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TAJIKISTAN

***Diagnostic Review of***

***Consumer Protection and***

***Financial Literacy***

**Volume II**

**Comparison with Good Practices**

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# Consumer Protection in the Banking Sector

## Overview

1. Tajikistan’s banking sector shows a low rate of use of banking services by the population. A large percentage of the population lives in rural areas in which access to banking services may be difficult and consumer choice limited or absent. Most daily transactions are conducted in cash, and there are still few opportunities for most consumers to use any other means of payment. For this reason, immediate access to money in the form of cash is especially important to consumers. Most banks currently offer a narrow range of simple banking services to consumers, including money transfers (remittances), time deposits for savings, and “plastic card” accounts that allow consumers to receive payments, obtain cash from cash machines, and to make a limited number of payments. Small loans are also available to individuals to fund income-earning activities. Consumer credit is very limited and consists mostly of mortgage loans.
2. A very large amount of money circulates in the form of cash held outside of the banking system. If a greater share of this money were to be held in banks, it could provide greater safety and additional incomes to account holders as well as liquidity and available lending funds to banks. But consumer confidence in banks remains low, retarding growth of deposits. While there are many factors that affect a consumer’s decision to deposit funds in a bank, several important concerns were repeated during the review:
3. consumers rely on immediate access to their money in cash and believe that they will encounter problems in getting it from ATMs or banks that cannot be resolved quickly;
4. consumers fear that banking information will not be kept private and will subject them to unwanted attention from tax bodies, officials, or others in their communities who may have predatory intentions; and
5. consumers have a poor understanding of banking services, resulting in fear that they may misunderstand or be cheated and will have no effective recourse.
6. With respect to the first concern, there are several broader matters not usually addressed as “consumer protection” that are of great importance. Lack of sufficient banking infrastructure is clearly a primary consideration. The availability of bank branches and other sources of service, the availability of ATMs and their states of repair, and other similar issues clearly play a significant role in whether consumers are able to quickly and reliably obtain the cash needed to conduct daily transactions. As long as these facilities are not sufficient to meet demand, some consumers will continue to be unwilling to leave money in banks outside sums earmarked for longer term savings. Rules concerning bank liquidity and requirements for the availability of currency at bank branches are important in insuring consumers’ access to their funds, although these certainly are not purely consumer protection measures. As ATMs become more important in providing consumers access to cash, factors such as the condition of the stock of circulating currency and the ease with which banks can obtain bills in appropriate condition for machine use can also play a role in assisting or hindering smooth functioning of the system for both banks and consumers.
7. Consumer protection rules, however, can also be important both in ensuring that consumers have ready access to their money in cash and in setting clear expectations that build trust in the system and allow consumers to plan appropriately. Rules of this kind might include requirements concerning the treatment of consumer withdrawals of cash, requirements concerning the service of customers at cashier windows, and clarity concerning the circumstances in which a bank may require prior notice for a withdrawal due to the type of account, size of withdrawal, or other factors.
8. In addition to measures that may be taken to address consumer concerns about the immediate availability of their funds in cash, there are a variety of other measures that may be taken to improve consumer protection in the banking sphere and to address concerns about privacy of information, concerns about consumer understanding and information, and other important issues. These are addressed in the attached review of the legal framework and practices of Tajikistan against a list of good practices in the banking area.
9. The review of Tajikistan’s law and practices presented here is based on interviews and conversations with banks, government officials and other counterparts, as well as with a small number of consumers of banking services. A few test visits to bank offices were made to determine what information might be provided by those offices to an ordinary citizen of Tajikistan inquiring about banking services. It should be noted, however, that although they were requested, no examples of the packages of documents usually provided by banks to their customers could be obtained for review, either from the banks during discussion or by the visitors to bank offices. Thus, there remains some question about precisely what banks are doing in practice in terms of the information content of these materials.

