of the AMF, contain a warning about certain exceptional characteristics of the issuer or the guarantors, if any, or the securities being offered to the public or admitted to trading on a regulated market.”*

43. Information specified in the contract: detailed, listed, compulsory information have to be given in writing within the deposit account agreement or within a payment account agreement (Article L312 -1-1 and L314 -1 Monetary and financial code (and Order of 29 July 2009).

44. Consumer credit agreement is made in a writing document or on another durable medium. It is a document separate from any media or advertising materials, (i.e. article L311-18 consumer code).

45. Detailed and listed compulsory information has to be given in the contract (i.e. articles R311-5 and R 311-5-1 for consumer credit and article L312-9 for mortgage credit).

46. A cooling – off period of 14 days is allowed to consumers for consumer credit Article L311 -2 consumer code.

47. The contract is required to begin with a short-form document (“encadré”) of the main information about the credit. Article R 311-5 defines the list and content of said information and how it should be presented (article R311-3 consumer code).

48. Information during the contract until its termination: Articles L312-8 L312-9 of the Consumer code indicates the information to be given in mortgages and PPI insurance.

49. Number of information related to the contract has to be given after signing the credit agreement until its termination. Whether for credit agreement (i.e. L311-21, L311-25, L311-22-2 and L311-26 of consumer code) or for depositary account agreement or payment services agreement (i.e. articles L312 -1-1 and L314-14 Monetary and financial code, order of the minister of economy dated 29 July 2009) or for insurance agreements (i.e. -Articles L132-22, A132-7 R113-4 of insurance code

Germany

50. Pursuant to section 31 paragraph 3a of the Securities Trading Act (Wertpapierhandelsgesetz – WpHG) and in the case of investment advice, the client shall be provided with a brief and easily understandable information sheet concerning every financial instrument to which a buy recommendation relates in good time before a transaction in financial instruments is concluded. If the investment advice refers to units of investment funds, the information sheet shall be replaced by the key investor information document. This applies to Undertakings for Collective Investment and Transferable Securities (UCITS) and common Alternative Investment Funds (AIF) (section 164, 166, 268, 270, 318 Investment Code (Kapitalanlagegesetzbuch). Key information has to be given also on products of the “gray market”¹⁶.

51. Insurance companies have to give a product information sheet to the consumer. This sheet has to entail all information that is important to enter into and to fulfil an insurance contract.

¹⁶ Section 13 German Capital Investment Act (Vermögensanlagegesetz)

Hong Kong

52. Banks / licensed corporations (“LCs”) should make adequate disclosure of relevant material information in their dealings with their customers.¹⁷ Any representations made and information to customers should be accurate and not misleading. Invitations and advertisements should not contain information that is false, disparaging, misleading or deceptive¹⁸.

53. Banks / LCs conducting securities business are required to provide customers with adequate information about the services, other relevant documents (e.g. risk disclosure statements), nature and scope of fees, penalties and other charges.¹⁹

54. Each customer should be given sufficient time to digest, consider and evaluate the information and recommendation provided by a bank / LC and be given sufficient opportunity to raise queries with the bank / LC. Under no circumstances should banks / LCs use high-pressure or unfair techniques to force or entice any customer to make hasty investment decisions²⁰.

55. The Code of Banking Practice (“CoBP”)

- The CoBP is issued by the industry associations and endorsed by the HKMA. It sets out the minimum standards which banks should follow in their dealings with personal customers.
- The CoBP is publicly available and thus the general public can know what they can reasonably expect of the services provided by banks.
- The CoBP is subject to review and revision.

56. “The Code of Conduct for Insurers” prepared by the Hong Kong Federation of Insurers (a self-regulatory industry body) and approved by the Insurance Authority (“IA”) sets out the minimum standard of disclosure of relevant and useful information to customers so as to allow them to make informed decisions and contract insurance policies effectively.²¹

57. The Questions and Answers on Suitability Obligations of Licensed and Registered Persons Who Are Engaged in Financial Planning and Wealth Management Business mentions that intermediaries should provide each customer with recommended investment products’ prospectuses or offering circulars and other documents relevant to the investments.²²

¹⁷ GP 5 of the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission (“Code of Conduct”): http://en-rules.sfc.hk/net_file_store/new_rulebooks/h/k/HKSFC3527_1868_VER20.pdf.

¹⁸ Paragraphs 2.1 and 2.3 of the Code of Conduct: http://en-rules.sfc.hk/net_file_store/new_rulebooks/h/k/HKSFC3527_1868_VER20.pdf

¹⁹ Paragraph 1(c), Part A, Appendix to the Management, Supervision and Internal Control Guidelines for Persons Licensed by or Registered with the SFC: http://en-rules.sfc.hk/net_file_store/new_rulebooks/h/k/HKSFC3527_162_VER10.pdf.

²⁰ Question 5 of FAQ on Suitability: <http://www.sfc.hk/web/EN/faqs/intermediaries/supervision/suitability-obligations-of-investment-advisers/2007-05-08.html>

²¹ http://www.hkfi.org.hk/pdf_publications/e_abt.code.pdf

²² “FAQ on Suitability”: <http://www.sfc.hk/web/EN/faqs/intermediaries/supervision/suitability-obligations-of-investment-advisers/2007-05-08.html>

58. Intermediaries should present balanced views, explaining the good points of the investment products as well as drawing customers' attention to the disadvantages and downside risks. They should use simple and plain language, and in a language that the customers can readily understand²³.

59. In relation to unlisted structured investment product to which the Product Handbook applies, the issuer should confer to investors of banks / LCs a cooling-off or unwind right in respect of the structured investment product purchased or subscribed for, whereby investors may cancel their orders, sell the product back to the issuer or its agent, or otherwise unwind the transaction, and receive a refund or payment²⁴.

60. The Hong Kong Monetary Authority ("HKMA") and the Securities and Futures Commission ("SFC") have issued circulars reminding intermediaries to disclose and explain to customers the key features and risks of investment products.

61. Certain sales related information such as the capacity in which a bank / LC is acting and affiliation of the bank / LC with the product issuer and the benefits receivable for distributing an investment product have to be disclosed by a bank /LC before or at the point of sale.²⁵

62. In relation to distribution of structured investment products and investment funds, it is mandatory for banks to distribute to customers a Product Key Facts Statement ("KFS") / Important Facts Statement ("IFS")²⁶ which provides concise product summaries written in plain language to help customers understand the key features and risks of the products, regardless of the channels of distribution. Templates²⁷ were developed by regulators to facilitate more standardised disclosure across the intermediaries.

63. It is mandatory for banks / LCs to distribute KFS and the offering documents to clients prior to or at the point of sale for products authorised by the SFC under the consolidated SFC Handbook for Unit Trusts, Mutual Funds, ILAS and Unlisted Structured Investment Products, regardless of the channel of distributions.²⁸

64. In general, the CoBP requires banks to make readily available to customers written terms and conditions, details of fees and charges, interest rates, and general descriptive information about the operation and the customer's obligations and liabilities in the use of a banking service.

65. The following are examples of requirements of the CoBP:

²³ Item 5 of FAQ on Suitability: <http://www.sfc.hk/web/EN/faqs/intermediaries/supervision/suitability-obligations-of-investment-advisers/2007-05-08.html>

²⁴ Part IV of Code on Unlisted Structured Investment Products of the SFC Product Handbook: http://en-rules.sfc.hk/en/display/display_main.html?rbid=3527&element_id=3038

²⁵ Paragraph 8.3A of the Code of Conduct: http://en-rules.sfc.hk/net_file_store/new_rulebooks/h/k/HKSFC3527_1868_VER20.pdf).

²⁶ HKMA circulars of 17 May 2011 (<http://www.hkma.gov.hk/media/eng/doc/key-information/guidelines-and-circular/2011/20110517e1.pdf>) and 18 April 2011 (<http://www.hkma.gov.hk/media/eng/doc/key-information/guidelines-and-circular/2011/20110418e1.pdf>)

²⁷ KFS templates (<http://www.sfc.hk/web/EN/regulatory-functions/products/product-authorization/products-key-facts-statements.html>) and IFS templates (see Annexes 1 and 2: <http://www.hkma.gov.hk/media/eng/doc/key-information/guidelines-and-circular/2011/20110418e1.pdf>)

²⁸ SFC circular dated 28 May 2010: <http://www.sfc.hk/edistributionWeb/gateway/EN/circular/intermediaries/supervision/openFile?refNo=H578>

- Banks are required to use plain language in the terms and conditions to the extent that is consistent with the need for legal certainty. Legal and technical language should only be used where necessary.
- Banks are required to advise customers to read and understand the terms and conditions when applying for a banking service.
- Banks are required to display their standard fees and charges, and interest rates of interest-bearing accounts in their principal place of business and branches.
- Banks are required to quote annualised percentage rates (“APR”) when references are made to the interest rates of banking products. An APR is calculated based on a standard method which incorporates the interest rate and fees and charges of a banking product, and helps to facilitate comparison of banking products with different charging structures.
- Apart from the above general requirements, the CoBP also includes specific requirements in relation to electronic banking services, e.g. security measures and advice for using electronic banking services.

66. The following are examples of specific requirements of the CoCI:

- Sales materials and illustrations have to be current, correct, expressed in plain language and not misleading to the public.
- Proposal forms should ask questions in plain language, and, if appropriate, explain how the questions should be answered,
- Policy documentation and claim forms should also be in plain language and aid comprehension by policyholders.

Hungary

67. The Hungary Financial Services Authority (HFSA) considers it important for financial services providers to recognise that information it can be too much and too complex for consumers. Often the volume and depth of such information could cause difficulties for those with average financial knowledge. Financial services providers should therefore seek to convey the information necessary for consumers to make an informed financial decision in a readily understandable form, taking into account the consumer’s interests and knowledge.

68. Financial services providers are required to adopt standard general contract terms and conditions for the services they provide:

- financial institutions must publish the following in the form of a posted notice in the customer area of their premises and, where services are also provided in electronic commerce, by way of electronic means in easily accessible format;
- standard service agreement, also containing the standard terms and conditions;
- the contract terms and conditions for financial services and auxiliary financial services (transactions) offered for customers; and

- rates of interest, service fees, and other costs charged to the customers, default interests and the method of computation of interests.

India

69. SEBI (Mutual Funds) Regulations and SEBI (ICDR) Regulations are the standard documents ensure that clear, concise, accurate information is provided to the consumers. The draft offer documents are filed with SEBI and SEBI issues its observations before they are issued to investors

Ireland

70. The Central Bank of Ireland's Consumer Protection Code 2012 includes disclosure requirements around regulatory status, information about the regulated entity activities, information about the product, information about charges and information about remuneration.

71. Provision 4.1 of the 2012 Code stipulates the use of plain English and clear presentation in all information provided to consumers.

72. The Life Assurance (Provision of Information) Regulations, 2001 set out the information a policyholder must be provided with and includes details such as the projected benefits, charges and commissions that will be deducted from the premiums paid, as well as other general information on both the product itself and the product provider. It also contains requirements setting out what annual information should be provided to a policyholder.

73. In recognition of the number and pace of developments in the area of technological innovation the Central Bank has commissioned external consultants to research technology developments affecting consumers' personal finances. The research highlighted several key areas for the Central Bank to consider in terms of implications for financial services regulation.

74. The research commissioned by the Central Bank on technology developments affecting consumers' personal finances, identified that while the benefits to consumers range across cost of service, convenience and choice, there are also significant areas of risk and uncertainty around mobile financial services. Risks can arise due to the presence of unregulated applications in the market, the lack of standards on information provided to end users, the potential for transaction fees to be hidden and to escalate, and the likelihood of terms and conditions being somewhat opaque.

Israel

75. Relevant regulations include the following:

- Banking (Customer Service) Law, 1981
- Banking (Customer Service) (Appropriate Disclosure and Presentation of Documents) Regulations, 1992
- Guarantees Law, 1967
- Proper Conduct of Banking Business Directive 453 - Third-Party Guarantees in Favour of a Banking Corporation
- Banking (Customer Service) (Fees) Rules, 2008

76. In terms of process issues:

- Providing Periodic Statement – The statement will include a timely "snapshot" of the main aspects of the customer account activities.
- Regarding technological innovation: Proper Conduct of Banking Business Directive 420 - Electronic transfer of information is relevant.

77. Customer who wishes to complain against a banking corporation regarding these issues can address the public inquiries unit in the Bank of Israel.

78. The Legislation and Regulation Unit at the Bank–Customer Division in the Banking Supervision Department at the Bank of Israel publishes guides on the Bank of Israel's website on various issues such as credit cards, current account, fees, bank transfer, financial education (for teenagers), revolving credit card, standard contracts, checks restriction.²⁹

Italy

Investments

79. In Italy for investment and asset management services, pursuant to article 27 of Consob Regulation n. 16190/2007, states that all information, including advertising and promotional notices, addressed to customers and potential customers by intermediaries must be correct, clear and not misleading. Intermediaries must provide customers and potential customers with appropriate information in a comprehensible format, so that the nature of the investment service, the specific types of financial instruments involved and related risks are clear. Such information, which may be provided in standardized format, has to refer to:

- the investment firm and related services;
- the financial instruments and investment strategies proposed, including appropriate guidelines and warnings on the investment risks for such instruments or particular investment strategies;
- the execution venues; and
- related costs and charges.

Luxembourg

80. Relevant regulations include the following:

- Law of 5 April 1993 on the Financial Sector (as modified by Art. 136 of the Law of 13 July 2007 on markets in financial instruments) (hereafter “Law of 5 April 1993 on the Financial Sector”)
- Grand-Ducal Regulation of 13 July 2007 relating to organisational requirements and rules of conduct in the financial sector (hereafter “Grand-Ducal Regulation of 13 July 2007”)
- Law of 10 November 2009 on payment services

²⁹ <http://www.boi.org.il/en/ConsumerInformation/Pages/Default.aspx>

- Law of 8 April 2011 concerning the implementation of a Consumer Code
- Law of 17 December 2010 relating to undertakings for collective investment

Mexico

81. Mexico has developed a more mandatory approach to disclosure rules. The Law for the Protection and Defence of Users of Financial Services (LPDUSF) seeks to promote advice, protect and defend the rights and interests of users of financial services. Specifically, Title IV Chapter 2 states that the consumer protection oversight body (Condusef) will disseminate information on the different services offered by financial institutions. In order for this, Condusef requests information to financial institutions about the services offered (product characteristics, interest rates, commissions, etc.).³⁰

82. Condusef ensures that all financial institutions provide information related to the products/services offered in an accurate, reliable, and consistent form and that any information regarding concepts, amounts and periodicity of the commissions be available for free to the public in their branch offices on posters, lists and flyers.³¹

83. The Law for Transparency and Order in Financial Services (LTOSF) makes it mandatory for financial services providers to disclose information about their products and services. Specifically, Article 12 states that any information related to the products or services offered needs to be clear, transparent, concise, easily accessible, and accurate and it should include the risks associated with the product. Article 7 states that all financial institutions must have in their branches or establishments (in a visible place using posters, flyers and/or lists) updated information regarding the amounts, concepts and periodicity of the commissions they charge on different products. This information should also be available electronically and customers should be able to check it for free at the branches and/or establishments. Institutions are also required to provide any change in the commissions, at least 30 days before they take effect.³²

84. The Securities Market Law in Section III (Sales Practices) states that brokerage firms must provide their clients all the information necessary for their investment decisions. They should be clear on the costs and commissions that will be charged.³³

85. While the Law of the Retirement Savings Systems (LSAR), article 37 states that the National Commission of the Retirement Savings System (CONSAR) should periodically inform the public about the commissions that the retirement funds administrators charge as well as of the net returns that they pay. Likewise, CONSAR determines the terms that the administrators should follow when informing the users about the commissions that they charge. Article 47 bis of the LSAR states that the investment funds that operate with the retirement funds administrators should prepare information for the investing public containing at least elements such as:

- The type of worker that the investment fund is directed to.
- Warnings about the risks of the investment fund.

³⁰ http://www.condusef.gob.mx/PDF-s/marco_juridico/ley_condusef.pdf

³¹ http://www.condusef.gob.mx/PDF-s/marco_juridico/disposicion_entidades_financieras.pdf

³² http://www.condusef.gob.mx/PDF-s/marco_juridico/ley_transparencia_ordenamiento.pdf

³³ <http://www.diputados.gob.mx/LeyesBiblio/pdf/LMV.pdf>

86. The information provided by investment funds to the workers should be clear and it should be always available.³⁴

87. The Rules of the National Insurance and Bonding Commission (CNSF) applicable to insurance companies in its Title 2 state that, in order to foster a climate of transparency by insurance agents and to prevent any conflict of interest that may arise from the promotion or sale of insurance products of different companies, agents should inform their costumers about rates, policies, endorsements, plans and other circumstances of the insurance companies.³⁵

88. The National Banking and Securities Commission (CNBV) rules applicable to Brokerage Houses and Credit Institutions on Investment Services in Chapter III Section II state that financial institutions shall provide from the moment they are recommending something to their clients, all the information about the financial instrument (potential benefits, risks, costs or any other warning that the consumer should know). Chapter IV states that prior to the provision of investment services, financial institutions must provide to their potential clients, in a standardized format and clear language (or in their webpage), the description of all the characteristics and differences between the services offered including their commissions, benefits, risks and category of securities.³⁶

89. The Rules of CONSAR applicable to the agents of retirement funds administrators state that agents should provide complete, truthful, relevant and updated information to the customers (workers). The rules also state that agents should offer workers the product that best satisfies their needs and characteristics.³⁷

90. To supplement these rules, codes of conduct The Codes of the Association of Mexican Banks (ABM) and of the Mexican Association of Specialized Financial Intermediaries (AMFE), state that in their relationship with clients financial services providers should always give customers the right information about the products including commissions, risks, and other costs.³⁸

91. An innovative approach adopted in Mexico is the use of simulators and calculators where the user can compare the different financial products and services offered by the different financial institutions.³⁹ Comparative tables with the characteristics of different financial services⁴⁰ and information on commissions and net revenue of the different retirement funds administrators.⁴¹

34 http://www.consar.gob.mx/normatividad/pdf/normatividad_ley_sar.pdf

35 <http://www.cnsf.gob.mx/Normativa/Paginas/Acus2011.aspx>

36 <http://www.cnbv.gob.mx/Bursatil/Normatividad/Paginas/Casas-de-Bolsa.aspx>

37 http://www.consar.gob.mx/normatividad/pdf/normatividad_emitida/circulares/DISPOSICIONES_de_agentes_promotores.pdf

38 <http://www.abm.org.mx/quienes/codigo.htm>
http://www.amfe.com.mx/index.php?option=com_content&view=article&id=89&Itemid=63&lang=es

39 <http://www.condusef.gob.mx>

40 <http://www.condusef.gob.mx>

41 http://www.consar.gob.mx/principal/estadisticas_sar.shtml

Netherlands

92. Financial institutions that provide complex products, such as investment funds or investment insurance, are obliged to provide the customer with this document in which information is provided on costs, risks and return on investment. This document is standardized and has a pre set format and structure, this makes it easier for consumer to compare different products of different providers. The standardization of the first version of the Financial Leaflet was limited and the leaflet consisted of several pages. Evaluation and consumer research showed that the leaflet did not have the desired impact. Therefore the current version is more standardized:

93. The document is only two pages long and entails most essential information required for the decision making process. The financial leaflet is considered as a first layer of information and provides references to further information documents.

94. The authorized agent has a passive obligation to hand over the financial leaflet.

95. During the decision-making process a lot of consumers come to the conclusion that they need help in deciding on what financial products they need and which provider they should choose. In order to enable consumers' decision-making process on financial services the AFM is developing a standardized document on financial services. Within this standardized document people are informed on the services provide in 5 different steps. Also the costs for these services are documented.

96. This document will be obligated as of the first of July 2013. Financial service providers can use a software program to generate a Financial Services Document.

97. A direct reason for developing a standardized document on financial services is the ban on commissions. The ban on commissions causes that consumer have to pay for financial services directly. Therefore more contemplation on what financial services provider they choose might be triggered. In order to enable their decision-making process concerning choosing a financial services provider the Standardised financial services document is developed.

98. With the FSD market parties were heavily involved in the design process. We construed an Advisory panel which we consulted several times during the design of the document. Especially in the early phase of the design (determining what elements and what indicators to use for these elements) the input of the Advisory Panel proved to be very constructive and helpful. Also on several occasions designs were send out to the panel for discussion. In the finalizing phases we consulted all market parties on the content of the document. These suggestions improved the document and ensure user friendliness for market parties.

99. In the field of occupational pensions, members can find an overview of their total future pension income from first and second pension pillar through a central website.

100. Pension providers all deliver standardized data, making sure that the estimated future pension incomes from different schemes can be accumulated. An important assumption is that current way of pension saving continues until the formal retirement age is reached. The website is well-known and visited by many scheme members. It aims at enabling members to assess whether pension saving in the basic first and second pillars are sufficient, or not. Currently, the Ministry of Social Affairs and Employment in collaboration with all stakeholders is developing further this website and the quality of the information. They develop a digital 'Pension dashboard'. In a first layer of information, members should be able find the answers to their key questions 'what pension income they can expect, what the risks are. Equally important, it should be easy to understand what are appropriate financial decisions are and what options members have if they conclude they save too little or cannot bear the risks.

Portugal

Banking sector

101. In Portugal, a comprehensive set of regulations issued by Banco de Portugal (Notices and Instructions) on information disclosure establishes information disclosure obligations at all stages of the relationship with customers (pre-contractual, contractual and during the life of the contract). Information provided to clients has to be true, clear and complete⁴²:

102. The following regulations apply:

Bank Accounts and Deposits

- Decree-Law No. 317/2009 of 30 October (transposes PSD)
- Notice No. 4/2009
- Notice No. 11/2005

Structured Deposits

- Decree-Law No. 2011-A/2008 of 3 November
- Notice No. 5/2009

Consumer Credit

- Decree-Law No. 133/2009 of 2 June (transposition of CCD)
- Instruction No. 12/2013

Mortgage Credit

- Decree-Law No. 51/2007 of 7 March
- Notice No. 2/2010
- Instruction No. 10/2010

Pricelists

- Notice No. 8/2009
- Instruction No. 21/2009

Payment services and instruments

- Decree-Law No. 317/2009 of 30 October (transposes PSD)

103. In Portugal, credit institutions have to make available, both online and at each branch, the complete price list of fees using a harmonised template among the industry, which facilitates the comparison between the fees charged by different institutions. Credit institutions cannot charge fees with

⁴² More information can be found in <http://cliente bancario.bportugal.pt/pt-PT/Publicacoes/RSC/Paginas/RSC.aspx> “Banking Conduct Supervision Report - 2009”

an amount higher than the one disclosed in the published price list. The lists of bank fees of all credit institutions are also available in a public website managed by Banco de Portugal⁴³

104. The financial sector regulators publish leaflets and booklets on the characteristics of different products, which are also available at the respective websites and at the website of the National Plan for Financial Education (NPFEE) managed by the three financial supervisors⁴⁴

South Africa

Collective investment schemes

105. Section 3(b) of the Collective Investment Schemes Control Act, No 45 of 2002 (“CISCA”) provides “Before entering into a transaction with an investor information that is necessary to enable the investor to make an informed decision must be given to the investor timeously and in a comprehensible manner.”

106. This requirement is currently monitored by the industry association, ASISA however function will be performed by regulator in future

Capital markets

107. JSE Equities Rules

- Rule 8.10 – General standards of conduct
- Rule 8.10.3 – Disclosure to clients

108. Code of Conduct for authorised users (Notice 20 of 2005)

- Section 4 – Disclosure to clients

109. State Rules

- Section 4 – Conduct and ethics
- Section 5 – Duties of participants

110. The relevant regulations are published and available on the JSE, FSB and Strate’s websites

Pension sector

111. Financial services providers or authorised agents are regulated and supervised by the Registrar of Financial Advisors and Intermediary Services.

⁴³ Portal do Cliente Bancário – www.clientebancario.bportugal.pt.

⁴⁴ <http://www.todoscontam.pt>.

Financial advisory & intermediary services

112. Sections 7 and 8 of the General Code of Conduct (Board Notice (BN) 80 of 2003) issued as subordinate legislation under the Financial Advisory & Intermediary Services Act, 2002 (“the FAIS Act”).

Spain

113. Banks in Spain are required to provide information on fees and interests to clients at any moment and for free in all banks’ commercial branches and web pages as well as on the web page of the Banco de Espana. Information must include, as a minimum, the reasons for charging them, the periodicity of payment, the disaggregation of payments according to payment period and the annual percentage rate of charge; in case the service is provided through an online device or ATM, it has to be provided for free immediately before the provision of a banking service.

114. For the insurance sector, in order to increase the comparability among life insurance products:

- information is provided to the policyholder regarding the expected rate of return for life insurance products (excluding unit linked). The calculation of this yield should take into account all the costs related to the contract.
- regarding unit linked products; pre-contractual information should clearly highlight the product dependency on the performance of financial markets whose historical outcomes don’t entail future profitability.
- in the field of health and funeral insurance, insurance undertaking should inform the policyholder on a pre-contractual basis, on the criteria ruling both the renovation of the policy and the calculation of net premiums on the forthcoming periods.

Switzerland

115. To ensure that the rules of conduct and product documentation at the point of sale apply across all sectors and without exception, they should be set out in a new law / legislation (financial services act). On 19 December 2012 the Federal Council (government) adopted an overview of financial market policy. All the measures outlined in the report aim to maintain and improve the quality, stability and integrity of the financial centre. In autumn 2013, the Federal Council will submit for consultation a bill which eliminates the shortcomings in Swiss consumer protection and takes account of international developments in this area.

Turkey

Insurance sector

116. Regulation on Information Disclosure to the Consumers of Insurance Services, the distribution of disclosure form to the insurance holder is mandatory.

Banking sector

117. Communiqué by the Central Bank of the Republic of Turkey (CBRT). BRSA circular 2011/1 forces Banks to disclose fees received for the services provided to individual customers through their and BRSA’s websites. “Bank Cards and Credit Cards Act” (no: 5464 date February 23, 2006) and sub-regulations have provisions about the contracts between the Banks and the consumers.

- “Communiqué on Principles to be considered in Information Systems Management in Banks” (date: September 14, 2007) have provisions about providing customers about the risks of electronic banking channels such as internet and mobile banking and ATM’s.
- “Banking Law” (no: 5411 date: November 1, 2005) forces banks to provide customers with a copy of loan contracts and requires banks to provide all documents about any transaction if demanded.

118. The following key points are worth noting:

- Maximum interest rates to be applied for credit card transactions are determined quarterly by the CBRT and declared on the Official Gazette and CBRT’s web site.
- Public is warned about higher interest rates applied for credit cards and they are advised to use consumer loans rather than credit cards for their short term necessities via Financial Stability Reports, press releases, speeches etc.
- Banks publish fees received for the services provided to individual customers since July 2011 and this information is also presented in BRSA website available for comparison. Data is updated whenever a change occurs in the prices.
- Contracts between the banks and credit and debit card customers are at least 12 point Font and bold.
- Banks give credit and debit card customers a copy of the contract.

Capital markets

119. Under the provisions of the relevant regulation, mutual funds, pension investment funds, investment trusts have to prepare prospectus and circular which include the relevant key information before public offering of the units of the fund and shares. The prospectus, circular, fund rules and periodical reports of the funds and of the investment trusts are available free of charge on the website of the “Public Disclosure Platform (PDP)”. PDP is an electronic system through which electronically signed notifications required by the capital markets regulations are publicly disclosed (www.kap.gov.tr).

120. From Intermediary Institutions side, Articles 13 of CMB Communiqué Serial: V, No: 46 on Principles Regarding Intermediary Activities and Intermediary Institutions provides that intermediary institutions can not conclude a written agreement or provide services, unless the customers have signed the “capital market activities risk notice form” explaining the risks of capital markets, contents of which are to be determined by the Board. Under Article 57 of the same Communiqué, intermediaries which will engage in derivatives transactions with customers shall ensure that a separate form titled “derivatives transactions risk notice form” is signed by such customers for the same purposes mentioned in Article 13.

121. A similar risk notice form for leveraged trading is envisioned in Article 18 of Communiqué Serial: V, No: 125 on Principles on Leveraged Trading and Institutions Engaging in Leveraged Trading.

122. The PDP is designed to allow everyone to have access to correct, timely, fair and complete information about the listed companies, over the web simultaneously. PDP serves as an electronic archive which allows easy and low-cost access to historical information.

123. Within the framework of CMB's 'Communiqué Regarding Principles of Submitting Electronically Signed Information, Documents and Notifications to the Public Disclosure Platform' and 'Communiqué on Principles Regarding Mutual Funds', disclosure requirements of mutual funds must be fulfilled via PDP.

UK

124. FCA Principle 7 requires firms to have regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.

Investments

125. The relevant rules appear in COBS. They require firms to give consumers a document - Key Features - before the purchase is concluded.

126. The content and some presentational aspects of the document are prescribed in COBS. Broadly Key Features must set out the aims of the product, the risks involved, the charges to be taken and the commitment that the consumer will be making.

127. The way that charges are explained is closely prescribed in COBS and is known as an 'illustration'. It uses detailed tables of projected outcomes based on assumed growth rates to show how charges can affect the return on the product throughout its life. Often, in the case of life and pension products, a consumer's personal information is used to calculate the figures in the illustration.

Mortgage sector

128. The relevant rules appear in MCOB. They prescribe a standardised and personalised mortgage disclosure document - the Key Facts Illustration (KFI) detailing the product cost, features and risks.

129. Consumers can request this at any time, but in any event must receive a copy with any recommendation or with time to consider before applying for a mortgage. The relevant rules appear in MCOB.

Non-investment insurance sector

130. The relevant rules appear in ICOBS. They are split into a number of different sections:

- Distance marketing - specific disclosure rules for "distance" sales (i.e. not face-to-face sales).
- Status disclosure.

131. For sales of protection policies there are additional rules requiring intermediaries to disclose the limits of the service provided.

132. Statement of demands and needs - Intermediaries are required to provide customers with a statement setting out their demands and needs and the reasons for any advice given.

133. Product information - There is a high level requirement requiring all firms to take reasonable steps to ensure that a customer is given appropriate information about the policy to make an informed decision.

- Other information (GI) - Firms are also required to give GI customers other information, including information on the applicable law, complaints handling processes and cancellation rights.
- Other information (pure protection) - Firms are also required to give pure protection customers other information both before and after the conclusion of the contract.
- Other information (protection) - There are further disclosure requirements for firms selling protection policies.

Banking sector

134. The UK has established a Banking and Payments Regime which began on 1 November 2009. The regime comprises of the following elements:

- BCOBS;
- the Payment Services Regulations (PSRs); and
- the Electronic Money Regulations (EMRs).⁴⁵

135. BCOBS contains rules and guidance on:

- communications with banking customers and financial promotions must be fair, clear and not misleading;
- distance communications;
- information to be communicated to banking customers (both before and after the customer is bound by the terms of the contract) must be appropriate and must be provided in good time, in an appropriate medium and in easily understandable language and in a clear and comprehensible form so the customer can make decision on an informed basis, including statements of account where appropriate; and
- cancellation information, including the right to cancel and the effects of cancellation.

136. Guidance indicates that the information required may vary, taking into account the overall complexity, main benefits, risks, limitations, condition and duration of the product or service.

137. The PSRs and EMRs require firms to provide users with a range of information (for example, pre-contract information, such as terms and conditions and post contract information such as amount and currency of payment) and there are various provisions regulating the rights and obligations of payment service users and providers (for example, firms are prevented from deducting charges unless otherwise agreed).

⁴⁵ The FCA is the competent authority for both the PSRs and the EMRs.

1.2 INFORMATION ON MATERIAL ASPECTS OF THE FINANCIAL PRODUCT

Australia

138. In Australia, a PDS is prepared by, or on behalf of, the issuer or seller of the financial product and must contain sufficient information so that a retail client may make an informed decision about whether to purchase a financial product. PDS's include such details on the relevant product as information about the issuer, benefits, risks, costs, return, dispute resolution and cooling off to allow the investor to make an informed decision

139. The Australian Government has prescribed certain features of disclosure, such as headings and the order of the headings (for example, fees, risks, benefits) for PDS documents for certain (simpler) products, to make them comparable and easy to read for consumers.

Canada

Banking sector

140. To assist consumers in making informed choices, legislative provisions require disclosure of terms and conditions related to credit, such as interest rates, fees and minimum payment. In addition, federal financial institutions are required to provide at least 30 days' advance notice of changes in the credit contract.

141. To help Canadian borrowers better manage their finances, regulations relating to credit agreements, including lines of credit and credit cards, came into force in 2010.⁴⁶ These regulations require federally regulated financial institutions to:

- Provide clear information in credit contracts and application forms through a summary box that sets out key features, such as interest rates and fees;
- Help consumers manage their credit card obligations by providing information on the time it would take to fully repay the balance, if only the minimum payment is made every month; and
- Mandate advance disclosure of interest rate increases prior to their taking effect, even if this information had been included in the credit contract.

142. Federal financial institutions must also disclose the manner, if any, in which the holder may use the card to avoid any charge, and the maximum amount of the cardholder's liability for unauthorized use of cards that have been lost or stolen.

143. To provide consumers with enhanced information about their mortgages, the Code of Conduct for Federally Regulated Financial Institutions - Mortgage Prepayment Information requires federal financial institutions to explain the differences between mortgage products, including ways to pay off a mortgage faster without incurring penalties. The Code also requires more information on how prepayment charges are calculated.

⁴⁶ <http://www.fcac-acfc.gc.ca/eng/partners/campaign/rulescc/index-eng.asp>

Securities sector

144. Canadian regulators expect registrants to present disclosure information to clients in a clear and meaningful manner in order to ensure clients understand the information presented. Registrants should ensure that investors can readily understand the information. These requirements are consistent with the obligation to deal fairly, honestly and in good faith with clients.

France

Banking sector

145. ACP has enhanced disclosure and transparency regimes for time deposit accounts and loans exposed to exchange rate risk.

146. ACP Recommendation on the marketing of time deposit accounts 2012-R-02 of 12 October 2012: The ACP recommends that to issue a document separate from the contract itself, to provide clients with explanations before they enter into one or more time deposit account, in a clear, apparent and understandable manner.

147. ACP Recommendation on the marketing to individuals of loans exposed to exchange rate risk 2012-R-01 of 6 April 2012: The ACP recommends that the information provided to the borrower enables him/her to properly understand all of the risks associated with loans that are exposed to exchange rate.

Securities sector

148. The French Autorité des marchés financiers reminds distributors of their responsibilities when selecting products offered to individual customers. It further reminds them that marketing particularly complex products may lead them to breach their professional obligations. Moreover, the AMF requests that marketing documents for products with a high mis-selling risk should carry the following warning: “The AMF considers this product too complex to be marketed to retail investors and has not therefore examined the marketing documents.” (AMF position N° 2010-05 on marketing of complex financial instruments – Document created on 15 October 2010)⁴⁷

149. The AMF has published a best practice Guide for marketing to help investment services providers produce non misleading information (Reference : AMF position-recommendation 2011-24 – A Guide to drafting CIS marketing materials and distributing CIS – Document created on 23 December 2011 and amended on 7 December 2012)⁴⁸

Insurance sector

150. ACP enhanced special disclosure and transparency regimes for different subjects such as unit-linked life insurance policies composed of complex financial instruments or life insurance policies linked to funeral payment plan.

⁴⁷ Reference texts: [Article L.533-11 up to L.533-13 of the Monetary and Financial Code \(in French only\)](#). [Article L.541-8-1 of the Monetary and Financial Code \(in French only\)](#). [Articles 314-33 to 314-36 of the General Regulation](#). [Article 314-10 of the General Regulation](#). [Article 314-18 of the General Regulation](#). [Article 325-5 of the General Regulation](#)

⁴⁸ Reference texts: [Article L.533-12 of the Monetary and Financial Code \(in French only\)](#). [Articles 314-10 to 314-17 of the General Regulation](#)

151. ACP Recommendation relating to the marketing of unit-linked life insurance policies composed of complex financial instruments, 2010-R-01 of 15 October 2010. ACP reminds insurers and insurance intermediaries of their responsibilities in terms of information and advice provided to customers/subscribers with regard to financial instruments serving as units of account.

152. ACP draws the attention of insurers and insurance intermediaries to the objective criteria for the risk of mis-selling of life insurance policies based on complex financial instruments.

153. ACP Recommendation on the marketing of life insurance policies linked to funeral payment plans n° 2011-R-04 of 15 June 2011. ACP recommends to improve information and transparency in the marketing of life insurance policies linked to funeral payment plans, and to draw subscribers' attention to listed points.

Germany

154. Pursuant to section 31 paragraph 3 Securities Trading Act (Wertpapierhandelsgesetz – WpHG) investment services enterprises are required to provide clients in a comprehensible form and in a timely manner with information reasonably appropriated for these clients to understand the nature and risks of the types of financial instruments or investment services that are being offered or demanded, and to take investment decisions on this basis. This information may be provided in a standardized format. The information must relate to

- the investment services enterprise and its services;
- the types of financial instruments and proposed investment strategies, including the risks associated therewith;
- the execution venues; and
- the costs and associated charges.

155. The Supervisor (BaFin) checks whether the prospectus contains the minimum information required by law and whether it has been written in a readily comprehensive manner.

Hong Kong

156. Banks / LCs should make adequate disclosure of relevant material information in their dealings with their customers.⁴⁹

157. The SFC Handbook for Unit Trusts and Mutual Funds, Investment-Linked Assurance Schemes and Unlisted Structured Investment Products (“SFC Product Handbook”) sets out the requirements for the authorization of products (covered by the SFC Product Handbook) and their offering documents. SFC-authorized funds, investment-linked assurance schemes and structured investment products that are marketed to the public in Hong Kong (collectively, the “Product(s)”) are required to provide investors with product key facts statements (KFS) and offering documents that satisfy the requirements under the

⁴⁹ GP 5 of the Code of Conduct: http://en-rules.sfc.hk/net_file_store/new_rulebooks/h/k/HKSFC3527_1868_VER20.pdf

applicable product code contained in the SFC Product Handbook (the “Product Code(s)”) administered by the SFC.⁵⁰

158. The offering documents of Products should contain the information necessary for investors to be able to make an informed judgement of the investment and, in particular, shall meet the disclosure requirements under the applicable Product Code. All key features and risks of the Products shall be highlighted for investors prominently in a succinct manner and where a Product is being offered on a continuous basis, its offering documents shall be updated in accordance with the requirements set out in the applicable Product Code.

159. It is mandatory to prepare product summaries in the form of a KFS for all Products, regardless of the channels of distribution. The KFS shall be clear, concise and shall be capable of being easily understood by investors. Among other requirements, A KFS shall contain information that enable investors to comprehend the key features and risks of the Product and shall be prepared in a format that facilitates comparison with other Products.

160. It is mandatory for banks /LCs to distribute KFS / IFS to customers in relation to sale of certain investment products, regardless of the channels of distribution⁵¹. Such statements provide concise product summaries written in plain language to help investors understand the key features and risks of the products. KFS templates and IFS templates are provided to facilitate more standardised disclosure across intermediaries.⁵²

161. Term sheets may be used for certain investment products to summarise the key terms and conditions.

162. It is mandatory for banks/ LCs to distribute KFS and the offering documents to clients prior to or at the point of sale for products authorised by the SFC under the consolidated SFC Handbook for Unit Trusts, Mutual Funds, ILAS and Unlisted Structured Investment Products, regardless of the channels of distribution.⁵³

163. In general, the CoBP requires banks to make readily available to customers written terms and conditions, details of fees and charges, interest rates, and general descriptive information about the operation and the customer’s obligations and liabilities in the use of a banking service.

164. Banks are also required to provide to customers some specific information of loans and mortgages which is of significance to them. For example, the principal terms and conditions of any loans/mortgages are required to be provided to customers upon applications or in subsequent offers.

165. The HKFI sets out minimum standard of product disclosure by devising standard illustrations and specimen policies. For life insurance this includes the following:

⁵⁰ SFC Product Handbook: http://en-rules.sfc.hk/en/display/display_main.html?rbid=3527&element_id=3038 .

⁵¹ HKMA circulars of 17 May 2011 (<http://www.hkma.gov.hk/media/eng/doc/key-information/guidelines-and-circular/2011/20110517e1.pdf>) and 18 April 2011 (<http://www.hkma.gov.hk/media/eng/doc/key-information/guidelines-and-circular/2011/20110418e1.pdf>)

⁵² KFS templates (<http://www.sfc.hk/web/EN/regulatory-functions/products/product-authorization/products-key-facts-statements.html>) and IFS templates (see Annexes 1 and 2: <http://www.hkma.gov.hk/media/eng/doc/key-information/guidelines-and-circular/2011/20110418e1.pdf>)

⁵³ SFC circular dated 28 May 2010: <http://www.sfc.hk/edistributionWeb/gateway/EN/circular/intermediaries/supervision/openFile?refNo=H578>

- Standard Illustrations of Non-Unit Linked Products⁵⁴
- Standard Illustrations for Universal Life (Non-Linked) Policies⁵⁵

166. These documents provide illustrations summary of the benefits of respective life policies with different rates of return, disclosure of charges and other material facts / assumptions.

167. For general insurance, HKFI devised various specimen contracts of insurance policies for statutory insurance business;⁵⁶

- Building Owners' Corporation Third Party Liability Insurance Policy
- Commercial Vehicle Insurance Policy
- Employees' Compensation Insurance Policy

168. These standard illustrations and policies would provide policyholders clear, sufficient, reliable and comparable information.

169. For Investment-Linked Assurance Schemes ("ILAS") products, an insurance intermediary has to distribute product KFS, Principal Brochure and marketing materials of the product(s) to the applicant.

Hungary

170. The Hungarian FSA considers it best practice for financial organisations to call the attention of consumers both verbally and in writing to the consumer protection website of the HFSA, and the available information, product descriptions and internet based applications aiding product comparison (credit calculators, household budget calculation programs etc.). Financial organisations should also add on their home pages a link to the HFSA's consumer protection website. The HFSA considers it of critical importance that financial organisations cooperate as responsible service providers in making the HFSA's consumer protection information publications available. To facilitate this, financial organisations should present these publications in their customer service areas, and call attention to them.

171. It is good practice for insurance companies and independent insurance intermediaries to develop clearly understandable, transparent and easily manageable summaries or abstracts (preferably no more than two to three pages) that contain the key parameters of unit-linked life insurance and clearly highlight the key contract elements, in order to promote customers' informed decision-making.

Ireland

172. The Provision of Information and Advertising Chapters of the 2012 Code of Conduct in Ireland includes a series of requirements around information disclosure and the display of warning statements. The requirements around warning statements are intended to highlight the risk factors attaching to various products and services and ensure that consumers receive balanced information in relation to products or services. All the warning statements required by the Code must be prominent, i.e. they must be in a box, in

⁵⁴ http://www.hkfi.org.hk/download/e_tip.policy05.life02.pdf

⁵⁵ http://www.hkfi.org.hk/download/e_tip.policy05.life02.pdf

⁵⁶ The section of "Standard Insurance Policies" at the bottom of the web page: http://www.hkfi.org.hk/en_download.htm#

bold type and of a font that is at least equal to the predominant font used throughout the document or advertisement. Warning statements are only required where the advertisement refers to the benefits of a particular product.

173. In terms of enhanced disclosure and transparency regimes for key sectors, the Central Bank's 2012 Code includes specific disclosure requirements (provisions 4.21-4.53) for the following:

- Credit
- Insurance Products
- Lifetime Mortgages & Home Reversion
- Investment Products

Israel

174. The Banking (Customer Service) Law, 1981 – especially section 5. Enhancement of disclosure: The Bank of Israel requires banking corporations to give enhanced disclosure with regards to housing loans: Proper Conduct of Banking Business Directive 451 – Granting a Housing Loan Procedures. Banks are expected to supply customers with effective disclosure regarding the material aspects of transactions.

Italy

Banking sector

175. In Italy, consumers must be provided free of charge with adequate information in good time before they enter into a relationship with a financial services provider or an authorized agent. The information has to be complete (i.e. it must encompass all risks, costs and other relevant information), concise, clear, accessible, not misleading. Detailed rules and recommendations are established in order to ensure that documents are drafted in an understandable way. Specific rules concern the way the information has to be provided on the website of the financial services providers. Rules on disclosure apply regardless whether a service is marketed directly by the financial service provider or through an authorized agent. When the contract establishes terms which are less favourable to the consumer than those disclosed in the pre-contractual phase, the latter apply.

176. The Bank of Italy in 2009 adopts a targeted approach according to the principle of proportionality and distinguishes three classes of clients:

1. *consumers*, i.e. natural persons who act outside the scope of their profession or business (definition drawn from EU legislation);
2. *retail clients*, which include consumers, micro-enterprises, no profit organizations;
3. other clients.

177. Relations with “consumers” (1) are regulated in detail, with standardised information documents and Guides. Relations with “retail clients” (2) have to comply with a set of rules which is less detailed although quite intrusive. Relations with “other clients” (3) are mostly regulated with principle based rules.

178. Information is standardised for the most common products purchased by consumers: current accounts, mortgages and consumer credit. This allows simple language, comparability of information,

prioritization of information according to its importance. Information on risks is prioritized and indicated in the first sections of information sheets, after the basic data on the financial services provider. This general rule is not applied to some services whose regulation has been harmonised at EU level, whereby the information on risks is provided according to the relevant EU pieces of legislation within the information sheets.

179. For current accounts and mortgages, risks and consumers' rights (including the right to be adequately informed) are explained in detail in Guides which have been drafted by the Bank of Italy for consumers. These Guides are distributed in all branches of financial services providers, are published on the website of financial services providers and of the Bank of Italy, must be provided to consumers if they enter into a relationship with financial services providers outside branches or using distance communication tools.

180. A cooling-off period is provided for in case of distance marketing, door-to-door selling, and credit to consumers.

181. In standardizing information sheets, the Bank of Italy avails itself of statistical surveys in order to:

- prioritize information on costs (costs which account for a significantly the high percentage of the overall costs incurred into by clients are evidenced in information sheets);
- cluster the population in order to target specific information (e.g. calculating the average cost of a given banking account for each class of consumers according to the average use of banking services for each cluster).

182. Furthermore the Bank of Italy avails itself of experts in communication in order to draft documents in a simple and basic language.

Investments

183. For investment and asset management services, intermediaries must provide customers or potential customers with a general description of the nature of risks involved with the financial instruments concerned, in particular taking into account the customer category as a retail or professional customer.⁵⁷

184. The description must illustrate the characteristics of the specific type of instrument involved, together with the risks related to such instruments, in sufficient detail to allow the customer to adopt informed investment decisions.

185. The description of the risks must include, where relevant to the specific type of instrument, and the status and level of awareness of the customer, the following elements:

- the risks related to the type of financial instrument, including an explanation of its effect and impact, together with the risk of total loss of the investment;
- the price volatility of such instruments and any related liquidity limits;

⁵⁷ Pursuant to article 31 of Consob Regulation n. 16190/2007

- the fact that an investor might assume, as a result of transactions on such instruments, financial commitments and other additional obligations, including potential liabilities, further to those relating to the purchase cost of the instruments;
- any marginal requirements or similar obligations applicable to such instruments.

186. Where it is likely that the risks relating to a financial instrument or combined financial transaction involving two or more different financial instruments are greater than the risks relating to the individual components, the intermediary must provide an adequate description of the individual components and the manner in which their interaction increases risk.

187. When financial instruments incorporate a third party guarantee, information relating to said guarantee must include sufficient detail regarding both the guarantor and the guarantee, so that the retail customer or potential retail customer may correctly evaluate the guarantee.

Japan

188. Financial services providers should pay close attention to the following points when they provide their customers with material information that could affect the customers' judgement:

- Whether a financial services provider has identified and categorized transactions with the risk of conflict of interest in advance; and
- In cases where a financial services provider conducts management by notifying the customer of the risk of conflict of interest, whether the customer is provided with appropriate explanation, depending on the customer's attributes, so that the customer can fully understand the content of the potential conflict of interest and the reasons for choosing the management method (including reasons for not choosing other methods), before the customer concludes a contract for the transaction; and
- Whether the font size of text used to indicate benchmarks whose movements could cause losses, such as interest rates and prices, the risk of losses and the reasons for them, the risk of the loss amount exceeding the principal amount, and the direct cause thereof, is not markedly different from the largest font size of text used in the same advertisement.

Luxembourg

189. Relevant regulations include the following:

- Law of 5 April 1993 on the Financial Sector
- Grand-Ducal Regulation of 13 July 2007
- Law of 10 November 2009 on payment services
- Law of 8 April 2011 concerning the implementation of a Consumer Code
- Law of 17 December 2010 relating to undertakings for collective investment

Mexico

190. The LTOSF states that it is mandatory for financial services providers to calculate two financial indicators for informational and comparison purposes: the CAT that is the total annual cost of a credit or loan expressed as an annual percentage rate that incorporates all its costs and expenses. Likewise, the GAT is the Total Annual Net Revenue expressed as an annual percentage rate that incorporates the capitalized nominal interests, less all costs associated with the operation.⁵⁸

191. The LPDUSF in its Chapter II, states that Condusef will disseminate information among users on the different services offered by financial institutions. In order for this, the National Commission may request all financial institutions information regarding the general characteristics (rates, commissions, costs, risks) of the different products offered to users.⁵⁹

192. The Rules of CONDUSEF applicable to Financial Institutions, indicate in Article 45 what are the elements that information leaflets and web pages of financial services providers should have related to: (i) general description of the product or service, (ii) costs and commissions (including CAT), and (iii) risks. The purpose of this is that users can compare products offered by different financial services providers.⁶⁰

193. The Regulation of the Law of the Retirement Savings Systems states that the commissions that the retirement funds administrators charge have to be calculated over uniform bases and that they have to be same for similar services offered by different investment funds. It also states that administrators can only charge fix commission on certain types of services provided.⁶¹

194. The LSAR states that in case of an increase of the commissions, administrators should physically deliver in the address of the workers a notification of the increase 30 days before it enter into force.⁶²

Netherlands

195. In order for disclosure to be effective on the decision-making processes of consumers the Netherlands focuses on the prevention of information overload (not all information to be presented at once). The Netherlands is of the opinion that information should be layered and should distinguish between Must know, Need to know and Nice to know in order to enable decision-making by consumers on financial products or services.

196. Both standardised documents which are mentioned above (FL and FSD) are designed to entail Must Know information. Within the document references are made to other information documents with more detailed information that can support their decision-making process.

197. In November 2012, the AFM announced the wish to develop a total cost of ownership model in consultation with market participants, in order to give investors better insight in the total costs of investing. Based on research into the costs of investing, the AFM found that investors have a lack of insight in the total costs of investing – meaning both direct costs that the investor pays to investment firms and indirect costs included in investment products. This can be problematic because costs have a major effect on the return and are therefore important for every investor. The AFM has proposed that investment firms present

⁵⁸ http://www.condusef.gob.mx/PDF-s/marco_juridico/ley_transparencia_ordenamiento.pdf

⁵⁹ http://www.condusef.gob.mx/PDF-s/marco_juridico/ley_condusef.pdf

⁶⁰ http://www.condusef.gob.mx/PDF-s/marco_juridico/disposicion_entidades_financieras.pdf

⁶¹ http://www.consar.gob.mx/normatividad/pdf/reglamento-ley_sar.pdf

⁶² http://www.consar.gob.mx/normatividad/pdf/normatividad_ley_sar.pdf

these costs by way of a total cost of ownership. By means of a discussion paper the AFM has invited market participants to constructively participate in developing such concept.

198. The AFM intends to start further discussion with the market on this matter in the course of 2013

199. In cooperation with EIOPA, the AFM has developed a checklist for translation of behavioural finance in practice: on how people process information and make financial decisions regarding retirement planning. Also we have collected good practices on information provision. The checklist can now be used to see whether existing documents fulfil these criteria and at what points documents are not helpful to consumers in decision making processes. Besides these transparency approaches, the Netherlands have also introduced rules on the development of financial products and instruments per January 1, 2013, encouraged by the fact that many consumers in the Netherlands have been confronted with financial products that did not meet their expectations because of flaws in financial products and flaws in the selling process. Transparency and selling rules have so far not sufficiently addressed these problems. The AFM focuses on a cross-sectoral approach and of regulation and supervision that relates more to the product development process (including its outcome) rather than requiring (prior) product approval by regulators

Portugal

Banking sector

200. Banks are required to provide information in a pre-contractual phase (through pricelists and Standardised Information Sheets), in the contractual phase (through the contract) and during the execution of the contract (through statements).

201. Standardised Information Sheets (with standardised format and content by product, defined by Banco de Portugal) have to be provided by credit institutions at the pre-contractual stage when selling bank deposits, mortgage credit or consumer credit. This Standardised Information Sheet has a complete description of the characteristics of the product (costs, risks, etc.), with the purpose of facilitating comparison between the proposals presented by the different institutions for a conscious and informed decision by the customer.

South Africa

Collective investment schemes

202. Relevant regulations

- s. 100 stipulates the information that should be published / disclosed in marketing and advertising material, as well as price lists
- s. 90(4) the requirement to lodge all promotional material with the registrar

Capital markets

203. JSE Equities Rules

- Rule 8.10.3 – Disclosure to clients
- Rule 8.20 - Advertising

204. Code of conduct for authorised users (Notice 20 of 2005)

- Section 4 – Disclosure to clients
- Section 7 – Advertisements

205. Securities Services Act 36 of 2004

- Section 22 – Undesirable advertising and canvassing relating to securities

Pension sector

206. Financial services providers or authorised agents are regulated and supervised by the Registrar of Financial Advisors and Intermediary Services.

Financial advisory & intermediary services

207. Section 7 and 8 of the General Code of Conduct (BN 80 of 2003)

Insurance sector

208. Long-term Insurance Act No. 52 of 1998: 48. Summary, inspection and copy of policy.—(1) A person who enters into or varies a long-term policy, other than a fund policy and a reinsurance policy, shall be provided in writing or in another form prescribed by the Registrar, by the long-term insurer concerned, with information, in the form of a summary, relating to at least the following matters, namely:

- those of the representations made by or on behalf of that person to the insurer which were regarded by that insurer as material to its assessment of the risks under the policy;
- the premiums payable and the policy benefits to be provided under the policy; and
- the events in respect of which the policy benefits are to be provided and the circumstances (if any) in which those benefits are not to be provided, and shall be provided with that information as soon as possible, but not later than 60 days after the parties enter into or agree to vary the policy.

209. Short-term Insurance Act No. 53 of 1998: 47. Copy of policy and inspection of policy records.—(1) A person who enters into or varies a short-term policy which constitutes personal lines business, other than a short-term reinsurance policy, shall be provided by the short-term insurer concerned, within 30 days after so entering into or varying the policy, with a copy of the document which embodies the contract of short-term insurance concerned.

Spain

210. In Spain all the information deemed necessary must be provided before signing a mortgage contract. It shall be available free of charge in all branches at any time in all branches and web pages of banks and the central bank.⁶³

⁶³ Art. 20 Ministerial Order on Transparency and Protection of Banking Services Customers (Orden EHA/2899/2011, de 28 de octubre, de transparencia y protección del cliente de servicios bancarios)- Access Guide to Mortgage Credit drafted by the Banco de España

211. Spain has frontloaded the implementation of provisions foreseen in the future Credit Mortgage Directive and has already introduced standardized forms for mortgages. Besides, such standards do not only cover specific forms for a given client (Ficha de Información Personalizada –FIPER) but also for any client on a pre-contractual basis (Ficha de Información Precontractual –FIPRE). Both types of forms must be offered to all clients, free of charge.⁶⁴

212. The client can ask the entity for a binding offer after both parties have shown their willingness to sign a mortgage contract, an appraisal of the property has already been provided and the financial capacity and legal situation of the property have been properly checked. Such offer shall be provided under the FIPER format, which will additionally specify that the offer is binding as well as its validity period (minimum of 14 days).⁶⁵

213. On interest rate risk, hedging instruments shall specify whether they include a ceiling and/or floor clause, their duration (and eventually the conditions for its extension), whether a fee is applicable (as well as its value), whether periodic settlement will apply (specifying various interest rate scenarios), whether a penalty applies in case of early termination, as well as any other information imposed by the Central Bank.⁶⁶

214. In case a mortgage contract includes limits to the variations of interest rates, such as a floor and ceiling clause, an annex of the FIPER will include the minimum and maximum rates applicable as well as the maximum and minimum repayment instalments.⁶⁷

Turkey

Banking sector

215. BRSA circular 2011/1 forces Banks to disclose fees received for the services provided to individual customers through their and BRSA's websites. Data is updated whenever a change occurs in the prices.

216. "Debit and Credit Cards Act" and sub-regulations have provisions about the contracts between the Banks and the consumers.

217. "Communiqué on Principles to be considered in Information Systems Management in Banks" has provisions about providing customers about the risks of electronic banking channels such as internet and mobile banking and ATM's.

218. Banks publish fees received for the services provided to individual customers since July 2011 and this information is also presented in BRSA website available for comparison. Data is updated whenever a change occurs in the prices.

⁶⁴ Art. 21 and 22 Ministerial Order on Transparency and Protection of Banking Services Customers (Orden EHA/2899/2011, de 28 de octubre, de transparencia y protección del cliente de servicios bancarios) (+ Annexes I and II)

⁶⁵ Art. 23 Ministerial Order on Transparency and Protection of Banking Services CustomersBTO (Orden EHA/2899/2011, de 28 de octubre, de transparencia y protección del cliente de servicios bancarios)

⁶⁶ Art. 24 Ministerial Order on Transparency and Protection of Banking Services CustomersBTO (Orden EHA/2899/2011, de 28 de octubre, de transparencia y protección del cliente de servicios bancarios)- Information

⁶⁷ Art. 25 Ministerial Order on Transparency and Protection of Banking Services CustomersBTO (Orden EHA/2899/2011, de 28 de octubre, de transparencia y protección del cliente de servicios bancarios)

219. Contracts between the Banks and credit and debit card customers are at least 12 point Font and bold. Banks give credit and debit card customers an example of the contract.

220. FAQ section on BRSA website provides financial customers with some of the risks and benefits of financial products such as derivatives, deposits and government bonds.

Capital markets

221. Material aspects of the financial products are written in the prospectus and circular, which is a short form of the prospectus, and abstract information regarding the product is given in the circular.

222. The prospectus and the circular are available free of charge where the units of the funds are sold to the investors.

223. Paragraph 1 of Article 19 of Communiqué Serial: V, No: 125 on Principles on Leveraged Trading and Institutions Engaging in Leveraged Trading regulate the basic principles intermediaries engaging in leveraged trading should adhere to in designing their web sites. Such intermediaries shall disclose to the public on their web sites, including but not limited to the following:

- The kind of services they are licensed to provide
- If applicable, information regarding financial institutions they represent
- Basic components of leveraged trading and minimum risks borne by investors engaging in such activities
- Specifications of the trading platform utilized in leveraged trading activities, such as risks, safety measures and alternative methods of order management

224. Paragraph 2 of Article 19 of Communiqué Serial: V, No: 125 on Principles on Leveraged Trading and Institutions Engaging in Leveraged Trading necessitates intermediaries to disclose to the public on their web sites percentage distribution of investor accounts in profit and in loss every last day of a quarterly period.

1.3 APPROPRIATE INFORMATION SHOULD BE PROVIDED AT ALL STAGES OF THE RELATIONSHIP WITH THE CUSTOMER

Canada

Banking sector

225. To ensure consumers have the information they need, the federal financial institution statutes require federally regulated financial institutions to disclose to consumers the terms and conditions on financial products and services before entering into an agreement, and at relevant points of time. Legislation, regulation, and industry codes of conduct apply to products such as credit agreements (including credit cards, lines of credit and mortgages)⁶⁸, deposit accounts⁶⁹, debit cards⁷⁰, other deposit type instruments⁷¹ and principle protected notes⁷² among others.

Securities sector

226. Issuers are subject to disclosure obligations at the moment of authorization and on an ongoing basis. Once an issuer obtains a receipt for its prospectus in any province or territory, it becomes a reporting issuer. It must publish periodic financial statements and inform the public of any material change in its affairs on a timely basis. A copy of an issuer's financial statements and material change reports is available from the issuer and on the SEDAR website. SEDAR is the official site that provides access to most public securities documents and information filed by public companies and investment funds with the CSA in the SEDAR filing system.

227. Continuous disclosure review programs undertaken by CSA members aim to ensure that investors have accurate and timely information about public companies on which to base their investment decisions.

228. Section 14.2 of NI 31-103 prescribes a specific discussion about risk in investment at an early stage of the client-registrant relationship (RDI)

Chile

229. In Chile customers must receive a standardized monthly statement – one that is very similar to those emitted for credit cards and for consumer loans and mortgages. Regarding other financial products, the requirement for the customer to receive a monthly, quarterly or semi-annual statement will depend on the type of product or whether a transaction was recorded.

230. For brokers subject to supervision of the Superintendence of Securities and Insurance, the regulation stipulates that they provide a set of records that allows the customers to know the form, timing and conditions under which their purchasing and sale orders were executed. The records should include information on the account used, the transaction price vis-à-vis the market price, whether the counterparty to the transaction was related or not to the broker, the commissions paid, etc., within 5 working days from the date of execution of the respective order, or on a monthly basis provided the consent of the customer.

⁶⁸ <http://laws-lois.justice.gc.ca/eng/regulations/SOR-2001-101/index.html>

⁶⁹ <http://laws-lois.justice.gc.ca/eng/regulations/SOR-2001-101/index.html>

⁷⁰ <http://www.fcac-acfc.gc.ca/eng/industry/obligation/codeCond/debitCardCode-eng.asp>

⁷¹ <http://laws-lois.justice.gc.ca/eng/regulations/SOR-2011-98/index.html>

⁷² <http://laws-lois.justice.gc.ca/eng/regulations/SOR-2008-180/index.html>

Meanwhile, in the case of stock brokers that offer escrow services, they should send their customers a "Monthly Statement of movements and balances" on the securities held in custody. Similar information must also be provided to customers of portfolio management services.

231. In the case of mutual funds subject to supervision of the Superintendence of Securities and Insurance, the regulation states that managers must send proof of contribution when using remote means for subscription of shares, which should contain information about the fund and the date, time and amount of the contribution.

232. According to regulation of the pension system, the AFP must communicate to members every four months, all movements recorded in their personal accounts (movements in the mandatory individual account, voluntary contributions, agreed deposits, and collective voluntary pension savings in the different pension funds), and the member may request a detailed account statement of these movements in his/her AFP affiliate.

233. Overall, there is a regulation that specifies the form and content of the bank and nonbank credit card monthly statements on a monthly and the quarterly communications for consumer loans and mortgages.⁷³

Czech Republic

234. Pre-contractual information should be focused on key information given in a standardised and understandable format (given the fact that consumers' financial literacy is not perfect). Then, in the course of contractual relationship / duration of the contract, consumers should be informed about all significant changes and about the results of the product performance. Some information need not be provided automatically as the "on-request" regime is sometimes sufficient.

France

235. As a general principle article 1135 of the civil code states that agreements require not only what is expressed, but also all the consequences which equity, usage or law, require. French regulation stands that appropriate information should be provided at all stages of the relationship whether in insurance or banking sector.

Banking sector

236. Regular information should be given periodically (i.e. each month, quarter) concerning the situation of deposit account (Article L314-14 I. and articles L312 -1-1 and L314-14--French Monetary and financial code) or a consumer credit agreement (Article L311-26 consumer code)

Insurance sector

237. A Regular information should be given periodically to the policy holder Articles L132-22, A132-7, R113-4 of insurance code.

Germany

238. According to section 6 paragraph 1 Insurance Contract Law (Versicherungsvertragsgesetz- VVG) information has to be provided in the following way at all stages:

⁷³ Regarding deposits, article N° 31 of Decree Law N° 3.500 of 1980

- If the difficulty in assessing the insurance being offered or the policyholder himself and his situation gives occasion thereto, the insurer must ask him about his wishes and needs and, also bearing in mind an appropriate relation between the time and effort spent in providing this advice and the insurance premiums to be paid by the policyholder, the insurer shall advise the policyholder and state reasons for each of the pieces of advice in respect of a particular insurance.
- Before the contract is concluded, the insurer shall provide the policyholder with the advice in writing, clearly and comprehensibly stating reasons. This information may be provided verbally if the policyholder so wishes or if and insofar as the insurer guarantees provisional cover. In such cases the information shall be provided in writing to the policyholder without undue delay as soon as the contract has been made; this shall not apply where a contract is not made and to contracts in respect of provisional cover in the case of compulsory insurances.
- The obligation under subsection (1), first sentence, shall also apply after the contract has been made for the entire term of the insurance agreement insofar as it is clear that the insurer recognises that the policyholder requires information and advice. The policyholder may in individual cases waive the right to advice by written declaration.
- If the insurer breaches an obligation under subsections (1), (2) or (4), he shall be liable to indemnify the policyholder for any loss or damage resulting there from. This shall not apply if the insurer is not responsible for the breach of obligation.

Securities sector

239. Investment services enterprises must always take, in writing, the minutes when providing investment advice to retail clients. The minutes are to be signed by the person providing the investment advice; the client shall be provided with a copy of the minutes, on paper or in another durable medium, without undue delay after the conclusion of such investment advice and, in any case, prior to the conclusion of a transaction based on the investment advice. If a client chooses, for the investment advice and conclusion of the transaction, means of communication not allowing for the transmission of the minutes prior to the conclusion of the transaction, the investment services enterprise must send the client a copy of the minutes without undue delay after the conclusion of the investment advice. In this case, and at the express request of the client, the transaction may be concluded prior to the receipt of the minutes if the investment services enterprise expressly grants the client the right to withdraw from the transaction concluded on the basis of the investment advice if the minutes are not correct or not complete; this right must be exercised within one week after having received the minutes.

240. The client must be informed of this right and of the period to withdraw from the transaction. If the investment services enterprise contests the right to withdraw from the transaction specified under sentence 4, it must furnish evidence that the minutes are correct and complete (section 34 paragraph 2a Securities Trading Act (Wertpapierhandelsgesetz – WpHG)). These record-keeping obligations according to section 34 paragraph 2a Securities Trading Act (Wertpapierhandelsgesetz – WpHG) are further substantiated by section 14 Regulation concerning the rules of conduct and the organisational requirements of securities service providers (Wertpapierdienstleistungs-, Verhaltens- und Organisationsverordnung – WpDVerOV).

Hong Kong

241. Banks / LCs are required to disclose and explain relevant material information such as key features, nature and extent of risks of an investment product before or at the point of sale⁷⁴.

242. After the sale of investment products, it is mandatory for banks or LCs conducting securities business to timely issue contract notes and monthly statements to customers in accordance with the timeline specified in Sections 5(1)(b) and 11(2)(b) of the Securities and Futures (Contract Notes, Statements of Account and Receipts) Rules respectively.⁷⁵

243. Besides, banks should notify customers directly of higher risk rating of an investment product subsequent to the sale.⁷⁶

244. Section I of the SFC Product Handbook sets out the high-level principles and requirements that are intended to apply to all Products and more detailed Product-specific requirements applicable to specific types of products are contained in the applicable Products Code.

245. Banks may prepare checklists to ensure that bank staff provides all the necessary information to customers before or at the point of sale of investment products.

246. Intermediaries should help each client make informed decisions by giving the client proper explanations of why recommended investment products are suitable for the client and the nature and extent of risks the investments products bear (Item 5 of the FAQ on Suitability).

247. In general, the CoBP requires banks to make readily available to customers written terms and conditions, details of fees and charges, interest rates, and general descriptive information about the operation and the customer's obligations and liabilities in the use of a banking service.

248. The following are examples of specific requirements of the CoBP:

- Banks are required to provide to prospective customers major terms and conditions which impose significant liabilities or obligations on their part upon applications and or offers of loans and cards.
- Banks are required to give prior notice to customers before any changes in the terms and conditions, fees and charges, and interest rates of a banking service (including investment service provided by banks), unless such changes are not within the banks' control.

249. Where a Product is being offered on a continuous basis, it is mandatory that its offering documents should be updated in accordance with the requirements set out in the applicable Product Code. Where the applicable Product Code imposes an ongoing obligation on the product provider to keep investors informed of matters affecting investors or to disseminate product-related information on a regular basis, the product provider must ensure that effective measures are in place for timely dissemination of

⁷⁴ GP 5 of the Code of Conduct: http://en-rules.sfc.hk/net_file_store/new_rulebooks/h/k/HKSFC3527_1868_VER20.pdf

⁷⁵ [http://www.legislation.gov.hk/blis_pdf.nsf/6799165D2FEE3FA94825755E0033E532/5D2E80100C5C72BF482575EF001D96FA/\\$FILE/CAP_571Q_e_b5.pdf](http://www.legislation.gov.hk/blis_pdf.nsf/6799165D2FEE3FA94825755E0033E532/5D2E80100C5C72BF482575EF001D96FA/$FILE/CAP_571Q_e_b5.pdf)

⁷⁶ Recommendation 14 of Annex 1 to the HKMA's circular of 25 March 2009: <http://www.hkma.gov.hk/eng/key-information/guidelines-and-circulars/circulars/2009/20090325-1.shtml>

such information (regardless of the channels of distribution) and it monitors closely those matters required for notification.

250. Besides, there is a cooling-off period of 21 days upon the purchase of new non-linked and linked life policies, and all single premium life policies. This gives purchasers of such products a chance to re-think within the cooling-off period their decision with long-term commitment. Should the policyholders cancel such policies within the cooling-off period, they can get, subject to applicability of market value adjustment, the refund of the premiums.

251. The various standard illustrations and policies provide applicants sufficient and comparable information before making decision.

252. To further protect policyholders of life insurance from being misled into changing life insurance policy, the Code of Practice for Life Insurance Replacement requires that the intermediary must help the applicant to complete a Customer Protection Declaration Form (“CPD Form”) (before the applicant agrees to purchase a new life policy. A copy of that CPD Form must be issued together with the new policy to the client within 7 business days of the issue date of the new policy.⁷⁷

Hungary

253. Insurance companies in Hungary are advised to meet the criterion that requires compliance with their obligation to provide information to customers about contract execution – within 30 days following execution of the contract – to be evidenced and identified, in the following way:

- In the event of handing over documents evidencing contract execution to customers in person, insurance companies are advised to obtain the contracting customers’ statements on having received information on the execution of the contract. Such statements are required to contain the customers’ signatures and the date of acknowledgement.
- Once insurance companies inform the contracting customer about execution of the contract through a statement on the delivery of the insurance policy signed by the contracting customer, no further letters with the same contents should be sent to the customer. Otherwise, when the dates regarding delivery of the insurance policy and of the letter of notification on contract execution differ, the actual date of information provided about the execution of the contract cannot be established, nor can the start date of the customer’s possibility to exercise their right of termination.
- In the event that the document of information provided on contract execution is mailed to customers, insurance companies are recommended to obtain contracting customers’ statements confirming receipt of the information on the execution of the contract in a letter with return receipt.
- It is obligatory for insurance companies to retain the document containing the customer’s statement of having acknowledged notification of contract execution, even if an independent insurance practitioner participated in contracting.

⁷⁷ http://www.hkfi.org.hk/pdf/e_ReplacementCode_20100201.pdf and the Form: http://www.hkfi.org.hk/pdf/e_CPDForm_1Oct08.pdf

India

254. SEBI (Mutual Funds) Regulations/ SEBI (ICDR) Regulations and listing agreement between the companies and the stock exchange, it is ensured that continuous disclosure is provided to the investors through hard copy or email or through website so that the investors are provided with information and adequately protected.

Ireland

255. The assessment of the suitability of a product based on information about the customer is required to ensure consumers are adequately protected, in addition to product information disclosure. The 2012 Code sets out prescriptive requirements in relation to what is termed the 'Knowing the Consumer' process. The information gathered at this stage (for example, age, knowledge and experience, attitude to risk) is used to assess whether a product or service is suitable for a consumer. Provision 5.5 of the Code requires that the regulated entity must endeavour to have the consumer certify the accuracy of the information it has provided.

256. Many consumers place a great deal of reliance and trust on what a regulated entity tells them during the sales process, in particular in relation to verbal assurances concerning the safety and performance of a product or service. Provision 5.21 of the 2012 Code requires that where a verbal exchange takes place a record of the verbal interaction should be included in or with the written statements of suitability.

257. The 2012 Code requires that consumers are given appropriate and relevant information before, during and after the sales process. The Code obliges firms to act in the customers' best interest by supplying them with appropriate information and offering only products suitable to their needs. We believe that requirements to gather a sufficient and appropriate level of information about the customer in relation to the product, service or advice sought is the first essential part of any relationship between a firm and a customer.

258. In Ireland, regulated entities are required to provide information in the Pre contractual phase:

- Regulatory disclosure statement (4.7-4.11).
- Terms of Business (4.12-4.20).
- Information about product (main features and restrictions) (4.21-4.53).
- Schedule of fees and charges (4.54-4.56).
- Information about fees, commission or remuneration to be received in relation to that product or service (where applicable) (4.57-4.61).
- During point of sale phase:
 - Written statement of suitability (5.19-5.23).
- After point of sale phase:
 - Revised terms of business (where there is a material change) (6.1).

- Annual statements (6.3, 6.5, 6.16).
- Notification of any change in the interest rate on a loan, information (comparisons, advantages, disadvantages, warning statement) if moving from a tracker interest rate (6.9-6.11).
- Certain information if offering an incentive to an existing consumer on an existing mortgage (6.12).
- Policy documents for insurance products and policy renewals (6.13).
- Certain information on a tracker bond, within 5 business days of the start of the tracker bond (6.17).
- Notification of increases in charges (6.18).

Israel

259. Relevant regulations include the following:

- Banking (Customer Service) Law, 1981.
- Banking (Customer Service) (Appropriate Disclosure and Presentation of Documents) Regulations, 1992.
- Circular 2155-06 - Presentation of information to debtors.

260. Banks are expected to supply customers with appropriate information at all stages of the relationship (even after the bank started legal proceedings against a customer).

Italy

Banking sector

261. According to the regulations in Italy, financial services providers have to provide consumers with complete information before a contract is entered into by the consumer and during the whole duration of the relation. During the relation, consumers receive at least annually a complete record of all the operations which have been done, all other relevant information (e.g. sums paid or received by the customer), as well as an up-dated document with the charges and other costs established by the contract. Contractual terms may be unilaterally changed by the FSP only for a justified reason, if this is allowed by the contract and if prior notification is given to the consumer who can withdraw without charges.

262. In order to improve the quality and usefulness of documents, the regulation establishes drafting criteria which encompass both the language and the presentation of the information.

263. Moreover front office staff have to be trained so that they can provide consumers with assistance in order to help them understand the information they receive. For credit to consumers, the staff must provide assistance in order to understand the product, its features and risks.

Investments

264. Article 21 of Italian Consolidated Law on Finance states that, in providing investment and ancillary services, intermediaries must acquire the necessary information from customers and operate in such a way that they are always adequately informed.

265. Pursuant to article 37 of Consob Regulation n. 16190/2007, intermediaries must provide retail customers with their own investment services, other than investment advice, on the basis of a specific contract in writing. A copy of said contract must be provided to the customer.

266. The contract must:

- specify the services provided and their characteristics, indicate the content of the services provided and the type of financial instruments and transactions involved;
- establish the period of validity and renewal method for the contract, together with the terms to be adopted for any amendment to said contract;
- indicate the methods by which the customer may issue orders and instructions;
- indicate the frequency, type and content of documentation to be provided to the customer as statements on the activities performed;
- for the execution of customer orders, indicate and govern the receipt and transmission of orders, together with portfolio management and loss threshold in cases where negative positions are opened in relation to transactions that could lead to actual or potential liabilities greater than the purchase cost of the financial instruments, over and above which the customer must be informed;
- indicate the fees payable to the intermediary or objective criteria for their calculation, specifying how such fees are accumulated and, unless otherwise communicated, regarding incentives received;
- indicate if and by what method and content, in relation to the investment service, investment advice services may be provided;
- indicate other contractual terms agreed with the investor for provision of the service;
- indicate any settlement and arbitration procedures for the out-of-court settlement of any dispute

Japan

267. To ensure a precise identification of consumer attributes and the actual status of transactions at all stages, financial services provider should:

- prepare a system of customer cards, for instance, to adequately confirm the investment purpose and intention of customers;
- share the customer's investment purpose and intention registered on the customer cards with the customer; and

- examine the transaction conditions, such as trading losses, evaluation losses, the frequency of transactions and the status of fee payment with regard to each customer account, for example, as part of its effort to identify the actual status of transactions conducted by customers.

268. Also financial services providers shall provide information in an appropriate manner, if their customers require them to give information on contracts upon the completion of the agreements.

269. Moreover, in cases where customers have requested that a report on outstanding balance of their transactions be delivered after their agreements become effective or delivery of money concerning the agreements is completed, financial services providers shall submit reports on their contracts.

Luxembourg

270. Relevant regulations include the following:

- Law of 5 April 1993 on the Financial Sector
- Grand-Ducal Regulation of 13 July 2007
- Law of 10 November 2009 on payment services
- Law of 8 April 2011 concerning the implementation of a Consumer Code
- Law of 17 December 2010 relating to undertakings for collective investment

Mexico

271. Regulations in Mexico oblige financial services providers and their agents to provide specific information at all stages of the relationship with customers (before, after and at point of sale).

272. The Rules of Condusef applicable to financial institutions include guidelines to which financial entities should comply, with respect to the information that must be included in the publicity, contracts, transaction receipts and financial statements of financial services providers.⁷⁸

273. The Rules of the CNBV applicable to brokerage houses and credit institutions on investment services, on Chapter IV of its Second Title refer to the information that should be provided to clients (before and after an investment is made).⁷⁹

274. The Regulation of the Law of the Retirement Savings Systems in its articles 47 and 48 state that workers have the right to receive at least three times per year, a financial statement. The format of the financial statement used by the administrators should be the one established by CONSAR.⁸⁰

Netherlands

275. Pension administrators are required to provide the consumer with a so called UPO (Uniform Pension Statement) every year. Within this documents participants are informed about their personal build

⁷⁸ http://www.condusef.gob.mx/PDF-s/marco_juridico/disposicion_entidades_financieras.pdf

⁷⁹ <http://www.cnbv.gob.mx/Bursatil/Normatividad/Paginas/Casas-de-Bolsa.aspx>

⁸⁰ http://www.consar.gob.mx/normatividad/pdf/reglamento-ley_sar.pdf

up pension claims, the pension claim to be reached and the worth expansion of the previous calendar year. Participants are enabled to combine their claims with different pension administrators for themselves and their surviving relatives. It also promotes recognition with participants because of the uniform way of informing participants.

276. Providers of investment products are required to provide the consumer with a cost statement every year.

Portugal

Banking sector

277. A comprehensive set of regulations issued by Banco de Portugal (Notices and Instructions) establish information disclosure obligations at all stages of the relationship with customers (pre-contractual, contractual and during the life of the contract)⁸¹

278. In Portugal, financial services providers must provide information to banking customers prior to the conclusion of a contract.

279. The contract has to contain all the terms and conditions of the banking product and service described in the Standardised Information Sheet provided prior to the conclusion of the contract.

280. During the term of the contract, clients are provided with a monthly statement of account in the case of bank deposits and mortgage credit, including information on fees charged.

South Africa

Collective investment schemes

281. Relevant regulations include the following:

- S. 3 - disclosure before entering into a transaction
- S. 100 - content of price lists, advertisements, brochures
- Sections 106 and 107 prohibit the making of false or misleading statements with respect to participatory interests in a collective investment

Capital markets

282. JSE Equities Rules

- Rule 8.10.3 – Disclosure to clients

283. Code of conduct for authorised users (Notice 20 of 2005)

- Section 4 – Disclosure to clients

⁸¹ More information can be found in <http://cliente bancario.bportugal.pt/pt-PT/Publicacoes/RSC/Paginas/RSC.aspx> “Banking Conduct Supervision Report - 2009”

Pension sector

284. Financial services providers or authorised agents are regulated and supervised by the Registrar of Financial Advisors and Intermediary Services.

Financial advisory & intermediary services

285. Relevant regulations include the following:

- Sections 4 to 9 of the General Code of Conduct (BN 80 of 2003)
- Sections 14 to 15 of the General Code of Conduct (BN 80 of 2003)

Spain

286. The pre-contractual information provided in Spain encompasses binding offer, basic information to be included in advertisements, pre-contractual services and obligation to evaluate the consumer's solvency. It shall be provided free of charge, with anticipation enough and at least before the offer becomes binding for the client. It must be clear, adequate, sufficient, objective and not misleading.

287. In terms of contractual information this includes due delivery of the contract which must at least clearly specify the interest rate applicable, the periodicity of the instalments, any fees and expenses that might be applicable, the duration of the contract and the regime for changing the interest rate, early termination, infringement or default.

288. Post-contractual information: Entities must provide their clients with:

- a document about every settlement that is applied
- a comprehensive and detailed summary of all interest and fees charged the previous year.
- a monthly summary of transfers into and withdrawals from the current account

Turkey

Banking sector

289. "Debit and Credit Cards Act" and sub-regulations require banks to disclose the changes in contracts to the customer, and if the customer continues to use the card, that means customer accepts the new terms of the contract.

Capital markets

290. According to the 'Communiqué on Principles Regarding Mutual Funds', the financial intermediaries to serve in the trading of the units of guaranteed funds and protective funds which have private sector bonds in their portfolios and hedge funds have to employ sales staff with an adequate level of experience and expertise on the issue and carry out the sale of such fund units via the aforementioned staff. This provision aims to be given the appropriate information to the investors in terms of the risks of the products.

UK

Mortgage sector

291. On initial contact with a mortgage seller the consumer must receive information on the service offered (e.g. is advice given), the range of products covered and how the firm will be remunerated.

292. Prior to application, or at the point that a recommendation is made, the consumer must receive the KFI. This disclosure, appropriately updated, must be repeated as part of the mortgage offer.

293. When the loan is entered into, the lender must disclose key details confirming the repayment arrangements. Thereafter, there is a requirement for an annual statement detailing the payments made and the outstanding loan balance.

294. Further disclosure obligations apply in the event of the customer encountering payment difficulties.

Non-investment insurance sector

295. Usual disclosure rules apply prior to the conclusion of the contract, except as noted below.

- Product information - The product information rules applies pre- and post- conclusion of the contract, and so includes matters such as mid-term changes and renewals.
- Other information (pure protection) - Some of the disclosure obligations re pure protection customers apply post conclusion of the contract
- Other information (protection) - Some of the disclosure obligations re protection policies apply post conclusion of the contract

1.4 PRE CONTRACTUAL INFORMATION

Australia

296. The Corporations Act 2001 facilitates the use of Short-Form PDSs and applying a tailored disclosure regime to some products. A Short-Form PDS is a document that summarises the key information in a PDS. A Short-Form PDS can be given instead of a PDS for all products except for those that are subject to a tailored PDS regime.

297. There are requirements surrounding the content of a PDS:

- fees payable in respect of a financial product;
- risks of a financial product;
- benefits of a financial product; and
- significant characteristics of a financial product.

298. The National Consumer Credit Protection Regulations 2010 require disclosure of information, through a Key Fact Sheet, about the cost, duration and comparable interest rate on home loans so consumers can easily compare different loans.

299. The home loans Key Fact Sheet provides information set format so it is easier for consumers to shop around and compare loans. The KFS also highlights important information such as the total amount to be paid back over the life of the loan.

Canada

Banking sector

300. Under the Cost of Borrowing regulations, federally regulated financial institutions are required to provide clear information in credit contracts and application forms through a summary box that sets out key features, such as interest rates and fees.

301. The proposed prepaid payment product regulations would also require federally regulated financial institutions to set out summary box highlighting all fees in any initial disclosure documentation, including on exterior packaging.⁸²

302. In an effort to improve credit card disclosure for consumers, the Financial Consumer Agency of Canada (FCAC) and MasterCard Canada developed a model credit card application form designed to help Canadian consumers better understand what they are applying for and the terminology used in the form.

303. The plain language model application form was tested with real consumers. Participants preferred it to the typical credit card application form, citing the use of plain language; it's simple and straightforward nature, and its visually appealing layout, which was airy and uncluttered. They indicated that the use of colour, abundance of white spaces, headings and subheadings and readable font size made it more user-friendly and easier to understand.

⁸² <http://www.gazette.gc.ca/rp-pr/p1/2012/2012-10-27/html/reg1-eng.html>

Securities sector

304. All registered dealers and advisers, and representatives of registered dealers and advisers, are required by securities legislation in each jurisdiction of Canada to deal fairly, honestly and in good faith with their clients. To comply with this obligation, registered dealers and advisers must have adequate internal controls in place. Specifically, there are requirements for the benefit of clients that all registered dealers and advisers must provide, including:

- providing prescribed relationship disclosure information to clients (including information regarding commissions, fees, the availability of dispute resolution services, the type of products being offered to the client)
- having complaint handling procedures in place
- ensuring that registered advisers allocate investment opportunities among clients fairly
- ensuring registered dealers provide trade confirmations, and
- the requirement for registered dealers and advisers to provide account statements (including transactional reporting) at least quarterly.

305. Registrants should know each security well enough to understand and explain to their clients the security's risks, key features, and initial and ongoing costs and fees. Having the registered firm's approval for representatives to sell a product does not mean that the product will be suitable for all clients. Individual registrants must still determine the suitability of each transaction for every client. See suitability assessment requirements in NI 31-103 and its Companion Policy, section 13.3⁸³, IIROC rules 1300 and 2500⁸⁴ and MFDA Policy No. 2⁸⁵. See also product due diligence guidance⁸⁶.

Czech Republic

306. The goal is to provide consumers with a form which contains appropriately chosen information presented in a language, that is understandable and which would make the consumer understand the basic features of the financial product on the first sight. Such a result requires previous testing.

⁸³ <http://www.lautorite.qc.ca/files/pdf/reglementation/valeurs-mobilieres/31-103/2012-02-28/2012fev28-31-103-vofficielle-en.pdf> ; See also <http://www.lautorite.qc.ca/files/pdf/reglementation/distribution/reglements-distribution/2009sept28-regl4-vm-ldpsf-en.pdf> still applicable to mutual fund dealers and scholarship plan dealers: see section 135, *An act to amend the Securities Act and other legislative provisions*, 2009, chapter 25 http://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=5&file=2009C25_A.PDF

⁸⁴ <http://iiroc.knotia.ca/Knowledge/View/Document.cfm?Ktype=445&linkType=toc&dbID=201301341&tocID=637>;
<http://iiroc.knotia.ca/Knowledge/View/Document.cfm?Ktype=445&linkType=toc&dbID=201301341&tocID=764>

⁸⁵ <http://www.mfda.ca/regulation/policies/policy02.pdf>

⁸⁶ <http://iiroc.knotia.ca/Knowledge/View/Document.cfm?Ktype=445&linkType=toc&dbID=200805345&tocID=1631>
<http://www.lautorite.qc.ca/files/pdf/reglementation/valeurs-mobilieres/0-avis-acvm-staff/2009/2009sept04-33-315-acvm-en.pdf>; <http://www.mfda.ca/regulation/notices/MR-0048.pdf>

Germany

307. Section 6 of the German Insurance Contract Act (Versicherungsvertragsgesetz) requires the insurer to advise policyholders prior to conclusion of the contract and to send them written record of the advice provided before the contract is concluded. This is also intended to ensure, in the interest of the policyholders, that the insurance cover offered is optimally oriented on what the policyholder wants and needs. Similar requirements are defined for securities and investments.⁸⁷

Hong Kong

308. It is mandatory for banks to distribute KFS / IFS to customers for structured investment products and investment funds, regardless of the channels of distribution.⁸⁸ Such statements provide concise product summaries written in plain language to help investors understand the key features and risks of the products. KFS templates are provided to facilitate comparison between Products and more standardised disclosure across intermediaries.⁸⁹

309. It is mandatory for banks/ LCs to distribute KFS and the offering documents to clients prior to or at the point of sale for products authorised by the SFC under the consolidated SFC Handbook for Unit Trusts, Mutual Funds, ILAS and Unlisted Structured Investment Products, regardless of the channels of distribution.

310. Customer surveys, in particular post-sale surveys, may be conducted by the banks to collect customers' opinion on whether the KFS are easy to understand and their suggestions on ways for improvement to ensure effectiveness of such disclosure.

311. In view of different features, risks and investment objectives of each investment product, the HKMA sets out in their guidance notes for completion that the contents in each KFS / IFS may differ, depending on the actual circumstances of the case, and the suggested wording are construed as examples rather than suggestions, and are not meant to be exclusive or prescriptive (even though the headings are expected to be generally observed).

312. For credit cards, as part of the credit card reform in Hong Kong, card issuers are required to provide a Key Facts Statement which is a consistent and succinct summary of major terms and conditions to customers when they apply for credit cards, including information which is of significant concern to customers, such as interest rates, fees and charges. A standard template for the Key Facts Statement is provided for banks to follow. No row in the table should be omitted and the sequence of information should be the same to help customers compare credit card products.

313. The HKFI prepared standard illustrations for life insurance and specimen policies for statutory business of general insurance business for ease of understanding and comparison by policyholders.

⁸⁷ See section 34 paragraph 2 and section 31 paragraph 4 German Securities Trading Act for securities and Section 13 German Capital Investment Act (Vermögensanlagegesetz) introduced the obligation to hand out an investment information sheet and a prospectus for non-securitized types of investment.

⁸⁸ HKMA circulars of 17 May 2011 <http://www.hkma.gov.hk/media/eng/doc/key-information/guidelines-and-circular/2011/20110517e1.pdf> and 18 April 2011 <http://www.hkma.gov.hk/media/eng/doc/key-information/guidelines-and-circular/2011/20110418e1.pdf>

⁸⁹ <http://www.sfc.hk/web/EN/regulatory-functions/products/product-authorization/products-key-facts-statements.html>) and IFS templates (see Annexes 1 and 2: <http://www.hkma.gov.hk/media/eng/doc/key-information/guidelines-and-circular/2011/20110418e1.pdf>)

314. Besides, for ILAS products, an insurance intermediary has to distribute product KFS, Principal Brochure and marketing materials of the product(s) to the applicant, and the applicant has to complete an Applicant's Declarations declaring that he / she has read and understood the content of those materials.⁹⁰

Hungary

315. The Hungarian FSA expects financial organisations to present both the benefits and the risks of financial products and services to consumers, preferably in a documented form. Organisations should also offer customers the opportunity to assess the offered product's terms, conditions and possible consequences. Preferably, financial organisations should offer, for products with similar conditions, that which provides the most benefits and the least risk according to the demand described by the consumer. If the consumer has not specified any such priorities, the financial organisation should preferably offer the least expensive and/or least risky product or service of products with similar conditions. They should also mention more expensive available products, which may offer more services and more advantageous conditions. Financial organisations are also expected to inform consumers properly of the potential negative consequences of non-compliance with the contractual obligations.

316. The HFSA considers it expected behaviour for the acting administrator of the financial organisation to insist the consumer study the terms and conditions before signing them. The financial organisation is to make sure that sufficient time is available to the consumer to read the terms and conditions and other documents, forms and declarations; they should also provide peaceful circumstances for the consumer to read the information, and provide answers to any questions.

317. It is an advisable good practice for insurance companies and independent insurance intermediaries to develop clearly understandable, transparent and easily manageable summaries or abstracts (preferably no more than two to three pages) that contain the key parameters of unit-linked life insurance and clearly highlight the key contract elements, in order to promote customers' informed decision-making.

- The purpose of such abstracts is to ensure that service providers use tools that, beyond complying with the legal requirement to provide information, promote informed decision-making through providing customers with further clear information on the contract, and drawing attention to customer obligations, costs and exclusions.
- On drafting summaries to facilitate finding information, it is an important consideration to ensure that they present arguments for and against the given product, considerations for deliberation of the risks and benefits inherent in the given product, as well as the aspects of selecting products in order to facilitate customers' informed decision-making, instead of fulfilling the customary marketing purposes. Another consideration is that such abstracts should be transparent, comprehensible for customers, and should highlight the key risks and the main points of the product. Figures aiding visual representation are also permitted, considering the volume limits of such abstracts.

Ireland

318. Information is provided to consumers in a specific "Key Features" document for tracker bonds. The 2012 Code also incorporates requirements that were introduced in June 2003, setting out the information to be provided in relation to Personal Retirement Savings Accounts (PRSAs). In relation to life

⁹⁰ (Applicant's Declarations: for business introduced by insurance agents: http://www.hkfi.org.hk/pdf/e_ApplicantsDeclarationsInsuranceAgents.pdf ; or for business introduced by insurance brokers: http://www.hkfi.org.hk/pdf/e_ApplicantsDeclarationsBrokers.pdf)

assurance products, the Provision of Information (Life Assurance) Regulations, 2001 set out the information a policyholder must be provided with and includes details such as the projected benefits, charges and commissions that will be deducted from the premiums paid, as well as other general information on both the product itself and the product provider. It also contains requirements setting out what annual information should be provided to a policyholder. For investment products, provision 4.46 of the 2012 Code sets out the information that must be provided to consumers in a standalone document, prior to the sale of an investment product. The 2012 Code does not prescribe the format or layout of such information.

Israel

319. Relevant regulations include the following:

- Banking (Customer Service) Law, 1981 – especially sections 3, 4, 7.
- Proper Conduct of Banking Business Directive 451 – Granting a Housing Loan procedure. Sections 4-Explanatory notes, 4C- Approval in principle and maintaining the interest rate.
- Banking Order (Early Payback Fees), 2002, section 12.
- Guarantees Law, 1967, section 22.
- Proper Conduct of Banking Business Directive 416 - Minors' accounts – section 16 Fact sheet.

320. In general, KFS used by banks are not standardized except in the case for housing loans.

Japan

321. Considering that ordinary customers may not necessarily have sufficient expert knowledge and experiences, it is necessary for financial services providers to fulfil their responsibility for providing appropriate explanations by, for example, disclosing correct information (including pre-contractual information) that may be used as a basis for investment decisions to customers in a fair manner. Therefore, due consideration should be given to the following points:

- Whether the financial services provider avoids placing too much emphasis on the advantages of the transaction and makes sure to sufficiently explain disadvantages, such as the possibility of incurring losses and other risks.
- Whether the financial services provider explains the contents of products and transactions (basic characteristics of products, the nature, types, and variable factors of risks involved, etc.) in a manner that enables the customer to fully understand them.

322. In particular, whether they strive to prevent the customer from losing interest in understanding the contents, by, for example, first explaining important matters that may affect their investment decisions, in accordance with the purpose of rules concerning the order of items listed in a pre-contract document.

Luxembourg

323. Relevant regulation:

- Law of 8 April 2011 concerning the implementation of a Consumer Code.

Mexico

324. Article 11 of the LTOSF states that contracts used by financial institutions to document massive operations must comply with the requirements established in the Rules of Condusef applicable to financial institutions. These requirements should include, amongst other things, the use in contracts of a cover page with key information easy to read and understand. The cover page should include:

- the essential elements of the operation that allows the client to compare the same type of services from different banks;
- warnings related to fees and commissions;
- clear spaces to distinguish terms and conditions such as the commissions and interest rates, the CAT and the total amount payable in the case of credits or loans; and
- anything else that contributes to transparency, comprehension and comparison.⁹¹

325. Article 7 of the Rules of Condusef applicable to financial institutions state that all financial institutions have to add a cover page to their contracts. The cover page should be one page maximum and should include all the characteristics of the product/service in order to allow users to compare services from different entities. It also has to include certain captions related to interest rates, commissions, fees, minimum payments, etc.⁹²

326. The rules of the CNSF applicable to insurance companies in its Chapter 20 state that insurance companies have to publish in their Web pages sample contracts of the products offered to the general public.⁹³

327. The rules of the CNBV applicable to Brokerage Houses and Credit Institutions on Investment Services in Chapter IV state that prior to the provision of investment services, financial institutions must provide to their potential clients, in a standardized format and clear language (or in their webpage), the description of all the characteristics and differences between the services offered including their commissions, benefits, risks, category securities, etc.⁹⁴

Netherlands

Investments

328. Information on investment firm and services are provided, financial instruments and investment strategies, execution venues and cost.

- Prospectus for issue of financial instruments
- Key Investor Document (KID) for UCITS

⁹¹ http://www.condusef.gob.mx/PDF-s/marco_juridico/ley_transparencia_ordenamiento.pdf

⁹² http://www.condusef.gob.mx/PDF-s/marco_juridico/disposicion_entidades_financieras.pdf

⁹³ <http://www.cnsf.gob.mx/Normativa/Paginas/Acus2011.aspx>

⁹⁴ <http://www.cnbv.gob.mx/Bursatil/Normatividad/Paginas/Casas-de-Bolsa.aspx>

329. Not all of these are viewed as equally effective where it regards consumers. For example the amount of information provided by a prospectus in many cases exceeds the processing capabilities of the consumers.

330. The Netherlands have found the Financial Leaflet and the Financial Services document to be more effective in supporting the comparison between products and services.

Portugal

Banking sector

331. Standardised Information Sheets (with standardised format and content by product, defined by Banco de Portugal) have to be provided by credit institutions at the pre-contractual stage when selling bank deposits, mortgage credit or consumer credit. This Standardised Information Sheet has a complete description of the characteristics of the product, with the purpose of facilitating comparison between the proposals presented by the different institutions for a conscious and informed decision by the customer.

South Africa

Collective investment schemes

332. Relevant regulations

- s. 3 requires the manager to disclose information about the investment objective of the CIS, the calculation of the net asset value and dealing prices, charges, factors and distribution of income levels;
- disclose information that is necessary to enable the investor to make an informed decision about the investment

Capital markets

333. JSE Equities Rules- Rule 8.10.3 – Disclosure to clients

334. Code of conduct for authorised users (Notice 20 of 2005) - Section 4 – Disclosure to clients

Pension sector

335. Financial services providers or authorised agents are regulated and supervised by the Registrar of Financial Advisors and Intermediary Services.

Financial advisory & intermediary services

336. Section 4, 5, 7 and 8 of the General Code of Conduct (BN 80 of 2003)

Turkey

Capital markets

337. Institutional investors have to prepare prospectus and circular before public offering of the capital market instruments and publish those via PDP, pursuant to the relevant regulations of CMB. The standardised prospectus and circular examples has been formulated and published by CMB.

UK

Investment sector

338. The Key Features has been subject to extensive consumer testing.

Mortgage sector

339. The required KFI was developed on the basis of significant consumer testing in respect of the language, format and usability.

340. Consumer research for a post implementation review has further assessed the practical use made of the disclosure.

Non-investment insurance sector

341. There are no requirements for standardised pre-contractual disclosure for non-investment insurance products, except for protection products where firms are required to give customers a policy summary in a format set out in ICOBS

Banking sector

342. Under the Banking Conduct Regime, there is no prescriptive format requirement for information, provided it meets the relevant rules. This means it must be in easily understandable language, in a clear and comprehensible form and in an appropriate medium (a durable medium where appropriate), so that the customer can make decisions on an informed basis.

2. CONFLICTS OF INTEREST

Australia

343. In Australia the FSG and the SOA must include information on conflicts of interest, including interests of the service provider or an associate that could influence the service provider. However, the Australian Government has recognised the limits on disclosure and has taken the further step of banning forms of conflicted remuneration, including commission payments, as part of its Future of Financial Advice reforms. This means that licensees and authorised representatives will not be allowed to give or receive payments or non-monetary benefits if the payment or benefit could reasonably be expected to influence advice provided to retail clients. Note that there are some exceptions for certain types of remuneration in some circumstances, such as non-monetary benefits which have a genuine education or training purpose, or the provision of information technology software or support.

344. The National Consumer Credit Protection Regulations 2010 require credit licensees to disclose information about commissions, bonuses and payments to third parties and Australia's responsible lending obligations prohibit irresponsible lending to consumers by all types of credit providers. The laws make it illegal for a lender to extend credit for a consumer that is unsuitable, based on their needs and their financial capacity.

Canada

Securities sector

345. In Canada, registered securities firms should ensure that their clients are adequately informed about any conflicts of interest that may affect the services the firm provides to them. This is in addition to any other methods the registered firm may use to manage the conflict.

When a registered firm provides this disclosure, it should:

- be prominent, specific, clear and meaningful to the client, and
- explain the conflict of interest and how it could affect the service the client is being offered.

Insurance sector

346. In the province of Quebec, where a representative charges fees to the client with whom he is transacting business, he must disclose to the client the fact that he also receives remuneration for the products sold and the services rendered and any other benefit determined by regulation.⁹⁵

347. Distributors must also, if the remuneration received by the distributor for the sale of the product exceeds 30% of its sales price, disclose that remuneration to the client.

France

348. In the banking sector, a person selling accredit agreement cannot, under any circumstances, be paid accordingly to the rate or type of credit (consumer credit and mortgages) that has been contracted by the borrower (i.e. article L313-11 consumer code). French regulation requests specific disclosure about conflicts of interest for intermediaries in both banking and insurance sector.

⁹⁵ (Distribution Act, s. 17).

Banking sector

349. Pursuant to article L313-11 of the consumer code, any individual vendor, employee or agent of a credit institution cannot, under any circumstances, be paid according to the rate of the credit or the type of credit.

350. According to article R519-25 monetary and financial code “CMF”, the level of remuneration received by the banking intermediaries should not go against their obligation to act in the best interests of clients or influence the quality of their service delivery.

351. Intermediaries are bound by rules of conduct (L519-4-1 Monetary and Financial Code). Prior to the conclusion of a banking transaction, the intermediary must provide the customer, when applicable, information to the existence of financial relationships with one or more credit institutions. It should also indicate if it is subject to a contractual obligation to work exclusively with one or more credit institutions and inform the client that he may release, upon request, the names of these institutions (L 519 4 2 Monetary and Financial Code).

352. Banks’ internal control must check that conflicts of interest are prevented (Article 11-3 of Regulation 97-02).

Securities sector

353. The Monetary and Financial Code sets the requirements applicable to investment services providers for dealing with conflicts of interest. These articles impose an obligation for investment services providers to take measures in order to prevent conflicts of interest from affecting their clients’ interests, and, where those measures are not sufficient to ensure the avoidance of any risk for clients’ interests, to provide them with clear information (L.533-10 3.).