## Comparison with Good Practices for the Banking Sector

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| **SECTION A** | **CONSUMER PROTECTION INSTITUTIONS** |
| **Good Practice A.1.** | ***Consumer Protection Regime***  **The law should provide clear consumer protection rules regarding banking products and services, and all institutional arrangements should be in place to ensure the thorough, objective, timely and fair implementation and enforcement of all such rules.**   1. **Specific statutory provisions should create an effective regime for the protection of a consumer of any banking product or service.** 2. **A general consumer agency, a financial supervisory agency or a specialized financial consumer agency should be responsible for implementing, overseeing and enforcing consumer protection regarding banking products and services, as well as for collecting and analyzing data (including inquiries, complaints and disputes).** 3. **The designated agency should be funded adequately to enable it to carry out its mandates efficiently and effectively.** 4. **The work of the designated agency should be carried out with transparency, accountability and integrity.** 5. **There should be co-ordination and co-operation between the various institutions mandated to implement, oversee and enforce consumer protection and financial system regulation and supervision.** 6. **The law should also provide for, or at least not prohibit, a role for the private sector, including voluntary consumer organizations and self-regulatory organizations, in respect of consumer protection regarding banking products and services.** |
| **Description** | **a.** Tajikistan’s legal framework contains some important basic provisions concerning the rights of consumers of banking products and services. These include requirements for confidentiality of banking information, rules on the content and truth of advertising, and other matters. Some more detailed rules exist in regulatory instructions issued by the National Bank of Tajikistan (NBT), such as rules concerning the kinds of records that banks must keep in relation to credit agreements with a customer. In addition, banks interviewed for the diagnostic review indicated that in at least some areas of consumer protection they follow internal policies and practices that exceed the more limited requirements imposed by legal provisions. Markets for some banking services appear to be reasonably competitive, and bank attention to consumer protection issues suggests that banks are increasingly aware of the importance of consumer satisfaction to individual bank performance and to stability of the larger banking system.  Some of the existing legal provisions, however, are general in nature and not designed for application to banking services, such as those in the law “On the Protection of Consumers’ Rights” and in the law “On Advertising.” Others, although contained in banking legislation or regulatory instructions, lack clarity and detail and/or an effective enforcement mechanism. There are gaps in some important areas that need to be addressed and some existing rules should be changed or strengthened. This situation is not surprising, as the overall legislative framework for banking in Tajikistan is quite new. It makes sense for initial provisions to be drafted to include basic provisions covering some of the most important areas of consumer protection, and for more detailed regulation of specific areas to follow.  **b.** A more important and fundamental problem at present is the lack of institutional structures that are responsible for regulating for consumer protection or for receiving and responding to consumer complaints in the banking sphere. Although the NBT is responsible for supervising the banking system, including observance of those legislative rules that protect consumers, it does not have clear and specific responsibility to ensure protection of the consumers of banking products and services. Nor does the NBT have structures in place that would respond to individual consumer complaints. There is no independent body or office, such as a financial ombudsman or consumer financial protection office, that is responsible for receiving and responding to individual consumer complaints concerning banking issues.  Responsibility for the enforcement of general consumer protection rules on the basis of specific complaints and own-initiative investigations currently rests with the antimonopoly body, which is tasked with enforcement of the competition law, consumer protection law, and advertising law. That body is itself very new. It does not yet have basic legal provisions in place governing procedures for investigations and decisions on cases and it has as yet only very limited experience in addressing consumer complaints of any kind. It lacks any expertise at all in relation to banking matters. The antimonopoly body already faces significant resource constraints in meeting its higher profile obligation to deal with natural monopoly regulation and competition concerns across the economy as a whole, and it does not appear that it would be able to address banking or broader financial consumer protection issues without both a significant increase its resources and strong support in developing the necessary expertise. At present, the antimonopoly body lacks public recognition as a consumer protection body, making it highly unlikely that it will receive consumer complaints.  **c.- e.** As there is no organization or entity that is directly responsible for consumer protection in banking, and there are no specific procedures in place for this purpose, no assessment is made here of the adequacy of financing, transparency of procedures, or cooperation among bodies.  **f.** The laws contain some general provisions envisioning the existence of industry associations and social bodies or consumers’ organizations. They do not, however, assign these bodies any specific role or mandate consultation with them on issues of consumer protection in the banking sphere. They likewise do not prohibit such organizations from participating in consumer protection activities. There is a single existing consumer protection organization, which on the basis of general principles of law could pursue a consumer complaint in relation to banking matters. That organization reports that it receives almost no complaints related to banking or financial matters. That organization would have to either assist the consumer to resolve the problem on an informal basis, or pursue the matter in court (or through the public prosecutor’s office) through the general provisions of the consumer protection law and the provisions of the civil code, civil procedure code, and other general legislation. This is a time consuming process.  Overall, consumers lack any direct channels to quickly and effectively resolve disputes with banks that are not resolved by the banks’ own initial complaint procedures. Processes that involve escalating a dispute through the higher ranks of bank management, waiting for an investigation and ruling by the antimonopoly body, or filing a complaint in court are likely to be unattractive in terms of both cost and delay. This may be especially problematic in relation to issues affecting the ability of consumers to access money in their accounts and for rural consumers who are not located near any of these sources of redress. In order to raise consumer confidence and willingness to deposit funds, it may be necessary for special mechanisms to be created for the quick resolution of particular types of disputes or for particular categories of consumers. |
| **Recommendation** | NBT’s responsibility and authority as the banking regulator to address consumer protection concerns in regulating banking activities should be clarified in law, and a department or office in NBT should be created or designated to carry out this function. This department (office) should be responsible for ensuring that consumer protection issues are addressed in NBT instructions and other regulatory acts and proposing changes or additions where necessary, reviewing bank observance of consumer protection norms as a part of NBT bank supervision, receiving and reviewing information on consumer complaints collected by banks and other bodies to determine whether further regulation by NBT or other action is needed, and coordinating with (providing expertise to) other bodies involved in the enforcement of consumer protection norms. NBT eventually should develop a risk-based conduct-of-business supervision methodology.  If responsibility for investigation of individual consumer complaints in the banking sphere remains with the antimonopoly body, substantial additional resources and support will need to be provided and corresponding amendments made in its statute and provisions included in rules governing its procedures (when those are adopted) to ensure appropriate involvement of banking experts and the banking regulator in its decisions. At a minimum, the rules should require that the antimonopoly body specifically assign responsibility in cases concerning banking and finance to a department, sub-department or official (to encourage the development of expertise) and should also require that decisions on such cases involve consultation with the regulatory authority. If desired, the procedure for decisions on these categories of cases could require the participation of representatives of the regulatory body along with officials of the antimonopoly body.  In the alternative, a special office of the NBT or a financial ombudsman’s office could be created to accept and pursue individual consumer complaints concerning banking and financial issues. Whatever body is defined as the proper recipient of consumer complaints, it is important that this body be clearly identified to consumers and its role in this area publicized so that information about the kinds of problems that consumers are encountering can begin to flow to NBT as the banking regulator and to other authorities. In the absence of both clear institutional structures and authority and of information on what bodies might respond to a complaint, it is not surprising that there are few such complaints recorded outside of bank structures. The regulator and other bodies cannot receive the information necessary for the development of appropriate rules and their efficient enforcement until channels are opened for communication by bank customers.  On the basis of information received by the regulator concerning complaints and concerns of consumers, the regulator should consider whether special mechanisms for resolution of consumer problems are needed in relation to particular categories of problems or groups of consumers. The regulator should have the authority to convene a working group together with consumer protection authorities and representatives of the banking industry to consider workable solutions for these situations. Such solutions could be imposed by the regulator (if within its authority), voluntarily implemented by the industry alone or with the participation of consumer protection bodies, or created in another way. |
| **Good Practice A.2** | ***Code of Conduct for Banks***   1. **There should be a principles-based code of conduct for banks that is devised by all banks or the banking association in consultation with the financial supervisory agency and consumer associations, if possible. Monitored by a statutory agency or an effective self-regulatory agency, this code should be formally adhered to by all sector-specific institutions.** 2. **If a principles-based code of conduct exists, it should be publicized and disseminated to the general public.** 3. **The principles-based code should be augmented by voluntary codes of conduct for banks on such matters as facilitating the easy switching of consumers’ current accounts and establishing a common terminology in the banking industry for the description of banks’ charges, services and products.** 4. **Every such voluntary code should likewise be publicized and disseminated.** |