354. Furthermore, the General Regulation of the French Autorité des marchés financiers requires the investment services providers to have a process in place regarding conflicts of interest within the entity. The RG AMF specifies that (Art. 313-18 to 313-24):

- Investment services providers must identify, with reference to their individual situation and activities, the circumstances which could constitute or give rise to a conflict of interest entailing a material risk of damage to the interests of one or more clients when providing an investment service or an ancillary service or management of a collective investment scheme”.
- In order to help investment services providers to identify potential and actual conflicts of interest, the RG AMF provides a list of situations which may lead to conflicts of interest (For example: 1° The investment services provider or that person is likely to make a financial gain or avoid a financial loss, at the expense of the client;
- The investment services provider or that person has an interest in the outcome of a service provided to a client or of a transaction carried out on behalf of the client, which is distinct from the client’s interest in that outcome).
- They must establish, implement and maintain an effective conflicts of interest policy set out in writing and appropriate to the size and organisation of the firm and the nature, scale and complexity of its business (Articles 313-20 to 313-22 of the of the AMF General Regulation). Besides, they must inform their clients about their conflicts of interest policy.

355. Specific obligations are imposed regarding investment research (Articles 313-25 to 313-28 of the AMF General Regulation). In particular, regulated entities including its personnel should not accept inducement in any shape or form from the people/entities which are part of the investment recommendation.

356. A special policy is also required regarding inducements (Articles 314-76 to 314-85-1 of the AMF General Regulation). All investment services providers are allowed to earn or provide from a person inducements linked to the investment or ancillary services they provide only if these payments or non monetary benefits belong to one of the following categories:

- inducement paid or provided to or by the client or a person on behalf of the client; (this provision ensures that the remuneration that is paid by the client for the services is legitimate).
- inducement paid or provided to or by a third party that meet three conditions: The client must be clearly informed, prior to the provision of the service by the ISP, about the existence, the nature and the amount of the inducement, or, at least, how it has been calculated. The inducement must not impair compliance with the firm's duty to act in the best interests of the client. The inducement must be designed to enhance the quality of the service provided to the client.
- proper fees which enable or are necessary for the provision of investment services.

357. The French Autorité des marchés financiers published a Position-recommendation (N° 2013-10 on 10 July 2013) regarding the information about advantages and inducements that should be given to clients.

Insurance sector

358. Before the conclusion of the first insurance contract, the intermediary must provide a potential client, when applicable, information as to the existence of financial relationships with one or more insurance undertakings.

359. Before signing any contract, the intermediary must give information:

- if it is subject to a contractual obligation to work exclusively with one or more insurance companies, to so inform the prospective purchaser, and give him the names of the firms upon request
- if it is not subject to a contractual obligation to work exclusively with one or more insurance companies, it must communicate, at the client's request, the name of the insurance companies with which it works; (Article L520-1 Insurance code)

Germany

360. Investment services enterprises are required to avoid conflicts of interest wherever possible (section 31 paragraph 1, no. 2 of the Securities Trading Act (Wertpapierhandelsgesetz – WpHG)). In addition they do have to inform their clients clearly prior to the execution of transactions for clients, if the

organisational arrangements pursuant to section 33 (1) sentence 2 no. 3 Securities Trading Act prove insufficient to prevent, with reasonable certainty, clients' interests from being prejudiced.⁹⁶

Hong Kong

361. Where a bank / LC has a material interest in a transaction with or for a customer or a relationship which gives rise to an actual or potential conflicts of interest in relation to the transaction, the bank or LC conducting securities business should not advise, nor deal in relation to the transaction unless it has disclosed that material interest or conflict to the customer and has taken all reasonable steps to ensure fair treatment of that customer.⁹⁷

362. Prior to or at the point of sale of securities, sales staff are required to disclose information such as affiliation of the bank or LC conducting securities business with the product issuer; and monetary benefits (amount received) and non-monetary benefits receivable (the existence and nature of benefits) for distributing an investment product.⁹⁸

363. If a bank /LC or its staff have an interest in a direct / cross transaction with a customer, proper procedures should be established to ensure that this fact is disclosed to the customer prior to the execution of the relevant transaction. Suggested related controls can be found in Paragraph 6, Part A of the Appendix to the Management, Supervision and Internal Control Guidelines for Persons Licensed by or Registered with the SFC.⁹⁹

364. Banks / LCs must not take commission rebates or other benefits to be received by them or their related companies as the primary basis for recommending particular investment products to clients. Where banks / LCs only recommend investment products which are issued by their related companies, they should disclose this limited availability of products to each client¹⁰⁰.

365. Senior management of banks / LCs should ensure their staff comply with all applicable laws, rules and codes, and should review, assess and be satisfied that the banks/ LCs have adequate systems and controls to promptly identify issues and matters that may be detrimental to a client's interest (e.g. cases in

⁹⁶ Circular 4/2010 (WA - Minimum Requirements for the Compliance Function and Additional Requirements Governing Rules of Conduct, Organisation and Transparency pursuant to sections 31 et seq. of the Securities Trading Act for Investment Services) defines the responsibilities/duties of the compliance function. According to the Circular (BT 1.2 paragraph 4) the compliance functions shall ensure that conflicts of interest are prevented or that unavoidable conflicts of interest are sufficiently taken into account. This applies in particular to the protection of client interests.

Section 27 Investment Code: The management company should take all reasonable steps to identify conflicts of interest. The management company should maintain and operate effective organisational and administrative arrangements with a view of taking all reasonable steps designed to identify, prevent, manage and monitor conflicts of interest in order to prevent them from adversely affecting the interests of Alternative Investment Funds and their investors. See also section 30 to 37 regulation (EU) No. 231/2013.

⁹⁷ Paragraph 10.1 of the Code of Conduct: http://en-rules.sfc.hk/net_file_store/new_rulebooks/h/k/HKSFC3527_1868_VER20.pdf.

⁹⁸ Paragraphs 8.3 and 8.3A of the Code of Conduct: http://en-rules.sfc.hk/net_file_store/new_rulebooks/h/k/HKSFC3527_1868_VER20.pdf.

⁹⁹ http://en-rules.sfc.hk/net_file_store/new_rulebooks/h/k/HKSFC3527_162_VER10.pdf.

¹⁰⁰ Item 4 of the FAQ on Suitability: <http://www.sfc.hk/web/EN/faqs/intermediaries/supervision/suitability-obligations-of-investment-advisers/2007-05-08.html>

which investment advice may have been given merely to meet sales targets or may be driven by financial or other incentives)¹⁰¹.

366. The HKMA provides guidance to banks on certain key factors that should be considered in designing the remuneration structure for sales staff. Banks should have adequate procedures and controls to ensure that sales staff are not remunerated with bonuses calculated solely on the basis of financial performance but that other factors are taken into account.¹⁰² The factors that should be taken into account in setting the remuneration for sales staff include adherence to applicable regulatory requirements and best practices guidelines, satisfactory audit or compliance review results, and satisfactory complaint investigation results.¹⁰³

367. Banks are required to take into account the latest market conditions and critically review any sales targets imposed on frontline staff for sale of investment products, and the appropriateness of any incentive schemes associated with such targets.¹⁰⁴

368. Section V of GN10 “Guidance Note on the Corporate Governance of Authorized Insurers” issued by the IA requires the Board of Directors of an insurer to:¹⁰⁵

- set out clearly policies regarding conflict of interest, fair treatment of clients and information sharing with shareholders (para. 9(i)); and
- devise clear policies on private transactions, self-dealing, preferential treatment of internal and external entities, and other inordinate trade practices of a non-arm’s length nature (para. 9(j)).

369. Section 40 of the CoCI sets out the requirement on insurers of avoiding conflicts of interest. Insurers should take reasonable steps to ensure that their employees and insurance agents are aware of the circumstances in which potential conflicts of interest may arise and that such conflicts are avoided.

Hungary

370. Financial services providers are expected to verbally present the product and its features as comprehensively as possible, and, in written communications, to set out the key comparative features in chart-form or any other clear and easily understandable format. Organisations should preferably avoid behaviour whereby they present their own product as the most favourable without evidence to support the

¹⁰¹ Item 9 of the FAQ on Suitability: <http://www.sfc.hk/web/EN/faqs/intermediaries/supervision/suitability-obligations-of-investment-advisers/2007-05-08.html>

¹⁰² Recommendation 18 of Annex 1 to the HKMA’s circular of 25 March 2009: <http://www.hkma.gov.hk/eng/key-information/guidelines-and-circulars/circulars/2009/20090325-1.shtml>, Attachment to the HKMA circular of 14 July 2009: <http://www.hkma.gov.hk/eng/key-information/guidelines-and-circulars/circulars/2009/20090714-2.shtml>, and Enclosure of the HKMA circular of 11 December 2008: <http://www.hkma.gov.hk/eng/key-information/guidelines-and-circulars/circulars/2008/20081211-1.shtml>.

¹⁰³ Recommendation 18 of Annex 1 to the HKMA’s circular of 25 March 2009: <http://www.hkma.gov.hk/eng/key-information/guidelines-and-circulars/circulars/2009/20090325-1.shtml>, Attachment to the HKMA circular of 14 July 2009: <http://www.hkma.gov.hk/eng/key-information/guidelines-and-circulars/circulars/2009/20090714-2.shtml>, and Enclosure of the HKMA circular of 11 December 2008: <http://www.hkma.gov.hk/eng/key-information/guidelines-and-circulars/circulars/2008/20081211-1.shtml>.

¹⁰⁴ Enclosure of the HKMA circular of 11 December 2008: <http://www.hkma.gov.hk/eng/key-information/guidelines-and-circulars/circulars/2008/20081211-1.shtml>

¹⁰⁵ <http://www.oci.gov.hk/download/gn10-eng.pdf>

claim (e.g. they should instead offer comparison with another service provider's product). Such behaviour carries the inherent risk of deceiving consumers.

India

371. Investment Advisers Regulations - the best way would be specify potential conflicts of interests to be disclosed rather than general statements:

- disclosure regarding his business, disciplinary history, terms and conditions, affiliations with other intermediary
- disclosure regarding compensation
- holding/ position, if any, in the financial products/ securities which are subject matter of advice

Ireland

372. In Ireland the 2012 Code of Conduct ensures that remuneration structures are not structured in such a way that they have the potential to impair the regulated entity's obligation to act in the best interests of consumers and to satisfy the suitability requirements set out in the Code.

373. The Conflicts of Interest section in Chapter 3 of the 2012 Code also includes a requirement for regulated entities to have in place a written conflicts of interest policy.

374. The Central Bank is currently undertaking a Review to Examine Sales Incentives for Direct Employees of Insurance Companies. A study across the EU of 10 Member States on remuneration structures and conflicts of interest is underway by the EU Commission.

375. In 2008, the Central Bank published a Report of the Working Group on the Review of the Intermediary Market (with a particular focus on transparency). The recommendations of the Report were implemented through the 2012 Code, which requires disclosure of remuneration arrangements by mortgage intermediaries authorised under the Consumer Credit Act, 1995 (the "CCA") and investment firms authorised under the Investment Intermediaries Act 1995 (as amended) (the "IIA"). Where the amount cannot be ascertained, the method of calculating that amount must be disclosed.

376. Where on-going remuneration is to be received, the intermediary must disclose the nature of the service to be provided in respect of that remuneration. In the case of non-life insurance, intermediaries must disclose in general terms that they are paid by means of a remuneration arrangement with a product producer and must either disclose the amount of that remuneration or inform the consumer that details of the remuneration are available on request. The intermediary must also disclose any additional remuneration arrangements that are not directly attributable to the service provided to that individual consumer but are based on levels of business introduced by the intermediary to that product producer or that may be perceived as having the potential to create a conflict of interest

377. There are also existing disclosure requirements for Life insurance undertakings under the Life Assurance (Provision of Information) Regulations, 2001.

378. In January 2009, as part of its compliance monitoring, the Central Bank published the findings from an examination of potential conflicts of interest where mortgage intermediaries provide property services. A letter to industry was issued in December 2008.

Israel

379. Proper Conduct of Banking Business Directive 322 - capital market activity of the banking system – requires maintaining “Chinese walls”.

380. Proper Conduct of Banking Business Directive 455 - providing credit for the purchase of financial assets - In view of the problems which may arise as a result of marketing financial assets by extending credit for their purchase, as regards of the conflict of interest for the banking corporation. A banking corporation shall not initiate contact with a customer to encourage the purchase of financial assets using credit for this purpose.

381. Proper Conduct of Banking Business Directive 461 - a banking corporation’s dealings in securities on its customers’ account.

382. Proper Conduct of Banking Business Directive 359 - banking corporations’ ties with Intermediaries.

383. The recommendations of the Bachar Committee (2005) regarding the separation of the provident and mutual funds from the banks, aimed at increasing competition in the financial system and the competitive threat to the banking system from the capital market. These recommendations were enacted through three different laws.

Italy

384. According to article 21(1-bis) of the Italian Consolidated Law on Finance, investment firms must adopt all reasonable measures to identify and manage conflicts of interest which may arise with the clients or between clients, by the adoption of appropriate organisational measures, in order to avoid a negative impact on the interests of the clients. Conflicts which cannot be adequately managed must be disclosed to clients.

385. In order to minimize the risk of conflicts of interest, authorized persons (Article 25 of Bank of Italy and Consob Regulation of October 29, 2007) are required to provide in writing, apply and maintain an effective conflicts of interest management policy in line with the principle of proportionality. This policy shall consider the circumstances of which the intermediaries are or should be aware, connected with the structure and business of the parties belonging to its group.

Japan

386. The Financial Services Authority in Japan requires financial services providers to manage transactions that are likely to cause a conflict of interest, to ensure that such a conflict of interest will not unduly harm customers’ interests. In this regard, it is important for financial services providers to develop a system to manage conflict of interest in an appropriate manner. Due attention should be given to the following points:

- the financial services provider has identified and categorized transactions with the risk of conflict of interest in advance; and
- the financial services provider conducts management by notifying the customer of the risk of conflict of interest, whether the customer is provided with an appropriate explanation, depending on the customer’s attributes, so that the customer can fully understand the content of the potential conflict of interest and the reasons for choosing the management method (including reasons for not choosing other methods), before concluding a contract for the transaction.

Luxembourg

387. Relevant regulations include the following

- Law of 5 April 1993 on the Financial Sector
- Grand-Ducal Regulation of 13 July 2007
- Law of 17 December 2010 relating to undertakings for collective investment
- CSSF Regulation N° 10-04 transposing Commission Directive 2010/43/EU

Mexico

388. Rules of the CNSF the Mexican Insurance regulator, state that, in order to foster a climate of transparency by the insurance agents and prevent any conflict of interest that may arise from the promotion or sale of insurances from different insurance companies, should inform their customers about rates, policies, endorsements, plans and other circumstances used by the institutions.¹⁰⁶

389. The Rules of the CNBV applicable to Brokerage Houses and Credit Institutions on Investment Services has a section on conflicts of interest that describes all the situations that can imply conflict of interests between the financial service provider and the customer. Furthermore, article 50 clearly states that in their remuneration structure brokerage houses and credit institutions should include criteria to align the incentives of their professionals to act in the best interest of their clients.¹⁰⁷

Netherlands

390. The Netherlands have experienced that transparency is of added value where it regards conflicts of interest. However, the Netherlands have also experienced that disclosure alone did not remove the conflicts of interest and even had a counterproductive effect. Underneath we have described one solution on the side of disclosure

391. Within the Financial Services document that is designed interest in other financial institutions need to be reported in three different ways:

- whether the financial service provider is also a provider of financial products
- whether the financial service provider has a 'gekwalificeerde deelneming' in other financial services provider(s)
- whether the financial services provider has contractual obligations

392. Most importantly it is required that not only is mentioned that these interest exist but is also stressed that these interest can have an impact on the advice consumers receive.

393. In order for consumers to make fair comparisons between costs it is important that providers employ the same starting points for the calculation of their costs. Therefore it is prescribed by law what

¹⁰⁶ <http://www.cnsf.gob.mx/Normativa/Paginas/Acus2011.aspx>

¹⁰⁷ <http://www.cnbv.gob.mx/Bursatil/Normatividad/Paginas/Casas-de-Bolsa.aspx>

types of costs can be displayed. These starting points or basis assumptions are necessary to ensure the representation of costs is unambiguous for consumers and to promote comparability.

394. Since January 1, 2013 the Netherlands have implemented a ban of inducements for non-MiFID financial service providers. The intention of this ban is to remove excessive sales intentions that may be generated by commissions provided by third parties, such as financial product manufacturers.

395. The ban has been applied on a cross-sector basis which implies that a similar regime applies to financial service providers operating in different sectors (insurance, banking and investment).

396. The AFM is in the middle of the implementation of the regulation and is aware of the fact that this is a very complex measure. Hence the AFM is closely observing the (side) effects.

South Africa

Collective investment schemes

397. Relevant regulations include the following:

- Section 4 of CISCA - a manager must “avoid conflict between the interests of the manager and the interests of an investor”
- S 4(2) - the manager must disclose the interests of its directors and management to the investors
- Notice 910 regarding the appointment of directors who are fit and proper, independence of the board of directors.

Capital markets

398. JSE Equities Rules: Rule 8.10.2 – General conduct towards clients

399. Code of conduct for authorised users (Notice 20 of 2005): Section 4 – Disclosure to clients

Pension sector

400. Financial services providers or authorised agents are regulated and supervised by the Registrar of Financial Advisors and Intermediary Services.

Financial advisory & intermediary services

401. Section 3A of the General Code of Conduct (BN 80 of 2003)

Spain

402. For the banking sector, providers of advice in Spain shall charge an independent fee for this service and shall act in the best interest of their clients, based on an objective and sufficiently broad analysis of the banking services available and considering both the personal and financial situation of the client, the client’s preferences and objectives.¹⁰⁸

¹⁰⁸ Advice is defined as any tailor-made recommendation by the entity to the client regarding one or more banking services available in the market.

UK

403. If arrangements made to manage conflicts of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of a client will be prevented, the firm must clearly disclose the general nature and/or sources of conflicts of interest to the client before undertaking business for the client

Investments

404. The rules require that advice and product costs are distinguished and disclosed in a comprehensible and transparent manner.

Mortgage sector

405. Mortgage intermediaries must disclose their remuneration basis (which can include both fees and commission) on first contact with a consumer.

406. The KFI must state the value of any payments made by the lender to the intermediary (or third parties).

Non-investment insurance sector

407. Insurance intermediaries are required to disclose:

- whether a given insurance undertaking (that is not a pure reinsurer) or its parent undertaking has a direct or indirect holding representing more than 10% of the voting rights or capital in the firm; and
- the procedures allowing customers and other interested parties to register complaints about the firm with the firm and the Financial Ombudsman Service or, if the Financial Ombudsman Service does not apply, information about the out-of-court complaint and redress procedures available for the settlement of disputes between the firm and its customers.

408. Insurance intermediaries are also required to give customers details of commission payments that they receive as part of the premium payment. The commission disclosure obligations derive partly from rules and partly from the general law.

409. The application of these rules to non-investment insurance intermediaries goes beyond the requirements of the Markets in Financial Instruments Directive (MiFID).

3. PROVISION OF ADVICE

Australia

410. In Australia, a person must only provide financial advice to a retail client if they have made reasonable inquiries into the personal circumstances of the client, they have a reasonable basis for the advice taking into account the client's personal circumstances, and the advice is appropriate to the client. Providers of financial services must generally hold a license.

Canada

Banking sector

411. For both deposit-type instruments, and principal protected notes, regulations require that banks provide prospective customers with the telephone number of a person who is knowledgeable about such products.

412. Under the Cost of Borrowing regulations, under certain circumstances a financial institution must ascertain that a borrower has obtained independent legal advice prior to entering into a mortgage contract.

Securities sector

413. The legislative obligation for dealers and advisers to deal fairly, honestly and in good faith with their clients prohibits any person or company from making statements that are untrue or omitting information that is necessary to prevent the statement from being false or misleading. (NI 31-103)

414. The representative must follow rules of professional conduct that require them, among other things, to place the client's interests first when selling products and services. The representative must follow the "Know Your Client" rule. Before making any recommendations, the representative must understand the current financial situation of its client, know its financial goals and establish its investor profile.

415. Under "Know Your Client" and suitability obligations¹⁰⁹, registered advisers and dealers are required to take reasonable steps to:

- establish the identity of a client
- establish whether the client is an insider of an issuer whose securities are publicly traded (there is an exception, however, where the registrant is only trading mutual fund or labour-sponsored investment fund corporation or labour-sponsored venture capital corporation securities)
- ensure that they have sufficient information to make a determination of the suitability of a trade or investment for a client, including information regarding the client's needs and objectives, financial circumstances and risk tolerance, and
- establish the creditworthiness of the client if the registered firm is financing the client's acquisition of a security (applies only to investment dealers as other types of registered firms are prohibited from making loans to clients).

¹⁰⁹ Sections 13.2 and 13.3 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*.

416. Registrants are required to keep the information outlined above current. The regulators have provided guidance stating that the timeframe for currency may be determined by the frequency of trading or advising being conducted by the registrant.

417. Registered dealers and advisers are also required to ensure that a purchase or sale of a security is suitable for a client before making a recommendation to or accepting an instruction from a client to buy or sell a security or a purchase or sale of a security for a client's managed account. Clients are permitted to override a registered dealer or adviser's opinion that a specific trade is not suitable, but only if the registered dealer or adviser has specifically outlined this opinion to the client prior to the purchase or sale of the security.

418. All registered dealers and advisers must deliver the following information to clients¹¹⁰:

- a description of the nature or type of the client's account
- identification of the products or services the registered firm offers to a client
- a description of the types of risks that a client should consider when making an investment decision
- a description of the risks to a client of using borrowed money to finance a purchase of a security
- a description of the conflicts of interest that the registered firm is required to disclose to a client under securities legislation
- disclosure of all costs to a client for the operation of an account
- a description of the costs a client will pay in making, holding and selling investments (regulators confirm in guidance that these costs include commissions and fees and the description of these costs must include the potential impact on the investment)
- a description of the compensation paid to the registered firm in relation to the different types of products that a client may purchase through the registered firm
- a description of the content and frequency of reporting for each account or portfolio of a client
- if the firm is subject to the dispute resolution and mediation services provisions of NI 31-103, disclosure that independent dispute resolution or mediation services are available at the registered firm's expense
- a statement regarding the registered firm's obligation to assess the suitability of an investment for a client prior to executing the transaction or at any other time the information a registered firm must collect in respect of know your client obligations in NI 31-103.

¹¹⁰ Section 14.2 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*.

France

Insurance sector

419. Prior to the conclusion of a (life) contract and on the basis of information provided by the policyholder about his/her financial situation and investment objectives, the insurance undertaking (or the intermediary, where applicable) must specify the demands and needs of the policyholder as well as the underlying reasons for any advice given to him concerning a contract. Information is modulated according to the complexity of the contract.

420. The insurance undertaking or where applicable, the intermediary, has to take into account the policyholder's knowledge and experience in the financial field, but also any other element brought to its attention (Articles L. 132-27-1 and L. 520-1 III of the Insurance Code).

421. Before signing any contract, the Insurance intermediary must specify the requirements and needs of the prospective purchaser and the reasons for the advice provided about a given insurance product. These details, which are based in particular on the information provided by the prospective purchaser, are adapted to the complexity of the insurance contract proposed Article L520-1 Insurance code.

Banking sector

422. The creditor or credit intermediary provides the borrower explanations allowing him to determine whether the proposed credit agreement is adapted to his needs and to his financial situation, (...) He drew the attention of the borrower on the essential characteristics (...) and the impact that these funds can have on its financial position, including in the event of default. This information is given, as appropriate, based on the preferences expressed by the borrower.

423. When credit is offered in place of sale, the creditor must ensure that the borrower receives these explanations fully and appropriately on the spot of the sale conditions guaranteeing the confidentiality of exchanges. (Article L311-8 consumer code)

424. Before concluding the credit agreement, the creditor verifies the borrower's creditworthiness from a sufficient number of information, including information provided by the applicant at the request of the creditor. (Article L311-9 consumer Code)

425. When the contract is a credit transaction, the intermediate banking enquires about the client's knowledge and experience in banking and its financial situation and needs, in order to be able to offer services, contracts or transactions tailored to their situation.

426. The intermediary must also collect from the customer, including the potential customer information on its resources and its charges, and outstanding loans it has made to allow the credit institution to ensure its solvency. (R 519 21 CMF)

Securities sector

427. The French AMF has published a position, applicable to investment services providers and financial investment advisers, on the collection of know your customer (KYC) information. These professionals must gather certain information from their customers to ensure that the service they are planning to provide is suitable or appropriate. Working within their joint unit, the AMF and the ACP therefore decided to clarify their expectations in terms of drawing up and using customer questionnaires. KYC is vital to providing a high-quality service, whether a remote or face-to-face distribution method is used. The information gathered must make it possible to identify the customer's individual characteristics,

needs, investment objectives and financial knowledge and experience. Professionals must pay close attention to the wording of questions in the questionnaire and the way that the questions relate to the product proposed. For example, questions asked to assess attitude to risk must be in line with the planned investment. The assessment of financial knowledge and experience cannot be based solely on a self-assessment by the customer. The way the questionnaire is prepared and used must also make it possible to identify answers that are obviously inconsistent or incomplete. In addition, professionals need to educate their customers to help them understand these rules, which are designed to protect them, and show that it is in their interest to answer the questionnaire honestly.

Germany

428. Section 31 paragraph 2 Securities Trading Act (Wertpapierhandelsgesetz - WpHG) states:

“All information, including marketing communications, which investment services enterprises make available to their clients must be fair, clear and not misleading”.

429. The same will apply to the insurance sector pursuant to Article 24 paragraph 2 of the Directive on Insurance Mediation (COM 2012/360/2).

Hong Kong

430. Banks / LCs shall not, during or as a consequence of an unsolicited call made, make or offer to make (or induce / attempt to induce) with another person an agreement for that other person to sell or purchase any securities.¹¹¹

431. There are positive obligations on banks / LCs under the Code of Conduct to seek information from customers including their financial situation, investment experience and investment objectives. Each customer's information should be fully documented and where appropriate, updated on a continuous basis.

432. When making a recommendation or solicitation, banks / LCs should ensure the suitability of the recommendation or solicitation for a customer is reasonable in all the circumstances.¹¹²

433. The need for intermediaries to provide investment recommendation to a client after taking into account the personal circumstances of the client is reflected in further guidance on “suitability” according to the FAQ on Suitability. Suitability generally involves banks' matching the risk return profile of each recommended investment product with each customer's “personal circumstances”, taking into account the customer's investment objectives, investment experience, financial situation, investment horizon, risk tolerance and so on (Item 4 of the FAQ). Banks / LCs should help each customer make informed decisions by giving the customer proper explanations of why recommended investment products are suitable for the customer and the nature and extent of risks the investments products bear. Banks / LCs should document and provide a copy to each customer of the rationale underlying the investment recommendations made to the customer. Banks / LCs should document and record information given to each customer and the rationale for recommendations given to the customer, including any material queries raised by the customer and the responses given by banks / LCs.¹¹³ Even if a customer does not fully disclose his

¹¹¹ Section 174 of the Securities and Futures Ordinance: [http://www.legislation.gov.hk/blis_pdf.nsf/6799165D2FEE3FA94825755E0033E532/5167961DDC96C3B7482575EF001C7C2D/\\$FILE/CAP_571_e_b5.pdf](http://www.legislation.gov.hk/blis_pdf.nsf/6799165D2FEE3FA94825755E0033E532/5167961DDC96C3B7482575EF001C7C2D/$FILE/CAP_571_e_b5.pdf)

¹¹² Paragraph 5.2 of the Code of Conduct: http://en-rules.sfc.hk/net_file_store/new_rulebooks/h/k/HKSFC3527_1868_VER20.pdf.

¹¹³ Items 5 and 7 of FAQ on Suitability: <http://www.sfc.hk/web/EN/faqs/intermediaries/supervision/suitability-obligations-of-investment-advisers/2007-05-08.html>

personal circumstances (e.g. financial situation) to a bank / LC, this would not stop the bank / LC from making an assessment of the customer's attitude, his expectations and so on. However, if a bank / LC are unable to make that assessment, the bank / LC should, as a minimum, explain to the customer the inherent limitations of the advice as a result of the lack of information. Further, the bank / LC should explain to the customer the assumptions made in relation to the advice given.¹¹⁴

434. Whenever a product with a risk rating higher than a retail bank customer's tolerable level is sold to the customer, bank staff should remind the customer of the risk mis-match and that the product may not be suitable for the customer, document the reasons of the customer's choice of products, and that the customer should sign an acknowledgement of the risk mis-match, and full conversation should be audio-recorded¹¹⁵. It should be noted that a mechanical matching of risk ratings between customers and products per se may not necessarily satisfy the suitability requirement.

India

435. Investment Advisers Regulations, 2013 - Risk profiling being done after objective evaluation of his risk appetite considering his capacity for absorbing loss, whether willing or unable to accept risk of loss or capital.

Ireland

436. The Code of Conduct outlines requirements for product producers in their responsibility to provide certain details to an intermediary in relation to a new investment product. These include:

- the key characteristics and features of the product;
- the target market of consumers for the product;
- the nature and extent of the risks inherent in the product; and
- the level, nature, extent and limitations of any guarantee attaching to the product and the name of the guarantor.

Italy

437. Article 40 of Consob Regulation n. 16190/2007 states that, based on information obtained from the customer, and taking into account the nature and characteristics of the service provided, the intermediaries must assess whether the specific transaction recommended satisfies the following criteria:

- correspondence with the customer's investment objectives;
- the nature of the transaction is such that the customer is financially able to face any risk related with the investment compatible with his investment objectives;
- the customer has the necessary experience and awareness of the nature of the transaction to understand the risks involved in such a transaction

¹¹⁴ Item 2 of FAQ on Suitability: <http://www.sfc.hk/web/EN/faqs/intermediaries/supervision/suitability-obligations-of-investment-advisers/2007-05-08.html>

¹¹⁵ Recommendation 25 of Annex 1 to the HKMA's circular of 25 March 2009: <http://www.hkma.gov.hk/eng/key-information/guidelines-and-circulars/circulars/2009/20090325-1.shtml>

438. A series of transactions, each of which is suitable if considered individually, may not be appropriate if the frequency of such transactions is not in the best interests of the customer.

Japan

439. To fulfil their responsibility to provide appropriate explanation, financial services providers are required to:

- avoid placing too much emphasis on the advantages of the transaction and makes sure to sufficiently explain disadvantages, such as the possibility of incurring losses and other risks;
- avoid making false statements when promoting products and services or avoid making definitive claims without sufficient grounds when describing products and services;
- explain products and transactions in an objective manner and avoid arbitrary and subjective statements; and
- avoid making arbitrary use of forecasts tinged with a particular bias in cases where they use materials (including newspaper articles, analyst reports) containing third-party market forecasts.

440. Also, financial services providers may discourage their customers from buying certain products judged by their profile.¹¹⁶

Mexico

441. In Mexico the Securities Market Law in Section III (Sales Practices), Articles 189 y 190 states that brokerage firms are required to evaluate the client in order to offer products which correspond to his profile.¹¹⁷

442. The rules of the CNBV applicable to Brokerage Houses and Credit Institutions on Investment Services in its Title I Chapter III indicate that financial institutions that provide investment services are obliged to request the necessary information from the clients to make an evaluation of their profile. Some of the elements of the evaluation are: financial situation, expertise and knowledge in financial matters, investment objectives, risk profile, income level. This evaluation should be later discussed with the client.¹¹⁸

443. The Rules of CONSAR applicable to the agents of retirement funds administrators state that agents should provide complete, truthful, relevant and updated information to the customers (workers). The rules also state that agents should offer workers the product that best satisfies their needs and characteristics.¹¹⁹

¹¹⁶ Article 5-2, Regulations concerning Solicitation for Investments and Management of Customers, etc., by Japan Securities Dealers Association

¹¹⁷ <http://www.diputados.gob.mx/LeyesBiblio/pdf/LMV.pdf>

¹¹⁸ <http://www.enbv.gob.mx/Bursatil/Normatividad/Paginas/Casas-de-Bolsa.aspx>

¹¹⁹ http://www.consar.gob.mx/normatividad/pdf/normatividad_emitida/circulares/DISPOSICIONES_de_agentes_pr_omotores.pdf

Spain

444. The provision of financial advice is regulated under specific terms, different to and more stringent than the ones applicable to the general commercialization of financial products, which falls under the general transparency rules.¹²⁰ Advice is defined as any tailor-made recommendation by the entity to the client regarding one or more banking services available in the market. Advising entities shall charge an independent fee for this service and shall act in the best interest of their clients, based on an objective and sufficiently broad analysis of the banking services available and considering both the personal and financial situation of the client, his preferences and objectives.

Turkey

Capital markets

445. Articles 46 of Communiqué Serial: V, No: 46 on Principles Regarding Intermediary Activities and Intermediary Institutions states that: in providing intermediation services for secondary trading, the brokerage houses may give written or oral information to their customers about the capital market instruments, the corporations and institutions issuing these instruments and market tendencies. Such services shall not be regarded as investment consultancy services. However, the given information must be fair and impartial and should not have the purpose of serving the interests of a certain individual, group or portfolio and must not be in return of any material benefit

446. Article 11 of Communiqué on the Principles Regarding Investment Advisory Activities and Institutions which are Authorised to Provide Investment Advisory Services reads: In carrying out investment advisory activities, authorized institutions;

- Shall not offer suggestions or recommendations based on misleading, false and exaggerated information,
- Shall provide investment advices based on reliable documentation, supportive reports and analysis,
- Shall give recommendations to customers by considering their financial status, investment purposes, liquidity and risk and return preferences so as to enable them to make the most appropriate investment decisions,
- Shall not make any written or verbal commitment to the customers implying that given investment advise will provide a certain and determined return,
- Shall primarily consider the benefits of clients in a direct or indirect conflict of interest with their clients, and treat their customers fairly in case of a conflict of interest that cannot be prevented among clients,
- Shall not use the results of the researches which are to be announced to the clients in written, audio and visual formats and which can affect the investment decisions of the clients for their own benefit or for the benefit of third parties before announcing to the clients.

¹²⁰ Art. 10 Ministerial Order on Transparency and Protection of Banking Services Customers (Orden EHA/2899/2011, de 28 de octubre, de transparencia y protección del cliente de servicios bancarios)-:

UK

Investments

447. COBS contain detailed suitability requirements around the steps that providers must take to help ensure that the advice they give meets their clients' needs.

Mortgage sector

448. Where a firm chooses to provide mortgage advice it must base this on a proper consideration of the consumer's needs and circumstances

Non-investment insurance sector

449. A firm must take reasonable care to ensure the suitability of its advice for any customer who is entitled to rely upon its judgment. There is also more detailed suitability Guidance for firms selling protection products in ICOBS.

Banking sector

450. Guidance to firms states that authorised deposit-takers are not obliged to make personal recommendations to customers relating to particular accounts or deposit-taking services. But, if a deposit-taker chooses to make a personal recommendation to a customer who is entitled to rely upon its judgment, it should take reasonable steps to ensure that the recommendation is suitable for the customer in question, taking into account that customer's needs, objectives and circumstances.

451. In addition, deposit-takers should bear in mind that, depending on the circumstances, they may owe a customer a duty of care under the general law in relation to giving advice.

4. PROMOTIONAL MATERIAL

Australia

452. The Australian regulator, ASIC actively monitors advertising to ensure confident and informed investors and to ensure promoters comply with their legal obligations not to make false or misleading statements or engage in misleading or deceptive conduct. In addition, the Corporations Act 2001 requires that all information contained in a PDS must be worded and presented in a clear, concise and effective manner.

453. ASIC has released guidance on advertising financial products and advice services, to ensure confident and informed investors and financial consumers, and ASIC can take action in response to misleading or deceptive conduct.

Canada

Banking sector

454. Federal regulations and legislation set out certain requirements with respect to promotional material and advertisements for financial products. For example, the Cost of Borrowing regulations require a federally regulated financial institution to disclose the annual interest rate and the term of the loan in any advertisement. The interest rate must be provided at least as prominently and in the same manner as any other representation.

455. As another example, a federally regulated financial institution that uses past market performance in an advertisement for a principal protected note must represent that performance fairly and disclose that past market performance is not an indicator of future market performance.

456. Under the Cost of Borrowing regulations, federally regulated financial institutions are required to provide clear information in credit contracts and application forms through a summary box that sets out key features, such as interest rates and fees.

Securities sector

457. In accordance with securities legislation an advertising document must adequately reflect the information presented in the prospectus, without distorting it by selective presentation or by adding misleading statements. The regulatory framework for public offerings specifies that issuers should apply plain language principles when they prepare their disclosure. The IIROC's *Guidelines for the review, supervision and retention of advertisements, sales literature and correspondence*¹²¹, MFDA rules 2.7 and 2.8.¹²²

¹²¹

<http://iiroc.knotia.ca/Knowledge/View/Document.cfm?Ktype=445&linkType=toc&dbID=200805345&tocID=1847>

¹²² <http://www.mfda.ca/regulation/rules/RulesFeb13.pdf> ; In Québec, see also *Regulation respecting firms, independent representatives and independent partnerships*, Division I http://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=3&file=/D_9_2/D9_2R2_A.HTM, still applicable to mutual fund dealers and scholarship plan dealers: see section 134, *An act to amend the Securities Act and other legislative provisions*, 2009, chapter 25. <http://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=5&file=2009C25A.PDF>

Insurance sector

458. In the Province of Quebec, the *Regulation under the Act respecting insurance*¹²³ provides specific rules pertaining to advertisement. An insurer may not exaggerate the extent of the protection offered or the amount of payable benefits, nor minimize the cost thereof. It must also specify the exclusions likely to affect the nature or scope of the protection under the contract, and expose any limitation resulting from a waiting period.

Chile

459. 415. In Chile misleading advertising is regulated by the Law on Protection of Consumer Rights. For its part, industry regulations issued by the Superintendence of Securities and Insurance and the Superintendence of Pensions also regulates matters referred to misleading advertising.

France

460. As a general principle, untrue, misleading statements, omission of necessary information in advertising materials are prohibited (all sector) by article L121-1 II of consumer code as bad commercial practice

Banking sector

461. All advertisements, regardless of the medium, which concerns consumer credit to consumers and indicates an interest rate or quantitative information related to the cost of the loan has to state clearly, accurately and prominently a list of compulsory information using a representative example. (L 311-4 Consumer code)

462. Articles L312-4 and L 312-5 of the Consumer code stipulate that all advertising regarding mortgages credit shall indicate the nature, duration, objective, total cost, rate, and withdrawal period in a clear and understandable way.

Insurance sector

463. All information, including advertising, relating to a contract of life insurance or an endowment contract are accurate, clear and not misleading. Advertising should be clearly identified as such. (Article L132-27 Insurance Code)

Hong Kong

464. Intermediaries should ensure that advertisements do not contain information that is false, disparaging, misleading or deceptive.¹²⁴

465. Unless an exemption applies, marketing materials for securities that are offered to the public requires authorization from the SFC prior to issuance or publication (Sections 103 and 105 of the Securities and Futures Ordinance).¹²⁵

¹²³

http://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=3&file=/A_32/A32R1_A.H.TM.

¹²⁴

Paragraph 2.3 of the Code of Conduct: http://en-rules.sfc.hk/net_file_store/new_rulebooks/h/k/HKSFC3527_1868_VER20.pdf

466. The SFC Product Handbook¹²⁶ and the Advertising Guidelines Applicable to Collective Investment Schemes Authorized under the Product Codes¹²⁷ and the Advertising Guidelines Applicable to Unlisted Structured Investment Products in the Code of Unlisted Structured Products under the SFC Product Handbook set out general requirements as well as product-specific requirements of advertisements, such as use of language and graphics, performance information, examples, and warning statements.

467. For bank-issued currency-linked or interest rate-linked investment products that are not regulated by the Securities and Futures Ordinance, the HKMA expects banks to follow standards similar to those issued by the SFC on marketing materials. The HKMA states that such marketing materials must be clear, fair and present a balanced picture with adequate and prominent risk disclosure in compliance with all applicable regulations.¹²⁸

468. The above requirements emphasise on ex-ante approval controls. The HKMA conducts on-site examinations to assess banks' controls and ascertain banks' compliance with the requirements with the requirements as ex-ante and ex-post controls.

469. The following are examples of specific requirements of the CoBP in relation to promotional materials:

- Banks are required to ensure that all promotional materials are fair and reasonable, and do not contain misleading information.
- Banks are required to indicate the APRs and other relevant fees and charges in any promotional materials which include references to interest rates.
- Banks are required to clearly indicate in promotional materials the conditions which promotional benefits are subject to.

India

470. The SEBI (Mutual Fund) Regulations, 1996 - Advertisement Code and Guidelines: any misleading information or advertisements would also attract action under FUTP Regulations

Ireland

471. Effective practice seeks a same level of differentiation of consumers to identify those consumers that require a greater level of protection. Such differentiation has been incorporated into the 2012 Code in the form of a definition of 'vulnerable consumer', which highlights various vulnerabilities that may affect some consumers. The inclusion of this definition in the Code means that regulated entities now have to consider whether a consumer has any of the characteristics of a vulnerable consumer when making an assessment of the suitability of a financial product or service for that consumer.

¹²⁵ Securities and Futures Ordinance: [http://www.legislation.gov.hk/blis_pdf.nsf/6799165D2FEE3FA94825755E0033E532/5167961DDC96C3B7482575EF001C7C2D/\\$FILE/CAP_571_e_b5.pdf](http://www.legislation.gov.hk/blis_pdf.nsf/6799165D2FEE3FA94825755E0033E532/5167961DDC96C3B7482575EF001C7C2D/$FILE/CAP_571_e_b5.pdf)

¹²⁶ SFC product Handbook: http://en-rules.sfc.hk/net_file_store/new_rulebooks/h/k/HKSFC3527_3038_VER10.pdf

¹²⁷ Advertising Guidelines Applicable to Unlisted Structured Investment Products: http://en-rules.sfc.hk/net_file_store/new_rulebooks/h/k/HKSFC3527_2800_VER10.pdf

¹²⁸ HKMA circular of 13 July 2009: <http://www.hkma.gov.hk/eng/key-information/guidelines-and-circulars/circulars/2009/20090713-2.shtml>

Israel

472. Relevant regulations include the following:

- Banking (Customer Service) Law, 1981 – especially sections 3,4,5,6, 6A
- Proper Conduct of Banking Business Directive 406 - banking services for new immigrants.
- Banking (Customer Service) (Advertising Aimed at Minors) Regulations, 1995

Proper Conduct of Banking Business Directive 416 - Minors' Accounts.

Italy

473. Unsolicited commercial communications with consumers through mail, email, the web, telephone or other distance communication techniques is not allowed without prior consent of the consumer.

474. All information, including advertising and promotional notices, addressed to customers and potential customers by financial services providers must be correct, clear and not misleading.

Japan

475. Financial services providers should provide their customers with clear and precise information to ensure the appropriateness of their solicitation. In this regard, due attention should be given to the following points:

- Whether advertisements, could lead customers to erroneously believe that the fees, commissions, other rewards and expenses they must pay are nil or substantially lower than the actual levels.
- Regarding financial instruments whose value could fall below their principal amount or for which the loss amount could exceed the principal amount, whether the advertisement, etc., clearly indicates such risks.

476. Regulations regarding promotional materials are not applied to professional investors.

Luxembourg

Relevant regulations include the following:

- Law of 5 April 1993 on the Financial Sector
- Grand-Ducal Regulation of 13 July 2007
- Law of 10 November 2009 on payment services
- Law of 8 April 2011 concerning the implementation of a Consumer Code
- Law of 17 December 2010 relating to undertakings for collective investment

Mexico

477. Regulations in Mexico provide guidelines to be followed by financial services providers with regards to promotional material (ex-ante control), and the oversight body should have the authority to review promotional material and sanction providers that deviate from the guidelines (ex-post control).

478. Article 12 of the LTOSF states that financial institutions must comply with the guidelines established in the Rules of Condusef applicable to financial institutions regarding promotional materials. The guidelines for promotional materials should consider the following aspects:

- The truthfulness and accuracy of the information related to the products and/or services offered;
- That they do not contain elements of unfair competition;
- Transparency in the characteristics, and risks inherent in the product or service;
- Financial literacy elements for the public;
- Contact points for getting further information;
- The disclosure mechanisms to inform the public about the commissions charged.¹²⁹

479. The Rules of Condusef applicable to financial institutions in its section on publicity (section V) indicate the elements that publicity and promotional materials of financial institutions should have.¹³⁰

480. The Rules of the CNSF applicable to Insurance companies in its Title 10 establish the requisites that the publicity and advertising of insurance companies must comply; it states that information provided needs to be clear, unbiased, accurate and timely in order to promote fair competition.¹³¹

481. The Securities Market Law states in Article 6 that the dissemination of information about securities for promotional, marketing or commercialization purposes addressed to the general public is subject to the previous authorization of the National Banking and Securities Commission.¹³²

482. The Rules of CONSAR applicable to the advertisement of retirement savings systems specify the principles that must be complied with: clarity, purpose, truthfulness, relevance, verification, loyalty, identification. Furthermore, the rules state that pension funds administrators should establish their own codes of conduct regarding advertisement to promote good practices and a healthy competition in the sector. The rules also define the elements that are forbidden for any kind of advertisement.

483. Finally, these rules also regulate the comparative advertisement that pension funds administrator's issue. The information used for comparative advertisement has to be the information that CONSAR has on its webpage.¹³³

¹²⁹ http://www.condusef.gob.mx/PDF-s/marco_juridico/ley_transparencia_ordenamiento.pdf

¹³⁰ http://www.condusef.gob.mx/PDF-s/marco_juridico/disposicion_entidades_financieras.pdf

¹³¹ <http://www.cnsf.gob.mx/Normativa/Paginas/Acus2011.aspx>

¹³² <http://www.diputados.gob.mx/LeyesBiblio/pdf/LMV.pdf>

¹³³ http://www.consar.gob.mx/normatividad/pdf/normatividad_emitida/circulares/DISPOSICIONES_en_materia_de_publicidad_del_SAR.pdf

Netherlands

484. The following approaches are taken:

- For investment services which are not under the supervision of the AFM (which means there is no obligation to have a prospectus or license), the service has to be accompanied by a so called *vrijstellingsvermelding*, a warning sign and text that the service is not under the supervision by the AFM
- Any credit advertisement or offer has to be accompanied by a standardized warning sign focused on the consumer.
- in advertisements for a complex product a ‘risk indicator’ has to be mentioned. The risk indicator shows five different risk-categories to consumers. Based on prescribed calculations providers can indicate which category is applicable to the product. The risk with most impact on the calculation is whether consumers can lose their deposits. Or can be left with a debt at the end of the duration of the product. An example of the risk indicator is added below for a product with very high risk. Also a reference needs to be made to the financial leaflet.
- Credit Table: when the interest rate of a consumer of mortgage credit is mentioned in advertising, a table with the total cost of credit has to be mentioned
- APRC (JKP) in advertising for consumer credit: Annual percentage rate of charge has to be mentioned in advertising to reflect total cost of credit; this is implementation of CCD

Portugal

Banking sector

485. Notice No. 11/2010 on Advertisement that establishes a set of principles and rules relating to advertisement made by credit institutions. Information in all advertising materials must be (taking into consideration the various media that can be used for publicity): clear and accurate; balanced/proportional (re advantages and risks of the product); visible/audible.

486. Banco de Portugal monitors compliance of all advertising campaigns on all banking products and services with the existing rules. All the different means of communication are under scrutiny (TV, outdoors, mail shots, internet, booklets,...), and Banco de Portugal requires non-compliant advertising campaigns to be changed or suspended.⁴⁴² Ex ante approval by the Central Bank is required for advertisement related to structured deposits.

South Africa

Collective investment schemes

487. Relevant regulations include the following:

- Section 100 of CISC – provisions on the content of price lists, advertisements, brochures
- Sections 106 and 107 prohibit the making of false and misleading statements regarding CIS

Capital markets

488. JSE Equities Rules

- Rule 8.10.3 – Disclosure

489. Code of conduct for authorised users (Notice 20 of 2005)

- Section 4 – Disclosure to clients

Pension sector

490. Financial services providers or authorised agents are regulated and supervised by the Registrar of Financial Advisors and Intermediary Services.

Financial advisory & intermediary services

491. Section 14 of the General Code of Conduct (BN 80 of 2003)

Insurance sector

492. Long-term Insurance Act No. 52 of 1998 and Short-term Insurance Act No. 53 of 1998: Section 4 - If any advertisement, brochure or similar communication which relates to the business of a long-term insurer, or to a long-term policy, and which is being, or is to be, published or issued by a person, is misleading or contrary to the public interest or contains an incorrect statement of fact, the Registrar may by notice direct that person not to publish or issue it or to cease publishing or issuing it or to effect the changes to its which the Registrar deems fit.

Spain

493. Publicity of financial products and services must be clear, sufficient, objective and not misleading, setting explicitly the advertising nature of the message. On a preventive basis, the general advertising policy of the entity must take into account the protection of the legitimate interests of clients. Information on interest rates must be provided in terms of annual percentage rate of charge (TAE) describing the approximate cost or return of a banking product

Turkey

Banking sector

494. “Regulation on Principles and Practice Bases of Advertisement and Announcements” (date June 14, 2003) requires Banks not to be misleading about credit products.

495. Ethical Principles published by Turkish Bankers Association in July 26, 2006 requires Banks advertisements to be honest and not to be misleading. Association also has a regulation about requirements of advertisements.

Capital markets

496. Board decision no. 40/1243 dated 14.10.2005 foresees: intermediaries shall be permitted to launch promotional campaigns so long as the Board is notified regarding the details of the campaign prior to launch and the Board does not object within 10 days of notification, provided that the campaign shall not

include information which: might constitute infringement of rights and benefits of customers, is against the rules of good faith, is exaggeration, is unfaithful to reality and might mislead customers or the public.

497. Article 20 of Communiqué Serial: V, No: 125 on Principles on Leveraged Trading and Institutions Engaging in Leveraged Trading regulates advertisements, public announcements and notifications for leveraged trading activities of intermediaries. Advertisements and announcements of any kind and medium regarding leveraged activities shall be truthful and objective. Authorized intermediaries cannot prepare and announce to the public any kind of advertisements or announcements which is based on untrue, false, misleading or exaggerated facts. Authorized intermediaries in advertisements or announcements cannot promise absolute return or guarantee against loss. Such measures shall also be applied in promotional and informational activities directed at individual investors.

UK

Investments

498. The onus is on the advertiser to ensure that promotions meet our high-level requirement that they be clear, fair and not misleading.

Mortgage sector

499. The onus is on the advertiser to ensure that promotions meet high-level requirements to be clear, fair and not misleading and also include any required details (e.g. the APRC).

Non-investment insurance sector

500. FCA Principle 7 is reinforced by the ICOBS rules, which also require that, when a firm communicates information, including a financial promotion, to a customer or other policyholder, it must take reasonable steps to communicate it in a way that is clear, fair and not misleading.

5. SPECIFIC DISCLOSURE MEASURES

Australia

501. The Australian Consumer Credit Legislation (Enhancements) Act 2012 sets out requirements on small amount lenders to display warnings on their premises and websites and to read out warnings over the telephone disclosing information about alternatives to small amount loans and where to get advice and financial counselling.

502. For example, the Australian Government requires that certain risks, if relevant, need to be disclosed for non-standard margin lending. In addition, ASIC guidance suggests stark language is used.