| **Description** | **a. – d.** There are not currently any voluntary codes of conduct, whether principles-based or otherwise, for banks in Tajikistan. Some banks reported that they had their own codes of conduct in the form of detailed rules about how bank employees are to deal with customers in relation to specific types of products and accounts. At least one bank reported that it had and enforced a code of ethical conduct for employees. These are, however, internal governing documents of the banks. They were not available for review. None of such documents can serve the purpose of setting broadly agreed principles for bank behavior, although it is possible that they might serve as the basis for work on codes that could be developed through the Association of Banks of Tajikistan. |
| **Recommendation** | The NBT and/or the Association of Banks of Tajikistan should raise the question of development of a basic voluntary code of conduct or code of ethical principles with member banks and facilitate the beginning of work on such a code to be applied to banks’ dealings with consumers. Work done in developing such a voluntary code of conduct could also facilitate consideration by NBT of consumer protection issues and its consideration of which minimum rules and standards should be included in mandatory instructions or legal amendments. The existing consumer protection association, the antimonopoly body, and any other interested bodies should, at a minimum, be encouraged to make suggestions and to comment on the draft of the code. When a code has been developed, banks observing the voluntary code may wish to reflect its provisions in appropriate parts of their contracts. They could also distribute the code as an attachment to contracts, in order to give consumers information on what to expect of the bank. The voluntary code itself could include such a requirement or suggestion if desired. |
| **Good Practice A.3** | ***Appropriate Allocation between Prudential Supervision and Consumer Protection***  **Whether prudential supervision of banks and consumer protection regarding banking products and services are the responsibility of one or two organizations, the allocation of resources to these functions should be adequate to enable their effective implementation.** |
| **Description** | No single body or organization is assigned responsibility for consumer protection specifically in the banking and financial services sector and there are, correspondingly, no resources specifically directed to this purpose.  The antimonopoly body is responsible for the application of the general laws on consumer protection, on competition, and on advertising, where many of the general legal rules protecting consumers are located. The antimonopoly body has very limited general funding. Knowledge of its existence and its role in consumer protection appears to be limited, and it has not yet received any complaints, conducted any cases, or performed any industry reviews related to the banking and financial services sectors. If it is to play an effective role in consumer protection in those areas, it will need additional funding and also assistance in developing staff expertise on relevant issues. |
| **Recommendation** | Responsibilities and authorities related to consumer protection in the banking and financial services sector still need to be clearly defined in laws and regulations, as discussed in A.1 above. Adequate funding will need to be allocated to the office or division of the NBT that is assigned responsibility for consumer protection issues, including for the collection and/or review of data on consumer complaints and the maintenance of effective coordination with the other bodies involved.  If the antimonopoly body is entrusted with the primary authority for the case-by-case response to consumer problems and complaints, additional resources will be critical in allowing it to fulfill this role. |
| **Good Practice A.4** | ***Other Institutional Arrangements***   1. **The judicial system should ensure that the ultimate resolution of any dispute regarding a consumer protection matter in respect of a banking product or service is affordable, timely and professionally delivered.** 2. **The media and consumer associations should play an active role in promoting banking consumer protection.** |
| **Description** | **a.** Judicial decisions are not routinely published in Tajikistan, and it is not possible to determine with certainty whether any cases have been brought specifically to challenge a bank’s violation of an individual consumer’s legal rights. Banks, the antimonopoly body, and the single existing consumer protection association, as well as a law firm consulted on the issue, all reported no knowledge of any such cases.  In general, consumer cases would be heard by the courts of general jurisdiction (rather than the specialized economic courts). Filing costs may not be prohibitive for small claims and consumers may represent themselves or ask any trusted party (not only a lawyer) to represent them. But case decisions are reported to be subject to delays of six months or more and the process for filing and consideration would be burdensome for an individual. A number of the counterparts interviewed for this diagnostic study reported a perception that individual use of the courts to make complaints could involve social stigma, business difficulties, or negative consequences for the plaintiff.  Cases concerning the violation of consumers’ rights can be brought by state bodies, local government bodies, and consumers’ associations, in addition to individual consumers. Such bodies are relieved of the payment of filing fees and have the right to bring a case on behalf of a specific individual consumer or group of consumers, or on behalf of an undefined group of consumers whose rights have been violated by illegal behavior (Article 15 of the law “On Protection of Consumers’ Rights”). Some of the state bodies (such as the antimonopoly body) have investigative powers that could help a consumer to obtain information necessary for a court case. To the extent that consumers wish to pursue a complaint through official channels, including the courts, the use of these bodies is likely to be the best option currently available. However, it is doubtful that these bodies currently have the resources or expertise to pursue a complaint.  Banks did report that there were cases in which banks sought repayment of debt or execution against property serving as security for a loan through the courts. Although most of these cases concern loans made to individual entrepreneurs for small business purposes, treatment of the banks’ claims in these cases would shed some light on judicial interpretation of general legal provisions that are also important to consumers. Decisions in these cases, however, are likewise unpublished and no general guidance appears to have been issued by the highest court on any relevant questions.  It would appear that the judicial system has little experience in the resolution of consumer disputes in general, and the resolution of consumer disputes in financial services in particular. A timely and professional resolution of an individual dispute may not be available to individuals at an affordable price. Alternatives such as mediation or quick, informal arbitration for an individual complaint do not appear to be available through the judicial system at all.  **b.** Consumer issues in financial markets have not been a focus for either the media or the work of the existing consumer association. There have been few complaints to focus the attention of the consumer association, and no significant developments or public events reported in the media.  Note: A full evaluation of the treatment of individual civil disputes by Tajikistan’s courts of general jurisdiction is well beyond the scope of this diagnostic review. The discussion here is based on information easily available from counterparts in the banking and consumer protection spheres and from public sources. It is reasonable to assume that those counterparts would be aware of significant developments in this area or a large practice of cases, as they must follow developments and abide by the relevant legal rules. However, no meetings were held with representatives of the judicial system during the diagnostic review and no court statistics were available for review. |
| **Recommendation** | On the basis of a further inquiry into the handling of civil cases concerning individuals by the courts, consideration should be given to whether changes are needed in civil procedure arrangements to allow individual consumers to use the courts effectively for the redress of their rights. This could include a “small claims procedure” allowing for a simplified process and rapid hearing and decision on the matter. A procedure for simple arbitration or mediation of small disputes could also be considered, but care should be taken that such procedures do not have the undesirable result of producing pressure on individual consumers to accept compromise resolutions. Where the law protecting consumers is not well developed and the ability of consumers to fully vindicate their rights is not established, it may be appropriate to focus any special procedures on a formal application of the law. |
| **Good Practice A.5** | ***Licensing***  **All banking institutions that provide financial services to consumers should be subject to a licensing and regulatory regime to ensure their financial safety and soundness and effective delivery of financial services.** |
| **Description** | Banks and other institutions that conduct banking activity are subject to licensing under Chapter 2 of the Law on Banking Activity. Licenses are issued by the NBT, which is authorized to regulate banks to ensure the soundness of individual banks and of the financial system as a whole. Responsibility of NBT to ensure the effective delivery of financial services from the point of view of consumers of those services is considerably less clear, as is its responsibility for consumer protection issues. In practice, however, NBT does include some provisions intended to protect the rights of bank customers in its regulatory instructions and other documents. |
| **Recommendation** | There is no need for change in the overall licensing regime at this time. It is important, however, for NBT’s responsibility for consumer protection in the banking sphere and its authorities to take action (including through suspension or withdrawal of a license where appropriate) to be more clearly expressed in the law and instructions. |
| **SECTION B** | **DISCLOSURE AND SALES PRACTICES** |
| **Good Practice B.1** | ***Information on Customers***   1. **When making a recommendation to a consumer, a bank should request sufficient information from the consumer to enable the bank to render an appropriate product or service to that consumer. If the consumer takes up a product or service, such information should be recorded and filed.** 2. **The extent of information the bank gathers regarding a consumer should:**    1. **be commensurate with the nature and complexity of the product or service either being proposed to or sought by the consumer; and**    2. **enable the bank to provide a professional service to the consumer in accordance with that consumer’s capacity** |