Canada

Banking sector

503. As a specific example, the *Principle Protected Notes (PPN) regulations* set out a number of disclosure requirements that look to yield a balanced presentation of PPNs. The regulations specify that institutions must disclose any risks associated with the note, including the risk that no interest may accrue, along with the distinction between a PPN and a fixed rate investment, examples under which PPNs are not appropriate investments, and any other information that might affect the investors' decision to purchase the note.¹³⁴

504. The *Negative Option Billing Regulations* require federally regulated financial institutions to first obtain consumers' express consent before providing an individual with a new or optional product or service. The regulations also require federally regulated financial institutions to provide individuals receiving optional products and services, such as credit balance insurance or fraud alerts, with advance notice for the end of promotions and changes to the terms and conditions of the optional product or service. These regulations came into force in 2012.¹³⁵

Securities sector

505. Canadian regulators expect registrants to present disclosure information to clients in a clear and meaningful manner in order to ensure clients understand the information presented. Registrants should ensure that investors can readily understand the information. These requirements are consistent with the obligation to deal fairly, honestly and in good faith with clients.

506. Complex and bundled products are currently part of the exempt market allowing for distribution without a prospectus to limited categories of investors.

507. Draft regulations and amendments relating to securitized products (the "Draft Securitized Products Regulations") are subject of current consultation. The Draft Securitized Product Regulations set out a new framework for the regulation of securitized products in Canada.

508. There are two main features of the Draft Securitized Products Regulations:

- Enhanced disclosure requirements for securitized products issued by reporting issuers; and

¹³⁴ <http://laws-lois.justice.gc.ca/eng/regulations/SOR-2008-180/>

¹³⁵ <http://laws-lois.justice.gc.ca/eng/regulations/SOR-2012-23/index.html>

- New regulations that narrow the class of investors who can buy securitized products on a prospectus-exempt basis in the exempt market, and require that issuers of securitized products provide disclosure at the time of distribution, as well as on an ongoing basis.

509. The Draft Exempt Distribution Regulations in particular are a significant departure from the current exempt market regulatory regime.

Czech Republic

510. The Czech Republic supports risk warnings - consumer should be fully informed about possible risks arising from product design. Though, such an information need to be communicated transparently and understandably – i.e. in the standardised way as is described above.

511. Information about risk is key information, not only for investment products, where it completes their yield and liquidity characteristics, but also for other financial products as credit and insurance ones. Without such information, consumer decisions can be distorted and irrational.

France

512. See n° 125 to 129 Regulators recommendations on special disclosure measures to provide information commensurate to complex or risky products.

Banking sector

513. The Financial Sector Advisory Committee (Comité consultatif du secteur financier, CCSF) was established by Law. It is responsible for studying issues related to the relationship between on the one hand, credit institutions, payment institutions, investment firms and insurance companies and the other, their clients and proposing appropriate measures in this area, particularly in the form of notice or general recommendations.

514. Through this process, a short form document has been developed for insurance as collateral for a real estate credit. This short form document must, as professionals involved (banks, insurers, credit intermediaries, insurance intermediaries) have committed themselves, to be given to each applicant for a credit agreements relating to residential property mortgage insurance as collateral for loan since July 1, 2009.

Insurance sector

515. The supervisory authority (ACP) is entitled to require modification or to decide to withdraw any document (i.e. contract) non compliant with the laws (Article L-310-13 of the Insurance Code). The ACP strongly supports the view that consumers should be given more accurate information for complex products

516. In the PIPS European discussion, the ACP proposes a two-stage approach for life insurance contracts:

- at the contract level, consumers should receive an Insurance document, encompassing information on the essential features of the contract (guarantees, tax and inheritance regimes, beneficiary clause, etc.), as foreseen in SII directive (art. 185).

- at underlying assets' level, consumers should receive a Key information Document as foreseen in the PRIPs regulation proposal. This information would be comparable in all ways to the information received for any other PRIPs product.

517. ACP states a recommendation 2010-R-01 relating to the marketing of unit-linked life insurance policies composed of complex financial instruments,

Hong Kong

518. Certain sample risk disclosure statements are provided in the Code of Conduct. The substance of such statements is considered as the minimum required and intermediaries may elect to provide additional risk disclosure information as appropriate.¹³⁶

519. Where any of the risk disclosure statements in Schedule 1 to the Code of Conduct are applicable, a declaration by bank /LC staff and acknowledgement by customer should be executed (Schedule 1 to the Code of Conduct).

520. The financial regulators also issue circulars to intermediaries to provide guidance on product-specific risk disclosure where appropriate. For instance, key risks of basket equity-linked products that warrant special attention, accumulators and investment-linked assurance schemes were highlighted.¹³⁷

521. The key risks of certain investment products as highlighted in the circulars are non-exhaustive. Banks should have a thorough understanding of each investment product they offer and provide customers with proper disclosure and explanation in each case¹³⁸.

522. The offering documents and KFS of Products should contain information necessary for investors to be able to make an informed judgement of the investment and, in particular, shall meet the disclosure requirements under the applicable Product Code¹³⁹. All key features and risks of the Products shall be highlighted for investors prominently in a succinct manner. KFS is part of the offering document of the product (unless otherwise provided in the applicable product codes), and requires authorization by the Securities and Futures Commission.

523. It is mandatory to prepare product summaries in the form of a KFS / Important Facts Sheets (IFS) for relevant Products and distribute a copy to customers prior to or at the point of sale. The KFS / IFS shall be clear, concise and shall be capable of being easily understood by investors. Among other requirements, A KFS / IFS shall contain information that enable investors to comprehend the key features and risks of the

¹³⁶ Schedule 1 to the Code of Conduct: http://en-rules.sfc.hk/net_file_store/new_rulebooks/h/k/HKSFC3527_1868_VER20.pdf.

¹³⁷ HKMA circular of 5 January 2012: <http://www.hkma.gov.hk/media/eng/doc/key-information/guidelines-and-circular/2012/20120105e1.pdf>, HKMA circular of 22 December 2010: <http://www.hkma.gov.hk/media/eng/doc/key-information/guidelines-and-circular/2010/20101222e1.pdf>, HKMA circular of 14 March 2011: <http://www.hkma.gov.hk/media/eng/doc/key-information/guidelines-and-circular/2011/20110314e1.pdf>).

¹³⁸ HKMA circular of 5 January 2012: <http://www.hkma.gov.hk/media/eng/doc/key-information/guidelines-and-circular/2012/20120105e1.pdf>

¹³⁹ SFC product Handbook: http://en-rules.sfc.hk/net_file_store/new_rulebooks/h/k/HKSFC3527_3038_VER10.pdf

Product and shall be prepared in a format that facilitates comparison with other Products. Templates were developed by regulators to facilitate more standardised disclosure across the intermediaries.¹⁴⁰

524. The following are examples of specific requirements of the CoBP:

- Banks are required to give security advice to customers on their use of cards and the related personal identification numbers, and devices and passwords for accessing electronic banking services.
- Banks are also required to inform customers of the respective liabilities for losses related to the use of these two banking services.

Hungary

Insurance sector

525. It is good practice for insurance companies and independent insurance intermediaries to develop clearly understandable, transparent and easily manageable summaries or abstracts (preferably no more than two to three pages) that contain the key parameters of unit-linked life insurance and clearly highlight the key contract elements, in order to promote informed consumer decision-making.

India

526. In India the use of ‘colour coding’ for various products depending of the risks is under discussion. Warnings /alerts are issued to consumers on phishing emails/ unregistered collective investment schemes or any such related schemes/ products running in the market. In case of IPOs, the risks are classified and in the decreasing order of the risks.

Ireland

527. The use of warning statements are intended to highlight the risk factors attaching to various products and services and ensure that consumers receive balanced information in relation to products or services. All the warning statements required by the 2012 Code must be prominent, i.e. they must be in a box, in bold type and of a font size that is at least equal to the predominant font size used throughout the document or advertisement.

Israel

528. Relevant regulations include the following;

- The area of securities advice and portfolio management is regulated by the Israel Securities Authority.
- The area of pension counselling and marketing is regulated by the Ministry of Finance.
- In May 2011, the Supervisor of Banks issued a letter to the Banks regarding Adjustable Rate Housing Loans. In this letter the banks were obliged to provide specific Information to borrowers

¹⁴⁰ KFS templates: <http://www.sfc.hk/web/EN/regulatory-functions/products/product-authorization/products-key-facts-statements.html> and IFS templates: see Annexes 1 and 2: <http://www.hkma.gov.hk/media/eng/doc/key-information/guidelines-and-circular/2011/20110418e1.pdf>

concerning housing loans, which carries interest rate adjusted to the prime interest rate. This included an example of the effect of an increase in the prime interest rate on the monthly payments.

- Sales (Dwellings) (Assurance of Homebuyers' Investments) Law, 1974 - section 3B; Proper Conduct of Banking Business Directive 326 - Project finance.

Italy

529. It is a requirement for information on complex and bundled products must be comprehensive; if the bundled products concur to form a new integrated product, all the information has to be provided in one document, in a way which clearly states all the costs and risks which are connected with the product as a whole.

530. As far as loans are concerned:

- specific arrangements are provided in order to ensure that the calculation of the annual percentage rate of charge duly takes into account bundled ancillary services;
- consumers can shop around in order to find insurance contracts at more suitable conditions. In order to make shopping around easier the law has mandated the insurance supervisor to standardise the minimum contents of life insurance contracts bundled to loans: thus financial services providers may not require insurance contracts which have such unique features that consumers cannot find them elsewhere on the market; standardisation also makes comparison amongst different options available on the market easier;
- banks are banned from bundling a current account and, under certain circumstances (e.g. when they are the beneficiaries of the insurance and receive a compensation from the insurance company) an insurance contract when selling loans.

Portugal

Banking sector

531. For structured deposits, Decree-Law No. 2011-A/20 of 3 November and Notice No. 5/2009 sets out the pre-contractual information to be provided to the client. Information shall be comprehensive and warn in detail for the risks of the product.

532. To address the increasing complexity of the products sold to retail customers and to ensure the completeness and adequacy of the information provided to customers before the completion of the contract, Portugal has established that all advertising and pre-contractual information regarding complex banking deposits products must be pre-approved by the supervisory authority.

533. A code of conduct has been addressed to credit institutions, according to which complex products and products which do not guarantee the repayment of 100% of the invested capital should not be sold in association with traditional banking products (deposits, credits, payment services).

South Africa

Capital markets

534. JSE Equities Rules

- Rule 8.10.3 – Disclosure to clients

535. Code of conduct for authorised users (Notice 20 of 2005)

- Section 4 – Disclosure to clients

Pension sector

536. Financial services providers or authorised agents are regulated and supervised by the Registrar of Financial Advisors and Intermediary Services.

Financial advisory & intermediary services

537. Relevant regulations

- Section 5 of the Discretionary Code
- Sections 7 to 8 of General Code of Conduct (BN 80 of 2003)
- Board Notice 571 of 2008

Turkey

Capital markets

538. From the institutional investors side; Pursuant to the article 39, paragraph 2 of the 'Communiqué on Principles Regarding Mutual Funds', it is compulsory to be taken the written order from the investors which includes a statement that the prospectus and the circular of the fund has been read, understood and the risks are perceived during the sale of the units of guaranteed funds and protective funds which have private sector bonds in their portfolios.

539. For intermediary institutions, the Capital Markets Law no.6362 which came into effect on 30.12.2012 foresees a transitory period of 6 months for the drafting and finalization of sub-regulations, until when current CMB regulations will be in effect.

UK

Investments

540. Risk warnings are used in advertising and the Key Features to highlight the risks of investing. COBs rules require firms/providers to disclose all relevant risks.

Mortgage sector

541. Risk warnings are used in advertising and the KFI to highlight that mortgage borrowing involves putting the home at risk. The KFI also includes risk warnings about affordability, foreign exchange and

interest-rate risks. As well as prescribing the form and content of the mortgage disclosure, national regulation prevents firms adding to the document in an effort to reduce information overload.

6. CONSUMER RESEARCH

Australia

542. The Australian Government conducted consumer research on disclosure documents, for example, a prototype short margin lending PDS was developed in conjunction with a third party professional, and was extensively consumer tested.

543. Where possible, extensive consumer testing of prototype products by experts in design should be undertaken prior to their release to produce products that are useable by consumers, legible and readable, easily navigable and enable consumers to make an informed choice about the product.

Canada

Banking sector

544. In 2010, the Financial Consumer Agency of Canada's mandate was expanded to include monitoring and evaluating trends and emerging issues that may have an impact on consumers of financial products and services. The FCAC's research division serves to provide timely and valuable intelligence on consumer issues. The FCAC conducts and commissions surveys to evaluate the needs and behaviours of consumers of financial products and services and to assess the efficiency and effectiveness of their activities that aim to empower consumers and to promote consumer-related compliance by financial institutions.

545. At the federal level, in 2009 the Canadian Financial Capabilities Survey was launched. The survey provided insights into levels of financial literacy across different segments of the population.

Securities sector

546. The CSA conducted consumer research to help determine and improve the effectiveness of disclosure requirements. As a tool for policy development, the CSA often uses focus groups and surveys with consumers¹⁴¹.

547. The 2012 Investor Index is the CSA's third survey on investment knowledge, investor behaviour, and incidence of investment fraud. The survey examined similar themes to those conducted in 2006 and 2009, including the incidence of "self-reported" investor fraud and awareness of securities regulators. The 2012 survey also included new questions in the areas of market expectations and the role of social media in investing.

548. The *Autorité des marchés financiers* (the "AMF") have also adopted a new tool, the AMF Index, to measure the knowledge and behaviour of consumers of financial products and services in Québec. The AMF Index is a useful resource for developing and adapting educational tools and better targeting consumers who could benefit from more knowledgeable behaviours.

¹⁴¹ [Draft Regulation to amend National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations and Draft Amendments to Companion Policy to National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations - Cost Disclosure, Performance Reporting and Client Statements](#)

- [Exempt Market Investors – Account Reporting Practices Online Survey Final Report](#)
- [Results of Investor Focus Groups and Personal Interviews - Background Report for Online Survey of Exempt Market Investors](#)
- [Telephone survey of Retail investors – Account reporting practices Omnibus Final Report](#)

549. Ontario's targeted review (sweep) of exempt market dealers and registered advisers have introduced a new approach of contacting a sample of dealer's and adviser's clients as part of normal course of compliance inspection¹⁴².

Insurance sector

550. The National Complaint Reporting System identifies types of complaints in order to track problems with specific insurers and trends within the industry.

France

551. A Glossary of key terms used in the fields of banking, insurance, savings and financial assets has been prepared by the General Secretariat of the Financial Sector Advisory Committee (FSAC) in the framework of this Committee, which combines including the financial sector and consumer associations, in collaboration with the Treasury and the supervisory authorities (prudential Control Authority, Autorité des marchés financiers). The glossary is intended to help customer understand the terms most commonly used to present the characteristics of a product and the names of the various banking and financial products.

552. One of the main tasks of the Retail investor relations division within the French Autorité des marchés financiers, created in May 2010, is to know behaviour of investors and financial product marketing practices better (establishment of a saving knowledge centre and introduction of "mystery shopping").

553. With mystery shopping, the French AMF seeks to increase its preventive efforts to protect savings by onsite monitoring of how financial products are presented to the general public. The aim of mystery shopping is to have a specific view of financial product marketing, understand better good and bad practices and begin a dialogue with the professionals concerned. It is not a monitoring tool or a tool allowing the AMF to sanction a "visited" entity. It is a tool which provides relevant subjects for the controls of the financial products distribution.

Germany

554. In Germany a consumer advisory council has been set up. Furthermore, the complaints procedure for consumers and other customers of supervised enterprises as well as consumer protection organisations has been incorporated into the Act Establishing the Federal Financial Supervisory Authority (§ 8a Finanzdienstleistungsaufsichtsgesetz – FinDAG) to ensure that consumer issues will play a larger role in BaFin's supervisory approach.

Hong Kong

555. Though there are no mandatory requirements that banks / LCs have to conduct research on customer behaviour, the following requirements give some hints on how banks can improve their selling practices.

556. Banks / LCs are required to use simple and plain language for disclosure and explanation to customers in order to assist them in making informed decisions.¹⁴³

¹⁴² http://www.osc.gov.on.ca/en/SecuritiesLaw_sn_20121122_33-738_annual-rpt-dealers.htm section 2.2

¹⁴³ Item 5 of FAQ on Suitability: <http://www.sfc.hk/web/EN/faqs/intermediaries/supervision/suitability-obligations-of-investment-advisers/2007-05-08.html>

557. Intermediaries should exercise extra care in advising elderly or unsophisticated clients or those who may not be able to make independent investment decisions on complex investment products and rely on intermediaries for advice, particularly when these clients invest in investment products with long maturity periods and those which will attract hefty penalty charges upon early redemption or withdrawal.¹⁴⁴

558. If banks are involved in the sale of investment products to vulnerable customers (e.g. less sophisticated customers in terms of investment knowledge and / or education level), additional measures should be implemented, such as allowing those customers to choose during the initial transaction whether they would like to bring a companion to witness the sale process, and / or have a second frontline staff to handle the sale.¹⁴⁵

559. Customer surveys, in particular post-sale surveys, may be conducted by banks to collect customers' opinion on effectiveness of the existing disclosures and their suggestions on ways for improvement.

560. According to Updated Requirements Relating to the Sales of ILAS Products a post-sale call has to be performed with the customer under the following situations:¹⁴⁶

- customer being “Vulnerable Customers”
- the features / risks level of the products proposed not suitable to the customer as declared in Applicant's Declarations
- the customer opting out to perform FNA and RPQ as declared in Applicant's Declarations

561. The SFC conducted a mystery shopping exercise jointly with the HKMA in 2010 to look into the selling practices of selected LCs and banks involving unlisted securities and futures products. The results were published in May 2011. The mystery shopping exercise identified deficiencies in complying with the selling practices requirements that need improvements. The HKMA is conducting another mystery shopping exercise in 2013 to understand the sale practices of banks in the sale of investment and insurance products.

562. The IA has introduced mystery shopping programme on a number of insurance products in 2011 and the exercise was useful to reveal some common practices that insurers adopted and also identify areas where improvements could be made in the sales process from the consumers' perspective.

Ireland

563. The Central Bank of Ireland conducts consumer research in order to gain a greater understanding of consumer attitudes to financial services. The research findings are used to inform our policy development and highlight specific areas that require increased monitoring/supervision. For example, the Central Bank commissioned research on consumer attitudes to Financial Services Advertising (focus group

¹⁴⁴ Item 4 of the FAQ on Suitability: <http://www.sfc.hk/web/EN/faqs/intermediaries/supervision/suitability-obligations-of-investment-advisers/2007-05-08.html>

¹⁴⁵ HKMA circular of 6 April 2011: <http://www.hkma.gov.hk/media/eng/doc/key-information/guidelines-and-circular/20110406e1.pdf>.

¹⁴⁶ http://www.hkfi.org.hk/pdf/e_NewRequirements.pdf

survey). The results of the research will be used to inform our policy guidelines (including disclosure requirements) for firms in relation to advertising.

Israel

564. Banking institutions in Israel conduct consumer research on a regular basis for marketing purposes.

Luxembourg

565. Relevant regulations include the following:

- Law of 5 April 1993 on the Financial Sector
- Grand-Ducal Regulation of 13 July 2007

Portugal

Banking sector

566. Banco de Portugal conducts mystery shopping inspection activities to monitor credit institutions and payment institutions' compliance with the applicable legal and regulatory framework.

South Africa

Capital markets

567. JSE Equities Rules

- Rule 8.10.3 – Disclosure to clients

568. Code of conduct for authorised users (Notice 20 of 2005)

- Section 4 – Disclosure to clients

Pension sector

569. Currently no regulatory requirements – Treating Consumers Fairly (TCF) Project Groups are currently working on Key Investment Statements to prescribe minimum investment information that must be provided to customers

UK

570. The FCA applies both Market Failure Analysis (MFA) and High Level Cost Benefit Analysis (CBA) when proposing any policy initiative that is likely to have material market-wide impacts. The regulator will also undertake consumer research, where appropriate, to inform the development of proposals.

7. CONSUMER'S AWARENESS

Australia

571. Increasing the financial literacy of the general public will help ensure consumers understand the importance of providing accurate information, and help them to ask more informed questions of their financial adviser.

572. To increase financial literacy, Australia has launched its MoneySmart website. MoneySmart is the Government's central reference point for consumers in understanding superannuation and getting guidance about how to make good choices.

Canada

Securities sector

573. There is specific guidance in the Companion Policy to NI 31-103 to registered firms on promoting client participation (section 14.2).

Insurance sector

574. In the province of Quebec, according to sections 2408 and 2410 of the *Civil Code of Quebec*¹⁴⁷ the client, and the insured if the insurer requires it, is bound to represent all the facts known to him which are likely to materially influence an insurer in the setting of the premium, the appraisal of the risk or the decision to cover it, but he is not bound to represent facts known to the insurer or which from their notoriety he is presumed to know, except in response to inquiries.

575. Subject to the provisions of statement of age and risk, any misrepresentation or concealment of relevant facts by either the client or the insured nullifies the contract at the instance of the insurer, even in respect of losses not connected with the risks so misrepresented or concealed.

Czech Republic

576. In certain areas of financial services (such as credit) this information flow from the consumer to the financial service provider is ensured by law (as far as criminal prosecution in cases of credit fraud), however, improved financial literacy helps the consumer to be aware of the importance of providing relevant information about them to the service provider.

France

577. A Glossary of key terms used in the fields of banking, insurance, savings and financial assets has been prepared by the General Secretariat of the Financial Sector Advisory Committee (FSAC) in the framework of this Committee, which combines including the financial sector and consumer associations, in collaboration with the Treasury and the supervisory authorities (prudential Control Authority, Autorité des marchés financiers). The glossary is intended to help customer understand the terms most commonly used to present the characteristics of a product and the names of the various banking and financial products.

¹⁴⁷http://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=2&file=/CCQ_1991/CCQ1991_A.html

Germany

578. Pursuant to section 4 paragraph 2 no. 5 of the Regulation on Information obligation for Insurance Contracts (VVG-InfoVO) notice has to be given on the obligations of the insuree and the legal consequences when disregarding the obligations.

579. According to section 34 paragraph 2a Securities Trading Act (Wertpapierhandelsgesetz - WpHG) the investment service enterprise must send the client a copy of the minutes of the investment advice on paper or in another durable medium after the conclusion of the transaction.

Hong Kong

580. There are positive obligations on banks / LCs under the Code of Conduct to seek information from customers including their financial situation, investment experience and investment objectives. Each customer's information should be fully documented and where appropriate, updated on a continuous basis.

581. Even if a customer does not fully disclose his personal circumstances (e.g. financial situation) to a bank / LC, this would not stop the bank / LC from making an assessment of the customer's attitude, his expectations and so on. However, if a bank / LC is unable to make that assessment, the bank / LC should, as a minimum, explain to the customer the inherent limitations of the advice as a result of the lack of information. Further, the bank / LC should explain to the customer the assumptions made in relation to the advice given.¹⁴⁸

582. According to the HKMA circular of 20 January 2012 on private banking, customers should be reminded to advise banks of any material change in the customer's circumstances that warrant updates to the customer risk profile.¹⁴⁹

583. Apart from proposing to insurers to use plain language in various forms of communication with applicant / policyholders, the CoCI requires that if a proposal form calls for the disclosure of material facts, a statement should be prominently displayed somewhere on the form explaining the consequences of a failure to disclose all "material" facts", and warning that if the applicant is uncertain about that, he should disclose that fact.

584. The SFC, through a publication "InvestEd Intelligence" which is available online to the public, reminds investors to give their advisers as much information as they can about their circumstances so that the advisers can understand what their customers really need (March 2011 issue) and similarly, investors are also reminded to provide as much information about themselves to their advisers in order that their adviser can assess their risk appetite and expectations and so that the investor may be appropriately characterised (May 2011).¹⁵⁰

585. Consumers are reminded to ask the right questions and seek adequate information from banks / LCs.¹⁵¹

¹⁴⁸ Item 2 of FAQ on Suitability <http://www.sfc.hk/web/EN/faqs/intermediaries/supervision/suitability-obligations-of-investment-advisers/2007-05-08.html>.

¹⁴⁹ <http://www.hkma.gov.hk/media/eng/doc/key-information/guidelines-and-circular/2012/20120120e2.pdf>

¹⁵⁰ InvestEd Intelligence: <http://www.hkiec.hk/iec/common/pdf/intelligence/mar2011.pdf>
<http://www.hkiec.hk/iec/common/pdf/intelligence/may2011.pdf>

¹⁵¹ <http://www.hkiec.hk/iec/common/pdf/intelligence/may2011.pdf>

586. The Investor Education Centre (a SFC subsidiary) has been recently established in Hong Kong as a holistic provider of investor education and as part of strengthening overall investor protection. The above publications are now available on the IEC website. Further, the IEC will continue to promote key education messages and questions to ask in relation to dealing with advisers, including messages about the importance for consumers and investors to disclose information about themselves. For example, the IEC also reminds investors to tell their investment advisers about themselves when seeking investment advice.¹⁵²

587. For enhancing education and consumer awareness, the HKFI requires intermediaries to distribute to applicants at the point of sale the pamphlet “Questions you need to ask before taking out an ILAS product”.¹⁵³

India

588. Various investor awareness and education activities are undertaken, including the following:

- workshops/ seminars done by SEBI and through stock exchanges and depositories or various bodies like Association of Mutual Funds of India (AMFI) which does not have promotion of any brand/ company;
- toll free helpline; and
- mass media campaigns.

Ireland

589. Provision 5.4 requires that where a consumer refuses to provide the required information, the regulated entity must inform the consumer that as it does not have the relevant information necessary to assess suitability, it cannot offer the consumer the product or service sought.

Israel

590. The Public Enquiries Unit, Banking Supervision Department, Bank of Israel deals with public inquiries, the staff emphasis that the consumer should provide his bank with comprehensive relevant information.

591. As part of the banking supervision process consumer credit score are included in the periodic statement sent to consumer by the banking institution. This helps to encourage a consumer to provide updated information in order to improve their credit score.

Mexico

592. Financial services providers should be clear with consumers of the negative consequences that purchasing the wrong product can have for them. In that way consumers could be more willing to be transparent about their profile.

593. Financial education can also sensitise consumers on the importance of being transparent with the financial services providers.

¹⁵² http://www.hkiec.hk/iec/en/html/section/investment/adviser_analyst/advisers/ask.html.

¹⁵³ http://www.hkfi.org.hk/pdf_publications/ILAS_QA.pdf

Portugal

594. In Portugal, there is a duty for credit institutions to provide adequate and appropriate explanations (taking into account the profile of the consumer) on consumer credit products (Decree Law 133/2009 of 2 June).

595. Information disclosure on financial products is complemented by other tools such as financial education allowing for some degree of responsibility of the consumer.

596. Financial education initiatives are developed in the framework of the National Plan for Financial Education (NPFÉ)¹⁵⁴ managed by the 3 financial supervisory authorities (<http://www.todoscontam.pt>).

597. The financial sector regulators and financial services providers publish educational materials on the characteristics of different products, which are also available at the respective websites.

South Africa

Capital markets

598. JSE Equities Rules

- Rule 8.10.3 - Disclosure to clients

599. Code of conduct for authorised users (Notice 20 of 2005)

- Section 3 – Furnishing of advice
- Section 4 – Disclosure to clients

Pension sector

600. Financial services providers or authorised agents are regulated and supervised by the Registrar of Financial Advisors and Intermediary Services.

Insurance sector

601. Section 8 of the General Code of Conduct (BN 80 of 2003)

UK

602. The UK Money Advice Service provides a range of consumer information materials and financial education tools. The website highlights to consumers the importance of understanding and being able to demonstrate income and expenditure to help lenders assess the affordability of any mortgage¹⁵⁵.

¹⁵⁴ [http://clientebancario.bportugal.pt/pt-PT/Publicacoes/PNFF/Documents/National%20Plan%20for%20Financial%20Education%20\(2011-2015\)%20-%20Portugal.pdf](http://clientebancario.bportugal.pt/pt-PT/Publicacoes/PNFF/Documents/National%20Plan%20for%20Financial%20Education%20(2011-2015)%20-%20Portugal.pdf)

¹⁵⁵ www.moneyadviceservice.org.uk

Non-investment insurance sector

603. Guidance in ICOBS indicates that firms should consider ways of ensuring a customer knows what he/she must disclose, including:

- explaining the duty to disclose all circumstances material to a policy, what needs to be disclosed, and the consequences of any failure to make such a disclosure; or
- ensuring that the customer is asked clear questions about any matter material to the insurance undertaking.

Banking sector

604. The regulator has published a ‘Know Your Rights’ guide for consumers on bank accounts, which describes the obligations of firms, reminds consumers of their responsibilities, and gives general information that current and prospective account holders may find useful¹⁵⁶.

¹⁵⁶ http://www.fsa.gov.uk/static/pubs/consumer_info/know_your_rights_guide.pdf

ANNEX II

PRINCIPLE 6. RESPONSIBLE BUSINESS CONDUCT

Reference Table

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1 BEST INTEREST

COUNTRY EXAMPLES

Australia

1. The Future of Financial Advice (FOFA) reforms best interests' duty requires financial advisers to act in the best interests of their retail clients and place their clients' interests ahead of their own when providing personal advice.¹⁵⁷

Canada

Banking sector

2. Under the *Bank Act*, the board of directors of a bank is required to establish procedures to provide disclosure of information to customers, as required under legislation, and establish procedures for dealing with consumer complaints.¹⁵⁸

3. The Financial Consumer Agency of Canada (FCAC) is responsible to ensure that the market conduct of federally regulated financial entities complies with federal legislation and regulations.

Securities sector

4. Securities legislation in Canada imposes a duty on registered advisers and dealers to deal fairly, honestly and in good faith with their clients.

5. This duty applies to advisers and dealers broadly in all dealings with their clients. Depending on the nature of the relationship between the client and their adviser or dealer, Canadian courts (except in Québec, where the common law does not exist in respect of private law matters) may find that an adviser or dealer stands in a common law fiduciary relationship to their clients.

6. In Québec, according to both the general civil law and the Securities Act (Québec), registered dealers and advisers are currently subject to a duty of loyalty and a duty of care and must act in the client's best interest.¹⁵⁹

Insurance Sector

7. In the province of Quebec, according to An Act respecting the distribution of financial products and services (Distribution Act)¹⁶⁰ (s. 16) and its related regulations, such as Code of ethics of damage insurance representatives and Code of ethics of the Chambre de la sécurité financière¹⁶¹, all representatives

¹⁵⁷ <http://www.comlaw.gov.au/Details/C2012A00067> <http://www.comlaw.gov.au/Details/C2012A00068>

¹⁵⁸ <http://laws-lois.justice.gc.ca/eng/acts/B-1.01/page-66.html#h-32>

¹⁵⁹ http://www.osc.gov.on.ca/en/SecuritiesLaw_csa_20121025_33-403_fiduciary-duty.htm; General comment: In Québec, dealers and advisers in derivatives must also comply with the *Derivatives Act*; see : http://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=2&file=/I_14_01/I14_01_A.html

¹⁶⁰ http://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=2&file=/D_9_2/D9_2_A.html

are bound to act with honesty and loyalty in their dealings with clients. They must act with competence and professional integrity.

France

8. Working in the "best interest of the customers" involves financial services providers to comply with relevant consumer protection regulations, in order to avoid bad practices such as:

- misleading commercial practices (L121-1 French Consumer code)
- aggressive commerciale practices (L122-11 French Consumer code)
- abuse of weakness (L122-8 French Consumer code)
- and to comply with inclusion regulation such as giving access to a basic account deposit services to more vulnerable consumers (i.e. article L312-1 Monetary and financial code)

9. In addition, special requirements exist for distance selling, that involves more information provided to consumers and that consumers have a longer period to exercise a right of withdrawal (cf L121-20-10 consumer code) with special sanctions (R121-2-4 consumer code) L112-2-1 Insurance code).

10. ACP the French supervisor performs on site inspection to monitor the services providers and their authorized agents customer treatment culture and compliance with consumer protection regulation (i.e. article L612-1 Monetary and financial code)

Banking sector

11. Regulations cover the following:

- advertising materiel , (L311-4 consumer code): All advertising, regardless of the medium, which focuses on consumer credit and indicates an interest rate or quantitative information related to the cost of credit should mentioned clearly, accurately and prominently a listed elements of information illustrated with a representative simple
- pre contractual information (L311-6 consumer code) : Prior to the conclusion of the credit agreement, the creditor or credit intermediary gives the borrower, in writing or on another durable medium, the information needed to compare different offers and allowing the borrower to give their preferences in a clear understanding of the extent of its commitment
- advice given (311-8 consumer code): The creditor or credit intermediary provides the borrower explanations allowing him to determine whether the proposed credit agreement is adapted to his needs and to his financial situation, especially from the information given by the consumer on his financial situation and his needs. His draws the attention of the borrower on the essential characteristics of the proposed credit and the impact that it can have on its financial position, including in the event of default. This information is given, as appropriate, based on the

¹⁶¹http://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=3&file=/D_9_2/D9_2R3_A.HTM
http://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=3&file=/D_9_2/D9_2R5_A.HTM

preferences expressed by the borrower. Before giving an advice creditor must check the solvability of the consumer (article L 311-9 consumer code)

- information specified in the contract itself (L311-18 and R 311-5 R311-5-1 consumer code) the credit agreement is in writing or on another durable medium. It is a document separate from any media or advertising materials. The information given in the contract must be compliant with the list of information required by said regulation.

12. Moreover a short form document is inserted at the beginning of the contract, to inform the borrower of the essential characteristics of credit. Article R 311-5 defines the list of information.

Insurance sector

13. Regulations cover the following:

- advertising materials. article L132-27 (life insurance) all information, including communication of advertising, relating to o life insurance are content accurate, clear and not misleading. Communications of advertising are clearly identified as such. According to ACP Recommendation on the marketing of complex financial instruments as units of account (15 Oct 2010), advertising must allow the consumer to understand the nature of support offered and the associated risks, the underlying in order to follow their evolution, the profile of gain / loss of IF, mechanisms of the formula to determine the outcome at maturity.
- pre contractual information,: prior to signing a contract, insurer must provide consumer with an information sheet on the prices and guarantees and with a copy of the draft contract and its appendices or an information notice on the contract that describes precisely matching guarantees exclusions, and the obligations of said policy holder (article L112-2 French insurance code) information required within the contract itself: article L. 112-4 provides that insurance policy shall disclose:
 - The nature of the risks insured,
 - The level of the guarantee and the warranty period,
 - The amount of this guarantee,
 - The premium or assessment.
- The informative notice is required to begin with a short-form document (“encadré” – maximum 1 page) of the main information about the policy (A. 132-8 Insurance code).

Life insurance sector

14. Article L. 132-27 of French Insurance code stipulates that the content of information relating to life insurance policies and capitalisation contracts must be “accurate, clear and not misleading”. Before the contract is signed, the insurer must provide the subscriber with an information notice indicating the main provisions of the contract, (Article L. 132-5-2 French insurance code). The contract must give detailed information, including on costs and units of account (i.e. R. 132-3 and R. 132-4).

15. Article L. 132-27-18 of Insurance code states that for an insurance contract life the Insurer shall inquire into the knowledge, experience financial requirements and needs of the subscriber and issue an

advice, taking particular account of this information, appropriate to the complexity of the contract. If the subscriber does not provide this information, the insurer must warn prior to signing the contract.

16. Article L. 520-1 Insurance code raises the same obligation for insurance intermediaries either for life insurance or non life insurance.

Germany

17. The basic idea is to protect the consumer and to increase the confidence in the integrity, efficiency and orderly functioning of the financial markets. One main essential objective is to minimise the asymmetry of the information by assessing the consumer need and providing him with information on products and services. This objective applies cross-sectoral:

- Section 26 Investment Code (Kapitalanlagegesetz): An asset management company shall act solely in the interest of the investors and/or shareholders.
- Section 31 paragraph 1, no. 1 Securities Trading Act (Wertpapierhandelsgesetz - WpHG): Investment services enterprises shall be required to provide investment services and ancillary services with the requisite degree of expertise, care and diligence in the interests of their clients.
- Section 11 of the Ordinance on Insurance Mediation (VersicherungsvermittlungsVO) poses explicit information requirements on intermediaries when they get into contact to customers.
- Section 31 paragraph 2 of the Securities Trading Act (WpHG): Pursuant to that rule all investment services enterprises shall be required to avoid conflicts of interest wherever possible and, prior to the execution of transactions for clients, clearly inform those clients of the general nature and the source of the conflicts of interest if the organisational arrangements prove insufficient to prevent, with reasonable certainty, clients' interests from being prejudiced¹⁶².

Hong Kong

18. The guiding principle adopted by the Hong Kong Monetary Authority (HKMA) is that banks should treat their customers fairly. This is mainly achieved through banks' compliance with the recommended practices currently embodied in the Code of Banking Practice (CoBP) which is issued by the industry associations and endorsed by the HKMA, and through periodic circulars and guidelines issued by the HKMA.¹⁶³

19. Under the Code of Banking Practice, approval of loans or overdrafts is subject to banks' credit assessment which should take into account the applicants' ability to repay. In doing so, banks may have regard to such factors as – (a) prior knowledge of the customer's financial affairs gained from past dealings; (b) the customer's income and expenditure; (c) the customer's assets and liabilities; (d) information obtained from credit reference agencies; and (e) other relevant information supplied by the applicant.

¹⁶² This is supplemented by the provisions of § 33 (1) No 3 WpHG.

¹⁶³ The CoBP can be downloaded from: http://www.hkma.gov.hk/media/eng/doc/code_eng.pdf. The Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission: http://en-rules.sfc.hk/net_file_store/new_rulebooks/h/k/HKSFC3527_1868_VER20.pdf) stipulates various key general principles (among 9 general principles, 3 are related to "best interest": GP 1, 2 and 7 in the Code of Conduct) and standards of conduct requirements.

20. The HKMA conducts on-site examinations of banks, focusing on regulatory compliance, internal controls and management supervision. It conducts mystery shopping to assess the industry's compliance with regulatory requirements in the sale of investment products, and published the results to require banks to make improvements on issues identified and to encourage them to adopt good practices.

21. The HKMA performs off-site surveillance, including analysing surveys of banks' relevant activities. The HKMA monitors remedial actions taken by the banks on issues of supervisory concerns or non-compliance identified in the supervisory process. The HKMA keeps a close dialogue via meetings and day-to-day communications with other financial regulators to discuss issues in relation to supervising securities and insurance businesses of banks.

22. The Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission ("Code of Conduct") stipulates various key general principles. Among 9 general principles, 3 are related to "best interest": GP 1 on honesty and fairness, GP 2 on due skills, care and diligence, and GP 7 on compliance with regulatory requirements, so as to promote the best interests of clients. GP 5 requires making adequate disclosure of relevant information to clients, and GP 6 requires avoiding conflicts of interest and ensuring fair treatment to clients.¹⁶⁴

23. Each customer should be given sufficient time to digest, consider and evaluate the information and recommendation provided by a bank / licensed corporation ("LC") and be given sufficient opportunity to raise queries with the bank / LC. Under no circumstances should banks / LCs use high-pressure or unfair techniques to force or entice any customer to make hasty investment decisions¹⁶⁵.

24. The HKMA generally expects that banks should only sell accumulators and decumulators to professional investors.¹⁶⁶

25. The HKMA has issued circulars to require banks to have a thorough understanding of each investment product they offer and properly take into account some special product features and risks in their product due diligence process. During the HKMA's supervisory process, depending on nature, complexity and risks of the investment products and insurance products, the HKMA assesses whether banks have identified suitable customers or unsuitable customers in their product due diligence process.

26. The Code of Conduct for Insurers ("CoCI") issued by the Hong Kong Federation of Insurers ("HKFI") (which is a self-regulatory industry body) and approved by the Insurance Authority ("IA") specifies that insurers should seek to conduct their affairs honestly and fairly and in a manner consistent with the public's interests.¹⁶⁷

27. Self-regulatory entities for the insurance intermediaries namely, The Insurance Agents Registration Board ("IARB") as set up by HKFI, The Hong Kong Confederation of Insurance Brokers ("HKCIB") and Professional Insurance Brokers Association ("PIBA") have also published rules and codes of conduct requiring their members to conduct business with good faith and integrity.

¹⁶⁴ "Code of Conduct": http://en-rules.sfc.hk/net_file_store/new_rulebooks/h/k/HKSFC3527_1868_VER20.pdf

¹⁶⁵ Question 5 of FAQ on Suitability: <http://www.sfc.hk/web/EN/faqs/intermediaries/supervision/suitability-obligations-of-investment-advisers/2007-05-08.html>

¹⁶⁶ HKMA circular of 22 December 2010: <http://www.hkma.gov.hk/media/eng/doc/key-information/guidelines-and-circular/2010/20101222e1.pdf>

¹⁶⁷ Article 44 of the CoCI: http://www.hkfi.org.hk/pdf_publications/e_abt.code.pdf

28. The IA performs on-site inspection of insurers, agencies and brokers focusing on regulatory compliance, internal controls and management supervision. Also, the IA employs Mystery Shopping Programme from time to time to assess compliance of key elements in the sales process by the intermediaries.

Hungary

29. With a view to protecting the interests of consumers, to fostering fair market practices and to improve the efficiency of combating unfair commercial practices, recognizing the weight of self-governance to eliminate unfair commercial practices and - for this purpose - to foster the enforcement of codes of conduct established within the framework of self-governance, Parliament has adopted the Act XLVII of 2008 on the Prohibition of Unfair Business-to-Consumer Commercial Practices.

30. According to the Code of Conduct Principles of fair conduct by financial organizations engaged in retail lending, the creditors undertake to fully comply with the principles of responsible lending. They recognize that responsible lending requires mutually responsible and prudent actions on the part of both the creditor and the customer. In the course of providing information to and communications with the customer, the creditors use their available resources to assist their customers to make a responsible decision. In the course of their procedure, it is not the sole objective of the creditors to place a credit, but also to retain the customer in the long run, as well as to ensure the successful repayment of the credit.

31. Based on the Recommendation No. 1/2011 (IV.29.) of the President of the Hungarian Financial Supervisory Authority on the principles of consumer protection expected from financial organisations when behaving as responsible service providers, financial organisations should seek not only to respond to questions asked by consumers, but also to remember their long-term interests, and to compile all the information necessary for the consumer to make a personalised, responsible and proactive financial decision.

32. The HFSA considers it important for financial organisations to recognise that in the course of giving correct information it can occur that too much, and too complex, information can be given to consumers. Often the volume and depth of such information could cause difficulties for those with average financial knowledge. Financial organisations should therefore seek to convey the information necessary for consumers to make an informed financial decision in a readily understandable form, taking into account the consumer's interests and knowledge.

India

33. The Indian securities regulator, SEBI, under the (Investment Advisers) Regulations, 2013, includes various points of interest including general responsibilities, risk profiling, suitability of product or services, disclosures, maintenance of records, mechanism for grievance redress and the segregation of execution services to ensure that they work in the best interest of consumer.

Ireland

34. The requirement to act in the consumer's best interest is set out as a General Principle (provisions [2.1](#) and [2.2](#)) in the Irish Central Bank's Consumer Protection Code 2012 (2012 Code) – a statutory code of conduct with which regulated financial services providers must comply.

Israel

35. Customer who wishes to complain against a banking corporation regarding these issues can address the Public Enquiries Unit at the Banking Supervision Department in the Bank of Israel (the "Public Enquiries Unit").

36. The Public Enquiries Unit acts as an objective external body in settling disputes between banks and their customers in accordance with judicial principles, and in the light of the fairness in bank–customer relations (which is the Bank of Israel substitute definition to the term "best interest" in this context).

Italy

37. For banking products the issue of best interest is regulated by the general rules on fair behaviour enshrined in the civil code and in the consumer code. According to these rules, all parties to a contract must behave in good faith at all stages of a relationship. Furthermore the regulation adopted by the Bank of Italy requires that marketing procedures and remuneration of front office staff and authorized agents prevent mis-selling. Compliance with these requirements is regularly controlled, both on site and off site.

38. For investment and asset management services, an intermediary is required to establish and maintain appropriate systems of client protection, risk management and internal and operational controls, including policies, procedures and controls relating to all aspects of its day- to -day business intended reasonably to ensure, among others, the integrity of the firm's dealing practices, including the treatment of all clients in a fair, honest and professional manner. Intermediaries must maintain appropriate standards for the conduct of business to ensure compliance with all applicable laws and regulations.

39. In particular, pursuant to article 21 of Italian Consolidated Law on Finance, intermediaries must act diligently, correctly and transparently in the interests of customers and the integrity of the market; acquire the necessary information from customers and operate in such a way that they are always adequately informed; organize themselves in such a way as to minimize the risk of conflicts of interest and, where such conflicts arise, act in such a way as to ensure transparency and the fair treatment of customers; have resources and procedures, including internal control mechanisms, capable of ensuring the efficient provision of services; conduct independent, sound and prudent arrangement and make appropriate arrangements for safeguarding the rights of customers with respect to the assets entrusted to them. Compliance with these requirements is regularly controlled, both on site and off site.

Japan

40. Financial services providers in Japan shall work in the best interest of their customers and establish a policy and method for executing orders from customers for sales and purchase of financial products (See Article 40-2, Financial Instruments and Exchange Act.)

Luxembourg

41. Relevant regulations include the following:

- Law of 5 April 1993 on the financial sector (as modified by Art. 136 of the law of 13 July 2007 on markets in financial instruments) (hereafter "Law of 5 April 1993 on the financial sector")
- Grand-Ducal Regulation of 13 July 2007 relating to organisational requirements and rules of conduct in the financial sector (hereafter "Grand-Ducal Regulation of 13 July 2007")
- Law of 17 December 2010 relating to undertakings for collective investment

- Law of 13 July 2005 on institutions for occupational retirement provision in the form of pension savings companies with variable capital (SEPCAVs) and pension savings associations (ASSEPs)
- CSSF Circular 07/307 “concerning MIFID: Business conduct rules for the financial sector”

Netherlands

42. Financial regulation in the Netherlands applies the general duty of care cross-sectoral to all financial institutions (art 4:19 to 4:25 Wft). Under these rules financial institutions need to provide information on products and services, apply standards of care in case of advised and non-advised services as well as certain specific rules to ensure that financial service providers act with due care when dealing with customers.

43. In addition per January 1, 2013 rules were introduced with respect to product development in order to ensure that financial products give due consideration to client interests in a balanced manner.

44. In 2010, the AFM started a supervision project called Client Interest First aimed at the five major banks and five major insurance companies in the Netherlands. These ten financial institutions provide approximately 75 % of the financial services in the Netherlands. The AFM used dash board tools to rate financial institutions on their services, products and practices with an aim to measure their performance on acting in the interest of clients. Key factor of success of this program is the use of peer pressure, by sharing the results of the dashboard scores in a meeting with senior management of these financial institutions.

45. In addition to financial supervision regulation, Dutch law contains provisions protecting consumers against unfair trade practices. These rules also capture financial products that are out of scope of financial supervision regulation.

Portugal

Banking sector

46. The Legal Framework of Credit Institutions and Financial Companies – LFCIFC - (Decree-Law N.º298/92, of 31 December) establishes, in its Article 74º that “*in their relationship with clients, the members of the board and the staff of credit institutions shall act with diligence, impartiality, loyalty and discretion, and with scrupulous regard for the interests entrusted to them.*”

47. In addition, Article 77.º B of LFCIFC establishes that credit institutions or the associations representing them, shall adopt codes of conduct and make them available to the public.

48. To address the increasing complexity of the products sold to retail customers and to ensure the completeness and adequacy of the information provided to customers before the completion of the contract, Portugal has established that all advertising and pre-contractual information regarding complex banking deposits must be pre-approved by the supervisory authority.

South Africa

Collective investment schemes

49. The Collective Investment Schemes Control Act (“CISCA”) requires the manager to administer a collective investment scheme (“CIS”) in the interest of investors (s.2(1)).

50. The manager has a duty to avoid conflict between the interests of the investor and the interests of the manager (s.4(1))

Capital markets

51. JSE Equities Rules

- Rule 810.3 – General conduct towards clients
- Rule 8.90 - Best execution
- Rule 8.120.1 – Client mandates

52. Strate Rules

- Section 4 – Conduct and Ethics
- Section 5 – Duties of participants

Pension sector

53. Financial services providers or authorised agents are regulated and supervised by the Registrar of Financial Advisors and Intermediary Services.

54. In terms of legislation, agents of service providers must (there might be a word missing) utmost good faith and exercise proper care and diligence towards the principal and their clients

55. Service providers have policies and procedures to ensure that services provided to customers (pension funds and members) is in their best interest

56. Annual regulatory seminars with service providers to emphasise their responsibilities towards their clients.

Financial advisory & intermediary services

57. Sections 2 and 3 of the General Code of Conduct (BN 80 of 2003)

Turkey

58. The Code of Banking Ethics, the Banks Association of Turkey, states that under Service Quality Article 11- banks should assume the service quality as a precondition of meeting the requirements and expectations of their customers. They should do their utmost for the employment of the two fundamental elements of this concept of service quality, the technological infrastructure and qualified human resources, in a way to lead to a continuous improvement and betterment of the service quality.

59. In Turkey, banks should offer the same quality and the same level of service to all their customers. However, differentiating the organizational structure and product range in accordance with an identified target market, or adopting different approaches to the customers in different risk groups can not be interpreted as a discrimination or categorization of the customers.

60. It is obliged to exercise due diligence, foresight in the orders to be placed on behalf of the on behalf of the fund. And founder should constitute an internal audit for prevention of errors, fraud and irregularities.

61. Regulation on Detection, Notification and Recording of Wrongful Insurance Practices and Principles and Procedures for Fighting Against These Practices'' serves to regulate the Turkish insurance sector for any kind of professional malpractice that may take place within the framework of ethical code of conduct. Business ethics, methods for coping with malpractices, on the job training of the insurance providers' personnel for good practices, disclosure of information and transparency are the basic principles concerned for responsible business conduct in the insurance sector.

UK

62. FSA (the predecessor of the Financial Conduct Authority FCA) Principles 1 Integrity: A firm must conduct its business with integrity and 6 Customers' interests: A firm must pay due regard to the interests of its customers and treat them fairly, require firms to conduct their business with integrity and to pay due regard to the interests of their customers and treat them fairly.

63. Principle 9 Customers: relationships of trust: A firm must take reasonable care to ensure the suitability of its advice and discretionary decisions for any customer who is entitled to rely upon its judgment also requires firms to take reasonable care to ensure the suitability of its advice and discretionary decisions for any customer who is entitled to rely upon its judgment.