| **Description** | **a.** There is no requirement in banking legislation or instruction that banks gather sufficient information from a consumer to determine which products or services are appropriate to that individual, nor are there applicable voluntary standards or codes in the banking sphere. The narrow selection and relative simplicity of the products currently offered to consumers by Tajikistian’s banks may have so far limited attention to this issue by banking regulators.  Article 6 of the law “On Protection of Consumers’ Rights” does obligate a seller who has been made aware by a consumer of the concrete purposes for a purchased service to provide the consumer with a service that is suitable for those purposes. It does not, however, obligate the seller to make inquiries to determine either the consumer’s purposes or other information that would affect suitability of banking products for that consumer.  **b.i. & ii.** Test inquiries at several banks concerning available account types and services indicated wide availability of only two types of accounts: (1) payment accounts in which payments may be received and from which cash may be withdrawn or payments made to a limited number of recipients on a direct debit basis, and (2) interest-bearing time deposit accounts. Consumer credit was offered by only one visited bank, and only in the form of a mortgage. Credit was available at all of the banks to individuals for income earning activities.  Conditions on payment accounts appeared to be fixed in all of the banks offering them, with only the possibility to purchase additional services related to notifications of activity in accounts. Bank employees were not in a position to make recommendations among differing accounts or services of this type.  A number of types of interest-bearing savings accounts are available, and a bank representative could make recommendations in that regard. Differences in the accounts, however, appear to be limited and reasonably simple. In the test visits, bank representatives did not inquire about the intended use of the funds in order to make a recommendation, but rather concentrated on asking when the client might need the funds again and explaining the means for payment of interest and the consequences of early withdrawal of funds. While more information about the client might have allowed the representative to make a more specific suggestion, the simplicity of the products, relatively short deposit periods available, and limited differences between products would limit the use of further inquiry. Thus, the observed practice appeared to be appropriate to the products discussed.  In the banks visited in test visits, consumer credit was either completely unavailable, or (in one instance) available only for mortgages. Credit to individuals for use in income-earning activities was available, but would be required to be secured against real estate. Bank representatives described an approval process for such credit involving review of the business activity involved, visit of bank representatives to the place where the income-earning activity would be conducted (farm, trading stall, etc), and other inquiries. While this review was to be undertaken for the security of the bank, it also implies significant knowledge by the bank of the potential customer’s purpose for the loan and financial circumstances and the appropriateness of the loan for that customer. |
| **Recommendation** | At present, the selection of available banking products and services in Tajikistan is very limited and the amount of information needed to determine whether a product is appropriate is correspondingly small. However, it is not too early to incorporate the principle that only products appropriate to a consumer’s needs and financial capacity should be recommended into banking principles and operations.  Banks should train their employees to make sufficient inquiries about customers’ needs and financial situations to make appropriate recommendations for products and services. In addition, banks should avoid the use of compensation schemes that skew employee incentives toward the sale of more complex or costly products regardless of their suitability to the individual customer. If bank employees make specific recommendations to a consumer concerning banking products, a notation of the recommendation and its basis should be made in the record concerning the account that is opened for that consumer. As a part of their review of banking records and employee performance, banks should review these notations – and particularly notations in records concerning non-performing loans and other problematic accounts – to determine whether inappropriate recommendations have been made.  A principle reflecting this good practice should be included in any code of conduct developed for banks under point A2.  It is important to note that this good practice should not be interpreted too broadly. It is not good practice for bank employees to be instructed or required to collect or record personal identifying information on all individuals who seek information about bank products and services before providing that information to them. Similarly, the information asked for and recorded should not go beyond that necessary to determine which of several available products may be best for the consumer and whether the consumer has the needed financial capacity. There were indications during the diagnostic review that some potential customers of banks do not use banking services due to fears of predatory behavior by those with access to information about bank clients. Overly intrusive practices may discourage use of banking services even further and delay development of an inclusive financial system.  With respect to information that it is appropriate for bank employees to record, privacy of consumer information remains a significant concern and may impact the accuracy of information provided. In order for banks to receive accurate information on consumers and for consumers to be secure in releasing such information to banks, the privacy regime will need to be strengthened. |
| **Good Practice B.2** | ***Affordability***   1. **When a bank makes a recommendation regarding a product or service to a consumer, the product or service it offers to that consumer should be in line with the need of the consumer.** 2. **The consumer should be given a range of options to choose from to meet his or her requirements.** 3. **Sufficient information on the product or service should be provided to the consumer to enable him or her to select the most suitable and affordable product or service.** 4. **When offering a new credit product or service significantly increasing the amount of debt assumed by the consumer, the consumer’s credit worthiness should be properly assessed.** |
| **Description** | **a. – d. in general:** Banks offer a relatively narrow range of products and services to consumers in Tajikistan, including remittances, time deposits for savings, and “card accounts” allowing receipt of payments and use of a card to get cash at ATMs and to make payments at a small number of locations. Consumer credit is extremely limited, and is available primarily for mortgages for individuals with a high, regular salary.  Small amounts of credit are available to individuals for income earning activities such as trading, livestock raising, and other pursuits, but this credit is also offered only with security against real estate or (for small amounts in some banks) with the deposit at the bank of items of value. In addition to the security interest, banks often require a visit to the premises where the activity is to be conducted, a valuation of the property serving as security, references from neighbors, and proof that the borrower does not owe taxes. A financial guarantee by other persons may also be required. This appears to be the only credit product, other than mortgage credit, available to most non-business customers of banks and in several test visits to banks there was no indication that banks were eager to lend (indeed, rather the opposite). Banks do attempt to assess the credit worthiness of borrowers for these loans, but in the absence of a credit reporting system have significant difficulty in tracing other indebtedness.  In this current environment, choice is available to consumers primarily with respect to savings products in the form of varied terms on time deposits, and consumers appear to be given choices among these products and informed about their differences. Several banks did indicate that disputes or complaints about the consequences of early termination of a time deposit had been received, and it is clear that there is competition among banks for such deposits. Some banks also indicated that they employ incentive schemes in relation to the sale of deposit accounts by bank employees. Although this is not sufficient information to determine whether there is a problem developing, it is possible that such incentives may result in recommendations of time deposit accounts that are not suitable for a consumer’s savings purpose or financial means.  **a.** There are no rules specifically in the banking sphere that discuss recommendations to consumers concerning which products and services they should purchase or require that bank employees consider this issue. Existing banking rules focus on the provision of information rather than of advice. Article 6 of the law “On Protection of Consumers’ Rights” requires a seller of services that has been told the consumer’s purpose to provide a service that is suitable for that purpose, but does not obligate sellers to undertake any inquiry.  **b.** Point 15 of NBT Instruction #186 “On the Procedure for the Provision of Credit and the Accrual of Interest in Credit Organizations” requires that a client receive written information on all of the types of credit provided by that organization and their terms (including rates, conditions, types of security accepted and other conditions). This may be provided in the form of an announcement or description, or in the form of an advertising brochure, and the form and content must be approved by the management of the credit organization. The Instruction requires that this information must be provided prior to the signing of a contract for credit, but does not require it to be provided before the client submits an application for a particular credit product.  **c.** With regard to credit, a consumer presented with the information required under point 15 of Instruction #186 would have sufficient information to choose among credit products, provided they received the information in a clear form and prior to any steps in the application and approval process that would commit them to a particular type of loan. In practice, there appears to be little choice for consumers due to the limited selection of available credit products. Although there is no requirement applicable to savings products, advertising materials reviewed generally contained enough information to allow consumers to choose among products. In a small number of test visits, customers were provided with detailed explanations of the differing accounts.  **d.** Chapter 4 of Instruction #186 requires an evaluation of the customer’s financial condition and ability to repay as a part of the process of issuance of credit. In test visits to banks, bank personnel described a substantial amount of review of an individual’s creditworthiness that would be undertaken, including visits to his/her place of business activity, valuation of real estate used as security, and proof that there is no indebtedness to the state budget. The instruction does not distinguish between issuance of an initial amount of credit and any decision to issue additional credit that would increase a customer’s debt. |