2. ASSESSING CONSUMER NEEDS

COUNTRY EXAMPLES

Australia

64. Responsible business conduct requires that the financial services providers consider the financial capabilities, situation and needs of their customers before providing a product, advice or service. Since 2001 Australia has had a broad licensing regime for providers of investment and financial products. This has helped to improve accountability of financial institutions and support consumer financial protection.¹⁶⁸

Chile

65. Regulations issued by the Superintendence of Securities and Insurance applicable to brokers, established suitability requirements, demanding brokers to adopt policies and procedures to identify the risk profile of their customers in order to make recommendations that fit their needs according to their risk tolerance, investment horizon and others.¹⁶⁹

France

66. Assessing consumer needs under French credit consumer protection requires the following:

- To give access to a basic account deposit services to more vulnerable consumers in compliance with French inclusion regulation (i.e. article L312-1 Monetary and financial code
- to provide the borrower with explanations allowing him, to determine whether the proposed credit agreement is adapted to his needs and to his financial situation, (R 311-3 Consumer code) after having checked his solvency and needs.
- to draw the attention of the borrower on the essential characteristics of the proposal and the impact that these funds can have on its financial position, including in the event of default.
- to make this information appropriate based on the preferences expressed by the borrower (such as the duration of the credit agreement and the total amount of credit).

67. Specific provisions (L311-10 consumer code) are taken when credit transactions is concluded on the point of sale or through a distant selling. In such a case, assessing consumer needs requires a separate information sheet to be given by the provider or through his agent includes elements relating to resources and expenses of the borrower and, if applicable, outstanding loans contracted by it. The information sheet is signed or the contents are confirmed electronically by the borrower and contribute to the assessment of creditworthiness by the provider.

68. Specific provisions apply to intermediaries involved in credit transactions (R519-21, R 519-22 CMF). In such a case, assessing consumer needs requires:

- to be able to offer services, contracts or transactions tailored to his situation

¹⁶⁸ The Australian Government implemented a new credit regime as of July 2010 which now requires lenders to comply with responsible lending requirements under [Chapter 3 of the National Consumer Protection Act 2009](#).

¹⁶⁹ www.svs.cl/normativa/cir_2054_2011.pdf

- to inquire the client's knowledge and experience in banking and its financial situation and needs.
- to collect from the customer, information on its resources and its charges, and outstanding loans it has made, allow the credit institution to ensure its solvency
- to draw the attention of the customer, including the potential customer on the consequences that the signing of the contract may have on its financial position and, where applicable, property collateral

69. For life insurance the insurer is required to inquire into the knowledge, experience financial requirements and needs of the subscriber and issue an advice, taking particular account of this information, appropriate to the complexity of the contract. If the subscriber does not provide this information, the insurer must warn him prior to signing the contract. Article L. 132-27-18 Insurance code).

70. Specific provisions applies to intermediaries, Article L. 520-1of Insurance code raises the same obligation for insurance intermediaries either for life insurance or non life insurance. Intermediary shall specify the requirements and needs of the prospective purchaser and the reasons for the advice provided about a given insurance product. These details, which are based in particular on the information provided by the prospective purchaser, are adapted to the complexity of the insurance contract proposed

Securities sector

71. The regulator AMF has published a position, applicable to investment services providers and financial investment advisers, on the collection of know your customer (KYC) information. These professionals must gather certain information from their customers to ensure that the service they are planning to provide is suitable or appropriate. Working within their joint unit, the AMF and the ACP therefore decided to clarify their expectations in terms of drawing up and using customer questionnaires. KYC is vital to providing a high-quality service, whether a remote or face-to-face distribution method is used. The information gathered must make it possible to identify the customer's individual characteristics, needs, investment objectives and financial knowledge and experience. Professionals must pay close attention to the wording of questions in the questionnaire and the way that the questions relate to the product proposed. For example, questions asked to assess attitude to risk must be in line with the planned investment.

72. The assessment of financial knowledge and experience cannot be based solely on a self-assessment by the customer. The way the questionnaire is prepared and used must also make it possible to identify answers that are obviously inconsistent or incomplete. In addition, professionals need to educate their customers to help them understand these rules, which are designed to protect them, and show that it is in their interest to answer the questionnaire honestly (Position AMF n° 2013-02 Collecting 'know-your-client' information – document created on 8 January 2013)

Germany

73. Financial services providers have to meet the needs of their customers. They must obtain from their clients all necessary information regarding the client's knowledge and experience, they must know their clients investment objectives and their financial situation. They may only recommend those financial instruments and investment services that are appropriate for them based on the information obtained (see Section 31 (4) and (4a) of the Securities Trading Act (WpHG), see also Section 6, 7 Insurance Contract Act (Versicherungsvertragsgesetz) and the decree on obligations to disclose information in the case of insurance contracts (Verordnung über Informationspflichten bei

Hong Kong

74. For investment products, banks in Hong Kong are required to obtain relevant information from a customer about his financial situation, investment experience and investment objectives, and ensuring suitability of the recommendation or solicitation of an investment product for that customer is reasonable in all the circumstances.¹⁷⁰

75. For credit cards, the card issuers should act responsibly in the issue and marketing of credit cards, in particular to persons (such as full time students) who may not have independent financial means.¹⁷¹

76. Under the Code of Banking Practice, banks should provide customers with statements of account at monthly intervals unless (a) a passbook or other record of transactions is provided; (b) there has been no transaction on the account since the last statement; or (c) otherwise agreed with the customer.

77. When banks are aware that any of their personal customers are experiencing financial problems or have an unmanageable level of debt, they should consider such cases sympathetically and positively, following the guidelines set out in the “Hong Kong Approach to Consumer Debt Difficulties”. Banks should discuss with the customer concerned to work out a solution that is mutually beneficial for both the customer and the banks concerned. In doing so, the customer should be made aware of the possibility of solving the problem by a Debt Relief Plan. Where the bank does not have a prior credit relationship with the individual who has applied for credit, the bank should suggest that the individual discuss the problem with the bank with which the individual has the major credit relationship as soon as possible. Banks should not hastily demand immediate repayment of loans or reduce credit lines or actively recommend transfer of the balance. Instead, banks should follow the framework and procedures which are laid down in the Agreement on Debt Relief Plans, and the framework and procedures for Individual Voluntary Arrangements, and work out a mutually acceptable solution with the customer as far as possible.

78. For Investment-Linked Assurance Schemes (“ILAS”) products, the HKFI has updated its requirements that applicant’s suitability and affordability is assessed against specific risks of the investment products.¹⁷²

79. The following measures are adopted:

- Financial Needs Analysis (“FNA”) and Risk Profile Questionnaire (“RPQ”) have to be performed on the applicant to assess his risk profile and the suitability of the product.¹⁷³

¹⁷⁰ Paragraphs 5.1 to 5.2 of the Code of Conduct: http://en-rules.sfc.hk/net_file_store/new_rulebooks/h/k/HKSFC3527_1868_VER20.pdf

Guidance is provided (e.g. Recommendation 12 of Annex 1 to the HKMA’s circular of 25 March 2009: <http://www.hkma.gov.hk/eng/key-information/guidelines-and-circulars/circulars/2009/20090325-1.shtml> and “Questions and Answers on Suitability” covering 6 aspects of suitability obligations: (i) know their clients, (ii) conduct due diligence on products, (iii) provide reasonably suitable recommendations, (iv) provide all relevant material information to clients and help them make informed investment decisions, (v) employ competent staff and provide appropriate training, and (vi) document and retain the reasons for product recommendations to each client: <http://www.hkma.gov.hk/eng/key-information/guidelines-and-circulars/circulars/2007/20070510-1.shtml>) to banks to elaborate the suitability obligations.

¹⁷¹ Section 25.1 of the CoBP. The CoBP can be downloaded from: http://www.hkma.gov.hk/media/eng/doc/code_eng.pdf.

¹⁷² http://www.hkfi.org.hk/pdf/e_NewRequirements.pdf

¹⁷³ FNA: http://www.hkfi.org.hk/pdf/e_FNA.pdf

- The applicant has to complete an Applicant's Declarations form to confirm his acceptance of the highlighted features of the products. If the product has any unusual features or risks, the intermediary must explain these to the full satisfaction and understanding of the applicant prior to signing.
- Authorized insurers must establish operational controls to ensure that FNA, RPQ and Applicant's Declarations are duly completed, and the ILAS products sold are suitable and affordable for the policyholder.

80. In this regard, PIBA has also issued a similar requirement under its code of conduct to its members for conducting investment linked business.¹⁷⁴

Hungary

81. According to the act, prior to conclusion of the financial services contract, the financial organisation shall interview the customer so as to ascertain his needs and requirements, as well as the reasons underlying the advice given by the financial organisation in connection with his activities.

82. General consumer protection recommendation we mentioned before, regulates that the financial organisations should seek to offer financial products and services that best suit the consumer's needs and match their ability to meet the assumed obligations, short and long-term. This should be done by assessing the consumer's actual needs, circumstances and financial knowledge.

83. In connection with the Unit Linked life insurance products, the product information handed over to the customer on the basis of a pre-contracting needs assessment and further specification of the needs should contain the reasons explaining why the given product with the specified services, contents, payment frequency and insurance amount was offered to the customer. It is recommended that the needs assessment should include an evaluation of the contracting party's actual long-term load-bearing capacity and propensity to assume risk, in addition to a limited outline of the contracting party's financial standing and goals related to contracting. If possible, acting officers should ensure that the customer completes the needs assessment.

84. On performing the needs assessment, it is reasonable for acting officers to survey the customers' further financial obligations other than assumed through the insurance legal relationship, as well as their implications and consequences, prior to selling them loans bundled unit-linked life insurance products; acting officers should place sufficient emphasis on drawing attention to the impact such products may have on customers' ability to bear financial burdens.

India

85. The Indian securities regulator, SEBI, under the (Investment Advisers) Regulations, 2013 ensure that:

- Risk profiling of the client important including age, investment objective, income details, existing investments/ assets, risk appetite, liability/ borrowing details
- has proper process for assessing risk
- documentation important and list of documents specified to maintained for five years

¹⁷⁴ http://www.piba.org.hk/administrator/components/com_extra/data/news_circulars_hk_tbl/ori/32_filelink.pdf

Ireland

86. The 2012 Code sets out prescriptive requirements in relation to what is termed the 'Knowing the Consumer' process (provision 5.1-5.8). The information gathered at this stage (for example, age, knowledge and experience, attitude to risk) is used to assess whether a product or service is suitable for a consumer.

87. The 2012 Code also prescribes requirements around assessing suitability and regulated entities are required to explicitly consider certain key criteria when carrying out an assessment of suitability (provisions 5.16-5.18).

88. In addition, where a consumer refuses to provide information sought in compliance with the Knowing the Consumer requirements, the regulated entity must inform the consumer that, as it does not have the relevant information necessary to assess suitability, it cannot offer the consumer the product or service sought (provision 5.4).

89. In July 2012, the Central Bank released the findings of the latest inspection as part of the on-going investigation of the sale of Payment Protection Insurance (PPI). The inspection raised concerns in relation to the sale of PPI and, as a result, the Central Bank wrote to the seven firms inspected and required them to conduct a comprehensive review of all their PPI sales from August 2007 to date.

Israel

90. Relevant regulations include the following:

- Procedures for Extending Housing Loans (regulation 451); Management of Credit Facilities in Current Accounts (regulation 325).
- Several letters from the Supervisor of Banks were sent to the banking corporations in regard to housing loans, which resulted in restricting excessive lending to individuals. Those letters include instructions to the banks to increase provisions, to limit LTV and to limit the component of the "floating interest rate loans"
- Regulation 411 includes provisions about "know your customer" (customer due diligence procedures). The main purpose of this regulation is to prevent money laundering, but the Bank of Israel position is that this risk management system should work also for customers.

Italy

Banking sector

91. As a general rule, financial services providers have to implement procedures meant to avoid mis-selling. As far as loans are concerned a creditworthiness assessment has to be always performed by the creditor on the basis of information on the financial situation of the consumer.

Investment and asset management sector

92. In providing investment and ancillary services, intermediaries must acquire the necessary information from their clients (Article 39 and following of CONSOB Regulation n.16190/2007).

93. In order to recommend the investment services and financial instruments suited to the clients or potential clients, in the provision of investment advice or portfolio management services, the intermediaries must obtain necessary details from the clients or potential clients in relation to:

- awareness and experience of the investment sector relevant to the type of instrument or service;
- the financial position;
- the investment objectives.

94. The information pursuant to sub paragraph a) must include the following elements:

- the type of service, transaction and financial instruments with which the customer is familiar;
- the nature, volume and frequency of financial instrument transactions performed by the clients and the period in which such transactions were executed;
- the level of education, profession or, if relevant, the former profession of the client.

95. The information pursuant to sub paragraph b) must include, where appropriate, data on the source and consistency of the client's income, overall assets and financial commitments.

96. The information pursuant to sub paragraph c) must include data on the period for which the client wishes to retain the investment, his preferences in relation to risk, his own risk profile and investment aims, where relevant.

97. The intermediaries may rely on the information provided by the client or potential client unless such information proves to be clearly exaggerated, incorrect or incomplete. The acquisition of relevant information is a dynamic process which implies periodic updates of the relevant data.

98. Where intermediaries providing investment advice or portfolio management services are unable to obtain the required information, they must abstain from providing the said services.

99. Based on information obtained from the clients, and taking into account the nature and characteristics of the service provided, the intermediaries must assess whether the specific transaction recommended or executed as part of the provision of portfolio management services satisfies the following criteria:

- correspondence with the client's investment objectives;
- the nature of the transaction is such that the client is financially able to face any risk related with the investment compatibly with his investment objectives;
- the client has the necessary experience and awareness of the nature of the transaction to understand the risks involved in such a transaction or management of the portfolio.

100. With specific regard to the provision of investment services other than investment advice or portfolio management, intermediaries must verify that the client has the necessary level of experience and awareness to understand the risks deriving from the instrument or investment service offered or requested.

101. Where the client or potential client decides not to provide the necessary information, or where such information is insufficient, the intermediaries must advise the client or potential client that such a decision prevents any verification that the service or instrument is appropriate to the customer.

102. To this end, the intermediary will have to consider any information available (e.g. age, professional qualifications, risk appetite

Japan

103. In accordance with the principle of suitability, financial services providers in Japan must ensure that investment solicitation is conducted in an appropriate manner suited to their customer's attributes, by offering transactions with terms and contents that are commensurate with the customer's knowledge, experience, asset status and investment purpose as well as his/her ability to make judgment regarding risk management. To this end, it is important to establish a control environment for customer management that enables a precise identification of the customer's attributes and the actual status of transactions, and financial services providers shall prepare a system of customer cards, for instance, adequately confirming the investment purpose and intention of customers.

104. Moreover, financial services providers shall conduct careful sales management, such as adopting a system of management approval when selling high-risk instruments, such as multi-currency funds, to customers who are focused on the security of their principal.

105. As for internal control, they shall strive to keep track of how customer attributes are identified and how customer information is managed, and establish an internal control environment that ensures the effectiveness of customer information management by, for example, checking whether solicitation is conducted in an appropriate manner suited to the customer attributes and revising the method of customer information management when necessary; and whether the same measures are taken to identify the actual status of transactions that continue for a long time after the conclusion of contracts, e.g. transactions of derivatives.

106. The JFSA works together with Bank of Japan to disseminate sufficient information on what information financial services providers shall provide their customers and how they shall explain financial products at the solicitation or sales of the products¹⁷⁵.

Luxembourg

107. Relevant Regulations include the following:

- Law of 5 April 1993 on the financial sector
- Grand-Ducal Regulation of 13 July 2007
- CSSF Circular 07/307 “concerning MIFID: Business conduct rules for the financial sector”

¹⁷⁵ For example, the following websites are of interest:

<http://www.shiruporuto.jp/e/index.html>;

<http://www.shiruporuto.jp/finance/trouble/torihiki/torihiki004.html>;

<http://www.fsa.go.jp/en/refer/legislation/index.html>;

<http://www.fsa.go.jp/common/law/index.html>.

For Information provided by industry associations, see the following website:

<http://www.jsda.or.jp/en/index.html> <http://www.jsda.or.jp/>

Netherlands

108. In the Netherlands the rules relating to assessing customer needs apply cross sectoral. When advice is given, financial service providers should assess the client's financial position, knowledge and experience, needs and risk appetite (to the extent relevant for the advice). These rules are based on MiFID and have been extended to insurance products, mortgage credit in order to have a level playing field between banks, insurance companies and intermediaries and investment firms.

109. In the past years the AFM has paid particular attention to the quality of advice given in respect of mortgage credit, financial instruments and pension products. The AFM has published the results of these investigations in several reports and has provided guidance to financial service providers on how to apply the rules.

110. The investigations were often initiated by signals and complaints from retail customers and roughly follow the following stages:

- analysis of signals
- (at random) selection of advice files
- Analysis (both economical and legal) of advice files
- Sanctioning (fine accompanied by publication) of the party

111. The fine and the publication are not the only means to influence the market to be more transparent and objective. The AFM also sets out further standards/guidance on how the advice should be constructed.

112. Special rules apply for assessing a customer's financial capability in case of consumer credits and mortgage credits. Criteria on responsible lending have the objective to protect consumers for payment problems and residual debt issues. The criteria were based on self regulation until 2013, when the *loan to income ratio*, the *loan to value ratio* and the possibilities to deviate became part of the law. The loan to income ratio is based on budget figures and varies between 3 -5 times the gross income depending on the gross income itself and the interest rate. There are limited possibilities to extend loans over the maximum limit, e.g. in case of income-growth or self-employment. The loan- to value ratio was not limited until 2012. The loan to value ratio is however currently maximised at 105% and will be reduced to 100% in the coming 5 years. Also here there are limited possibilities to extend the limits, e.g. in case of residual debt or the case of reclosing the mortgage.

Portugal

Banking sector

113. The legal act that transposed the EU Directive on consumer credit establishes the following:

- a duty of care (credit institutions should ensure that consumers are aware of and fully understand the terms and conditions associated with the product they are contracting),
- a duty to assess the creditworthiness of the lender before entering into the contract (credit institutions should verify the capability of lenders to cope with the financial commitment they are

assuming, either by verifying the information provided by the consumer or by consulting the Central Credit Register) and

- a duty to assess the suitability of the product being offered to the client.

114. In Portugal, a comprehensive regime for the prevention and settlement of arrears on credit agreements with household customers is in place, comprising measures to promote the prevention of arrears situations and the out-of-court settlement of default situations on credit agreements. An extraordinary regime has also been established, with measures to protect housing loan borrowers in a very difficult economic situation.

Spain

115. Under Spanish Law 2/2011 on Sustainable Economy (article 29) obliges entities to provide customers with enough information to assess whether financial products are suitable for their specific needs, with a particular focus on the consequences in case of default.

South Africa

Collective investment schemes

116. The intermediary has an obligation to assess the investor's needs. A FAIS Act requirement. GN 910 requires the manager to ensure that the intermediary is adequately skilled and resourced.

Capital markets

117. JSE Equities Rules

- Rule 8.10.2 – Disclosure to clients

118. Code of conduct for authorised users (Notice 20 of 2005)

- Section 3 – Furnishing of advice
- Section 4 – Disclosure to clients

119. Financial Intelligence Centre Act 38 of 2001 (as amended)

120. Section 21 – Identification of clients and other persons

Pension sector

121. Financial services providers and authorised agents are regulated and supervised by the Registrar of Financial Advisors and Intermediary Services.

Financial advisory & intermediary services

122. Section 8 of the General Code of Conduct (BN 80 of 2003)

UK

Investments

123. For retail investment products advice standards are found in national rules. Essentially, the requirement is to ensure that any product is appropriate to the customer's needs and circumstances.¹⁷⁶

Mortgage sector

124. For mortgages and other forms of home finance advice standards are found in national rules. Essentially, the requirement is to ensure that any product is appropriate to the customer's needs and circumstances.¹⁷⁷

125. Mortgages can be sold on a non-advised basis, but planned regulatory changes (taking effect in April 2014) will require advice to be given wherever there is interaction with a customer regarding a product sale.

Non-investment insurance sector

126. Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation (IMD) recognises that insurance intermediaries sell products on both an advised and non-advised basis.

127. Article 12 requires that for both types of sale insurance intermediaries must “prior to the conclusion of any specific contract, the insurance intermediary shall at least specify, in particular on the basis of information provided by the customer, the demands and the needs of that customer as well as the underlying reasons for any advice given to the customer on a given insurance product. These details shall be modulated according to the complexity of the insurance contract being proposed.” This requirement is implemented in the UK in the FCA’s rules.¹⁷⁸

128. FCA rules also require that for advised sales of non-investment insurance products firms must “take reasonable care to ensure the suitability of its advice for any customer who is entitled to rely upon its judgment.”¹⁷⁹

129. The FCA also has guidance and rules for firms governing the steps that they must take to ensure that customers only buy policies under which they are able to claim benefits under a non-investment insurance policy.¹⁸⁰

¹⁷⁶ See COBS 9.2.

¹⁷⁷ See MCOB 4.7.

¹⁷⁸ See ICOBS 5.2

¹⁷⁹ See ICOBS 5.3

¹⁸⁰ See ICOBS 5.1

3. STAFF TRAINING

COUNTRY EXAMPLES

Australia

130. The Australian Corporations Act 2001 (the Act), requires financial services licensees to take reasonable steps to ensure that its representatives comply with the financial services laws. The Australian Securities and Investments Commission (ASIC) prepares regulatory guidance to this effect outlining the minimum standard of training expected of financial product advisers.¹⁸¹

Canada

Banking sector

131. At the federal level, on-site examinations of federally regulated financial institutions are a formal compliance tool used by the FCAC. The FCAC, as part of these examinations, examines the institutions' internal policies and procedures, training materials and conducts interviews with staff employees to assess their knowledge.

Securities sector

132. NI 31-103 (section 3.4) prescribes that an individual must not perform an activity that requires registration unless the individual has the education, training and experience that a reasonable person would consider necessary to perform the activity competently, including understanding the structure, features and risks of each security the individual recommends¹⁸². The level of expertise required varies according to the different registration categories. See also IIROC Rule 2900¹⁸³ and MFDA Rule 1.2¹⁸⁴

Insurance sector

133. In Quebec, before issuing a certificate (licence) to an intermediary, the AMF must ensure that the candidate has acquired essential knowledge for consumer protection, and a minimum level of education or equivalent experience. Prospective intermediaries must also pass Autorité des marchés financiers (AMF) examinations and he must successfully complete a probationary period. 110. To maintain his certificate, a representative must comply with any regulation of the AMF, or by-law of the Chambre de la sécurité financière or the Chambre de l'assurance de dommages pertaining to compulsory professional development. These regulations require the intermediaries to have a minimum of hours of training on a period of 2 years. (See Regulation respecting the compulsory professional development of the Chambre de

¹⁸¹ [ASIC RG 146 Licensing: Training of financial product advisers](#)

¹⁸² See Part 3 for specific initial proficiency requirements <http://www.lautorite.qc.ca/files/pdf/reglementation/valeurs-mobilieres/31-103/2012-02-28/2012fev28-31-103-vofficielle-en.pdf> ; Québec's mutual fund representatives and scholarship plan representatives must also satisfy compulsory professional development; See http://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=3&file=/D_9_2/D9_2R13_1_A.HTM

¹⁸³

<http://iiroc.knotia.ca/Knowledge/View/Document.cfm?Ktype=445&linkType=toc&dbID=201301341&tocID=811>

¹⁸⁴ <http://www.mfda.ca/regulation/rules/RulesFeb13.pdf>

l'assurance de dommages¹⁸⁵ and Regulation of the Chambre de la sécurité financière respecting compulsory professional development¹⁸⁶ and Regulation respecting the issuance and renewal of representatives' certificates¹⁸⁷.)

Chile

134. Chile has been working on improving the standards among financial providers, establishing fit and proper requirements for several industries, including insurance, pensions, brokers and fund management.

135. An example of such a requirement is established in the Securities Market Law and a norm issued by the Superintendence of Securities and Insurance (NCG 295), which requires brokers and dealers to prove that they have sufficient knowledge about securities brokerage through a test.¹⁸⁸

136. A similar requirement has been established for providers of the insurance and pensions industries, by regulations issued by the Superintendence of Securities and Insurance (Circular 1.679) and the Superintendence of Pensions.

Czech Republic

137. Professional qualification regarding expertise in the particular financial area comprising of both legal and economical knowledge (not only marketing and selling) is a necessary condition to be able to assess the needs of a consumer and to act in his/her best interest.

France

Insurance sector

138. Specific qualifications or specific levels of technical knowledge are required from intermediaries and employee (Article R512-9 Insurance code). The training is intended to enable trainees to acquire, prior to the exercise of the activity of intermediation expertise in legal, technical, commercial and administrative aspects. The training programs are designed by professional organizations and are approved by order of the Minister of Economy. The skills acquired are checked at the end of the course. The results of this monitoring must be attached to training booklet Article R512-11

Banking sector

139. Intermediaries must meet requirements of professional competence determined by regulation. (L519-3-3 and R519-8 CMF)

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http://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=3&file=/D_9_2/D9_2R12_A.HTM

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http://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=3&file=/D_9_2/D9_2R13_1_A.HTM

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http://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=3&file=/D_9_2/D9_2R7_A.HTM

¹⁸⁸

(http://www.svs.cl/sitio/english/legislacion_normativa/marco_legal/ley18045_ingles_07122011.pdf)

140. The training is intended to allow the trainees to acquire the expertise in legal, economic and financial aspects. The skills acquired are checked at the end of the training (R519-12 CMF). The training programs are designed by the profession and are approved by an Order of 4 April 2012 of Minister of economy.

141. French regulation requires also specific qualifications or specific levels of technical knowledge from persons (intermediary or employee) who proposes a credit on the point of sale or through distance selling (L311-8 consumer code). These persons have to be trained in the distribution of consumer credit law and prevention of overindebtedness. The programme of the training is described in Article D311-4-3 Consumer Code.

Securities sector

142. Since the 1st July 2010 there is a regulatory framework to ascertain that market participants have a specified minimum level of regulatory knowledge. The professional certification regime is based on the following principles:

- introducing a regulatory framework whereby investment services providers (ISPs) verify that employees in certain key functions have the appropriate level of regulatory knowledge with regard to a specified corpus;
- identifying the key functions concerned by the new system, i.e. trader, sales personnel, financial analyst, asset manager, head of clearing and post-trade services, and compliance officer;
- permitting ISPs to carry out the verification either in-house, by any means they see fit but in accordance with a formal procedure, or by checking that the employee has passed a certified external examination providing them a professional "passport", with a view to mutual recognition of qualifications between France and other countries.

143. The AMF has also published the following:

- the content of the minimum body of knowledge that market participants have to acquire with details of the scope of the knowledge requirement, the weighting assigned to each topic according to its importance, etc;
- the conditions to be satisfied by exams submitted for certification; and
- a Q&A on the implementation of the knowledge verification procedure.

Germany

144. Section 34 d Securities Trading Act (Wertpapierhandelsgesetz - WpHG) ensures the required qualification of staff members which are directly engaged in providing investment advice concerning financial instruments. In addition financial intermediaries providing investment advice concerning some other financial investments (e.g. funds) have to provide evidence of their qualification by passing an examination, pursuant to section 34 f paragraph 2 no.4 of the Trade and Industry Code (Gewerbeordnung).

145. An investment services enterprise may entrust an employee with the provision of investment advice only if that employee has the degree of expertise and reliability required for the activity. Before the employee takes up the activity specified in sentence 1, the investment services enterprise must report to the Supervisory Authority.

- the employee; and,
- provided that the investment services enterprise has sales representatives within the meaning of subsection (2), the sales representative directly responsible for such employee depending on the organisational structure of the investment services enterprise.

146. If the circumstances reported by the investment services enterprise pursuant to sentence 2 changed, the new circumstances shall be reported to the Supervisory Authority without undue delay.

147. In addition, the investment services enterprises must report to the Supervisory Authority:

- any complaints;
- the name of the employee on whose activity the complaint is based; and
- where the investment services enterprise has several branches or other organizational units, the branch or organizational unit to which the employee is assigned or for which he predominantly or usually performs his activity to be reported pursuant to sentence 1,
- if one or several complaints within the meaning of section 33 (1) sentence 2 no. 4 WpHG about the activity performed by the employee are brought against the investment services enterprise.

Hong Kong

148. Staff dealing in or advising on securities should meet the minimum competence standards set by the Securities and Futures Commission, including academic qualification, industry qualification and regulatory knowledge¹⁸⁹ and fitness and propriety requirements including the ability to carry on relevant activities competently, honestly and fairly¹⁹⁰ and are required to update their technical knowledge and skills (including knowledge of new products and the associated risk management systems), regulatory knowledge and ethical standards through continuous professional training (“CPT”).¹⁹¹ Guidelines on CPT require the staff to undertake a minimum of CPT hours per calendar year.

149. In addition, the HKMA, through a number of circulars, highlighted the need for banks to ensure that their staff are properly trained so that they understand the features and risks of the investment products that they distribute to customers.

150. The HKMA conducts mystery shopping, including sales staff’s product knowledge and adherence to regulatory requirements and control procedures, to assess the industry’s compliance with regulatory requirements in the sale of investment products, and published the results to require banks to make improvements on issues identified and to encourage them to adopt good practices.

151. Governed by Section 67 of the Insurance Companies Ordinance (“ICO”), the Code of Practice for the Administration of Insurance Agents (“CoPA”) is issued and approved by the HKFI and IA

¹⁸⁹ Guidelines on Competence: http://en-rules.sfc.hk/net_file_store/new_rulebooks/h/k/HKSFC3527_4415_VER10.pdf

¹⁹⁰ Fit and Proper Guidelines: http://en-rules.sfc.hk/net_file_store/new_rulebooks/h/k/HKSFC3527_548_VER10.pdf

¹⁹¹ Guidelines on CPT: http://en-rules.sfc.hk/net_file_store/new_rulebooks/h/k/HKSFC3527_4416_VER11.pdf

respectively.¹⁹² Persons to be registered as an appointed insurance agent have to satisfy the IARB that he is fit and proper and that he meets all the requirements specified in Part E of the CoPA¹⁹³ including those on qualifications and experience. Specifically, Part C of the CoPA requires insurers to provide sufficient trainings to their agents.¹⁹⁴

152. Similar to insurance agents, insurance brokers have to satisfy “fit and proper” criteria and register with the IA or the approved body of insurance brokers as appropriate. The insurance broker must satisfy the minimum requirements specified by the IA with regard to “qualifications and experience”, “capital and net assets”, “professional indemnity insurance”, “keeping of separate client accounts” and “keeping proper books and accounts” under Sections 69 and 70 of the ICO.

153. Under the Insurance Intermediaries Quality Assurance Scheme (“the Scheme”), all insurance intermediaries are required to pass the Qualifying Examination (administered by the Vocational Training Council) as a condition for registration or authorization unless otherwise exempted. They are also required to comply with the requirements of the Continuing Professional Development (“CPD”) Programme under the Scheme to upkeep and enhance their professional knowledge. IARB, HKCIB and PIBA have issued guidelines to their members in relation to compliance with the CPD Programme requirements.

154. Educational pamphlet “Insurance Intermediaries in Hong Kong” has been published by the IA to introduce the roles of insurance intermediaries and how they are regulated in Hong Kong.¹⁹⁵

Hungary

155. The HFSA expects financial organisations to provide adequate – preliminary, preparatory and regular – training to their acting administrators, in order to ensure that they supply truly useful, accurate and comprehensible information to consumers. In addition to the conditions of products and services, training should also include knowledge of consumer protection legislation and expectations, and – within the latitude allowed by the discretion of the financial organisation – compliance with the relevant exam requirements should preferably be a prerequisite to further cooperation.

India

156. SEBI (Investment Advisers) Regulations, 2013 SEBI (Mutual Funds) Regulations, 1996 and all Intermediaries Regulations Minimum, educational qualifications and experience specified along with certification on financial planning or fund or asset or portfolio management or investment advisory services.

Ireland

157. A General Principle in the 2012 Code which requires a regulated entity to have and employ effectively, the resources, policies and procedures, systems and control checks, including staff training, that are necessary for compliance with the Code (provision 2.4)

158. The Minimum Competency Code 2011 (MCC) was developed following a review of the Minimum Competency Requirements, introduced in 2007. The MCC introduces a basic competency

¹⁹² http://www.hkfi.org.hk/en_tips_customer_practice.asp

¹⁹³ http://www.hkfi.org.hk/pdf/e_CodePracticeE_2010.pdf

¹⁹⁴ http://www.hkfi.org.hk/pdf/e_CodePracticeC_2010.pdf.

¹⁹⁵ <http://www.oci.gov.hk/download/booklet-2005-e.pdf>

framework that is designed to establish minimum standards for financial services providers, with particular emphasis on areas dealing with consumers. Firms are required to ensure that individuals who provide advice on or sell retail financial products or who undertake certain specified activities on their behalf acquire the competencies set out in the Requirements. In addition, individuals are required to undertake a programme of Continuing Professional Development [CPD] on an ongoing basis.

159. The MCC is closely linked to the Central Bank of Ireland's Fitness and Probity Regime. A number of the controlled functions set out in the Fitness and Probity Regulations are aligned with the scope of the MCC, specifically the customer-facing controlled functions. Under the MCC, responsibility is placed on all persons carrying out these controlled functions, as well as on regulated firms.

Israel

160. Banks train their employees internally in various areas of banking activities, including compliance to laws and regulations. According to Section 15(d) of Regulation 308, the compliance office of the bank must review activities of bank training department.

161. Relevant regulations include the following:

- Proper Conduct of Banking Business -Regulation 308 - Compliance Officer (especially Section 15(d)).
- Investment advisors, portfolio managers and pension advisors: for them, relevant legislation set up minimum competence requirements. This field is regulated by the Israeli Security Authority, and the Ministry of Finance.

Italy

Banking sector

162. Front line staff have to be sufficiently trained in order to explain all the relevant information provided to consumer in order to enable him/her to fully understand the features of the product and the risks connected to it.

163. Authorized agents have to be entered into a register; specific professional and knowledge requirements (assessed through an examination) are required as a condition for being registered.

Investment and asset management sector

164. Pursuant to article 5 of Bank of Italy and Consob Regulation of October 29, 2007, investment firms must have an organisational system able to ensure a sound, prudent management, the limitation of risk and the stability of equity as well as the correctness and transparency of conduct in the provision of services.

165. To this end, in providing services, the intermediaries must apply and maintain, inter alia, policies and procedures aimed at ensuring that staff has the qualifications, knowledge and skills necessary to exercise the responsibilities assigned to them.

Luxembourg

166. The Institut de Formation Bancaire du Luxembourg (IFBL) organizes specialized training for persons working in the financial sector. Some of their training courses are mandatory for the staff of banks which are members of the Luxembourg Bankers' Association (ABBL).

Netherlands

167. Financial service providers are responsible by law for the professional competence of their staff who are directly involved in providing financial services to consumers. The requirements are further laid down in lower legislation (Decree) and apply to inter alia insurance products and mortgages; these requirements do not apply to investment services. Currently a diploma is only required for managers. As of January 1, 2014, new rules will be introduced imposing an obligation on all advisors with client contact to obtain a certified diploma. The requirements to be met differ per product.

168. In order to obtain the diploma, an exam must be passed in which both knowledge, skills and professional behaviour are assessed. After obtaining a diploma, staff needs to maintain their level of knowledge by means of Permanent Education. Financial service providers with over 50 employees are not obligated to get a diploma when their conduct of business certifies qualified personnel. Further there will be an obligation to keep the professional requirement permanently up to date.

169. In the absence of any professional competence requirements by law, the AFM has liaised with the Dutch Securities Institute (a Dutch industry body) to promote a qualification regime for investment advisors.

Portugal

170. Legal Framework of Credit Institutions and Financial Companies (LFCIFC), Article 73^o establishes that:

“credit institutions shall treat their clients with high level of technical competence in all activities which they carry on, providing their business organisation with the human and material resources required to ensure appropriate conditions of quality and efficiency.”

171. The Central Bank of Portugal provides financial institutions employees with training sessions on new regulations in order to ensure a proper implementation of the new rules.

South Africa

Collective investment schemes

172. General Notice 911 of 2010 requires the manager or to have adequately trained staff

Capital markets

173. JSE Equities Rules

- Rule 4.10 – Fit and proper requirements

Pension sector

174. Financial services providers or authorised agents are regulated and supervised by the Registrar of Financial Advisors and Intermediary Services.

175. It is a legal requirement that administrators employ adequately trained staff and ensure that they are properly supervised

Financial advisory & intermediary services

176. Part 3 to 8 of the Determination of Fit and Proper Requirements

UK

177. The UK Retail Distribution Review (RDR) raised the professional standard requirements for all individuals offering retail investment advice. The rules applying the RDR standard came into effect on 31 December 2012. Consumer research conducted on the impact of RDR has shown that consumer confidence is increased by a higher qualification requirement.

4. REMUNERATION STRUCTURES

COUNTRY EXAMPLES

Australia

178. Part of the FOFA reforms a prospective ban on conflicted remuneration structures including commissions, in relation to the distribution of and advice on retail investment products including managed investments, superannuation and margin loans.¹⁹⁶

Canada

Banking sector

179. Under the *Bank Act*, the board of directors of a bank are required to establish procedures to resolve conflicts of interest, including techniques for the identification of potential conflict situations and for restricting the use of confidential information.¹⁹⁷

Securities sector

180. NI 31-103 (section 13.4) provides requirements in order to identify and respond to conflicts of interest¹⁹⁸. As stated in the *Companion Policy to NI 31-103*¹⁹⁹, registered firms should consider whether any particular benefits, compensation or remuneration practices are inconsistent with their obligations to clients, especially if the firm relies heavily on commission-based remuneration. For example, if there is a complex product that carries a high commission, the firm may decide that it is not appropriate to offer that product.

France

181. Individual vendors cannot, under any circumstances, be paid according to the consumer credit rate or the type of contract (L313-11 Consumer Code). The terms or the level of remuneration received by the banking intermediaries under their intermediation activity should not go against their obligation to act in the best interests of clients or influence the quality of their service delivery (R519-25CMF)

Germany

182. Generally in Germany the Supervisory Board lies down the rules of procedure and fixes the remuneration of the Management Board. After the financial crisis for banking institutions and insurance companies special regulations were enacted. The objective of these regulations is to ensure that risk management and the overall strategy are in line with the overall remuneration system so that no damaging incentives to take disproportionate risks are given. Pursuant to section 64 b Act on the Supervision of Insurance Companies the remuneration systems for managers, staff and members of the supervisory board of insurance undertakings must be transparent, appropriate and focused on the long-term performance of

¹⁹⁶ <http://www.comlaw.gov.au/Details/C2012A00067> <http://www.comlaw.gov.au/Details/C2012A00068>

¹⁹⁷ <http://laws-lois.justice.gc.ca/eng/acts/B-1.01/page-66.html#h-32>

¹⁹⁸ <http://www.lautorite.qc.ca/files/pdf/reglementation/valeurs-mobilieres/31-103/2012-02-28/2012fev28-31-103-vofficielle-en.pdf>

¹⁹⁹ <http://www.lautorite.qc.ca/files/pdf/reglementation/valeurs-mobilieres/31-103/2012-09-28/2012sept28-31-103-ig-vadmin-en.pdf>

the undertaking. For banking institutions see Section 25 a paragraph 1, sentence 3 Banking Act (KWG), see also the Remuneration Ordinance for Institutes²⁰⁰

183. Equivalent herewith is that for insurance companies' remuneration systems for managers, staff and members of the supervisory board must be transparent, appropriate and focused on the long term performance of the undertaking, Section 64 b Insurance Supervisory Act (VAG).

184. For securities pursuant to section 37 Investment Code German asset management companies should have remuneration policies and practices for those categories of staff, including senior management, risk takers and control functions, and any employees receiving total remuneration that takes them into the same remuneration bracket as senior management and risk takers, whose professional activities have a material impact in the risk profile of the asset management company or of the AIFs they manage that are consistent with and promote sound and effective risk management and do not encourage risk-taking which is inconsistent with the risk profiles, rules or instruments of incorporation of the AIFs they manage.

185. The asset management company has to disclose information in the fund rules concerning the manner, the amount and the calculation of fees and the reimbursement of expenses to be paid out of the fund to the management company, the depositary and third parties. These fund rules have to be approved by the German Federal Financial Supervisory Authority (BaFin). For this fee clause in the fund rules BaFin has developed templates, which could be seen as best practice. The both governing principles are:

- the clause on fees and expenses should contain comprehensible information about the manner, the amount and the calculation of the fees and expenses; and
- there is no detrimental effect on investor rights by inappropriate fees or expenses.

186. With respect to performance fee clauses BaFin requires the benchmarks used as a calculation base in such clauses to be in line with the investment strategy of the fund. Furthermore the minimum reference period for performance fees has to be one year; underperformance of at least five preceding reference periods has to be taken into account. Thus performance fee clauses shall foster long term returns but not induce the portfolio management to assume inappropriate risks in order to gain short term benefits.

187. If the templates mentioned above are used it will be no problem for BaFin to approve the fund rules with regard to the clause on fees and expenses. If the clause on fees and expenses differs from the template BaFin has to check whether the clause on fees and expenses meets a comparable standard of transparency and appropriateness

188. In addition for investment services enterprises a special inducement prohibition is enacted in section 31 d Securities Trading Act (Wertpapierhandelsgesetz - WpHG).

189. To enable the client to make a clear choice between a commissioned based investment advice and a fee based investment advice an Act on fee based investment advice on financial instruments²⁰¹ (Gesetz zur Förderung und Regulierung einer Honorarberatung über Finanzinstrumente, Honoraranlageberatungsgesetz) was introduced.

²⁰⁰ Institutsvergütungsverordnung
http://www.bafin.de/SharedDocs/Aufsichtsrecht/EN/Verordnung/institutsvergv_en_ba.html

²⁰¹ See also bullet point 262

190. The act will enter into force on 1st of August 2014. The contents are as follows:

“When an investment firm offers fee based advice using the designation “Honorar-Anlageberatung” the firm shall not accept and retain fees, paid or provided by any third party; remuneration is only provided by the client. Further the investment firm shall assess a sufficiently large number of financial instruments available on the market which should be diversified with regard to their type and issuers or product providers and should not be limited to their own financial instruments or those which are offered by providers or issuers who are close to them.”

Hong Kong

191. The Hong Kong Monetary Authority (HKMA) provides guidance to banks on certain key factors that should be considered in designing the remuneration structure for sales staff to encourage responsible business conduct. Banks should have adequate procedures and controls to ensure that sales staff are not remunerated with bonuses calculated solely on the basis of financial performance but that other factors (including adherence to best practices guidelines and code of conduct in which certain principles are related to best interest of customers, satisfactory audit / compliance review results and complaint investigation results) are taken into account to avoid conflict of interest.²⁰²

192. Banks are required to disclose information in relation to their remuneration systems to the public on a timely basis, which includes, but not limited to: (i) the most important design characteristics of the remuneration system (e.g. criteria used for performance measurement and risk adjustment, the linkage between pay and performance, deferral policy and vesting criteria, and the parameters used for allocating cash versus other forms of remuneration), and (ii) aggregate quantitative information on remuneration for the senior management and key personnel indicating amount of remuneration for the financial year, split into fixed and variable remuneration, and number of beneficiaries²⁰³.

Ireland

193. It is important that remuneration structures are designed in such a way that they encourage responsible business conduct, given the potential consumer detriment that can arise where remuneration structures encourage conflicts of interest, for example, where commission is based solely on sales targets. In recognition of this, a requirement was included in the 2012 Code to ensure that remuneration structures are not structured in such a way that they have the potential to impair the regulated entity’s obligation to act in the best interests of consumers.

194. The Central Bank is currently undertaking a Review to Examine Sales Incentives for Direct Employees of Insurance Companies.

195. In 2008, the Central Bank published a Report of the Working Group on the Review of the Intermediary Market (with a particular focus on transparency). The recommendations of the Report were implemented through the 2012 Code, which requires disclosure of remuneration arrangements by mortgage intermediaries authorised under the Consumer Credit Act, 1995 (the “CCA”) and investment firms

²⁰² Recommendation 18 of Annex 1 to the HKMA’s circular of 25 March 2009: <http://www.hkma.gov.hk/eng/key-information/guidelines-and-circulars/circulars/2009/20090325-1.shtml> and item 4 of the Enclosure to the HKMA’s circular of 14 July 2009: <http://www.hkma.gov.hk/eng/key-information/guidelines-and-circulars/circulars/2009/20090714-2.shtml>

²⁰³ Paragraphs 3.2.2 and 3.2.3(i) of the Supervisory Policy Manual CG-5: Guideline on a Sound Remuneration System: <http://www.hkma.gov.hk/media/eng/doc/key-functions/banking-stability/supervisory-policy-manual/CG-5.pdf>

authorised under the Investment Intermediaries Act 1995 (as amended) (the “IIA”). Where the amount cannot be ascertained, the method of calculating that amount must be disclosed. Where on-going remuneration is to be received, the intermediary must disclose the nature of the service to be provided in respect of that remuneration. In the case of non-life insurance, intermediaries must disclose in general terms that they are paid by means of a remuneration arrangement with a product producer and must either disclose the amount of that remuneration or inform the consumer that details of the remuneration are available on request. The intermediary must also disclose any additional remuneration arrangements that are not directly attributable to the service provided to that individual consumer but are based on levels of business introduced by the intermediary to that product producer or that may be perceived as having the potential to create a conflict of interest

196. There are also existing disclosure requirements for Life insurance undertakings under the Life Assurance (Provision of Information) Regulations, 2001.

Israel

197. Banks are required to adopt a comprehensive remuneration policy align with long term profitability.

198. The policy should pertain to all employees of the bank, with special emphasis on the remuneration of senior executives and employees who influence the bank risk-taking - Letter of Supervisor of Banks Remuneration Policy (April 5, 2009).

Italy

Banking sector

199. Financial services providers have to implement remuneration structures of staff and authorized agents which prevent mis-selling.

Investment and asset management sector

200. In the Consob’s communication n. 9019104 of 2 March, 2009 regarding the distribution of illiquid financial products, it is stated that intermediaries must define their sales and commercial policies on criteria that do not conflict with the best interest of the client.

201. Investment firms must pay specific attention to the remuneration of employees and tied agent in relation to the various types of products offered in order to limit the risks that the staff in direct may receive fees in relation to the distribution of products that are particularly profitable for the intermediary, to the detriment of other products that could be more in line with the best interest of customer.

202. ESMA issued a consultation paper concerning proposed "*Guidelines on remuneration policies and practices MiFID*". The purpose of these guidelines is to ensure the consistent implementation of existing MiFID conflicts of interest requirements and conduct of business rules in the area of remuneration and to prevent investment firms from mis-selling financial products. The draft guidelines will apply to the remuneration of front line staff, sales staff and other staff indirectly involved in the provision of investment and/or ancillary services whose remuneration may create inappropriate incentives to act against the best interest of clients.

203. The draft guidelines include examples of the types of remuneration policies that could determine conflicts such as:

- commission schemes that could encourage an employee to "push" a specific financial product because it would pay higher fees, without taking into account the client's best interest;
- salaries based on a quota of minimum sales for specific products; and
- or bonuses based on achieving a minimum level of sales.

204. The draft guidelines also impose obligations on firms' senior management to "design and monitor remuneration policies and practices to take account of the conduct of business and conflicts of interest risks that may arise".

205. Investment firms will be required to consider a range of factors when designing their remuneration policy, including the type of product they sell, distribution channels and the role performed by the relevant persons. The relevant persons' performance will be required to be measured against criteria that encourage the relevant persons to act in the best interest of the firm's clients and when rewarding staff, firms will need to strike an appropriate balance between "*fixed and variable remuneration*". ESMA also calls for the intermediaries to implement adequate control measures on remuneration policies and practices in order to ensure compliance with conduct of business rules.

Luxembourg

206. Relevant regulations include the following:

- Law of 5 April 1993 on the financial sector
- Grand-Ducal Regulation of 13 July 2007
- Law of 17 December 2010 relating to undertakings for collective investment
- CSSF Circular 07/307 "concerning MIFID: business conduct rules for the financial sector"
- Circular CSSF 10/437 on Guidelines concerning the remuneration policies in the financial sector
- CSSF Regulation N° 10-04 transposing Commission Directive 2010/43/EU of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards organisational requirements, conflicts of interest, conduct of business, risk management and content of the agreement between a depositary and a management company Luxembourg

207. For banks and investment companies: Circular CSSF 10/496 and Circular CSSF 10/497 on the Transposition of Directive 2010/76/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 2006/48/EC and 2006/49/EC as regards capital requirements for the trading book and for re-securitizations, and the supervisory review of remuneration policies.

Netherlands

208. Financial institutions are obliged to have a sound remuneration policy for all employees. AFM and the Dutch Central Bank (DNB) have joined efforts to ensure that remuneration is based on actual longer term performance rather than short term selling incentives. Risk management is a key starting point for sound remuneration policies which take the client interest into account. To this end, AFM and DNB jointly published Principles and good practices for remuneration in 2009. Since January 1, 2011 these principles have also been laid down in Dutch regulation, with AFM and DNB as joint competent

authorities to supervise compliance with these rules. Most of the principles of the Dutch regulation are identical to those in the FSB Principles and Implementation Standards as well as the AFM/DNB Principles and good practices. The Dutch regulation on sound remuneration takes both prudential aspects and consumer protection aspects into account.

209. In the Netherlands a ban on commissions has been introduced as from the 1st of January 2013. This ban will apply to non-MiFID financial service providers. As from the first of 2014 this ban will also apply for investment firms.

210. The reason for the introduction of the ban is that in too many instances service providers were not acting in the best interests of their clients. The MiFID rules were helpful but not strong enough to stop the wrong incentives. Service providers still selected financial products for their clients based on the height of the commission received by them, rather than selecting the product that would best suit the interests of their clients.

Switzerland

211. The regulator FINMA issued a Circular 2010/01 on Remuneration Schemes, in October 2009, that gave the banks and insurers affected a transition period until 1 January 2011 to implement its provisions. FINMA noted particular progress being made in the corporate governance of remuneration schemes, e.g. more direct leadership by the boards of directors on remuneration and more involvement by the risk management and internal audit functions. While not all institutions are making the same progress, FINMA noted efforts by institutions to redesign their remuneration instruments to align better with risk and longer-term performance. These efforts include reducing the percentage of cash in bonuses paid and increasing the percentage of remuneration that is deferred. Furthermore, the conditions for deferred remuneration are being tightened and alternatives, such as setting caps on the overall remuneration of any single manager, are being pursued.²⁰⁴

South Africa

Collective investment schemes

212. GN 910 of 2010 requires the manager to administer the CIS in a manner which protects the interests of investors

Capital markets

213. JSE Equities Rules

- Rule 8.10.3 – Disclosure

214. Code of conduct for authorised users (Notice 20 of 2005)

- Section 4 – Disclosure to clients
- Section 6 - Inducements

²⁰⁴ <http://www.finma.ch/e/aktuell/pages/mmfinma-mitteilung-20-20110119.aspx>

Pension sector

215. Financial services providers or authorised agents are regulated and supervised by the Registrar of Financial Advisors and Intermediary Services.

Financial advisory & intermediary services

216. Section 3A of the General Code of Conduct (BN 80 of 2003)

UK

217. In the UK the Remuneration Code (the Code) implements the main provisions of the Third Capital Requirements Directive (Directive 2010/76/EU) which related to remuneration. The Code incorporates a number of European Directives and international (Financial Stability Board) standards and aims to address the prudential systemic risks that can arise from inappropriate remuneration policies and practices within a firm.

218. The Code is comprised of 12 Principles. These Principles are set out in the FCA Handbook (SYSC19A). The first and overarching Principle is a firm must ensure that its remuneration policy is consistent with and promotes sound and effective risk management. It should not encourage risk-taking that exceeds the level of tolerated risk of the firm.

219. In 2011, the FSA (the predecessor of the FCA) carried out thematic work on incentives and remuneration, which found that most incentive schemes operated by firms for sales staff were likely to drive these staff to mis-sell and that these risks were not being managed properly. As result of the thematic work, in January 2013, the FSA published a final guidance paper providing examples of good and poor practice.²⁰⁵

²⁰⁵ <http://www.fsa.gov.uk/static/pubs/guidance/fg13-01.pdf> http://www.fsa.gov.uk/pubs/guidance/fg11_11_rem_code_faq.pdf

5. RESPONSIBILITY

COUNTRY EXAMPLES

Australia

220. The Corporations Act 2001 requires financial services licensees to take reasonable steps to ensure that its representatives comply with the financial services laws.²⁰⁶

Canada

Banking sector

221. Under the federal financial institution statutes, the consumer provisions applicable to federally regulated financial institutions continue to apply when a product or service of a federal financial institution is provided through an affiliate, representative, agent or other intermediary.²⁰⁷

Securities sector

222. Regulators require a firm to have policies and procedures requiring any individuals acting on behalf of the firm to report to their management as required by the individual's day to day duties or when an individual becomes aware of an issue that should be reported to management.

223. Compliance is a cornerstone of the new regime under NI 31-103. Every registered firm must establish a compliance system and regulators have made it clear that compliance is a firm-wide responsibility. NI 31-103 sets out that a registered firm must have a system of controls and supervision to provide reasonable assurance that the firm and each individual acting on its behalf complies with securities legislation, and manages the risks associated with its business in accordance with prudent business practices.

224. Dealers and advisers must also comply with bonding and insurance requirements²⁰⁸.

France

Banking sector

225. The credit institution remains responsible for the fulfilment of all the provisions required for the formation of the consumer credit contract, whether such obligations are to be performed by itself or by its intermediaries (L. 311-51 consumer code)

²⁰⁶ [Section 912A \(1\) \(ca\)](#)

²⁰⁷ <http://laws-lois.justice.gc.ca/eng/acts/B-1.01/page-187.html#docCont>

²⁰⁸ See section 12.3 and 12.4, NI 31-103, IIROC Rule 17 <http://iiroc.knotia.ca/Knowledge/View/Document.cfm?Ktype=445&linkType=toc&dbID=201301341&tocID=236> and MFDA Rule 4 <http://www.mfda.ca/regulation/rules/RulesFeb13.pdf> ; See also *Regulation respecting firms, independent representatives and independent partnerships*, http://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=3&file=/D_9_2/D9_2R2_A.HTM that still applies to mutual fund dealer and scholarship plan dealers, see section 134, *An act to amend the Securities Act and other legislative provisions*, 2009, chapter 25. <http://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=5&file=2009C25A.PDF>

226. Professional credit institution regulation (CRBF n°97-02 of 21 February 1997) relating to internal control states that credit institutions remain responsible for the compliance with all their obligations in case of externalization of the commercialization (in case of mandate) . (article 37-2)

Insurance sector

227. Article L511-1 of insurance code stipulates that the insurer remain responsible of its agents (acting on its behalf). Article R336-1 of insurance code relating to internal control of insurance companies stipulates that companies must describe, in their annual internal control report, the measures they have taken to ensure the control of the commercialization of their products

Germany

228. A deposit-taking credit institution or a securities trading firm must ensure that tied agents are trustworthy and have the necessary professional qualifications, fulfil the statutory requirements when providing financial services, and inform customers about their status pursuant to section 2 (Section 25 a paragraph 4 German Banking Act).

229. An enterprise (tied agent) which only provides financial services that only comprises investment broking or contract broking, placement business or investment advice solely for the account and under the liability of a deposit-taking credit institution or securities trading firm domiciled in Germany or operating in Germany shall not be deemed to be a financial services institution, but rather a financial enterprise if this is reported to BaFin by the deposit-taking credit institution or securities trading firm as the liable enterprise (Section 2 (10) of the German Banking Act (KWG).

230. According to Section 25a (4) KWG a deposit-taking credit institution or a securities trading firm if it avails itself of a tied agent within the meaning of Section 2 (10) sentence 1, it must ensure that he/she is trustworthy and has the necessary professional qualifications, fulfils the statutory requirements when providing financial services, informs customers about his/her status pursuant to Section 2 (10) sentences 1 and 2 prior to commencing business relationships and notifies customers about the termination of this status promptly. The deposit-taking credit institution or securities trading firm must keep the necessary evidence of the fulfilment of its duties pursuant to sentence 1 for at least five years after the termination of the tied agent's status.

231. In the insurance sector insurance companies may only cooperate with professional insurance intermediaries who inter alia are reliable and have well ordered finances (see Paragraph 80 Insurance Act (VAG). For their employers an insurance company is liable according to Paragraph 278 Civil Code.

Hong Kong

232. The Board of Directors and management of banks should retain ultimate accountability for the outsourced activities. Banks are required to perform appropriate due diligence before selecting the authorised agents (such as taking into account the agents' financial soundness, operational capability and capacity and compatibility with the banks' corporate culture) and to implement controls to monitor the service providers' performance on a continuous basis (covering, inter alia, their contract performance and any material problems encountered).²⁰⁹

²⁰⁹ (Paragraphs 2.1, 2.3.1, 2.3.2 and 2.6 of the HKMA's Supervisory Policy Manual on Outsourcing: <http://www.hkma.gov.hk/media/eng/doc/key-functions/banking-stability/supervisory-policy-manual/SA-2.pdf>).

233. Intermediaries should be responsible for the acts or omissions of its employees and agents in respect to the conduct of their business.²¹⁰

234. Under Section 68(5) of the ICO, an insurer is held responsible for the actions of their appointed insurance agents in the dealings for the issue of insurance contracts and related insurance business. Article 34 of the CoCI prohibits insurers from seeking to exclude or limit their liability for the actions of their appointed insurance agents acting in the course of their agency.²¹¹

Ireland

235. Where authorised agents are regulated in their own right, we would consider that the requirement for financial services provider to be responsible and accountable for their actions as a medium priority, particularly as the agent will be subject to certain requirements itself, by virtue of its regulated status.

236. The regulator recognises the very important role of the financial services provider (when acting as a product producer) in ensuring that intermediaries who sell a product on its behalf, fully understand the product and the target market and have included requirements (provision 3.52-3.57) to this effect in our 2012 Code.

237. However, should a financial service provider outsource regulated activities to an agent that is an unregulated entity, it is important that the provider is accountable and responsible for the actions of the agent. The 2012 Code includes a requirement for regulated entities to ensure that any outsourced activity complies with the requirements of the 2012 Code (provision 2.10)

238. In the Consumer Protection Code 2012 Guidelines, the Central Bank outlines that product characteristics, for example, ability to release funds, requirement for a once-off investment and/or regular contributions, and the risk profile of the product will enable product producers to identify a target market of consumer, for example, those with a need for access to funds, an ability to fund a once-off investment and/or regular contributions and a particular appetite for risk. The guidelines highlight that this does not negate the requirement for an intermediary to then carry out a full suitability assessment to decide whether the product matches a particular consumer's needs and objectives.

Israel

239. Israeli banking corporations do not use services of authorized agents. The exceptions are external lawyers in debt collection system, and marketing staff in the area of credit cards marketing through stores.

240. As to the aforementioned external lawyers, the bank is generally responsible for the lawyers' conduct, and this issue is being enforced by handling specific complaints of the public. The banking corporations are responsible for the conduct of external sales staff.

241. As to the revolving credit cards area, the Public Enquiries Unit at the Banking Supervision Department in the Bank of Israel treated some aspects of this issue in the course of its activity, in the field of correction of systemic irregularities.

242. Relevant regulations include the following:

²¹⁰ Paragraph 12.4 of the Code of Conduct: http://en-rules.sfc.hk/net_file_store/new_rulebooks/h/k/HKSFC3527_1868_VER20.pdf

²¹¹ http://www.hkfi.org.hk/en_tips_customer_conduct.htm

- Israel Agency Law – 1965
- Letter of Banking Supervision regarding Debt Collection by External Lawyers

Italy

Banking sector

243. Authorized agents have to be entered into a register after showing that they possess adequate knowledge requirements and good repute.

244. Financial services providers are responsible for the actions of authorized agents. For this purpose they are required by the law to perform controls on the activity of their authorized agents; if they fail to perform such controls properly the supervisor may take enforcement actions and fine them.

245. A further incentive for financial services providers to control their authorized agents is civil liability vis-à-vis consumers for any infringement committed by the authorized agent.

Investment and asset management sector

246. Authorized agents have to be entered into a register after showing that they possess adequate knowledge requirements and good repute.

247. Pursuant to article 31, paragraph 3 of Italian Consolidated Law on Finance, the authorised person conferring the appointment shall be jointly and severally liable for losses caused to third parties by a financial salesman, including cases where such losses are the consequence of a criminal offence resulting in conviction.

248. Article 82 of Consob Regulation n. 16190/2007 states that, for door-to-door selling and distance marketing and placement of third party investment services, the intermediaries concerned must make arrangements in a manner that observes the rules of conduct applicable to the service marketed.

249. For door-to-door selling and distance marketing and placement of third party investment services, the intermediary is liable for the completeness and accuracy of information transmitted to the person providing the service. An intermediary providing such service is liable for such provision on the basis of the information transmitted.

Japan

250. When financial services providers in Japan outsource their businesses to intermediaries, it is important for them to give guidance on the development of a control environment for customer management that enables the intermediaries to precisely identify the attributes of customers and the actual state of transactions from the viewpoint of ensuring appropriate investment solicitation suited to the attributes. It is also important for financial services providers to identify the actual state of investment solicitation by intermediaries and urge them to ensure thorough legal compliance. In examining a financial services provider's control environment for preventing violations of law by intermediaries, supervisors shall pay attention to the following points:

251. Precise identification of customer attributes and thorough management of customer information
- Whether the financial services provider shares information regarding the attributes and investment experiences of customers with the intermediary when it has obtained the customers'

consent, and whether it gives the intermediary guidance on how to identify customer attributes as necessary.

- Whether the financial services provider has prescribed specific procedures for the intermediary to solicit customers in an appropriate manner suited to the attributes of the customers, has communicated the procedures to the intermediary service provider, and strives to ensure compliance therewith.
- Whether the division in charge of customer due diligence strives to keep track of the financial services providers' status concerning the identification of customer attributes and the management of customer information, and also establish a control environment that ensures the effectiveness of customer information management by examining, as necessary, whether customer solicitation is conducted in an appropriate manner in light of the attributes of the relevant customers, and by requesting revisions of the method of customer information management, for example.

252. Identification of the actual state of financial instruments intermediary service provider's solicitation for investment and efforts to ensure appropriate solicitation

- Whether the manager of the division in charge of customer due diligence, for example, strives to identify and keep track of the actual state of the intermediary's solicitation for investment by directly holding interviews with customers and taking appropriate measures when necessary.
- Whether the division in charge of customer due diligence has prescribed a specific method for identifying and keeping track of the actual state of the intermediary's solicitation for investment and has communicated the method to them, and is striving to establish a control environment that ensures the effectiveness of the method by identifying and examining the implementation, and by reviewing and revising the method when necessary.
- Whether the division in charge of customer due diligence checks whether the entrusted intermediary provides appropriate explanations, and requests improvement and takes other measures when necessary.

253. Efforts to foster and maintain a sense of compliance among financial instruments intermediary service providers

- Whether the financial services provider provides case study training, external training and other types of training with a view to enhancing the entrusted intermediary's sense of compliance.
- Whether the division in charge of customer due diligence strives to enhance the effectiveness of training by, for example, identifying and examining the contents of training programs and the implementation thereof, and reviewing and revising the contents when necessary.

Luxembourg

254. Relevant regulations include the following:

- Law of 5 April 1993 on the financial sector
- Grand-Ducal Regulation of 13 July 2007

Netherlands

255. The Netherlands does not have a general rule that imposes a general responsibility on financial service providers for the actions of their authorized agents. Such responsibility only applies in certain limited cases when the agent operates under the license of the financial service provider. Most agents in the Netherlands, such as insurance intermediaries or mortgage intermediaries, are subject to license obligations themselves and have their own responsibility in meeting the requirements regarding professional competence and duties of care.

South Africa

Collective investment schemes

256. GN 910 of 2010 permits the use of agents but the manager is responsible and must ensure that the agents have the necessary skill and experience.

257. Notice 778 dealing with third party named portfolios clearly states that the manager is responsible for the actions of the third party. An amendment to CISCA will ensure that it is clear that the manager remains responsible for the actions of its agents.

Capital markets

258. Code of conduct for authorised users (Notice 20 of 2005)

- Section 12 – Waiver of rights

259. JSE Equities Rules

- Rule 4.70 – Internal control and risk management
- Rule 8.180 - Client statements

260. Strate Rules

- Section 8.2.1 - Internal control and risk management

Pension sector

261. Financial services providers or authorised agents are regulated and supervised by the Registrar of Financial Advisors and Intermediary Services.

Financial advisory & intermediary services

262. Section 13 of the FAIS Act Part 8 of the Determination of Fit and Proper Requirements

6. CONFLICTS OF INTEREST

COUNTRY EXAMPLES

Australia

263. The potential for conflicts of interest are directly addressed by the implementation of a ban on conflicted remuneration structures under the Future of Financial Advice (FOFA). These reforms notwithstanding, the broader regime for financial services providers seeks to ensure that retail clients have access to adequate dispute resolution processes, and that licensees are able to meet valid claims for losses or damage suffered through breaches of the obligations in the Corporations Act 2001 (the Act) by retail clients.

Canada

Banking sector

264. Under the *Bank Act*, the board of directors of a bank are required establish procedures to resolve conflicts of interest, including techniques for the identification of potential conflict situations and for restricting the use of confidential information.²¹²

Securities sector

265. NI 31-103 (section 13.4) provides requirements in order to identify and respond to conflicts of interest²¹³. As stated in the *Companion Policy to NI 31-103*²¹⁴, registered firms should consider whether any particular benefits, compensation or remuneration practices are inconsistent with their obligations to clients, especially if the firm relies heavily on commission-based remuneration. For example, if there is a complex product that carries a high commission, the firm may decide that it is not appropriate to offer that product.

France

Banking and insurance sector

266. French regulation describes different ways financial services providers should communicate that conflicts of interest exist to consumers:

- “when entering into a relationship” (i.e. R 519 20 CMF banking intermediaries)
- “ Before the conclusion of the first insurance contract” (Article L520-1 French Insurance code)
- “ Before signing any contract” (Article L520-1 French Insurance code)
- or “before entering into any transaction”(i.e. R 519 30 Monetary and financial Code “CMF, R520-1 Insurance code)

²¹² <http://laws-lois.justice.gc.ca/eng/acts/B-1.01/page-66.html#h-32>

²¹³ <http://www.lautorite.qc.ca/files/pdf/reglementation/valeurs-mobilieres/31-103/2012-02-28/2012fev28-31-103-vofficielle-en.pdf>

²¹⁴ <http://www.lautorite.qc.ca/files/pdf/reglementation/valeurs-mobilieres/31-103/2012-09-28/2012sept28-31-103-ig-vadmin-en.pdf>

- or “at the customer request” (i.e. L520-1 ,R 511-3 insurance code ,L 519 4 2 Monetary and Financial Code)

267. If conflicts are not possible to be avoided, transparency about existing conflicts of interest has to be made by the intermediaries on:

- Existing contractual relationship (L520-1 insurance code, [L 519-4-2](#) Monetary and Financial Code “CMF”)
- remuneration, (R520-1 R511-3 Insurance code, R519-30 CMF)
- voting rights (R520-1 insurance code)
- activity level (R519-20 CMF)

Securities sector

268. The Monetary and Financial Code (Article L. 533-10) sets the requirements applicable to investment services providers for dealing with conflicts of interest. These articles impose an obligation for ISPs to take measures in order to prevent conflicts of interest from affecting their clients’ interests, and, where those measures are not sufficient to ensure the avoidance of any risk for clients’ interests, to provide them with clear information (L.533-10 3.).

269. Furthermore, the RG AMF (Art. 313-18 to 313-24) requires the investment services providers to have a process in place regarding conflicts of interest within the entity. The RG AMF specifies that:

- Investment services providers must identify, with reference to their individual situation and activities, the circumstances which could constitute or give rise to a conflict of interest entailing a material risk of damage to the interests of one or more clients when providing an investment service or an ancillary service or management of a collective investment scheme” (Art. 313-21 1° of the AMF General Regulation).
- In order to help investment services providers to identify potential and actual conflicts of interest, the RG AMF provides a list of situations which may lead to conflicts of interest (For examples, 1° The investment services provider or that person is likely to make a financial gain or avoid a financial loss, at the expense of the client; 2° The investment services provider or that person has an interest in the outcome of a service provided to a client or of a transaction carried out on behalf of the client, which is distinct from the client’s interest in that outcome).
- They must establish, implement and maintain an effective conflicts of interest policy set out in writing and appropriate to the size and organisation of the firm and the nature, scale and complexity of its business (Articles 313-20 to 313-22 of the of the AMF General Regulation). Besides, they must inform their clients about their conflicts of interest policy.
- Specific obligations are imposed regarding investment research (Articles 313-25 to 313-28 of the AMF General Regulation). In particular, regulated entities including its personnel should not accept inducement in any shape or form from the people/entities which are part of the investment recommendation.

270. A special policy is also required regarding inducements (Articles 314-76 to 314-85-1 of the AMF General Regulation). All investment services providers are allowed to earn or provide from a person

inducements linked to the investment or ancillary services they provide only if these payments or non monetary benefits belong to one of the following categories:

- inducement paid or provided to or by the client or a person on behalf of the client; (this provision ensures that the remuneration that is paid by the client for the services is legitimate).
- inducement paid or provided to or by a third party that meet three conditions: The client must be clearly informed, prior to the provision of the service by the investment services providers, about the existence, the nature and the amount of the inducement, or, at least, how it has been calculated. The inducement must not impair compliance with the firm's duty to act in the best interests of the client. The inducement must be designed to enhance the quality of the service provided to the client.
- proper fees which enable or are necessary for the provision of investment services.

Germany

271. Investment services enterprises are required to avoid conflicts of interest wherever possible and, prior to the execution of transactions for clients, clearly inform those clients of the general nature and the source of the conflicts of interest if the organisational arrangements pursuant to section 33 (1) sentence 2 no. 3 Securities Trading Act prove insufficient to prevent, with reasonable certainty, clients' interests from being prejudiced (section 31 paragraph 1, no. 2 German Securities Trading Act).

272. Circular 4/2010 (WA - Minimum Requirements for the Compliance Function and Additional Requirements Governing Rules of Conduct, Organisation and Transparency pursuant to sections 31 et seq. of the Securities Trading Act for Investment Services) defines the responsibilities/duties of the compliance function. According to Circular (BT 1.2 paragraph 4) the compliance functions ensures that conflicts of interest are prevented and/or that unavoidable conflicts of interest are sufficiently taken into account. This applies in particular to the protection of client interests.

273. Section 27 Investment Code: The management company should take all reasonable steps to identify conflicts of interest. The management company should maintain and operate effective organisational and administrative arrangements with a view to taking all reasonable steps designed to identify, prevent, manage and monitor conflicts of interest in order to prevent them from adversely affecting the interests of AIFs and their investors.²¹⁵

274. Section 11 of the Ordinance on Insurance Mediation (VersicherungsvermittlungsVO) poses explicit information requirements on intermediaries when they get into contact to customers.

275. This is also true for section 16 of the proposal for a revised Insurance Mediation Directive (so-called IMD II). Moreover section 17 specifically refers to conflicts of interest and transparency. After the adoption of the proposal all Member States have to transpose these rules into national law.

²¹⁵ See also section 30 to 37 Regulation (EU) No. 231/2013.

Hong Kong

276. Where a bank and / or its sales staff has a material interest in a transaction with or for a customer or a relationship which gives rise to an actual or potential conflicts of interest in relation to a transaction, sales staff should not advise, nor deal in relation to the transaction unless certain steps are taken ²¹⁶

277. Specific policies and procedures should be established to minimize the potential for the existence of conflicts of interest between the intermediaries or their staff and clients.²¹⁷

278. Prior to or at the point of sale of securities, sales staff are required to disclose information such as affiliation of the securities company or bank conducting securities business with the product issuer; and monetary and non-monetary benefits receivable for distributing an investment product.²¹⁸

279. Intermediaries must not take commission rebates or other benefits to be received by them or their related companies as the primary basis for recommending particular investment products to clients. Where intermediaries only recommend investment products which are issued by their related companies, they should disclose this limited availability of products to each client.²¹⁹

280. Further, to avoid potential or actual conflicts, or even customers' perceived conflicts of interest, the HKMA requires banks' assessment of a customer's risk profile should be carried out by non-sales staff.

281. Representations made and information provided to customers should be accurate and not misleading²²⁰

282. The Questions and Answers on Suitability mentions that intermediaries should provide each customer with recommended investment products' prospectuses or offering circulars and other documents relevant to the investments.²²¹

283. In terms of risk disclosures, certain sample risk disclosure statements are provided in the Code of Conduct Schedule 1. The substance of such statements is considered as the minimum required and intermediaries may elect to provide additional risk disclosure information as appropriate. Besides, banks may develop sales scripts to facilitate more standardised disclosure of key features and risks of investment products to customers.²²²

²¹⁶ (Paragraph 10.1 of the Code of Conduct: http://en-rules.sfc.hk/net_file_store/new_rulebooks/h/k/HKSFC3527_1868_VER20.pdf).

²¹⁷ (Paragraph 4 of Part VII of the "Management, Supervision and Internal Control Guidelines for Persons Licensed by or Registered with the SFC": http://en-rules.sfc.hk/net_file_store/new_rulebooks/h/k/HKSFC3527_162_VER10.pdf).

²¹⁸ Paragraphs 8.3 and 8.3A of the Code of Conduct). http://en-rules.sfc.hk/net_file_store/new_rulebooks/h/k/HKSFC3527_1868_VER20.pdf).

²¹⁹ Item 4 of the FAQ on Suitability <http://www.hkma.gov.hk/eng/key-information/guidelines-and-circulars/circulars/2007/20070510-1.shtml>

²²⁰ paragraph 2.1 of the Code of Conduct: http://en-rules.sfc.hk/net_file_store/new_rulebooks/h/k/HKSFC3527_1868_VER20.pdf

²²¹ <http://www.sfc.hk/web/EN/faqs/intermediaries/supervision/suitability-obligations-of-investment-advisers.html#1>

²²² http://en-rules.sfc.hk/net_file_store/new_rulebooks/h/k/HKSFC3527_1868_VER20.pdf

284. In relation to distribution of structured investment products and investment funds, banks should distribute to customers a Product Key Facts Statement / Important Facts Statement which provides concise product summaries written in plain language to help customers understand the key features and risks of the products. Templates were developed by regulators to facilitate more standardised disclosure across the intermediaries.²²³

285. Further, term sheets may be used by banks for investment products to summarise key terms and conditions.

286. Sales staff should not advise, nor deal in relation to a transaction in which there is an actual or potential conflicts of interest unless it has disclosed that material interests or conflicts to the customer and has taken all reasonable steps to ensure fair treatment of that customer.²²⁴

287. Proper procedures should be established to ensure that if a bank or its staff have an interest in a direct / cross transaction with a customer, this fact should be disclosed to the customer prior to the execution of the relevant transaction. Suggested related controls can be found in paragraph 6 of the Appendix to the “Management, Supervision and Internal Control Guidelines for Persons Licensed by or Registered with the SFC”²²⁵

288. Section V of GN10 “Guidance Note on the Corporate Governance of Authorized Insurers” issued by the IA requires the Board of Directors of an insurer to²²⁶:

- set out clearly policies regarding conflict of interest, fair treatment of clients and information sharing with shareholders (para. 9(i)); and
- devise clear policies on private transactions, self-dealing, preferential treatment of internal and external entities, and other inordinate trade practices of a non-arm’s length nature (para. 9(j)).

289. Article 40 of the CoCI sets out the requirement on insurers of avoiding conflicts of interest. Insurers should take reasonable steps to ensure that their employees and insurance agents are aware of the circumstances in which potential conflicts of interest may arise and that such conflicts are avoided.

Ireland

290. The 2012 Code contains a number of requirements in relation to the management of conflicts of interest and their disclosure to the consumer. For example, regulated entities must have, and operate in accordance with a written conflicts of interest policy. In addition, where conflicts of interest arise and cannot be reasonably avoided, a regulated entity must disclose the nature of the conflict to the consumer and may only proceed where the consumer has indicated that he or she is aware of the conflict and wishes to proceed. Where this is the case, the entity must ensure that the conflict does not result in damage to the interests of the consumer.

²²³ KFS templates: <http://www.sfc.hk/web/EN/regulatory-functions/products/product-authorization/products-key-facts-statements.html> and IFS templates: see Annexes 1 and 2: <http://www.hkma.gov.hk/media/eng/doc/key-information/guidelines-and-circular/2011/20110418e1.pdf>

²²⁴ Paragraph 10.1 of the Code of Conduct: http://en-rules.sfc.hk/net_file_store/new_rulebooks/h/k/HKSFC3527_1868_VER20.pdf.

²²⁵ http://en-rules.sfc.hk/net_file_store/new_rulebooks/h/k/HKSFC3527_162_VER10.pdf

²²⁶ <http://www.oci.gov.hk/download/gn10-eng.pdf>

Israel

291. Banks are expected to disclose this issue according to the circumstances of the customer and the product.

292. Customer who has an issue in this area can complain to the Public Enquiries Unit at the Banking Supervision Department in the Bank of Israel.

According to Section 5.9 of the Letter of Supervisor of Banks Remuneration Policy, the methodology, principles and objectives of incentive pay should be transparent to the various stakeholders at the bank.

Italy

Investment and asset management services

293. Pursuant to articles 23 and following of Bank of Italy and Consob Regulation of October 29, 2007, intermediaries must take all reasonable steps to identify conflicts of interest that may arise with the clients or between clients when providing any investment service or business or accessory service or combination of such services.

294. Intermediaries must also manage conflicts of interest by taking suitable organisational steps and by ensuring that the assignment of one or more function to relevant parties involved in activities involving conflict of interest does not prevent them from acting independently, thereby preventing such conflicts from having a negative effect on the interests of customers.

295. In order to identify conflicts of interest that may arise in the provision of services and that may damage the interests of a customer, intermediaries must consider, as minimum criteria, if they, a relevant party or a party with a direct or indirect control link with them:

- may realise a financial gain or avoid a financial loss, to the detriment of the customer;
- may have an interest in the result of the service provided to the customer, which differs from that of the customer;
- may have an incentive to privilege the interests of customers other than the customer to whom the service is provided;
- carry out the same business as the customer; and
- receive or may receive from any person other than the customer, in relation to the service provided to it, an incentive in the form of money, goods or services, other than commission or fees normally received for said service

296. Intermediaries shall provide in writing, apply and maintain an effective conflicts of interest management policy in line with the principle of proportionality. This policy shall also consider the circumstances of which the intermediaries are or should be aware, connected with the structure and business of the parties belonging to its group.

The conflicts of interest management policy must:

- enable the identification, in relation to investment services and business and accessory services provided, the circumstances that generate or may generate a conflicts of interest able to seriously damage the interests of one or more customers;
- define the procedures to be followed and steps to be taken to manage such conflicts. (art. 25, para. 1 and 2 of Consob and BI regulation of October 29, 2007)

Investment and asset management sector

297. Pursuant to articles 23 and following of Bank of Italy and Consob Regulation of October 29, 2007, intermediaries must take all reasonable steps to identify conflicts of interest that may arise with the clients or between clients when providing any investment service or business or accessory service or combination of such services.

298. Intermediaries must also manage conflicts of interest by taking suitable organisational steps and by ensuring that the assignment of one or more function to relevant parties involved in activities involving conflict of interest does not prevent them from acting independently, thereby preventing such conflicts from having a negative effect on the interests of customers.

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- may realise a financial gain or avoid a financial loss, to the detriment of the customer;
- may have an interest in the result of the service provided to the customer, which differs from that of the customer;
- may have an incentive to privilege the interests of customers other than the customer to whom the service is provided;
- carry out the same business as the customer; and
- receive or may receive from any person other than the customer, in relation to the service provided to it, an incentive in the form of money, goods or services, other than commission or fees normally received for said service

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301. The conflicts of interest management policy must:

- enable the identification, in relation to investment services and business and accessory services provided, the circumstances that generate or may generate a conflicts of interest able to seriously damage the interests of one or more customers;

- define the procedures to be followed and steps to be taken to manage such conflicts. (art. 25, para. 1 and 2 of Consob and BI regulation of October 29, 2007)

Japan

302. To ensure that a conflict of interest will not unduly harm customers' interests, financial services providers in Japan shall control transactions that could cause a conflict of interest, taking into consideration the contents, characteristics, and scales, etc. of the financial services providers.

303. In this regard, it is important to develop appropriate systems for the management of conflict of interest and pay attention to the following points:

- Whether the financial services provider, etc. has identified and categorized transactions with the risk of conflict of interest in advance
- In cases where the financial services provider conducts management by notifying the customer of the risk of conflict of interest, whether the customer is provided with appropriate explanation, considering the customer's attributes, so that the customer can fully understand the content of the possible conflict of interest and the reasons for choosing the management method (including reasons for not choosing other methods), before the customer concludes a contract for the transaction.

Luxembourg

304. Relevant regulations include the following

- Law of 5 April 1993 on the financial sector
- Grand-Ducal Regulation of 13 July 2007
- Law of 17 December 2010 relating to undertakings for collective investment
- CSSF Circular 07/307 "concerning MIFID: Business conduct rules for the financial sector"

Netherlands

305. Conflict of interest rules apply to all financial service providers. More specifically, as of January 1, 2009 the Netherlands has applied the (more strict) MiFID rules on inducements to all financial services. Therefore all financial service providers were only allowed to receive third party inducements if this had been disclosed beforehand to the client and enhanced the service.

306. The Netherlands have experienced that disclosure alone did not remove the conflicts of interest and even had a counterproductive effect.

307. Therefore, since January 1, 2013 the Netherlands have implemented a ban of inducements for non-MiFID financial service providers. The intention of this ban is to remove excessive sales intentions that may be generated by commissions provided by third parties, such as financial product manufacturers.

308. The ban is cross-sectoral, which implies that a similar regime applies to financial service providers operating in different sectors (insurance, banking and investment).

309. The AFM is in the middle of the implementation of the regulation and is aware of the fact that this is a very complex measure. Hence the AFM is closely observing the (side) effects.

310. The Netherlands has also introduced rules on the development of financial products and instruments per January 1, 2013, encouraged by the fact that many consumers in the Netherlands have been confronted with financial products that did not meet their expectations because of flaws in financial products and flaws in the selling process. Transparency and selling rules do not sufficiently address these problems. The AFM is in favour of a cross-sectoral approach and of regulation and supervision that relates more to the product development process (including its outcome) rather than requiring (prior) product approval by regulators.

South Africa

Capital markets

311. JSE Equities Rules

- Section 4 – Disclosure to clients
- Rule 4.70 – Internal control and risk management

312. Strate Rules

- Section 8.2.1 - Internal control and risk management
- Section 10 – Resolution of disputes

Pension sector

313. It is a legal requirement for any financial service providers and authorised agents to disclose any conflicts of interest (and where possible provide mitigation mechanisms)

Financial advisory & intermediary services

314. Section 3A of the General Code of Conduct (BN 80 of 2003)

UK

315. FCA Principle 7 - requires firms to have regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.

316. FCA Principle 8 - requires firms to manage conflicts of interest fairly, both between themselves and their customers and between customers.

317. Generally firms are required to identify conflicts of interest and operate effective organisational and administrative arrangements with a view to taking all reasonable steps to prevent conflicts of interest from constituting or giving rise to a material risk of damage to the interests of its clients.

318. If arrangements made to manage conflicts of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of a client will be prevented, the firm must clearly disclose the general nature and/or sources of conflicts of interest to the client before undertaking business for the client

Investments

319. The Retail Distribution Review (RDR) was set up with the aim to improve clarity for people who are looking to invest, raise the professional standards of advisers and reduce the conflict of interest which is found in remuneration for adviser services.

320. The relevant rules appear in COBS and came into effect on 31 December 2012 and apply to all advisers in the retail investment market, regardless of the type of firm they work for (banks, product providers, independent financial advisers, wealth managers, stockbrokers).

321. The rules require that advice and product costs are distinguished and disclosed in a comprehensible and transparent manner.

Mortgage sector

322. Mortgage intermediaries must disclose their remuneration basis (which can include both fees and commission) on first contact with a consumer.

323. The prescribed pre-sale disclosure document must state the value of any payments made by the lender to the intermediary (or third parties).

Non-investment insurance sector

324. Insurance intermediaries are required to disclose:

- whether a given insurance undertaking (that is not a pure reinsurer) or its parent undertaking has a direct or indirect holding representing more than 10% of the voting rights or capital in the firm; and
- whether it has a direct or indirect holding representing more than 10% of the voting rights or capital in a given insurance undertaking (that is not a pure reinsurer).

325. Firms must provide customers with details of the amount of any fees other than premium monies for an insurance mediation activity.²²⁷

326. An insurance intermediary must, on a commercial customer's request, promptly disclose the commission that it and any associate receives in connection with a policy.²²⁸

327. The position for non-commercial customers is governed by the general law. In relation to contracts of insurance, the essence of these fiduciary obligations is generally a duty to account to the agent's principal. But where a customer employs an insurance intermediary by way of business and does not remunerate him, and where it is usual for the firm to be remunerated by way of commission paid by the insurer out of premium payable by the customer, then there is no duty to account but if the customer asks what the firm's remuneration is, it must tell him.²²⁹

²²⁷ ICOBS 4.3.1 R (1)

²²⁸ ICOBS 4.4.1 R (1)

²²⁹ ICOBS 4.4.3 G (2)

328. The application of these rules to non-investment insurance intermediaries goes beyond the requirements of the Markets in Financial Instruments Directive (MiFID).

7. REMUNERATION

COUNTRY EXAMPLES

Australia

329. There is a ban on conflicted remuneration structures under the Future of Financial Advice (FOFA) reforms. These reforms notwithstanding, the broader regime for financial services providers requires that financial services licensees provide retail clients with a Financial Services Guide which includes information on remuneration attributable to the provisions of services to the client as well as providing information on any relationships between the licensee and financial product issuers.

Chile

330. A recently approved law that creates an agency for the protection of financial consumer clearly states the obligation of financial services providers to deliver detailed information to customers regarding fees and expenses incurred from credit operations.

331. Another relevant example in this regard is a regulation recently issued by the Superintendence of Securities and Insurance asking mutual fund managers to provide detailed information about remunerations charged to investor.²³⁰

Germany

332. Inducements have to be disclosed to the client according to section 31 d Securities Trading Act (Wertpapierhandelsgesetz - WpHG).

333. According to the insurance mediation directive (COM 2012/0360) appropriate information about costs and associated charges shall be provided to the customers Article 24 No. 3c). This Act will be finally adopted probably mid 2014.

334. The Act on promoting and regulating fee-based advice on financial instruments (Honoraranlageberatungsgesetz — Fee-Based Investment Advice Act) will enter into force on 1 August 2014 and is intended to introduce statutory protection for the designation “fee-based investment advice”. Investment firms providing investment advice may use this designation only if they meet specific requirements. The main requirement is that remuneration for the advice should only be in the form of payments from the customer and that any payments from third parties which cannot be avoided are to be passed on to the customer.

Hong Kong

335. Banks are required to disclose information in relation to their remuneration systems to the public on a timely basis, which includes, but not limited to: (i) the most important design characteristics of the remuneration system (e.g. criteria used for performance measurement and risk adjustment, the linkage between pay and performance, deferral policy and vesting criteria, and the parameters used for allocating cash versus other forms of remuneration), and (ii) aggregate quantitative information on remuneration for

²³⁰ (www.svs.cl/normativa/cir_2027_2011.pdf).

the senior management and key personnel indicating amount of remuneration for the financial year, split into fixed and variable remuneration, and number of beneficiaries.²³¹

336. Where a bank and / or its sales staff has a material interest in a transaction with or for a customer or a relationship which gives rise to an actual or potential conflicts of interest in relation to a transaction, sales staff should not advise, nor deal in relation to the transaction unless certain steps are taken²³².

337. Prior to or at the point of sale of securities, sales staff are required to disclose monetary and non-monetary benefits receivable for distributing an investment product²³³.

338. Intermediaries are required not to take commission rebates or other benefits to be received by them or their related companies as the primary basis for recommending particular investment products to clients.²³⁴

339. HKCIB requires its members to disclose terms of remuneration to clients under Article 14.8 of Membership Regulations.²³⁵

Ireland

340. The 2012 Code, introduced a number of new requirements in relation to remuneration disclosure, including a requirement for mortgage intermediaries and firms authorised under the Investment Intermediaries Act 1995, to disclose the existence, nature and amount of any fee, commission or remuneration to be received from a product producer in relation to that product or service. In addition, where remuneration is to be received on an ongoing basis in respect of a product or service, the intermediary must disclose to the consumer, prior to providing the product/service, the nature of the service to be provided in respect of this remuneration.

Italy

Investment and asset management sector

341. Article 24 of Bank of Italy and Consob Regulation of October 29, 2007 states that, in order to identify conflicts of interest that may arise in the provision of services and that may damage the interests of a customer, intermediaries must consider, as minimum criteria if they, a relevant party or a party with a direct or indirect control link with them may have an interest in the result of the service provided to the customer, which differs from that of the customer.

²³¹ (Paragraphs 3.2.2 and 3.2.3(i) of the HKMA's Supervisory Policy Manual CG-5: Guideline on a Sound Remuneration System: <http://www.hkma.gov.hk/media/eng/doc/key-functions/banking-stability/supervisory-policy-manual/CG-5.pdf>).

²³² (Paragraph 10.1 of the Code of Conduct: http://en-rules.sfc.hk/net_file_store/new_rulebooks/h/k/HKSFC3527_1868_VER20.pdf).

²³³ (Paragraphs 8.3 and 8.3A of the Code of Conduct: http://en-rules.sfc.hk/net_file_store/new_rulebooks/h/k/HKSFC3527_1868_VER20.pdf)

²³⁴ (Item 4 of the Questions and Answers on Suitability: <http://www.hkma.gov.hk/eng/key-information/guidelines-and-circulars/circulars/2007/20070510-1.shtml>)

²³⁵ <http://www.hkcib.org/hkcib/en/rules/regulations.html>

Japan

342. In cases where financial services providers in Japan notify consumers of the risk of conflict of interest, financial services providers shall provide customers with appropriate explanation, considering the customer's attributes, so that the customers can fully understand the content of the possible conflict of interest, before the customer concludes a contract for the transaction. In addition, fees and remuneration shall be clearly described in pre-contractual documents.

Netherlands

343. The rules requiring financial service providers to have a sound remuneration policy stress that any conflicts of interest should be adequately managed. The Dutch rules therefore do not allow escape from this requirement by relying on disclosure to clients. This is because the client has little countervailing power against the internal remuneration of the financial service provider. In practice, the client either accepts this market practice, which is out of his control and of which he does not fully appreciate the impact, or should refrain from doing business with the service provider.

344. The Dutch rules on remuneration stress that risk management is a key starting point for sound remuneration policies which take the client interest into account. Managing the risks of its remuneration policy is the responsibility of management of the financial service provider. Under the Dutch rules, financial service providers do need to provide information on their remuneration policy. However, the intention of this provision is transparency to customers and regulators rather than an acceptable excuse for not managing risks.

Switzerland

345. For a company quoted on the stock exchange in Switzerland, reporting on the remuneration policy and the effective costs is based on the provisions of the Swiss Code of Obligations (Art. 663b bis OR and Art. 663c, Section 3 OR; "Transparency Law") as well as Paragraph 5 of the Corporate Governance Directive (RLCG) of the SWX Swiss Exchange (SWX).²³⁶

UK

Mortgage sector

346. Where an intermediary is selling a mortgage or home finance product and will receive commission from the product provider this payment must be disclosed in advance to the consumer.²³⁷

Non-investment insurance sector

347. Non-investment insurance intermediaries are required to identify and manage conflicts of interest under SYSC 10 in order to prevent them damaging the interests of customers.

²³⁶ <http://www.admin.ch/ch/f/rs/220/a663bis.html> (not available in English)http://www.six-exchangeregulation.com/admission_manual/06_15-DCG/en/index.html

²³⁷ MCOB 5.6.113R

ANNEX III

PRINCIPLE 9. COMPLAINTS HANDLING AND REDRESS MECHANISMS

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1. COMPLAINT HANDLING AND REDRESS MECHANISMS

COUNTRY EXAMPLES

Australia

1. All financial services and credit licensees are required to become a member of an External Dispute Resolution (EDR) scheme as a condition of their license. Consumers can then take complaints about the licensee to the EDR scheme, providing they have first exhausted the licensee's own internal dispute resolution processes, and the EDR scheme can make monetary compensation awards against the licensee.

2. In addition, in 2012, the Government simplified the operation of the hardship variation procedures made in relation to both credit contracts and consumer leases.

3. Under the new law, if a consumer is unable to meet repayments due to a reasonable cause, they can apply to their bank or loan provider for a change to their contract under the hardship provisions. The financial provider needs to assess the application, and within 21 days is obligated to provide a written reply stating whether or not they agree to any change. If they do not agree to the change, they must explain in writing the reasons and inform consumers that they can complain to the external dispute resolution scheme.

4. Internal dispute resolution is an important and necessary first step in a complaints handling process, as it gives the financial service provider the opportunity to hear client concerns and expressions of dissatisfaction. It enables a provider to address client concerns efficiently and effectively, and can lead to improved business systems, products and services.

5. In most cases, the credit provider or broker has up to 45 days to respond to a complaint, however the timeframe may be shorter for certain types of credit disputes (such as those relating to default notices, hardship applications or a request for postponement of enforcement proceedings).

6. For consumer credit concerns, the Financial Ombudsman Service (FOS) and the Credit Ombudsman Service Limited provide EDR.

7. An EDR scheme is a free, independent dispute resolution service that can help consumers who have a complaint or dispute with one of its members (for example, a credit provider or broker).

8. EDR schemes are independent of the industry or industries that provide its funding and constitute its membership. As schemes are independently constituted, they are required to apply their own Terms of Reference and determine their jurisdiction over complaints.

9. As an example of the type of activity undertaken by an EDR scheme, the FOS has had to deal with cases where retail consumers have been induced to invest in financial instruments which they don't understand and where the advice has been inappropriate for their needs.

Canada

Banking sector

10. Banks in Canada are required to be members of an external complaints body whose purpose is dealing with complaints made by customers that can't be resolved through internal dispute resolution.

*Complaints (Banks, Authorized Foreign Banks and External Complaints Bodies) Regulations*²³⁸ set standards that external complaints bodies must meet to ensure that consumers' disputes are resolved in a timely, impartial and transparent manner. The proposed Regulations specify that external complaints bodies offer their services at no cost to consumers, and resolve disputes within 120 days.²³⁹

11. The Regulations formalize existing expectations that banks and authorized foreign banks notify customers of the name and contact information of their external complaints body. External complaints bodies will also be expected to assist Canadians who are a party to a complaint by helping them navigate the complaint-handling process.

12. The Regulations also require that external complaints bodies, as well as banks and authorized foreign banks, publicly report information about the complaints they receive and investigate on an annual basis.

13. A company or not-for-profit corporation wishing to serve as an external complaints body will be required to submit an application to the Commissioner of the Financial Consumer Agency of Canada (FCAC) demonstrating that it meets the high standards in the Regulations. Once it is independently assessed, the Commissioner of the FCAC will refer the application to the Minister of Finance, along with a recommendation.

Securities sector

14. The Canadian Securities Administrators' (CSA) regulatory framework provides for an efficient and effective mechanism to address investor complaints, including requirements for dispute resolution and mediation services.

15. Investment dealers' self-regulatory organization (SRO) (IIROC) and Mutual fund dealers' SRO (MFDA) have their own requirements.

Insurance sector

16. In the province of Quebec, financial services providers (FSPs) (i.e., insurers and intermediaries) must have a complaint handling policy to provide equitable resolution of the complaints brought to their attention²⁴⁰. On its website, the Autorité des marchés financiers (AMF) explains what exactly is to be considered a complaint and provides a model of a complaints examination and dispute resolution policy at <http://www.lautorite.qc.ca/en/definition-complaint.html>. The Act respecting the Autorité des marchés financiers²⁴¹ edicts that one of the missions of the AMF is to "process complaints filed by consumers and giving consumers access to dispute-resolution services". The AMF provides mediation services upon request.

²³⁸ <http://laws-lois.justice.gc.ca/eng/regulations/SOR-2013-48/FullText.html>

²³⁹ <http://www.gazette.gc.ca/rp-pr/p1/2012/2012-07-14/html/reg2-eng.html>

²⁴⁰ Section 285.29 to 285.36 of An Act Respecting Insurance http://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=2&file=/A_32/A32_A.html; Section 103 to 103.4 of An Act Respecting the Distribution of Financial Products and Services http://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=2&file=/D_9_2/D9_2_A.html;

²⁴¹ http://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=2&file=%2F%2FA_33_2%2FA33_2_A.htm

Chile

17. Chile has recently approved a law (Law 20.555) which created an agency for the protection of financial consumers, called “SERNAC Financiero”. On the basis of the complaints the organization receives it can undertake lawsuits against financial services providers in the Courts of Justice and mediate the complaints it receives.

18. Consumers can request the intervention of an arbiter or financial mediator, named “Sello SERNAC”. In the context of a dispute, if the provider and the consumer don’t agree, the latter can turn to a mediator or arbiter, depending on the amount in conflict, from a list published by the SERNAC. The consumer also has the possibility of appealing to arbitration in the judicial system.

19. The Superintendence of Pensions receives complaints from affiliates to the pension system and the unemployment insurance that have been previously interposed to the corresponding pension fund administrator. In this case, the Superintendence requires a response from the administrator in the form and time frame established by the regulation.

20. Similarly, the Superintendence of Securities and Insurance has an area specially dedicated to the protection of investors and policyholders that receives and processes complaints in order to make sure that rules and regulations are met. Additionally, insurance contracts usually provide an arbitrage clause for the resolution of disputes between the insurance company and the policyholder. Within the framework of self-regulation, there is an ombudsman who resolves conflicts, with a binding nature, related to amounts under UF 250 and UF 500 for life / wealth insurance and other insurance, respectively.

21. Finally, the Superintendence of Banks has a division dedicated to client assistance and that receives complaints regarding entities under its supervision. Complementarily, the Association of Banks has an office that resolves complaints related to one or more operations that don’t exceed UF 600, free of charge for clients.

Czech Republic

22. Relevant regulations include the following:

- Act No. 21/1992 Coll., on banks
- Act No. 277/2009 Coll., on insurance industry
- Act No. 427/2011 Coll., on the complementary pension saving
- Act. No. 284/2009 Coll., on payment services
- Act No. 256/2004 Coll., on undertaking on the capital market
- Act No. 189/2004 Coll., on collective investing
- Act No. 229/2002 Coll., on the financial arbitrator
- Act No. 145/2010 Coll., on consumer credit
- Code of conduct of the credit institutions

- Code of conduct of the insurance companies

France

Banking sector

23. According to article L. 315-1 of the Monetary and Financial Code, all credit or payment services institutions must designate one or more ombudsman(men) responsible for recommending solutions to disputes with non-professional natural persons relating to the services provided. Mediators are chosen for their competence and impartiality. This mediation is free of charges.

24. The annual activity report prepared by each mediator is sent to the Governor of the Bank of France (L315-1 Monetary and Financial Code).

25. The decisions from mediation process are non-binding neither on financial services providers nor on the consumers. The mediation suspends the prescription of the judicial action to Court in accordance with the requirements of article 2238 of the Civil Code and, should parties be unable to settle the dispute through mediation, they may take a court action.

26. Pursuant to articles L314-12 and L. 314-13 of the French Monetary and Financial Code “CMF” the deposit account contract must contain information on complaints handling and redress mechanisms. According to article R. 311-5 of the Consumer Code, consumer credit contracts should as well include a clear and comprehensible section containing information on complaints handling and redress mechanisms.

27. ACP the French supervisor request annual data from financial services provider on complains handling procedure, types and volume of complains and use this information to organize its program of control (Instruction n° 2012-I-07)

Insurance sector

28. Pursuant to article L.112-2 of the French Insurance Code the documents given to prospective consumers should describe the consumer complaints handling procedures in place, and, where applicable, provide details of any specifically designated complaints handling bodies, without prejudice to any legal action the consumer may wish to take. According to articles L520-1 R 520 -1and R 520-2 of the French Insurance code, prior of the conclusion of any contract , the intermediaries must provide consumers with clear and precise information relating to complains handling and redress mechanisms. ACP the French supervisor request annual data from Insurers on complains procedure types and volume of complains and use this information to organize its program of control (Instruction n° 2012-I-07).

29. The work done in 2011-2012 by the regulators ACP and AMF is intended to provide customers with assurance that:

- they will receive clear and transparent information about complaint handling procedures and as well as easy access to the complaint handling system,
- their complaints will be dealt with in an effective, fair and standardised manner,
- financial institutions will take corrective measures to address problems highlighted through complaints handling.

30. In terms of information and access to the complaint handling system, the aim of the French regulation is to ensure that financial customers are told in clear and understandable language about:

- the procedures for submitting complaints at each level of the system, including contact details for complaints departments and for the ombudsman, where one has been appointed,
- the entity's commitments in terms of complaint handling times.

31. As part of this, market professionals must:

- acknowledge receipt of complaints within the promised time,
- keep customers informed about progress in processing complaints, notably in situations where complaints cannot be handled within the promised time owing to special circumstances that must be explained to the customer,
- in a situation where the professional rejects a complaint or refuses to fully or partly satisfy a complaint, it should provide information in the response sent to the customer about the available appeal options, and in particular provide details for the ombudsman, if one has been appointed.

Germany

32. Pursuant to the Act Establishing the Federal Financial Supervisory Authority (Finanzdienstleistungsaufsichtsgesetz – FinDAG) every client of supervised companies and consumer protection associations can address written complaints to BaFin (section 4b of the FinDAG). Additionally pursuant to article 17 of the German Basic Law (Grundgesetz), every individual has the right of petition. According to this article, every person shall have the right individually or jointly with others to address written requests or complaints to competent authorities and to the legislature. Complaints about the companies supervised by BaFin thus constitute petitions.

Hong Kong

33. The HKMA has responsibilities under the Banking Ordinance to ensure, inter alia, that authorized institutions (“AIs”) are operated in a responsible, honest and business-like manner and to promote proper standards of conduct and sound and prudent business practices among AIs. Its functions also include suppressing illegal, dishonourable or improper practices in relation to the business practices of banks. The HKMA believes that it is consistent with these functions to require AIs to have systems to ensure that customer complaints are fully and promptly investigated and resolved in a satisfactory manner. For that purpose, the HKMA has issued a guidance note in the form of a module of its Supervisory Policy Manual (“SPM”) requiring AIs to handle their customer complaints thoroughly, fairly and promptly.

34. The HKMA has established its Enforcement Department to handle complaints against AIs and carry out investigations and other enforcement duties.

35. Module IC-4 of the HKMA's SPM provides AIs with guidance on procedures to handle complaints in connection with the provision of banking or other financial services to personal and small business customers.

36. In particular, the following paragraphs of SPM IC-4 set out the guidance regarding customers' accessibility to AIs for lodging complaints, redress mechanism and effectiveness of the AIs' complaints handling procedures:

- Paragraph 2.3: Accessibility

- Paragraph 2.5: Independence and authority in handling complaints
- Paragraph 5: Cooperation with the HKMA and other complaint handling organisations

37. AIs are also expected to comply with the Code of Banking Practice which was issued jointly by the Hong Kong Association of Banks and the Deposit Taking Companies Association and endorsed by the HKMA. Paragraph 13.1: Handling customer complaints of the Code (Handling Consumer Complaints) sets out the requirements on AIs for handling customer complaints:

38. One of the principle functions of the IA is to regulate and supervise the insurance industry for the protection of the existing and potential policyholders. The IA is responsible for monitoring and ensuring that the complaints against insurers and insurance intermediaries are properly handled in accordance with the rules and regulations within the self-regulatory framework established under the Insurance Companies Ordinance ("ICO").

39. HKMA's complaints handling:

- Any person can lodge a complaint with the HKMA against an AI or any of its directors or staff members about any wrongdoing or matter leading to his/her dissatisfaction. The banking complaints handling services provided by the HKMA is free of charge.
- If a complainant has an enquiry about lodging a complaint against an AI, he/she can call the dedicated telephone line of the Complaint Processing Centre of the HKMA. The HKMA will explain its complaint handling process, scope of services and duties and provide the complainant with guidance and necessary assistance in lodging a complaint.
- In the "Consumer Corner" of the HKMA's website²⁴² the public can also find relevant guidance on how to lodge a complaint concerning an AI or its staff member with the HKMA.
- Referral of complaints from other parties, including other government agencies / departments or councillors, will also be followed up by the HKMA.
- On a monthly basis, the HKMA publishes the total numbers of banking complaints received, completed and in progress and analyses those figures by nature of the complaints.
- The HKMA also reports the abovementioned figures together with a breakdown by the types of service or product concerned in banking complaints received by the HKMA annually.
- The HKMA will inform the complainants who wish to lodge a complaint against a bank to the HKMA of the option of going to the Financial Dispute Resolution Centre Limited (FDRC) for cases involving monetary disputes. It will be up to such person to decide if he/she should refer his/her case to the FDRC.

40. AIs' complaints handling: The relevant practices by AIs in handling complaints should follow Module IC-4 of the SPM of the HKMA.

41. Financial Dispute Resolution Centre Limited ("FDRC") commenced operations in June 2012. The FDRC is a non-profit making organisation which provides individual customers with an independent and affordable avenue, as an alternative to litigation, for resolving monetary disputes with financial

²⁴² <http://www.hkma.gov.hk>

institutions. The FDRC administers a financial dispute resolution scheme (FDRS) by way of “Mediation first, Arbitration next”. All financial institutions authorized by the HKMA and /or licensed by the SFC are members of the FDRS and agree to abide by the rules and procedures in respect of the FDRS.

42. Guidance is provided in the IA’s website on how to lodge a complaint against insurers and insurance intermediaries.

43. The public can lodge a complaint by writing to the IA or calling the dedicated 24 hours hotline. Acknowledgement will be issued to the complainant by the IA within 10 working days upon receipt of the complaint.

44. In most cases, the IA may refer the complaint to the relevant insurer/self-regulatory body for investigation. The IA will keep in view of developments to ensure that the complaint is handled properly by that insurer or self-regulatory body.

45. The self-regulatory bodies for insurers and insurance intermediaries are The Hong Kong Federation of Insurers ("HKFI"), The Insurance Agents Registration Board ("IARB") which is set up by the HKFI, The Hong Kong Confederation of Insurance Brokers ("HKCIB"), and Professional Insurance Brokers Association ("PIBA").

46. In particular, complaints involving personal insurance claims against insurers with amounts not exceeding HK\$800,000 should be lodged with The Insurance Claims Complaints Bureau ("ICCB"). The ICCB is a self-regulatory initiative implemented by the insurance industry and serves as an alternate dispute resolution scheme to offer a free claims complaints service to the insuring public in respect of their personal insurance contracts.

47. For insurance-related financial services offered by AIs, the complainants can seek to resolve the matters through the FDRC if the individual claim does not exceed HK\$500,000. However, such claim must not be the subject of a complaint lodged with the ICCB which is currently under the ICCB’s consideration. Please refer to Part B of the FDRC Guidelines on Intake Criteria of Cases for more details.

Hungary

48. It is necessary for financial service providers to provide comprehensible, professional and meaningful information when providing information about the complaints handling process. In addition, financial service providers should allow sufficient time for the client to study the complaints handling. The regulations require that:

- service providers shall not be authorized to charge the costs of investigating complaints to the consumers, and
- service provider shall communicate its position relating to the written complaint - with explanation - to the client within thirty days of receipt of the complaint.

India

49. SCORES in India (SEBI Complaints Redress System) is a web based centralized grievance redress system of SEBI²⁴³ enabling investors to lodge and follow up their complaints and track the status of complaints online. All activities starting from the lodging of a complaint until its closure by SEBI would

²⁴³ <http://scores.gov.in>

be processed online and the status of every complaint can be viewed on the website at any time. In addition, any investor who is not familiar with SCORES or does not have access to SCORES can lodge complaints in physical form at any of the offices of SEBI. Such complaints are scanned and then uploaded in SCORES for processing.

50. SCORES enables the market intermediaries and listed companies to receive the complaints online from investors and to report decisions online.

Ireland

51. Requirements regarding complaints handling are set out in the Irish Central Bank's Consumer Protection Code 2012. A statutory code of conduct which regulated financial services providers must comply with. If a consumer contacts the Central Bank of Ireland with a complaint against a financial service provider, the consumer is advised that the complaint should first be addressed to the firm. They will also be directed to the Financial Services Ombudsman (FSO) for further information on how to make a complaint.

52. The Code of Conduct goes on to state that:

“A regulated entity must seek to resolve any complaints with consumers. When a regulated entity receives an oral complaint, it must offer the consumer the opportunity to have this handled in accordance with the regulated entity's complaints process. A regulated entity must have in place a written procedure for the proper handling of complaints. In addition, a regulated entity must maintain up to date and comprehensive records for each complaint received from a consumer.”

53. Provision 4.13 of the 2012 Code provides that a summary of the complaints procedure must be set out in the Terms of Business document. Provision 4.12 stipulates that the Terms of Business must be provided to each consumer prior to providing the first service. Provision 4.1 of the 2012 Code stipulates the use of plain English and clear presentation in all information provided to consumers.

54. The 2012 Code defines a vulnerable consumer to mean a natural person who:

- has the capacity to make his or her own decisions but who, because of individual circumstances, may require assistance to do so (for example, hearing impaired or visually impaired persons); and/or
- has limited capacity to make his or her own decisions and who requires assistance to do so (for example, persons with intellectual disabilities or mental health difficulties).

55. Provision 3.1 of the 2012 Code requires regulated entities to consider whether there is any evidence of vulnerability on the part of the consumer and regulated entities must provide those identified as vulnerable consumers with the necessary arrangements or assistance to facilitate their dealings with the regulated entity.

56. Provision 10.9 of the 2012 Code provides that firms must have a written procedure for the proper handling of complaints. A written outcome letter must be sent to the consumer, within 5 business days of the completion of the investigation. The letter should advise (where applicable) of the right to refer the case to the relevant Ombudsman and contact details for the Ombudsman.

57. The FSO is a statutory officer who deals impartially and independently with unresolved complaints from consumers about their individual dealings with all financial services providers. The FSO's services are provided free of charge to consumers. The website of the FSO's office defines the type of

consumer who can lodge a complaint and sets out the type of financial service provider which falls within the remit of the FSO's investigation powers.

Israel

58. The Public Enquiries Unit, which is part of Bank-Customer Division at the Banking Supervision Department in the Bank of Israel, acts by virtue of section 16 of the Banking (Service to Customer) Law, 1981, which empowers the Supervisor of Banks to investigate complaints of the public concerning their business with banking corporations. The Unit comprises of economists, lawyers and accountants, and it acts as an objective external body in settling disputes between banks and their customers in accordance with judicial principles, and in the light of the fairness in bank–customer relations. No costs are imposed on consumers, as regarding to complaints handling.

59. Banks are obliged to answer the requests of the supervisor. If a bank is found to be violating a consumer protection legislation or Supervisory directive, the Supervisor may impose a civil fine up to NIS 1,500,000. Failing to correct an irregularity according to the Supervisor's request may also result in a civil fine of NIS 250,000.²⁴⁴

Italy

60. The law in Italy established a system for resolving disputes out of court, called Arbitro Bancario Finanziario or ABF. Consumers are informed about the existence of ABF and the ways to file a case with it through a number of informative channels:

- the website of the ABF, of the Bank of Italy and of all financial services providers;
- guides which are distributed in each branch of financial services providers (Consumers must always be provided with a copy of the Guide if they enter into a relation with a financial services provider outside a branch or through distance communication mechanisms (internet, mail, etc.); and
- financial services providers when answering a complaint: financial services providers must always inform consumers of the possibility to file a case with the ABF.

61. For investment or asset management services, the Italian Investment Protection Law (no. 262/2005), enacted by Legislative Decree 179/2007, established the “Conciliation and Arbitration Chamber”. It is a technical and instrumental body of Consob, located in Consob premises and currently governed in organisational and procedures terms by Consob Regulation no. 18275 of 18th July 2012. The “Chamber” started operating in March 2011. The Chamber is the organisation responsible for the administration of conciliation and arbitration proceedings involving disputes arising between investors and financial intermediaries regarding compliance with disclosure obligations, correctness and transparency as envisaged in the contractual relations with customers and regarding investment or asset management services.

62. The main users of the Chamber (investors, intermediaries, conciliators and arbitrators) can refer to the dedicated web site www.camera-consob.it to consult sector regulations and obtain all information on the Chamber's operations.

²⁴⁴ <http://www.boi.org.il/en/ConsumerInformation/PublicEnquiries/Pages/Default.aspx>

63. Article 32-bis of Italian consolidated Law on Finance states that consumer associations entered on the list pursuant to the so called “Consumer Code” are entitled to protect investors’ collective interests, relating to the provision of investment services and activities, ancillary services and collective asset management services.

Japan

64. To promptly deal with complaints by customers, due consideration should be given to the following points:

- Whether the financial services provider has developed a control environment where it improves the response provided at contact points according to the occurrence of complaints, etc., and where it can receive complaints, etc. extensively, such as by setting access hours and means of access (for example, phone, mail, facsimile, email) which are considerate of customer convenience.
- Whether the financial services provider has developed a control environment where it extensively publicizes these contact points and ways of making applications, and where it makes them well known to customers in a way that is easy for them to understand and which also takes into account their diversity.

65. Emphasis is placed on the importance of properly publicizing the name or trade name and the contact address of designated ADR bodies.

66. In this regard, financial services providers shall take measures that are suited to the size and specific characteristics of their business operations, for example, presenting information on their websites, putting up posters at their branches, producing and distributing pamphlets, and conducting publicity activities through the media. Even supposing that the financial services provider has posted information on its website, if it is feasible that there are customers who cannot view this information, the business operator needs to give consideration to these kinds of customers.

67. The Financial Services Authority (FSA) in Japan conducts a campaign to enhance awareness about or access to adequate complaint handling and redress mechanisms, for example, by disseminating relevant information via websites and distributing pamphlets to industry and local governments²⁴⁵.

68. Designated dispute resolution organisations endeavour to disseminate information on ADR by, for example, distributing pamphlets to financial institutions and consumer organisations.

Luxembourg

69. In Luxembourg the CSSF has set up a consumer’s corner on its website in which the consumer can find frequently asked questions concerning the CSSF complaints’ handling procedures

Mexico

70. The Law for the Protection and Defense of Users of Financial Services (LPDUSF) in Mexico provides Condusef, the consumer protection agency, with the mandate to protect the interests of users of financial services. Under Article 11 paragraph II, Condusef will address and solve the complaints of financial services users. Under paragraph III, Condusef has to carry out conciliatory processes between users and financial services providers. Under paragraph IV Condusef the possibility to act as an arbitrator

²⁴⁵ <http://www.fsa.go.jp/policy/adr/index.html> & <http://www.fsa.go.jp/soudan/index.html>

and paragraph V states that Condusef can protect and represent the interests of the users in controversies against financial services providers before administrative or judicial authorities²⁴⁶.

71. In order to facilitate the resolution of disputes to the users of financial services, the Law for the Protection and Defense of Financial Services Users under Article 50 Bis. sets - each financial institution must have a Special Unit that will aim to respond to queries and complaints presented by financial users. These Specialised Units operate in coordination with CONDUSEF to track the solutions of user public controversies.

72. In Mexico, Condusef has a network of 36 offices distributed nationally where users can file complaints against financial services providers. Condusef also has mobile offices that go to smaller communities and there is a virtual office where users can file complaints, and through which Condusef and the financial services providers can look for agreements. Condusef makes effective use of information and communication technologies to address complaints, it has:

- an electronic complaints management system; and
- a telephone conciliatory process.

73. By using all these means Condusef has achieved a reduction in the time taken to solve the controversies from 53 to 20 working days (from 2006-2012). The advice and legal defence that Condusef gives to users of financial services is completely free.

Netherlands

74. Claims handling and redress system regarding consumers on financial markets that are set out in three levels. The first level is called the IKP-fase, this is an intern procedure regarding complaints that a consumer has to follow if he wants to settle his claim. The second level is up to the choice of a consumer following: (i) a civil court procedure or (ii) a claims handling institute procedure bases on ADR. Only in a normal civil court procedure it is possible to use the third level: collective redress. This process is divided into collective actions and/or collective settlement.

75. Applicable regulatory requirements regarding claims handling and redress mechanisms are set out by implementing the Consumer Directive²⁴⁷ regarding complaints handling issues in the Act on Financial Supervision (Wet op het Financieel Toezicht)²⁴⁸ (“Wft”) ex art. 4:17 Wft jo. Paragraph 7.1. art. 39 up til 48f (Besluit Gedragstoezicht financiële ondernemingen Wft) (“Bgfo”).

76. The requirements set out in the above mentioned articles provides the AFM powers to promote access to justice through creating better complaints handling and redress measures for consumers on financial markets. The AFM is aware of the preventive effects regarding ineffective behaviour of financial services providers by creating better access to justice for consumers.

77. At the moment complaints handling and redress mechanism issues are less being practiced by the AFM. Article 4:17 Wft provides the AFM marginal power to promote access to justice because of the focus on transparency instead of effective compliance with the rules.

²⁴⁶ http://www.condusef.gob.mx/PDF-s/marco_juridico/ley_condusef.pdf

²⁴⁷ Directive 2011/83/EU of the European Parliament and of the Council

²⁴⁸ Act of 28 September 2006, on rules regarding the financial markets and their supervision.

78. Claims Handling regarding ADR is housed by the Dutch Financial Complaints Handling Institute called Klachteninstituut Financiële Dienstverlening (“Kifid”). Cp. Article 4:17 par. (1)(b) Wft a financial service provider²⁴⁹ shall be associated with a disputes body recognized by the Minister that handles disputes in respect of financial services or financial products of the financial enterprise, unless no such disputes body exists.²⁵⁰

79. After filling a complain at the intern procedure of a financial service provider (“IKP-fase”) a consumer may comply for a procedure at Kifid. Kifid is set up in three different levels: the Ombudsman, the Geschillencommissie and the Commissie voor Beroep. The decision of the Ombudsman and in certain circumstances the Geschillencommissie, is not binding. In those cases parties are free to go to a regular court to solve their problem. Also after a binding declaration of the dispute parties may start a dispute at regular court, but the judge will take into account the applicable contractual requirements of the ADR decision.

80. A better example of an effective approach regarding the empowering of consumers by increasing access to justice within claims handling and redress mechanisms could be, after making adjustments in the area of safeguarding the interests of consumers, the Dutch collective redress mechanism divided into: (i) collective actions (cp. Article 3:305a-c Code of Civil Procedure (“CC”)) and (ii) collective settlements (cp. Article 7:907-910 CC and Article 1013-1018 Code of Civil Procedure (“CCP”)). Collective settlements are made possible by the Act on Collective Settlement of Mass Damage (Wet collectieve afwikkeling massaschade (“WCAM”)).

81. On 27 July 2005 the WCAM took effect in the Netherlands. Until then, it was only possible to initiate a collective action on the basis of Article 3:305a of the CC. In the latter procedure, the foundation or association representing the consumers can only obtain a declaratory judgment. Damages cannot be awarded in this procedure.²⁵¹

82. The WCAM introduces a procedure to have a collective settlement declared binding for both the liable party (or parties) and all injured parties with consideration to whom the settlement is concluded. If the Court thus declares the established settlement agreement binding, this has consequences for all entitled parties: all of them become a party to the agreement, unless they opt out. The idea behind the WCAM is to settle cases of mass damages in a smooth manner by enabling liable and injured parties to reach a collective settlement. The main advantage for the liable party is that the settlement is binding for all injured parties, including those who have not participated in the settlement negotiations. The main advantage for the injured parties is that the liable party will be more willing to reach a collective settlement. However, the WCAM does not deal with the stage of reaching a settlement. The settlement must be reached out of court and is a prerequisite for the parties to apply to the court (cp. Article 7:907 par. (1) CC). The court cannot hear a case under the WCAM without a settlement having been reached, as the settlement must be attached to the petition starting the procedure, and the petition itself must include a short description of the settlement agreement (cp. Article 1013 par. (2) and par. (1)(d) CCP). The settlement need not establish that the ‘liable party’ is indeed liable (in contract or tort), but only that the ‘liable party’ and the organisation representing the injured parties have agreed that the ‘liable party’ will pay compensation to the injured

²⁴⁹ In practice Kifid handles almost all disputes between consumers and financial enterprises regarding financial services and financial products.

²⁵¹ In the near future the handicap of not awarding damages in the collective action procedure will disappear by a new bill. Please look at: <https://zoek.officielebekendmakingen.nl/kst-33126-6.html>.

parties. Thus, contrary to the American damages class actions, a settlement must be reached before a request to the Court can be made.²⁵²

83. On the view of AFM a good working collective redress system should have an effective collective action and collective settlement procedure safeguarding interests of consumers. In the Netherlands the government is providing better civil standards for an effective collective action and settlement procedure at the end of 2013.²⁵³ Furthermore the AFM is considering better public powers and therefore possibilities for the AFM to help consumers regarding to increase their access to justice.

84. In the Netherlands we have learned that having an independent and fair dispute or ADR institute on financial markets is very important for consumers. In 2010 and 2011 politician expressed their concerns about the independence and fairness of the decisions of Kifid. This issue caused a lot of media attention. Because of this all, the regulation of Kifid has been changed. Also on the opinion of the AFM it is in the best interest of consumers to consolidate all dispute institutes to one institute because of better visibility, equality of arms, rights and reducing costs. Furthermore the AFM is advocate of an independent, timely, adequate, binding and effective dispute institute regarding its decisions to all financial enterprises that are regulated and regarding all financial services.

85. The Government (Ministry of Finance together with the AFM and Dutch Central Bank (DNB)) could provide solutions for claim risks together with the applicable financial enterprise(s) in certain cases (mass claims causing distrust and instability on financial markets)). In these cases a balance between interests of all actors (especially between claimants and the rest of the retail clients) should be created in the applicable measure to solve the problems.

86. In the Netherlands the effectiveness of the total claims handling and redress system should be examined with special view on safeguarding interests of consumers in the system. For example, regarding regulatory requirements of claim organisations or third party funders due to collective redress but also the high costs and information asymmetry within a normal civil procedure, ADR and IKP-fase.

Portugal

Banking sector

87. Decree-Law No. 156/2005 of 15 September sets the obligation of every business offering services or providing goods in Portugal (credit and payment institutions included) to have a complaint book where clients can make formal written complaints, which are then sent to the competent supervisory authorities (in the case of credit and payment institutions, this is the Banco de Portugal). The legislation states that the Complaints Book must be available at every branch of the institution and there must be a conspicuous sign that clearly indicates its existence.

88. Besides the complaints from the Complaints Book, customers can always present complaints directly to Banco de Portugal, on the grounds of a breach of the provisions governing credit institutions' activities [Article 77.^o-A of the Legal Framework of Credit Institutions and Financial Companies].

89. Customers can present their complaints via a written communication (letter, email, or fax) or through an online form available from a dedicated website to banking customers, developed and managed by Banco de Portugal. Banco de Portugal handles these complaints for the purpose of correcting any

²⁵² For a more detailed explanation of the WCAM and its effectiveness please have a look at: http://ec.europa.eu/consumers/redress_cons/nl-country-report-final.pdf.

²⁵³ <https://zoek.officielebekendmakingen.nl/kst-33126-6.html>.

irregularities found and, if necessary, sanctioning any disrespect to the regulations and legislation it supervises.

90. The information regarding the possibility of presenting a complaint directly to Banco de Portugal is disseminated through the central bank's official website and through the above mentioned Bank Customers Website. Furthermore, this last website has a functionality that allows complainants to check the status of their complaints.

91. Even though there is no specific legislation/ regulation on accessibility to complain regarding complaints directly presented to credit institutions by other means than the Complaints Book, credit institutions are obliged by general duties of fairness and diligence (Articles 73. ° and 74. ° of the Legal Framework of Credit Institutions and Financial Companies) and have normally in place various channels for costumers to complain (besides the Complaints Book).

92. Banco de Portugal also responds to information requests. Answering such requests submitted by customers may avoid complaints and also promotes financial literacy.

Spain

93. Relevant regulations relating to complaints handling and redress include the following;

- Art. 29 FSRL²⁵⁴ - Obligations of financial regarding internal complaint handling mechanisms. Financial institutions are obliged to have an internal customer complaint service. Voluntarily and on a stand-alone basis or together with other entities, they can also establish a Customer Ombudsman (Defensor del Cliente), who shall be an independent expert entity or individual of recognized standing.
- Art. 30 FSRL²⁵⁵ - General Principle regarding the banking, securities and insurance supervisors' complaint mechanisms. Supervisors' complaints mechanisms shall be responsible for any complaint, claim or consultation that customers may have regarding the alleged violation of their legitimate rights, of transparency and customer protection legislation or good financial practice.
- Art. 3 CPO²⁵⁶ – Legitimacy for filing complaints, claims or consultations before supervisors' complaint departments. Consumer associations have legitimacy to file a complaint, claim or consultation representing financial customers' interests.

94. Coordination mechanisms among the three supervisory authorities (for banking, securities and insurance and pension funds) increase horizontal convergence of supervisory practices and help to attain a common understanding of consumer protection on a cross-sectoral basis.

95. On an ongoing basis, the departments involved in these issues at the three supervisory authorities hold meetings with the aim to exchange information and promote financial education.

²⁵⁴ Financial System Reform Law (Ley 44/2002, de 22 de noviembre, de Medidas de Reforma del Sistema Financiero)

²⁵⁵ Financial System Reform Law (Ley 44/2002, de 22 de noviembre, de Medidas de Reforma del Sistema Financiero)

²⁵⁶ Complaints Procedure Order (Orden ECC/2502/2012, de 16 de noviembre, por la que se regula el procedimiento de presentación de reclamaciones ante los servicios de reclamaciones del Banco de España, la Comisión Nacional del Mercado de Valores y la Dirección General de Seguros y Fondos de Pensiones)

96. Access to both internal customer complaint services and supervisors' complaint departments is free of charge for the customer

97. Under the Financial System Reform Law in Spain²⁵⁷ financial institutions are obliged to have an internal customer complaint service. This can be voluntarily and/or on a stand-alone basis or together with other entities, they can also establish a Customer Ombudsman (Defensor del Cliente), who shall be an independent expert entity or individual of recognized standing.

98. While supervisors' complaints mechanisms shall be responsible for any complaint, claim or consultation that customers may have regarding the alleged violation of their legitimate rights, of transparency and customer protection legislation or good financial practice.

99. There is the scope under the law for consumer associations to file a complaint, claim or consultation representing financial customers' interests. Thus, this capacity for consumer associations to act on the behalf of individual customers ensures due access to adequate complaints handling and redress for those consumers lacking sufficient knowledge or financial means.

South Africa

Collective investment schemes

100. GN910 of 2010 requires the manager to implement a complaints handling process (Paragraph 9)

Capital markets

101. JSE Equities Rules

- Rule 11 – Complaints and Disputes

102. Strate Rules

- Section 14.4.3 – Complaints Procedure

103. Securities Services Act 36 of 2004

- Section 18 – Exchange rules - requirements with which Exchange rules must comply

Pension sector

104. The pension laws provide for the office of the Pension Funds Adjudicator to whom aggrieved members can lodge a complaint, at no cost to the member and without the need for legal representation, to provide an affordable, accessible, independent, accountable and efficient process of addressing complaints

105. The annual benefit statement must state that members can when aggrieved, have access to the pension funds adjudicator to resolve complaints

106. Due to the narrow jurisdiction of the adjudicator pension fund complaints may have to be dismissed due to lack of jurisdiction because they involve insurance, financial advisory or labour issues.

²⁵⁷ Ley 44/2002, de 22 de noviembre, de Medidas de Reforma del Sistema Financiero

107. Limited public awareness about the office of the adjudicator means that fund members are unaware they have recourse in the event they have a grievance against their fund.

108. Aggrieved parties can appeal the Adjudicator's determination in Court but there is no legal aid for the opposing party, so appeals are usually unopposed and determinations are easily set aside.

Financial Advisory and Intermediary Services

109. Financial Advisory and Intermediary Services Act, 2002 (FAIS Act) Section 20 – Provide for establishment of a statutory Ombud for Financial Services Providers that must consider complaints in a procedurally, fair, informal, economical and expeditious manner and by reference to what is equitable.

110. S32 – Empowers the regulator to take any steps conducive to client education and the promotion of awareness of the nature and availability of the Ombud for Financial Services Providers, other enforcement measures and to assist in the disclosure of information to clients.

- A specific Department was established in the FAIS Division of the Financial Services Board to deal with complaints against financial services providers and set turn-around times for dealing with complaints are part of the key performance areas.
- The FSB maintains a call centre to, inter alia; facilitate/receive complaints from consumers against financial services providers.
- FSB also set-up a Fraud and Ethics hotline (Tip-offs Anonymous) for complainants who wish to remain anonymous.
- FSB further established a Consumer Education Department that specifically addresses financial literacy and consumer awareness.

Switzerland

111. There is an ombudsman system in the Swiss banking and insurance sectors. An ongoing legislative project relating to financial services with client protection is the Federal Financial Services Act (FFSA). A consultation draft to the Federal Council shall be submitted by autumn 2013. FFSA seeks to strengthen the ombudsman system.

Turkey

112. Consumer complaints arising from banking activities are handled by the following agencies;

- Ministry of Customs and Trade (Directorate General of Consumer Protection and Market Surveillance); the Ministry handles the complaints of the consumer which are assessed within the scope of the Law on the Protection of Consumers No.4077 (LPC).
- Arbitration Committees for Consumer Problems; According to the Article 22 of the LPC, Committees are independent bodies which are responsible for the out-of-court settlement of consumer disputes. They were established mainly with the aim of providing simple and inexpensive means for the resolution of consumer disputes arising from the application of the LPC.
- Consumer Courts; It is entitled to solve the disputes among consumers and suppliers which are above the certain value that is determined by the Ministry of Customs and Trade. Also it is the Supreme Court of Arbitration Committees for Consumer Problems.

113. Authorities responsible for bank consumer protection;

- Banking Regulation and Supervision Agency (BRSA); BRSA handles the complaints about the misconduct of creditor with respect to consumer rights that are protected by Banking Law No.5411 and Law on Credit Cards and Banking Cards No. 5464.
- Customer Complaints Arbitration Committee of the Banks Association of Turkey and Customer Complaints Arbitration Committee of the Turkish Participation Banks Association; According to the article 80/1-j of the Banking Law Banks Association of Turkey and Turkish Association of Participation Banks have to set up a board of arbitrators within the framework of the principles and procedures to be prepared thereby and approved by the Banking Regulation and Supervision Board, in order to evaluate and settle the disputes between the members and their individual clients, with the reservation of their rights to legal application pursuant to LPC and other laws. Related to that provision, Customer Complaints Arbitration Committees have been established within the Banks Association of Turkey and the Turkish Participation Banks Association as reconciliatory committees for the assessment and solution of the disputes between the individual customers and banks.

114. Investors in Turkey have Access to several complaints handling and redress mechanisms depending on the nature of the complaint. Complaints arising from “market transactions” are handled by either ISE or TURKDEX. Market transaction is the process during which orders transmitted to the market by intermediaries are matched and mutual obligations are fulfilled. CMB is the authority of appeal regarding decisions of ISE or TURKDEX about complaints arising from market transactions.

115. Complaints arising from reasons other than market transactions are handled by CMB or TACMIIT directly.

116. At any point, investors reserve the right to seek resolution through judicial authorities.

117. Consumers can apply to BRSA for consumer finance complaints via petition. These complaints are handled on the basis whether there is incompliance to the related law or regulation enforced by BRSA.

118. On the other hand, the methods for making complaints are made known by laws and regulations published at Official Gazette and web sites of the related institutions as well web sites of the credit institutions for informing customers.

119. Also, in order to keep their customers informed about the duties and powers and the working principles and procedures of the Customer Complaints Arbitration Committee of the Banks Association of Turkey and Customer Complaints Arbitration Committee of the Turkish Participation Banks Association, the banks will reproduce the brochure and the complaint form samples prepared by the Associations in compliance with the law and communiqué and the general banking usage and practices and will make their copies available at places visible and accessible by the customers in their head quarter and branches.

120. CMB web site has a section specifically addressing investor complaints and redress mechanisms according to capital markets legislation. Investor may also send their complaints directly to CMB via an electronic form made available to the public in CMB web site.

121. Also, www.yatirimyapiyorum.com is specifically designed by CMB to inform investors regarding various aspects of capital markets, such as investor rights, risks, financial instruments, intermediaries as well as disputes handling mechanisms.

122. The Insurance Arbitration Commission in Turkey is established for conflict resolution arising between the insurer and the policy holders or beneficiaries of insurance contracts. Insurance arbitration system is based on voluntary participation of the insurance institutions. The insurance provider that wants to be a part of the insurance arbitration system has to notify the Commission in writing. Consumers of insurance services who are in conflict with the member insurance entities of the insurance arbitration system are entitled to apply for the arbitration procedure which is designed to be faster and more cost efficient than the traditional court referral process. The disputes that are referred to the Commission are settled by independent arbitrators within the time limits prescribed by law. In order to ensure efficiency, applications regarding disputes that had been referred to Court or to the Arbitration Committee for Consumer Problems according to the provisions of the Law on Protection of Consumers, shall not be filed to the Insurance Arbitration Committee. However, the way to an appeal is open in cases where a decision is made after the expiration of the arbitration process, a decision is made on an issue that is not requested, any decision made outside the arbitrator authorities, a decision is not made regarding the allegations of the parties and for awards above 40,000 liras.

UK

123. Firms carrying out regulated financial services activities have to be authorised by the Financial Conduct Authority (FCA) (potentially in conjunction with the Prudential Regulation Authority) (or licensed by the Office of Fair Trading in relation to consumer credit). This means in turn that they are covered by FCA rules on redress and subject to sanctions for non-compliance. Firms are required to give information about how to make a complaint, to the firm in the first instance, and then, if the firm is unable to respond to a consumer's complaint satisfactorily, to the Financial Ombudsman Service (the Ombudsman service).

124. In the UK it is free to make a complaint to a firm and, failing that, to the Ombudsman service. A complaint to the financial services provider or Ombudsman service can be made by 'any reasonable means' and this is expected to include phone, fax, e-mail, letter, and face-to-face, where these are the usual channels by which consumers contact firms. A response from a firm must be written and include a leaflet which provides information about the Ombudsman service. Complaints resolved by the close of the next business day are subject to fewer requirements around the nature of the firm's response, recording and reporting.

2. INTERNAL COMPLAINTS HANDLING

COUNTRY EXAMPLES

Australia

125. The law requires Australian credit licensees to have in place an internal dispute resolution process.

126. Internal dispute resolution (IDR) is an important and necessary first step in a complaints handling process, as it gives the financial service provider the opportunity to hear client concerns and expressions of dissatisfaction. IDR enables a provider to address client concerns efficiently and effectively, and can lead to improved business systems, products and services.

127. IDR procedures can be used to deal effectively with, and monitor, all forms of consumer inquiry, complaint or dispute.

128. It is essential for credit providers to have effective IDR procedures in place so that complaints or disputes are dealt with genuinely, promptly, fairly and consistently.

129. IDR must comply with the standards and requirements made by the Australian Securities and Investments Commission (ASIC), and cover complaints made by retail clients in relation to the financial services provided.

130. ASIC have released guidelines for IDR procedures, which are encouraged by requiring providers to notify consumers of their right to complain via external dispute resolution mechanisms if their claim is rejected.

131. It is appropriate to take into account:

- the size of the business (including the number of representatives or credit representatives authorised);
- the range of credit products or services offered;
- the nature of the customer base; and
- the likely number and complexity of complaints or disputes.

Canada

Banking sector

132. The Bank Act requires banks to maintain procedures and staff to deal with consumer complaints. Banks should work to resolve complaints through their own internal processes, whenever possible. This promotes confidence in the financial system, allows consumers to understand the process and gives industry members the opportunity to not only resolve disputes, but also to monitor their compliance with the provisions of the Acts, voluntary codes of conduct and public commitments that are designed to protect financial consumers.

133. Following consultations launched by the Financial Consumer Agency of Canada (FCAC), the FCAC has now finalized the *Commissioner's Guidance—Internal Dispute Resolution*²⁵⁸. The Guidance outlines the principles that the FCAC considers essential for the establishment of an effective, efficient and accountable internal dispute resolution (IDR) process that help to ensure that federally regulated financial institutions handle consumer disputes in a competent manner. If the dispute cannot be successfully resolved through the IDR process, consumers will have an opportunity to escalate their concern to an external complaints body.

Securities sector

134. All registered dealers, advisers (other than SRO members), are required to document and respond to client complaints about any product or service offered by the firm or one of its individual representatives, in an effective and fair manner. Firms must maintain records which demonstrate compliance with these complaint handling requirements.

Czech Republic

135. Relevant regulations include the following:

- Act No. 21/1992 Coll., on banks
- Act No. 277/2009 Coll., on insurance industry
- Act No. 427/2011 Coll., on the complementary pension saving
- Act. No. 284/2009 Coll., on payment services
- Act No. 256/2004 Coll., on undertaking on the capital market
- Act No. 189/2004 Coll., on collective investing
- Code of conduct of the credit institutions
- Code of conduct of the insurance companies

France

136. The French supervisor ACP issued the recommendations (n°2011-R-05 – 15 December 2011) applicable in both banking and Insurance sector on internal complaints handling which have been developed in accordance with the EIOPA guidelines, which states that:

- procedures shall be provided in writing and dealt with diligently and appropriate timeline stipulate in the procedure
- complaints shall be handled by an independent unit

²⁵⁸ <http://www.fcac-acfc.gc.ca/eng/industry/commissioner/guidance/cg-12/index-eng.asp>

- the head of the complaints handling unit shall be responsible for the whole process, i.e. the respect of the policy as well as the operational handling of the complaints
- limitation of conflicts of interests by requiring insurance companies or banks to handle complaints in an independent manner.
- complaints shall be handled independently from operational departments.
- employee(s) usually in contact with customers or who receives(s) customer demands, shall be trained to clearly identify the complaints received and to make a correct use of
- complaints handling channels
- In case of multiple complains handling Information sets out the appropriate entities according to the subject of the complaints
- the information has to be easily accessible to all customers, in particular in customer reception areas, where applicable, or on a website.

137. The same principles and rules apply to all financial services providers. However, the ACP recognises the importance of the proportionality principle, and states that different provisions (e.g. organisation of complaints handling) are applicable “*where the size and the structure of the entity allows it*”. Since 1st September 2012 the obligations to investment service providers, financial investment advisors and asset managers for real estate investment trusts are the following:

- the obligation, for the professional, to commit to respond to a customer complaint within a maximum deadline of two months;
- implementation of a complaint processing system that ensures equal and consistent treatment;
- allocating the necessary resources and expertise to complaint processing;
- the obligation to follow up complaints in order to identify and correct any malfunctioning,
- and the introduction of a principle of proportionality to take account of the size and structure of professional entities.

Germany

138. The Financial Supervisor (BaFin) is currently consulting a draft circular on the minimum requirements with regards to the handling of complaints by insurance undertakings and a draft collective decree on orders with regard to the establishment of a complaints management function and the obligation of insurance undertakings to provide supervisory information on complaint handling. .

Hong Kong

139. The SPM IC-4 provides AIs with guidance on complaints handling procedures. In particular, the following paragraphs of the SPM IC-4 set out the key elements of the complaint handling procedures and the timeline of handling complaints for AIs:

- Paragraph 2.1: General principles

- Paragraph 2.2: Policies and procedures
- Paragraph 2.3: Accessibility
- Paragraph 2.4: Confidentiality
- Paragraph 2.5: Independence and authority in handling complaints
- Paragraph 2.6: Resources and staff training
- Paragraph 2.7: Monitoring and audit
- Paragraph 3.2: Final response

140. AIs are expected to comply with the Code of Banking Practice. In particular, the following paragraph of the Code of Banking Practice sets out relevant requirements on complaint handling procedures and timeline on handling complaints of banks: Paragraph 13: Handling customer complaints.

141. As stipulated in Article 35 of the Code of Conduct for Insurers (“CoCI”) issued by the HKFI, insurers are required to have effective procedures in place for the proper handling of insurance complaints. In particular, Article 48 of the CoCI requires insurers to have in place internal complaint-handling procedures for attempting to resolve complaints by policyholders and the procedures should be readily accessible and be free of charge to the complainant.

142. In the context of insurance intermediaries, IARB, HKCIB and PIBA are required to have effective procedures in place for the proper handling of complaints against insurance intermediaries.

143. The HKMA has established procedures in handling banking complaints. Please refer to the enclosed leaflet on *“What to do if you have a complaint about banking products or services”*:

144. Upon receipt of a banking complaint, the HKMA will review it and, where necessary, contact the complainant to seek further information or clarification. In handling the complaint, which may have already been handled by the AI concerned, the HKMA will generally refer it to the AI for investigation or re-investigation and a further reply to the complainant and require the AI to provide the HKMA with relevant information. The HKMA will then conduct an assessment of the complaint based on the information provided.

145. The HKMA will ensure that the handling of the complaint by an AI is thorough, fair and timely by monitoring the AI’s handling process and reviewing its reply to the complainant to check that the AI’s complaint handling procedures are appropriate and working properly and that all allegations of the complaint have been adequately addressed.

146. If the complaint raises issues of supervisory concern, including a breach of HKMA supervisory guidelines or the Code of Banking Practice, the HKMA will pursue with the issues with the AI and, where necessary, require remedial action to be taken by the AI.

147. If the complaint raises issues of disciplinary concern, which are issues relating to the conduct of an AI or its staff, the HKMA will carry out an investigation if it considers that there are sufficient grounds to do so. Where an investigation reveals misconduct by an AI or its staff, the HKMA will take appropriate action or refer the case to other relevant enforcement or regulatory bodies for further action.

148. The HKMA has put in place adequate measures to ensure that banking complaints are handled in a fair and effective manner. The decision on whether and how a complaint is pursued has to be made by a committee comprising senior management staff members and in-house lawyer for complaints involving conduct issues, and by a senior management staff member for complaints involving service quality issues or commercial disputes.

149. The actual time required for information gathering, interviews with relevant parties, analyzing evidence and preparation of report may vary considerably depending on the complexity of the complaint in question. If the complexity of a complaint is such that investigation cannot be completed within six months, the HKMA will update the complainant of the progress.

150. For the complaints referred to the relevant insurer/self-regulatory body, the IA will keep in view of developments to ensure that the complaint is handled properly by that insurer or self-regulatory body.

Hungary

151. In Hungary, financial service providers are required to apply a consistent standard of complaints handling throughout the whole process of communication with clients. To that end, financial services providers should strive to exhibit cooperative, flexible and helpful service provider behaviour when managing problems and complaints arising prior to the contract termination, during the contract termination and following the termination thereof.²⁵⁹

152. The HFSA President is entitled to issue legally binding decrees as of January 2012 in the topics of information requirements and complaint handling. In these decrees the HFSA may stipulate detailed rules in compliance with the rules stipulated in the Act.

153. HFSA stipulated rules for all financial organisations operating in all 4 sectors.²⁶⁰

Ireland

154. In Ireland the Central Bank expects the complaint handling requirements as set out in the Consumer Protection Code to be the standard used by firms.

155. Provision 2.8 of the 2012 Code provides that complaints must be handled speedily, efficiently and fairly.

156. Provision 10.7 of the 2012 Code provides that a regulated entity must seek to resolve any complaints with consumers.

157. Provision 10.9 of the 2012 Code provides that a regulated entity must have a written procedure in place for the proper handling of complaints. The procedure need not apply where the complaint has been resolved to the complainant's satisfaction within five business days, (a record of this fact must be maintained). At a minimum the complaints procedure must provide that:

- the regulated entity must acknowledge each complaint on paper or on another durable medium within five business days of the complaint being received;

²⁵⁹ http://www.pszaf.hu/data/cms2378165/recom_11_2012.pdf

²⁶⁰ http://www.pszaf.hu/en/topmenu/legislation/decrees/act_LX_complaint.html

- the regulated entity must provide the complainant with the name of one or more individuals appointed by the regulated entity to be the complainant's point of contact in relation to the complaint until the complaint is resolved or cannot be progressed any further;
- the regulated entity must provide the complainant with a regular update on paper or on another durable medium on the progress of the investigation of the complaint at intervals of not greater than 20 business days, starting from the date on which the complaint was made;
- the regulated entity must attempt to investigate and resolve a complaint within 40 business days of having received the complaint; where the 40 business days have elapsed and the complaint is not resolved, the regulated entity must inform the complainant of the anticipated timeframe within which the regulated entity hopes to resolve the complaint and must inform the consumer that they can refer the matter to the relevant Ombudsman, and must provide the consumer with the contact details of such Ombudsman; and
- within five business days of the completion of the investigation, the regulated entity must advise the consumer on paper or on another durable medium of:
 - the outcome of the investigation;
 - where applicable, the terms of any offer or settlement being made;
 - that the consumer can refer the matter to the relevant Ombudsman, and
 - the contact details of such Ombudsman.

158. In June 2011, the Central Bank published the findings of a themed inspection into complaints handling procedures in investment and stock broking firms. The Central Bank carried out a series of inspections of selected insurance firms (life and non-life,) during 2010 and 2011, focusing on reviewing the procedures and processes in relation to complaints handling. In April 2011, the Central Bank issued a letter to insurance firms to outline the findings of these inspections and highlighted a number of specific concerns identified. All investment and stock broking firms have been advised to review their current procedures to ensure that they meet the standard set out in the Code and that the procedures are approved by senior management within the firms.

Italy

159. The Bank of Italy, 2009 regulations requires financial services providers to have certain procedures in place to handle complaints. These procedures must have the following features:

- a person or an office responsible for complaint handling who are independent vis-à-vis marketing functions;
- easy access for consumers (emails and ordinary mail must always accepted);
- possibility for consumers to interact with staff dedicated to complaint handling directly and without costs;
- professional training for staff dedicated to complaint handling;

- timely responses (maximum 30 days). Responses must be complete; if the financial service provider accepts the complaint, he must indicate the deadline for implementing corrective measures;
- a well maintained register of all complaints which have been received and as well as a yearly report published on the website;
- the control and compliance functions report at least annually on the complaint office to the board.

160. Financial services providers have to mention the existence of such procedures and their features in information documents made available to consumers.

161. Based on Regulation of Bank of Italy and Consob, 2007, intermediaries are required to adopt procedures that are able to assure a timely processing of any complaints received by retail customers or potential retail customers.

162. Customers have to be informed in advance on terms and conditions regarding the processing of complaints.

163. Intermediaries have to adopt specific procedures in order to make sure that the most relevant elements of each complaint received by the firms' clients are recorded, together with the description of how it was dealt with and the steps taken to address the problems.

164. The intermediaries Compliance function, in its periodic report to the management body of the firm (that has to be drafted at least annually), has to include a description of the overall situation of the complaints received by its clients. This generally includes at least the following information: the number of clients' complaints received, usually over a 3 year period; a short description of each of them, as well as a description of how it was dealt with and its final outcome, or if it is still outstanding, if while analyzing the complaint the firm uncovered a more general or procedural issue to be addressed, the report should also describe what consequent action was undertaken by the firm in order to solve the problem or if it is still a work in progress.

165. When the function appointed to deal with complaints within the firm is different from the Compliance function, it should provide the Compliance function the information necessary to draft the part of its periodic report regarding clients' complaints.

Japan

166. Japan has detailed guidelines on how financial services providers should implement international complaints handling mechanisms. These include the following:

1. Role of senior managers:
 - Whether the board of directors has exercised its functions properly with regard to the establishment of a group-wide internal control environment for the function of dealing with complaints
2. Internal rules:
 - Whether the division in charge of complaints, its responsibility and authority, and the procedures for dealing with complaints, have been established in the internal rules so that

complaints can be responded to and dealt with in a prompt, fair and appropriate manner. Also, procedures concerning business improvement have been established so that the views of customers are reflected in the conduct of business operations.

- Whether the financial services provider has developed a control environment, including making sure those internal rules are thoroughly publicized and enforced by means of training and other measures (including the distribution of manuals and so forth) so that business operations for dealing with complaints can be conducted based on internal rules.

3. Control environment for dealing with complaints:

- Whether the financial services provider has appropriately appointed staff in charge of dealing with complaints.
- Whether the financial services provider has developed a control environment in which relevant departments cooperate and promptly deal with any complaints.

Mexico

167. In Mexico the requirement for internal complaints handling procedures are enshrined in law. The Law for the Protection and Defense of Users of Financial Services (LPDUSF) establishes in its article 50 that each financial institution should have a specialized unit to address consumers' enquiries and complaints. This Unit is subject to the following requirements:

- The head of the Unit must have attributions to represent and force the financial institution to comply with the agreements reached on each complaint.
- It must have presence in every State in which the financial institution has branches or offices.
- Its operational costs should be covered by the financial institution.
- It has to reply in writing (the enquiry or complaint) to the user in no more than 30 working days.
- The head of the Unit must present a quarterly report to the National Commission for the Protection and Defence of the Users of Financial Services (CONDUSEF) about the enquiries and complaints received.

168. Financial institutions must display in their branches information about their specialized units including, location, office hours and person(s) in charge. Customers can present their enquiries or complaints directly at the specialized units or at Condusef²⁶¹.

169. All financial statements have to include the email address and telephone number of the specialized unit as well as the telephone and email of Condusef. The regulations also state that in their informative pamphlets and in their web pages they have to have the email address and telephone number of the specialized unit as well as the telephone and email of Condusef²⁶².

²⁶¹ http://www.condusef.gob.mx/PDF-s/marco_juridico/ley_condusef.pdf

²⁶² http://www.condusef.gob.mx/PDF-s/marco_juridico/disposicion_entidades_financieras.pdf

170. Condusef has a directory with information (location and people in charge) of the specialized units of all the financial institutions regulated by the LPDUSF²⁶³.

171. In addition, the Mexican Banking Association (ABM) on its Web page also has a section with an explanation of what the specialized units are and a directory of the specialized units of the banks. It also explains that if banks do not address the enquiries/complaints, users can always go to Condusef²⁶⁴. The National Retirement Savings System Commission (CONSAR) has a section with a directory of the specialized units of the administrators of retirement funds (AFORES)²⁶⁵.

172. A very effective mechanism for an improved attention of complaints is the Electronic Management of Complaints that was launched in 2007 by Condusef. This is an online process through which in real time Condusef communicates with the specialized units of financial institutions to notify them about the complaints they receive. This mechanism has significantly reduced the response time, which is now of approximately 20 days. There are approximately 130 financial institutions that use the electronic management system of Condusef.

Netherlands

173. In 2010, the Dutch AFM started a supervision project called Client Interest First aimed at the five major banks and five major insurance companies in the Netherlands. These ten financial institutions provide 75% of the financial services in the Netherlands. The AFM used dash board tools to rate financial institutions on their services, products and practices with an aim to measure their performance on acting in the interest of clients. Key factor of success of this program is the use of peer pressure, by sharing the results of the dashboard scores in a meeting with senior management of these financial institutions. This project includes claims handling and redress issues. It is not based on rules but on informal approaches. Results of research to effective approaches and the willingness to change culture will be discussed and (in some cases) will be published.

Portugal

Banking sector

174. Circular Letter 6/2008/DSB (issued by Banco de Portugal) establishes the procedures to be followed by credit institutions when handling complaints lodged in the Complaints Book.

175. Circular Letter 25/2008/DSB (issued by Banco de Portugal) establishes the procedures to be followed by credit institutions when handling complaints that were presented directly to the Banco de Portugal by customers.

176. Both administrative rules establish procedures, time frames, and the need for a written response to the complainant with an adequate justification regarding the result of the complaint and obligations regarding record keeping.

177. These complaints are handled by Banco de Portugal (Banking Conduct Supervision Department). According to the procedures established the complaine (the credit institution) is informed about the complaint and has to send the customer a response, which is taken into account by Banco de Portugal when

²⁶³ <http://www.condusef.gob.mx/index.php/unidades-especializadas-de-atencion-a-usuarios>

²⁶⁴ http://www.abm.org.mx/atencion_usuarios/unes.htm

²⁶⁵ http://www.consar.gob.mx/unidades_atencion_afores/atencion_afores.shtml

analyzing the complaint. In this sense the customer always receives a response from his credit institution and from the Banco de Portugal.

178. Furthermore, regarding complaints directly presented to credit institutions by other means than the Complaints Book, Article 77-B of the Legal Framework of Credit Institutions and Financial Companies establishes that:

“Credit institutions or their representative associations shall adopt codes of conduct and inform their customers about them, namely on their website. The said codes shall include the principles and rules of conduct governing the various aspects of their relationship with customers, including the mechanisms and internal procedures adopted for the examination of complaints”.

179. By handling customers complaints Banco de Portugal plays the role of the 3rd party independent appeal entity. At the same time the complaints are an oversight instrument.

Spain

180. Before resorting to the regulator’s complaint mechanism, customers must file their complaint at the customer complaint department of the financial institution.

181. Financial institutions are obliged, after issuing their report through their internal Customer Complaint Service, to inform their clients about the possibility of resorting to the regulator’s mechanism.

182. The inexistence and/or malfunctioning of the internal customer complaint service is subject to sanctions by regulators

183. Relevant regulation

- Art. 30.3.a) FSRL²⁶⁶ – General obligations of internal complaint handling mechanisms
- Internal complaint handling mechanisms (either the Customer Ombudsman or the customer service department) are obliged to acknowledge in writing the receipt of the complaint and also give in writing a reasoned reply.

South Africa

Collective investment schemes

184. GN 910 of 2010

Capital markets

185. JSE Equities Rules

- Rule 11 – Complaints and Disputes

186. Strate Rules

- Section 14.4.3 – Complaints Procedure

²⁶⁶ Financial System Reform Law (Ley 44/2002, de 22 de noviembre, de Medidas de Reforma del Sistema Financiero)

- Section 12 – Disciplinary procedure

187. Securities Services Act 36 of 2004

- Section 18 – Exchange rules

Pension sector

188. In terms of pension laws and financial advisors and intermediaries laws, administrators and service providers are required to have well-defined compliance processes and procedures, maintain a complaints register in order to manage any possible risks to which the entity might be exposed.

- Administrators and service providers do not seriously consider complaints lodged
- Complaints that have insufficient detail are lodged
- Processes and procedures are not followed which can cause a delay in capturing and responding complaints
- Complaints are not addressed to the right entity

Financial advisory and intermediary services

189. FAIS Act -General Code of Conduct S16 - A provider must-

- request that any client who has a complaint against the provider must lodge such complaint in writing;
- maintain a record of such complaints for a period of five years;
- handle complaints from clients in a timely and fair manner;
- take steps to investigate and respond promptly to such complaints; and
- where such a complaint is not resolved to the client's satisfaction, advice is given the client of any further steps which may be available to the client in terms of the FAIS Act or any other law.

190. S17 – Financial services providers must maintain an internal complaint resolution system and procedures based on the following:

- Maintenance of a comprehensive complaints policy outlining the provider's commitment to, and system and procedures for, internal resolution of complaints;
- transparency and visibility: ensuring that clients have full knowledge of the procedures for resolution of their complaints;
- accessibility of facilities: ensuring the existence of easy access to such procedures at any office or branch of the provider open to clients, or through ancillary postal, fax, telephone or electronic helpdesk support; and

- fairness: ensuring that a resolution of a complaint can during and by means of the resolution process be effected which is fair to both clients and the provider and its staff.

191. S18 - The internal complaint resolution system and procedures of a financial services provider must be designed to ensure the existence and maintenance of at least the following for purposes of effective and fair resolution of complaints:

- availability of adequate manpower and other resources;
- adequate training of all relevant staff, including imparting and ensuring full knowledge of the provisions of the FAIS Act with regard to resolution of complaints;
- ensure that responsibilities and mandates are delegated to facilitate complaints resolution of a routine nature;
- ensure that there is provision for the escalation of non-routine serious complaints and the handling thereof by staff with adequate expertise;
- internal follow-up procedures to ensure avoidance of occurrences giving rise to complaints, or to improve services and complaint systems and procedures where necessary.

192. S19 - The internal complaint resolution system and procedures of a provider must contain arrangements which must-

- reduce the details of the internal complaint resolution system and procedures of the provider, including all subsequent updating or upgrading thereof, to writing;
- provide that access to the procedures is at all times available to clients at any relevant office or branch of the provider, or by electronic medium, and that such availability is appropriately made known by public press or electronic announcements or separate business communications to existing clients;
- include in the details envisaged in subparagraph (a), a reference to the duties of the provider and the rights of a client set out in the Rules of the Ombud for Financial Services Providers;
- include in such details a clear summary of the provisions of the FAIS Act, which will apply whenever the client, after dismissal of a complaint by the provider, wishes to pursue further proceedings before the Ombud; and
- include in such details the name, address and other contact particulars of the Ombud;
- stipulate that complaints must, if possible, be submitted in writing and must contain all relevant information, and that copies of all relevant documentation must be attached thereto;
- provide that the receipt of complaints is promptly acknowledged in writing to the client, with communication particulars of contact staff to be involved in the resolution of the complaint, and are properly internally recorded by the relevant staff;
- make provision that after the receipt and recording of a particular complaint, the complaint will as soon as practically possible be forwarded to the relevant staff appointed to consider its resolution, and that-

- the complaint receives proper consideration;
- appropriate management controls are available to exercise effective control and supervision of the consideration process;
- the client is informed of the results of the consideration within the time referred to in Rule 6(b) of the Rules of the Ombud: Provided that if the outcome is not favourable to the client, full written reasons must be furnished to the client within the time referred to in Rule 6(b) of the Rules of the Ombud, and the client must be advised that the complaint may within six months be pursued with the Ombud whose name, address and other contact particulars must simultaneously be provided to the client.

193. In any case where a complaint is resolved in favour of a client, the provider must ensure that a full and appropriate level of redress is offered to the client without any delay.

194. Financial services providers must implement the internal complaint and resolution systems and procedures as required by the FAIS Act. Failure to comply may result in the withdrawal of their licences or the imposition of a penalty.

- Financial services providers must implement the internal complaint and resolution systems and procedures as required by the FAIS Act. Failure to comply may result in the withdrawal of their licenses or the imposition of a penalty.
- The FSB conducts regular on-site visits to determine compliance with the relevant provisions of the FAIS Act. Preferably under guidance from the regulator.
- The FSB implemented compulsory regulatory examinations with the purpose of testing the knowledge of financial services providers in respect of the requirements of the FAIS Act and their responsibilities under the Act.

195. Although financial services providers maintain a complaint resolution system, awareness of such system is not necessarily carried through to the staff of the provider.

Turkey

196. With respect to complaints addressed to “Customer Complaints Arbitration Committee of the Banks Association of Turkey” and “Customer Complaints Arbitration Committee of the Turkish Participation Banks Association”, according to Communiqué on Appointment and Working Principles and Procedures of Customer Complaints Arbitration Committee, before an application to that Committees, the complaint will first be communicated by the complainant to the head quarter or relevant branch of the bank in writing or by e-mail. Bank’s head quarter or relevant branch is obliged to give a positive or negative answer to complaint of the complainant within thirty days of receipt of application (twenty days for the applications about bank card or credit card) from the complainant. The complainant may apply to the Committees by filling in a complaint form within thirty days starting from the date of answer if and when the answer given by the bank’s head quarter or relevant branch is not satisfactory to the complainant, or starting from the end of answering period if no answer is given to him by the end of the period.

UK

197. Ensuring that firms treat customers fairly is at the heart of the UK consumer protection agenda. Central to this is the importance of firms embedding a culture that is committed to the fair treatment of

their customers. The quality of a firm's complaint handling is an important aspect of this, revealing the extent to which cultural drivers such as senior management engagement, decision-making and staff reward structures are delivering fair outcomes for customers. Carried out well, complaint handling represents a valuable opportunity for firms to rebuild and enhance their relationships with their customers when something has gone wrong, and to use the information gathered to make changes that deliver fair outcomes for their wider customer base (for example, by changing their product design or sales processes).²⁶⁷

198. The FCA has detailed rules and guidance requiring firms to deal promptly and fairly with complaints from eligible complainants. These rules require firms to have in place and to operate appropriate and effective procedures for registering and responding to complaints.

199. A rules-based approach requires firms to establish, implement and maintain effective and transparent procedures for the reasonable and prompt handling of complaints. They must put in place appropriate management controls and take reasonable steps to ensure that when handling complaints they identify and remedy any recurring or systematic problems. Firms must appoint an individual at the firm or in the same group as the firm, to have responsibility for oversight of the firm's compliance with the rules on treating complainants fairly.

200. The individual must be carrying out a 'governing function' at the firm or in the same group as the firm. The rules require firms to keep a record of each complaint received and the measures taken for its resolution, and retain that record for at least three years from when the complaint was received. Firms are required to publish appropriate information about their internal procedures for the reasonable and prompt handling of complaints. FCA rules require firms to:

- investigate complaints competently, diligently and impartially, obtaining additional information as necessary;
- assess fairly, consistently and promptly the subject matter of the complaint, whether it should be upheld, what remedial action or redress (or both) may be appropriate; and if appropriate, whether it has reasonable grounds to be satisfied that another firm may be solely or jointly responsible for the matter alleged in the complaint taking into account all relevant factors;
- offer redress or remedial action when appropriate;
- explain to the complainant promptly and in a way that is fair, clear and not misleading, its assessment of the complaint, its decision on it, and any offer of remedial action or redress; and
- comply promptly with any offer of remedial action or redress accepted by the complainant.

²⁶⁷ Financial Services Authority Review of Complaint Handling in Banking Groups April 2010

3. ALTERNATIVE DISPUTE RESOLUTION

COUNTRY EXAMPLES

Australia

201. The law requires Australian credit licensees to be members of an External Dispute Resolution (EDR) scheme. Examples of approved EDR schemes include:

- The Financial Ombudsman Service handles complaints about banking, credit, loans and debt collection, life insurance, superannuation, financial planning, insurance broking, stockbroking, investments, managed funds, timeshares, general insurance, finance and mortgage broking. They cover complaints where the value of the claim is \$500,000 or less.
- The Credit Ombudsman Service Limited handles complaints about credit unions, building societies, non-bank lenders, mortgage and finance brokers, financial planners, lenders and debt collectors, credit licensees and credit representatives. They cover complaints where the value of the claim is \$500,000 or less.

202. Industry-supported EDR schemes play a vital role in the broader financial services regulatory system.

203. The existence of these schemes provides a forum for consumers and investors to resolve complaints or disputes that are quicker and cheaper than the formal legal system. It encourages improvements in industry standards of conduct, and consequent improvements in relations between industry participants and consumers.

204. The ASIC MoneySmart website includes information about how to complain about different issues, including financial services and products, consumer goods and services and prices and competition.

Canada

Banking sector

205. The Complaints (Banks, Authorized Foreign Banks and External Complaints Bodies) Regulations (the Regulations) set out the requirements and standards that external complaints bodies must meet to be approved by the Minister of Finance. The regulations set explicit requirements for approval, including high standards for independence, timeliness and transparency. The Financial Consumer Agency of Canada conducts an in-depth review of external complaints bodies applying for approval to ensure that they meet the standards set out in the regulations, and monitor these bodies on an ongoing basis to ensure compliance with these high standards.

Securities sector

206. For the securities sector NI 31-103 provides, for all CSA jurisdictions, a formal requirement for all registered dealers and advisers (including IIROC and MFDA members) to ensure that independent dispute resolution services or mediation services are made available, at the firm's expense, to clients in order to resolve complaints about any trading or advising activity of the firm or one of its individual representatives.

207. Under the relationship disclosure requirements in NI 31-103, clients must be informed about their right to access these dispute resolution or mediation services (See section 14.2). In addition, once a client

makes a complaint, the firm is again, as soon as possible, required to provide the client with information regarding how to contact and use the dispute resolution or mediation services which the firm has made available for its clients (NI 31-103, sec. 13.15 (2); Québec Securities Act, s. 168.1.3).

208. Investors who are unable to resolve their dispute or complaint with an IIROC or MFDA member can take the dispute to the Ombudsman for Banking Services and Investments (OBSI). OBSI offers a free, independent and impartial resolution service and provides compensation of up to \$350 000. OBSI's recommendations are not binding, but investors may still pursue legal action after using OBSI's services.

Czech Republic

209. Relevant regulation - Act No. 229/2002 Coll., on the financial arbitrator.

210. The financial arbitrator was established in 2003 as a body for out-of-court resolution of disputes between consumers and financial institutions. The proceedings are free of charge for the consumer. The decisions of the arbitrator are binding and enforceable. The scope of authority of the financial arbitrator is gradually being widened to currently include, besides payment services, consumer credit and collective investment. Thanks to the compulsory nature of the proceedings, the financial arbitrator is seen to be effective. In the pilot project of voluntary ADR platform, conducted by the Ministry of Industry and Trade of the Czech Republic from April 2008 to April 2010, out of 2370 filed consumer complaints, the trader did not react at all or refused to participate in 1263 instances, gravely curbing the intended purpose of the scheme.

France

211. Pursuant to article L316-1 of Financial and monetary code, all credit and payment institutions have to participate to a mediation procedure.

212. An alternative dispute resolution organization (mediation) is open if the recourse through the internal complains handling has been unable to settle the dispute.

213. The decisions of the mediator have to be taken within two months and are free of charges. The decisions are not binding neither for financial services providers nor consumers. Mediation procedure suspends the prescription of the juridical action.

214. Should parties be unable to settle the dispute through mediation, they may take a court action Findings and declarations collected during the mediation process cannot be used in subsequent court action without the agreement of both parties.

215. A National Committee of the mediation in the France central Bank is in charge to examine all the rapports issued by the different mediators and publishes each year a single rapport about the mediation in the banking sector (article L615-2 Monetary and financial code).

216. ACP the French supervisor request annual data from financial services provider on complains handling procedure, types and volume of complains and use this information to organize its program of control (Instruction n° 2012-I-07).

217. In the event of a dispute relating to investor information, order execution (lead-time, order content), portfolio management and custody, the French AMF's Ombudsman can help the parties to reach an out-of-court settlement and avoid legal action. It does not act as lawyer for either party or as judge. Before seeking assistance from the Ombudsman's Office, the consumer must contact his financial intermediary or the company in which he is a shareholder.

218. The Ombudsman's Office cannot intervene if an AMF audit or enquiry is underway or if legal proceedings have already been initiated. Accepting mediation in no way implies recognising fault or liability.

219. Mediation is free of charge, confidential (the information and documents exchanged during the mediation procedure, the names of the parties involved and the Ombudsman's recommendation may not be disclosed), impartial (the Ombudsman acts entirely independently), quick (in principle, the mediation process takes three months from the time when the parties provide the Ombudsman with all the necessary information), non-binding (the Ombudsman makes a recommendation but the parties are free to reject it), in accordance with law and equity (fair, equal and equitable).

Germany

220. Many credit institutions and the majority of insurers in Germany have voluntarily agreed to settle possible disputes with the help of private mediators, so-called ombudspersons. These conciliation boards have been established within the industry associations of the respective companies. Two private-law institutions have been authorized by the government to act as conciliation boards for insurance and insurance intermediaries. The ombudspersons themselves, however, are independent. The ombudspersons are appointed for a specific period and may not, for instance, be dismissed prematurely simply because they have adjudged a case to the company's disadvantage. In most cases, the ombudspersons are highly qualified legal professionals, e.g. former federal judges. The procedural rules to be applied may differ between the respective ombudspersons. The procedure is generally free of charge for the applicants. Some ombudspersons are authorized to adjudge cases up to a specific amount in controversy (usually EUR 5,000); the rulings are binding on the companies concerned. In contrast, some ombudspersons are merely authorized to issue non-binding recommendations.

Hong Kong

221. All financial institutions authorized by the HKMA and /or licensed by the SFC are members of the FDRS and agree to abide by the rules and procedures in respect of the FDRS.

222. For the licensing condition for AIs that they should become a member of the FDRS, pursuant to section 16(5) of the Banking Ordinance and HKMA circular of 21 May 2012.

223. The FDRC, which commenced operation on 19 June 2012, is a non-profit making organisation which provides individual customers with an independent and affordable avenue, as an alternative to litigation, for resolving monetary disputes with financial institutions. The FDRC administers a financial dispute resolution scheme (FDRS) by way of "Mediation first, Arbitration next". If mediation is unsuccessful, the claimant may choose to arbitrate the dispute. The arbitral award rendered by the independent arbitrator appointed by the FDRC will be binding on both parties. The details of the FDRS and the Terms of Reference can be found at the FDRC website.²⁶⁸ The FDRC will submit such information within its knowledge relating to systemic issue and/or suspected serious misconduct cases to the HKMA.

224. The ICCB serves as an alternate dispute resolution scheme to offer a free claims complaints service to the insuring public in respect of their personal insurance contracts. The Insurance Claims Complaints Panel ("Complaints Panel") was established to provide independent and impartial adjudication of complaints between insurers and their policyholders or their beneficiaries and rightful claimants.

²⁶⁸ <http://www.frdc.org.hk>

225. For insurance-related financial services offered by AIs, the complaints can be lodged with the FDRC.

226. The FDRC administers a financial dispute resolution scheme (FDRS) by way of “Mediation first, Arbitration next”. If mediation is unsuccessful, the claimant may choose to arbitrate the dispute. The arbitral award rendered by the independent arbitrator appointed by the FDRC will be binding on both parties.

Hungary

227. The Financial Arbitration Board (FAB) is operated by the Hungarian Financial Services Authority (HFSA) was set up in July 2011 and is a professionally independent dispute (out-of-court) settlement body. FAB covers disputes between consumers and financial organisations to the conclusion and performance of contracts in connection with *the services* supplied with a view to reaching an out-of-court settlement. To this end, the FAB attempts to reach a conciliation agreement or, failing this, to adopt a decision in the case to enforce consumer rights simply and practically and under the principle of cost-efficiency.

Ireland

228. The Financial Services Ombudsman (FSO) is a statutory officer who deals impartially and independently with unresolved complaints from consumers about their individual dealings with all financial services providers.

229. The FSO is the arbiter of unresolved disputes and is independent and impartial from the appointing authority or industry. The Central Bank and Financial Services Authority of Ireland Act 2004-section 16 and schedules 6 and 7 establish the Financial Services Ombudsman as an independent officer.

230. The FSO’s decision is binding on both parties, subject to appeal to the High Court. The FSO has the power to award redress or compensation. The ability to correspond with the consumer is set out in Section 57CD of the Central Bank Act 1942 which states:

“The Financial Services Ombudsman may, in the course of investigating a complaint, periodically report to the complainant on the progress of the investigation, and in doing so, may make such comments to the complainant on the investigation and its consequences and implications as that Ombudsman thinks fit.”

231. The FSO’s services are provided free of charge to consumers. The website of the FSO’s office defines the type of consumer who can lodge a complaint and sets out the type of financial service provider which falls within the remit of the FSO’s investigation powers.

Italy

232. In Italy the law provides that there should be systems, in the banking and financial sector, for resolving disputes out of court and they should be able to provide a simple and effective instrument for consumer protection. In 2009 secondary legislation adopted by the Bank of Italy established the Arbitro Bancario Finanziario (ABF). All financial services providers have to adhere to the ABF.

233. The law establishes three basic principles:

- the system must be rapid and economical and must provide effective protection;

- the deciding body must be impartial and representative;
- the right to recourse to other means of protection provided by law must be safeguarded.

234. The aims of the ABF are:

- to protect consumers when the amounts involved are small or the characteristics of the dispute would make it difficult to go to court;
- to help restore trust between financial services providers and their customers; and
- to promote correct and transparent relations, as intermediaries progressively comply with the ABF's guidelines.

235. There is a fee which must be reimbursed by the financial services provider if the ABF finds in favour (or even partly in favour) of the consumer.

236. The ABF's area of competence is also limited by the subject of the dispute (banking and financial transactions and services other than investment) and the amounts in question (which cannot exceed €100,000 if the consumer is claiming a sum of money). The ABF participates in the EU network Fin-Net for the resolution of cross-border disputes.

237. Dispute resolution is the responsibility of the panels, which are made up of five members appointed by the Bank of Italy, three of whom chosen by the Bank itself and two nominated at the suggestion, respectively, of the representative bodies of the intermediaries and the consumers. There are specific requirements for nominees regarding experience, professionalism, integrity and independence.

238. The Bank of Italy acts as the secretariat for the panels through its own offices, which carry out auxiliary and preparatory activities. Staff working for these offices receive ad hoc training. The decisions themselves are the exclusive competence of the panels. The competent panel makes its decisions, determining whether the claim of the consumer is grounded. The decision is made according to law, i.e. by applying the provisions of laws and regulations and, where appropriate, codes of conduct to which the financial service provider is a signatory. The provisions indicate that decisions are taken within a maximum of 105 days, except when there is a period of suspension deliberated by the panels for investigation purposes.

239. The ABF's decisions are not binding, but if the financial services provider does not implement the decision the consumer as established by the panel, a notice of non-fulfilment is made public. Although decisions are not binding, financial service providers normally implement them (e.g. in 2011 only 2 decisions out of 1,109 were not implemented); furthermore decisions may help consumers file a case in court.

240. In relation to disputes arising between investors and financial intermediaries regarding compliance with disclosure obligations, correctness and transparency as envisaged in the contractual relations with customers and regarding investment or asset management services, the law has introduced two possible ADR proceedings: conciliation and arbitration.

241. A petition to initiate the conciliation procedure may be presented exclusively by the investor when, in relation to the dispute:

- no other conciliation procedures have been initiated;

- a complaint has been presented to the intermediary to which a specific response was provided, a period of 90 days or any shorter period set by the intermediary for handling the complaint has elapsed without the investor having received a response.

242. The conciliation procedure has to be carried out following the principles of being rapid, concentrated and on a verbal basis. All its phases have to be confidential. The procedure also has to be based on the principles of impartiality and cross-examination, notwithstanding the conciliator's right to hear the parties separately.

243. The Chamber ensures that the documents introduced into the conciliation procedure as well as any other documents submitted by the individuals that participate in the conciliation procedure in any capacity or which are created during the procedure are adequately maintained and kept confidential. The Chamber has to assess the eligibility of the petition within 8 days of its submission and has to request the petitioner to make any additions or corrections within an appropriate time period. Once the petition has been declared admissible the Chamber has to invite the intermediary to accept the conciliation attempt. Within 10 days of the invitation being submitted by the Chamber, the intermediary notifies his agreement to the conciliation attempt by the investor.

244. Once it has received the agreement by the intermediary to the conciliation attempt and verified the basis for the initiation of conciliation on the basis of the documents produced by the parties, the Chamber proceeds without delay to appoint a conciliator from those included on the list. In making the appointment, the Chamber applies the following criteria, on the basis of the principles of a fair distribution of appointments and equal treatment of genders:

- a location close to the investor;
- experience and competence acquired by the conciliator on the specific issues of the dispute in question;
- results of disputes previously assigned.

245. The Chamber communicates the appointment to the conciliator and the parties without delay. Once the conciliator has received the appointment and the documentation produced by the parties, he/she has to provide a declaration of acceptance within 5 days.

246. The parties have, in any case, the right to mutually agree and notify the Chamber of the name of a conciliator to whom the dispute should be assigned. The procedure is concluded within 60 days of the date on which the request is filed. When an amicable agreement is reached, the conciliator prepares a report to which he attaches the text of the said agreement. If no agreement is reached, the conciliator can prepare a proposed conciliation. In any case, the conciliator prepares a conciliation proposal if the parties agree on a request at any stage of proceedings. The conciliation proposal is notified to the parties in writing. The parties shall provide the conciliator, in writing within 7 days, their acceptance or refusal of the proposal. Failure to respond in time will mean that the proposal is considered to have been refused.

247. When a friendly agreement is reached or when all parties agree to the conciliator's proposal, a report is prepared that must be signed by the parties and by the conciliator, certifying the signatures of the parties or the fact that they were unable to sign. The agreement reached, including following the proposal, may entail payment of an amount of money for each breach or failure to comply with the obligations set out therein or for delay in their fulfilment.

248. Where conciliation fails, the conciliator prepares a report specifying any proposal(s) made; the report is signed by the parties as well as the conciliator who certifies the signature of the parties or the fact that they were unable to sign. This same report is also used by the conciliator to note the failure to attend the proceedings by the investor petitioner or by the intermediary who had agreed to the conciliation attempt.

249. The charges for the use of the conciliation service comprise the procedure's set-up expenses and are payable to Consob. The fees vary from a minimum of 43 Euros to a maximum of 4,600 euro, depending on the value of the dispute. Arbitration administered by the Chamber is a form of legal proceedings governed by the provisions of this regulation and by article 806 and following of the Italian Code of Civil Procedure.

250. There are two different types of arbitration: full and fast track. Unlike full arbitration, fast-track proceedings merely aim to compensate the equity damages suffered by the investor as a result of intermediary default in terms of disclosure, correctness and transparency obligations envisaged in contractual relations with investors. Also, the decision made by the arbitrator in the fast track procedure has to be based solely on evidence submitted in advance by the parties when applying for arbitration. In the case of full arbitration, the decision must be pronounced within 120 days of acceptance of the appointment of the arbitrator. In the case of fast track arbitration, parties must appear before the arbitrator no later than 15 days from the date of acceptance. During the hearing, the arbitrator has to verify adversarial regularity, freely interrogate the parties and, based on the facts submitted, has to ask the parties for clarification as necessary and has to indicate official matters deemed appropriate for negotiation.

251. On conclusion of negotiations, without prejudice to special circumstances calling for a new hearing within the following 20 days, the arbitrator has to invite the parties to specify conclusions. Within 20 days of the specification of conclusions, the arbitrator has to pronounce the final decision on the basis of documents submitted and taking into account elements emerging during the hearing. The fees may vary from a minimum of 600 Euros to a maximum of 76, 000 euro, depending on the value of the dispute and the fact that the arbitrator is a single person or a panel

Japan

252. Under the new financial ADR system that Japan introduced in April 2010, organizations in charge of ADR, called “dispute resolution organizations,” are established by each of the business categories, namely banks, securities companies, and insurance companies, etc. After receiving applications, the JFSA designates organizations with the requirements as “designated dispute resolution organizations.” Once a designated dispute resolution organization is established, a financial institution must conclude a master agreement regarding execution of proceeding with the designated dispute resolution organizations. On the other hand, in cases where there are no designated dispute resolution organizations in an industry, financial institutions shall take measures equivalent to those of ADR.

253. Dispute resolution committees are made up of experts with sufficient knowledge and experience, including attorneys, and consumer consultants. Also, designated dispute resolution organizations are required to take measures to ensure independence and impartiality. Designated dispute resolution organizations encourage both financial institutions and consumers to reach a settlement or suggest “special mediation proposals” that, in principle, financial institutions shall comply with. Financial institutions, as well as consumers where necessary, bear the expenses of dispute resolutions. Designated dispute resolution organizations shall make a policy regarding the pricing or the calculation method in advance, considering that financial burdens on customers are reasonable enough to ensure the consumer’s access to the dispute resolution.

Mexico

254. In Mexico Title V of the LPDUSF describes the arbitration process that users can seek when they are not satisfied with the response to their complaint. Condusef or a third party suggested by Condusef can act as arbitrator. The arbitration process is voluntary. In case that the resolution of the arbitration process is against the financial services provider, it has 15 working days to comply with it. The arbitration process established in the LPDUSF is voluntary, and the experience has shown that financial services providers have no incentives or interest in participating in this process; they prefer to go to court because it is rare that a user will go to court (given the costs (time and money) that this process represents).

Portugal

255. In Portugal, Decree Law No. 146/99 of 4 May establishes a framework for the creation of private entities that may provide out of court settlement of consumer disputes and whose decision may, in some circumstances, be binding on the professional providing the product/service.

256. Furthermore an arbitration framework is established under Law No. 63/2011 of 14 December (Voluntary Arbitration Law) and Decree-Law n° 425/86 of 27 December (on Arbitration Centers).

257. In what regards banking products and services in specific, the providers of payment services and e-money services are obliged to give their customers the chance to resolve disputes through arbitration and when the dispute is ≤ 5.000 euro, by adhering to, at least, two entities authorized to make arbitrations or two bodies responsible for out-of-court settlement of consumer disputes. These obligations steam from the transposition of the EU Payment Services and E-money Directives.

Spain

258. Relevant regulation

- Art. 30.1 FSRL²⁶⁹ – Principles governing supervisors' complaint mechanisms

259. The organization and functioning of supervisors' complaint mechanisms shall adjust to the principles of independence, transparency, adversariality, efficacy, legality, liberty and representation.

260. A one-stop-shop method applies to the supervisors' complaint departments, by which any of the three departments getting a complaint, claim or consultation for which it actually has no competence is obliged to personally redirect it to the competent department.

261. Supervisors' complaint departments inform the supervisory authorities of any indication of serious or repeated violation by the same entity.

262. Decisions issued by the supervisors' complaint departments are not binding for financial institutions, which only have the obligation to inform the supervisors' complaint department whether they agree or not with the decision, and are not subject to appeal.

²⁶⁹ Financial System Reform Law (Ley 44/2002, de 22 de noviembre, de Medidas de Reforma del Sistema Financiero)

South Africa

Collective investment schemes

263. GN 910 of 2010

Capital markets

264. JSE Equities Rules

- Section 11.40 – Redress
- Section 11.70 – Applicability of dispute resolution rules
- Section 11.100 – Consideration by an Ombud

265. Strate Rules

- Section 10 – Resolution of disputes

Pension sector

266. In terms of pensions law any aggrieved members or funds can lodge complaints with the pension funds adjudicator. The adjudicator also has a separate conciliation unit to speedily resolve complaints. In addition, an aggrieved party may approach the High Court to take the determination issued by the pension funds adjudicator on review.

267. Appeals are frequently lodged against determinations and in many cases the determination has been set aside. This is a costly process and members cannot afford to appeal against determinations or defend rulings in their favour in many cases.

Financial advisory and intermediary services

268. FAIS Act. S20 – Provides for the establishment of a statutory ombud for financial services.

269. Financial Services Ombud Schemes Act, 2004 (FSOS Act). This Act provides for-

- the recognition of voluntary financial services ombud schemes;
- minimum requirements for recognition of such schemes;
- promotion of consumer education with regard to ombud schemes;
- co-ordination of the activities of ombuds of recognised schemes with the activities of the two statutory ombud schemes (Pension Funds Adjudicator and the Ombud for Financial Services Providers);
- development and promotion of best practices for complaint resolution;
- the Ombud for Financial Services Providers to act as a statutory ombud in certain cases and to provide for matters connected therewith;

- ways in which it will co-operate with the Council's functions of promoting the education of clients and co-ordinating the activities of an ombud of a recognised scheme, the Adjudicator, the Ombud for Financial Services Providers and the statutory ombud;
- the establishment of an independent body (Council) to recognise, oversee the recognised ombuds and to monitor their compliance with the FSOS Act.

270. The Rules of Ombud scheme must provide for the effective enforcement of determinations of the ombud by stipulating that the participants of the scheme are legally bound to honour the ombud's determinations and to give effect thereto within the time stipulated by the ombud, subject to any right of appeal which a scheme may provide for.

271. A centralised call centre for all the recognised ombuds was established to ensure an effective and speedy dispute resolution process.

- A statutory ombud was established to deal with complaints falling outside the jurisdiction of the recognised voluntary ombuds thus ensuring that all complaints could be dealt with.
- The various Ombuds entered into bi-lateral agreements to promote co-ordination and co-operation between Ombud Offices.
- The Ombuds conducted various consumer awareness initiatives since 2005. Consumers are provided with a detailed breakdown of all costs (both direct and indirect) relating to their investments
- The FSB's Consumer Education Department conducts an on-going awareness campaigns as regards the various Ombuds and their respective jurisdictional limitations.

272. Confusion exists amongst consumers as to which Ombud a complaint must be lodged.

273. Co-ordination between Ombuds in certain instances is problematic. Regulators issue public risk warnings on their websites and if regarded necessary and material, through press releases.

274. Jurisdictional limits of the various Ombuds are not always clear and this causes the Ombuds to adjudicate on complaints received in different ways.

Turkey

275. There are three committees authorised for alternative dispute settlement in the field of banking activities, named as "Customer Complaints Arbitration Committee of the Banks Association of Turkey", "Customer Complaints Arbitration Committee of the Turkish Participation Banks Association" and "Arbitration Committee for Consumer Problems".

276. Customer Complaints Arbitration Committee of the Banks Association of Turkey and Customer Complaints Arbitration Committee of the Turkish Participation Banks Association: Customer Complaints Arbitration Committees are reconciliatory committees that have been established within the Banks Association of Turkey and the Turkish Participation Banks Association for the assessment and solution of the disputes between the individual customers and banks. As the activities of the committees cover individual banking transactions related to real-person bank customers excluding his/her commercial transactions, only real persons may apply to the Committees.

277. Members of the Customer Complaints Arbitration Committees are elected by the Association's Board of Directors from among nominees of banks. Alternate members to deputize the associate members holding a graduate degree in law must also hold a graduate degree in law.

278. Customer Complaints Arbitration Committees examine complaints and disputes concerning all kinds of individual banking transactions that are not related to commercial transactions, current and PLS accounts, individual credits, credit cards, ATM cards, etc. Applications to the Customer Complaints Arbitration Committees are to be made by filling in the Complaint Form by the customer; if the reply by the bank's general management or the branch thereof is not found sufficient within thirty days following the receipt of the reply; in case of no-reply within thirty days following the expiry of this period; in case of forces majeures within a year. A complainant should first refer to his/her bank as regards to his/her complaint.

279. Customer Complaints Arbitration Committee's task shall have terminated for such complaints as were carried to the court after they had been referred to the Committee.

280. Filing of complaints by the Committee does in no case keep back the legal time limitations relating to the application of the sides to juridical courts or arbitration courts or to the reference of the underlying dispute to juridical courts or arbitration courts.

281. Arbitration Committee for Consumer Problems: Arbitration Committees for Consumer Problems are independent bodies which are responsible for the out-of-court settlement of consumer disputes. They were established mainly with the aim of providing simple and inexpensive means for the resolution of consumer disputes arising from the application of the LPC. Each Arbitration Committee consists of five members, including the president. The Director of Industry and Commerce of the province, or an officer appointed by him, is the president of the Committee. Of the other members of the Committee, one is appointed by the Mayor of the Municipality from among the staff of the Municipality, one by the Bar Association from among its members, one by the Chamber of Commerce and Industry and one by the Chamber of Artisans and Craftsmen. The members appointed by the Chamber of Commerce and Industry and the Chamber of Artisans and Craftsmen participate in the Committee as alternates, depending on whether the other party to the dispute is a tradesman or an artisan or craftsman.

282. Consumer organisations, or consumption cooperatives in their absence, are entitled to elect a member to represent them on the Committee. The LPC sets a monetary limit and grants judicial power to Arbitration Committees for Consumer Problems only where a dispute involves a value below the relevant limit. If the claim is valued at an amount equal to or more than the monetary limit established in accordance with the LPC, a claimant is not required to bring the dispute before the Arbitration Committee for Consumer Problems, and if he desires to obtain an enforceable decision, he must bring the dispute in a Consumer Court. Where Arbitration Committees for Consumer Problems have exclusive power to deal with disputes, the system is characterised as a compulsory arbitration. Due to the fact that the costs of the operation of the Arbitration Committees will be paid from a fund in the budget of the related Ministry, the parties to the dispute are exempt from all costs. Where a consumer dispute involves a claim at an amount below the monetary limit, the award of the Committee will be binding upon the parties just like a judgement rendered by a court, and is to be executed in accordance with the provisions of the Code of Execution and Bankruptcy.

283. Either or both of the parties having a legal interest can apply to the Consumer Court for a judicial review of the award within a period of fifteen days commencing from the date on which they are officially informed of the award. The application for a judicial review does not prevent the execution of the award of the Committee. However, upon request, the judge may decide to suspend the execution by means of a

precautionary measure. The Consumer Court may either approve or disapprove the award of the Arbitration Committee.

284. In both cases, the decision of the Consumer Court is final; in other words, no further review of the court's decision is possible. If the value of the claim is equal to or exceeds the amount set as the monetary limit and therefore remains out of the exclusive power of the Arbitration Committee, the consumer may still bring the dispute before the Arbitration Committee for Consumer Problems. However, if such a dispute is brought before an Arbitration Committee, the decision of the Committee is not binding upon the parties in the sense of an award, but instead constitutes evidence that can be presented in the Consumer Courts.

UK

285. The UK Ombudsman service scheme is also free to consumers. It is funded through a combination of a general levy on all firms and a case fee. The general levy is divided across the activities that firms are permitted to undertake and increases with the amount of relevant business done by the firm.

286. The Ombudsman service seeks to resolve cases by mediation where that is practicable. Where mediation is not practicable, the Ombudsman service makes a formal decision.

287. The Ombudsman service is required by statute to resolve complaints on a 'fair and reasonable' basis. Complaints can be made to the Ombudsman service once the firm has sent a final response to the consumer or once eight weeks have elapsed since the complaint was received by the firm. The Ombudsman service seeks to resolve cases by mediation where that is practicable. Where mediation is not practicable, the Ombudsman service makes a formal decision. Formal decisions involve at least two stages. A determination (a final decision by an ombudsman) cannot be issued until the parties have been given an opportunity of commenting on a provisional assessment (usually by a case handler).

288. A final decision is legally binding on the firm if the consumer accepts it, but if the consumer does not accept it they are free to pursue their claim before the courts if they wish. If a firm does not comply with the Ombudsman's final decision, the consumer can enforce the decision in the county court. Independently of this, the FCA may decide to take supervisory or enforcement action against any firm it regulates for not paying an Ombudsman service award.

289. The Ombudsman service cannot consider a complaint if the consumer refers it to the Ombudsman service more than six years after the event being complained about, or if later, more than three years from the time the consumer knew or should have known they had cause for complaint (this allows for complaints about e.g. investment advice, where an issue may only emerge some years after the sale). The Ombudsman service is not bound to this limitation where there are exceptional circumstances.

4. COMPLAINTS DATA

COUNTRY EXAMPLES

Australia

290. Information regarding dispute resolution processes and outcomes and other statistics is available online via the Financial Ombudsman Service's annual report. The Credit Ombudsman Service Limited also provides details and statistics of its operations on its website via the Annual Report on Operations.

291. Information is provided on such things as:

- membership, and changes in membership;
- statistics on complaints handling, including comparisons with previous years, and timing of resolution; and
- how complaints are resolved.

Canada

292. The *External Complaints Bodies Regulations* require that external complaints bodies, as well as banks and authorized foreign banks, to publicly report information about the complaints they receive and investigate on an annual basis. This will provide consumers with a fuller understanding of the number and nature of complaints and of the effectiveness of the consumer complaints framework for banking services as a whole.

Czech Republic

293. Relevant regulations include the following:

- Act No. 229/2002 Coll., on the financial arbitrator
- Act No. 6/1993 Coll., on the Czech National Bank
- Act No. 2/1969 Coll., on establishing ministries and other central state bodies
- Act No. 106/1999 Coll., on free access to information

294. Financial arbitrator solves consumer complaints in the field of consumer credits, payment services and collective investing. Financial arbitrator publishes an annual report including review of cases submitted and solved (e.g. in 2011 the financial arbitrator has solved 167 cases – 126 from the payment services area, 37 related to consumer credit and 4 from the collective investing field)

295. The Czech National Bank receives complaints on financial institutions - it cannot decide individual cases, but based on the complaint as supervisory body it can start a procedure with financial institution. The Czech National Bank publishes an Annual Report including also review of complaints submitted.²⁷⁰

²⁷⁰ http://www.cnb.cz/en/about_cnb/performance/annual_reports/index.html.

296. The Ministry of Finance receives complaints on financial institutions - it cannot decide upon individual cases, however, it can provide advice for the consumer on where to submit a complaint.

France

Banking sector

297. An annual activity report is prepared by each mediator and sent to the Governor of the Central Bank

298. The ACP Recommendation on complaints handling asks for

- the availability of clear and transparent information on complaints handling procedures and an easy access to the complaints handling system;
- for entities legally obliged to set up an internal control system (credit institutions); an adequate internal control of complaints data and complaints handling procedure taking into account and to control – as part of its internal control of the entity concerned – the risks to which the customers are exposed as a result from any shortcomings or breaches of consumer protection rules identified through customer complaints data

299. ACP the French supervisor request annual data from financial services provider on complains handling procedure, types and volume of complains and use this information to organize its program of control (Instruction n° 2012-I-07) to improve market conduct.

Germany

300. Consumer complaints provide the financial regulator BaFin with an important source of information for its supervisory work. They alert BaFin to cases where BaFin needs to review whether or not a company is complying with binding legal requirements or applicable judgments and whether supervisory measures are necessary. Complaints can also reveal organisational weaknesses in a company.

Hong Kong

301. On a monthly basis, the Hong Kong Monetary Authority (HKMA) publishes the total numbers of banking complaints received, completed and in progress and analyses those figures by nature of the complaints. The HKMA also reports the abovementioned figures together with a breakdown of the total number of banking complaints received by product annually.

302. The FDRC may publish data about eligible disputes for research, evaluation or educational purposes. The nature and format of publication may include summary of statistics by sectors or nature of cases and any synopsis of individual cases without revealing, or being likely to reveal, directly or indirectly, the identity of the parties.

303. Statistics of complaints handled by the ICCB, HKCIB and PIBA are published regularly in their respective websites.²⁷¹

²⁷¹ http://www.iccb.org.hk/en_statistics.htm, <http://www.hkcib.org/hkcib/en/statistics/statistics.html#4> and http://www.piba.org.hk/index.php/en/statistics?option=com_extra&page_id=statistics

Hungary

304. In Hungary and based on the legislative acts require the service providers shall maintain records on the complaints received from clients, and the actions and measures taken for the handling and resolution of such complaints. According to the legislation information kept by the financial services provider should include the following:

- a description of the complaint, and an indication of the underlying event or fact;
- the date and time of submission of the complaint;
- a description of the measures proposed for the handling and resolution of the complaint, and the reason or reasons if rejected;
- the time limit for taking the measures indicated in paragraph c) and the person appointed to implement it; and
- the date and time of response to the complaint.

305. In terms of the record of the complaint, the service provider is required to set up the complaint records specified in the relevant Act, in a way that it enables the clear identification of the response deadline. The records must be suitable for enabling the service provider to:

- group complaints by subject;
- reveal and identify facts and events that cause complaints;
- consider whether the facts and events found as per point b) may impact other procedures, products or services;
- initiate corrective proceedings regarding the facts and events found as per point b);
- summarize recurring or systemic problems and legal risks.

306. The service providers should record client complaints as well as documents asked to be submitted by clients and the data of clients in accordance with the relevant legislation, in a retrievable manner and guaranteeing high-standard data protection for clients.

307. Complaints made by telephone should be registered by service providers using individual identification numbers to facilitate for service providers to retrieve the complaints and for clients to make reference to the complaints in the future.

Ireland

308. The Banking Code stipulates that a regulated entity must undertake an appropriate analysis of the patterns of complaints from consumers on a regular basis including investigating whether complaints indicate an isolated issue or a more widespread issue for consumers. This analysis of consumer complaints must be escalated to the regulated entity's compliance/risk function and senior management.

309. Provision 10.10 of the 2012 Code provides that regulated entities must maintain an up-to-date log of all complaints from consumers subject to the complaints procedure.

310. Provision 10.11 requires a regulated entity to maintain up to date and comprehensive records for each complaint received from a consumer. This log must be made available to the Central Bank of Ireland on request.

311. Under provision 10.12 regulated entities are required to undertake analysis of patterns of complaints from consumers on a regular basis, including investigating if the complaint is an isolated incident or a more widespread issue. This analysis must be escalated to the compliance/risk function and senior management.

312. While the Central Bank of Ireland does not investigate individual consumer complaints, under the 2012 Code (provision 11.8), the Central Bank of Ireland can require a regulated entity to provide them with records of complaints data and other information as required. As part of its market intelligence function, the Central Bank (Consumer Protection Directorate), will be collecting bi-annual complaints (and other) data from insurance undertakings representing a very high proportion of the domestic retail market in 2013, and plan to extend this requirement to all such firms during 2014.

313. The Financial Services Ombudsman can share certain limited information with the Central Bank of Ireland in relation to consumer complaints. This is set out in a Memorandum of Understanding between these bodies.

314. The FSO publishes case studies and trends each year. Information issued by the FSO would be given consideration by the Central Bank of Ireland when developing regulatory requirements.

315. The Central Bank of Ireland receives and reviews bi-annual reports from the FSO on related key issues and products.

316. With regard to it is intended by the end of 2013, that some Financial Institutions will report statistics on consumer complaints to the Consumer Protection Directorate of the Central Bank.

Israel

317. In Israel Information on complaints handling in Banking Supervision is available to the general public. Banking Supervision analyzes and publishes annually full statistics about complaints, which includes not only aggregate data, but also comparative data about complaints against specific banks. The Annual Report also includes information about systemic irregularities detected from complaints' analysis and measures which banks were required to take in order to correct them. Among the measures are: reimbursement to groups of customers, amendment of bank's internal work procedures, improvement of practices, processes or service. The Banking Supervision is monitoring the implementation of these measures.

Italy

318. In Italy, all decisions adopted by the ABF are published on its website. Financial services providers must take note of them and take appropriate measures in order to ensure compliance with them, also when handling complaints. The Bank of Italy, as supervisory authority in charge of consumer protection in the field of banking services, monitors the decisions adopted by the ABF in order to detect in advance issues having a systemic-wide relevance.

319. For investment and asset management services, Consob receives from intermediaries on a regular basis a copy of the Compliance periodic, that includes a description of the overall situation of the complaints received by the firm's clients, together with a structured mapping of the complaints, including a detailed classification of the complaints by category and investment service involved. Consob, in its annual

report, discloses information regarding the number and the content of the complaints received directly by intermediaries' clients.

Japan

320. Designated dispute resolution organisations endeavour to provide financial institutions with information, including consumer complaints, to promote the processing of complaints. The designated dispute resolution organisation prepares a report each year on dispute resolution, which is then submitted to the FSA.

321. Each industry association and dispute resolution organisation publicly announces the content of complaints from customers. The FSA publicly announces the implementation status concerning the designated dispute resolution at the consultation meeting on financial disputes, taking advantage of the collected data to discuss further developments of the system.

Mexico

322. The LPDUSF states that:

- Condusef shall inform the public about the complaints that it receives from the users against financial services providers. The information shall be aggregated, without identifying the involved users.
- Condusef has to provide information to financial services providers about the complaints it receive and about the products the public is demanding

323. Condusef publishes in its webpage the number of complaints it receives divided by financial product or service and by financial services provider²⁷².

Netherlands

324. Complaints are also useful for financial regulators AFM and DNB to foresee important risks regarding distrust and instability for a financial company. The AFM has got a partnership with Kifid (claims handling institute on ADR basis) regarding signal management. And in some cases the AFM and DNB are working together by preparing survey's regarding claim risks of financial enterprises.

Portugal

325. Paragraph (4) of Article 77. ° -A of the Legal Framework of Credit Institutions and Financial Companies establishes states that:

“Banco de Portugal shall publish an annual report on complaints of credit institutions' customers, specifying their areas of incidence and the complainees, as well as providing information on the handling of those complaints.”

326. Following this provision, and since 2008, data on complaints (from the Complaints Book and presented directly to the central bank) is published in the Banking Conduct Supervision Department's Annual Report [number of complaints per year, per subject and per outcome, the evolution of complaints from the previous year]. In particular, the Report provides a weighted ranking regarding the most complained institutions in the main retail banking markets.

²⁷² <http://www.condusef.gob.mx/index.php/indicadores-estadisticos>

327. Complaints made by bank customers provide crucial information to banking conduct supervision and contribute to improving the knowledge of market practices (namely, possible regulatory gaps, effectiveness of previously adopted regulatory measures and compliance with laws and regulations).

328. The publication of complaints data, namely a weighted ranking of institutions (“blame and shame”) can have a positive impact on institutions behaviour regarding consumer protection and care.

Spain

329. Relevant regulation

- Art. 30.4 FSRL²⁷³ – Annual reports by supervisors’ complaint departments.

330. All three supervisors’ complaint departments must publish an annual report, in which they shall include at least a statistical summary of complaints received during that period, the criteria applied when handling them, the identity of the affected entities and the positive or negative nature of the decision.

- Art. 17 FECMO²⁷⁴ – Annual reports by internal complaints departments.

331. Within the first quarter of the year the internal complaints departments must submit to the board of the entity a report detailing their activity of the preceding year, containing at least: a statistical summary of the characteristics of the complaints received, a summary of the decisions taken and the general criteria on which they are based, as well as any suggestion deriving from their experience as to how to improve the procedure. A summary of that report shall be included in the annual report of the entity.

332. These reports are generally accessible on the internet.

South Africa

Collective investment schemes

333. Paragraph 9 of GN 910 of 2010

Capital markets

334. JSE Equities Rules

- Section 11.50 – Recording of complaints

Pension sector

335. In terms of pensions laws any member of the public may obtain a copy of any determination issued by the pension funds adjudicator and the adjudicator publishes an annual report with statistics on complaints received for the year.

336. Determinations are published on the website of the office of the pension funds adjudicator.

²⁷³ Financial System Reform Law (Ley 44/2002, de 22 de noviembre, de Medidas de Reforma del Sistema Financiero)

²⁷⁴ Financial Entities Customers’ Complaints Management Order (Orden ECO/734/2004, de 11 de marzo, sobre los departamentos y servicios de atención al cliente y el defensor del cliente de las entidades financieras)

337. A summary of determinations and complaints are published in the annual report.

338. Not all complaints are lodged with the pension funds adjudicator and therefore the information and data relating to such complaints are not available to the general public and for trend analysis.

Financial advisory and intermediary services

339. Financial Services Ombud Schemes Act, 2004 S10 states that;

- Ombuds must report to the relevant regulator and to a body representative of the relevant category of financial institutions on matters which may be of interest to them; and
- The rules of the Ombud Schemes must comply with prescribed requirement that, inter alia, deals with publication of determinations and complaints statistics.

340. FAIS Act – Rules on the proceedings of the Office of the FAIS Ombud. S10 – The Ombud-

- must report to the Regulator such facts or information arising from complaints as may be capable for prompting the Registrar to consider action under the Act; and
- the Regulator must liaise and consults regularly.

341. Ombuds publish annual reports providing detail on its determinations and statistics on the number of complaints and type of complaints dealt with during the reporting period.

342. The Regulator analyses all determinations made by the Ombuds in order to determine whether regulatory action is required.

343. Ombuds do not inform Regulator of details of settled matters to enable the regulator to consider the fitness and propriety of financial services providers.

344. Ombuds do not publish details of parties in settled matters, thus not making it possible for regulator to determine a trend of non-compliance by a specific financial services provider.

Turkey

345. Complaints statistics and analyses on complaints about banking activities are summarized in Annual Report of BRSA²⁷⁵. The Customer Complaints Arbitration Committee of the Banks Association and the Participation Banks Association complaints statistics are published as part of the Annual Report that appears on the website²⁷⁶.

346. These statistics and analyses on complaints are used as indicators to address the systematic problems relevant to banking practises. In this context, in line with onsite supervision and implementation activities, if the complaints are related to a specific bank, the bank is warned. On the other hand if the complaints are broadly related to most of the banks, BRSA gives notices to the sector through the Banks Association of Turkey and the Participation Banks Association of Turkey.

²⁷⁵ www.bddk.org.tr

²⁷⁶ www.tkbb.org.tr

347. Database on damages, claims and complaints are monitored and reported under the formation of Insurance Information and Surveillance Centre.

348. These statistics and analyses on complaints are used as indicators to address the systematic problems relevant to banking practises. In this context, in the line with onsite supervision and implementation activities, if the complaints are related to a specific bank, the bank is warned. On the other hand if the complaints are broadly related to most of the banks, BRSA gives notices to the sector through the Banks Association of Turkey and the Participation Banks Association of Turkey.

UK

349. In the UK financial services firms report their complaints to the regulator, the FCA. The format of this report is defined by the FCA. Firms are also required to publish details of their complaints, when they receive more than 500 in a six-month period. The FCA publishes complaints data in aggregate and firm-level form (i.e. a named-firm basis), every six months. The Ombudsman service also publishes data on complaints which it has dealt with. More recently, the Ombudsman Service has made a database of its decisions publically available via its website. This database is fully searchable and covers the period 1 April 2013 onwards.

350. The Financial Services Authority (the predecessor of the FCA) reviewed the impact of the publication of complaints data, looking at whether it had met the objective of focusing firms' senior management's minds on complaints handling and assessed whether there had been any unintended consequences and consumers had paid attention to the publication. In short, the review was generally positive, and evidence suggested that it had focused firms' minds on peer analysis of complaints data and consequently on complaints handling. An added benefit was greater consumer engagement with the data and purchasing decisions using it.