| **Recommendation** | **a.** Given the low level of financial literacy in Tajikistan, it is important that customers not only be presented with information, but also advice that is designed to help them make good choices. A provision should be added to Article 55 of the law “On Banking Activity” requiring that advice given to customers be designed to meet their needs and to ensure that options chosen are affordable, and to require the banking officers to undertake sufficient inquiry to be able to do this. It would be appropriate for the NBT to insert such a requirement also in instructions concerning the procedures for conduct of some kinds of banking activities, and particularly in Instruction #186 on the issuance of credit.  **b. – c.** Point 15 of NBT Instruction #186 should be amended to require that customers receive the information described in that point early in the process when they are inquiring about credit products and before their submission of an application for credit, rather than before the signing of the credit contract. The information should be provided in plain language, in the form of a “key facts” statement or other format that makes it easy for consumers to understand and compare products. This information should also be available to any potential customer who requests it at a bank office.  **d.** The requirement to undertake a review of the creditworthiness of a borrower that is contained in Instruction #186 is sufficient, provided it is applied not only at the time of an initial extension of credit, but also at the time of any substantial increase in credit to a consumer. An addition or amendment to that Instruction could be made to clarify this requirement. In practice, this requirement will be difficult for banks to apply until they have access to reliable information on borrowers’ indebtedness. |
| **Good Practice B.3** | ***Cooling-off Period***   1. **Unless explicitly waived in advance by a consumer in writing, a bank should provide the consumer a cooling-off period of a reasonable number of days (at least 3-5 business days) immediately following the signing of any agreement between the bank and the consumer.** 2. **On his or her written notice to the bank during the cooling-off period, the consumer should be permitted to cancel or treat the agreement as null and void without penalty to the consumer of any kind.** |
| **Description** | **a.** There is no cooling off period specifically required by banking laws or regulations for any type of account or agreement. Penalty-free cancellation of contracts may, however, be allowed in practice in some cases. At least some banks indicated that their policies would allow a consumer to cancel the contract at any time before money is disbursed on a loan without any penalty. Most time deposit accounts described by banks in interviews and in informational materials appear to allow closure of the account prior to its term without a payment of penalty other than the loss of accrued interest – which would have an effect close to that of a cooling off period at the beginning of the contract.  A limited number of test visits to banks indicated that banks would not provide a copy of a form contract to a consumer who requested one to examine before submitting an application to open a time deposit account or to take out a loan. This indicates that it may be difficult or impossible for a customer to examine and consider the full text of the contract before signing it. Under these circumstances, a requirement of a cooling-off period is an important guarantee that the customer will be able to reject the agreement if, on full consideration, its terms are not acceptable.  **b.** As there is no cooling-off period, there are no specific terms for length of period or its effect or use. |
| **Recommendation** | **a. & b.** NBT should consider the insertion into Instruction 186 of a requirement that a contract for credit provided to an individual envision the customer’s right of unilateral cancelation within a period of 3 to 5 business days after its conclusion. In order to protect banks from customer fraud and undue complication, this right of cancellation should be limited for loan contracts to a period prior to disbursement of funds to the consumer or prior to any withdrawal of those funds if they are disbursed into a consumer’s account in the same bank. If banks are permitted to offer to consumers immediate disbursement loans or “quick turnaround” loans, special rules may need to apply restricting cancelation to customers who return any funds disbursed simultaneously with the notice that they are exercising their cancelation right.  There are no detailed instructions of the NBT regulating time deposit savings accounts and it is recommended that such instructions be developed and adopted. In those instructions, the NBT should include a requirement that a cooling-off period be provided for any savings product where the early termination of the contract results in a fee or penalty to the customer.  The creation of rules concerning a cooling off period should not be considered a substitute for the requirements that banks provide a copy of standard form contracts to customers that specifically request them and that banks provide a “key facts” statement or other document in plain language explaining all of the significant terms of products and account types. All three of these requirements are important in protecting consumer rights. |
| **Good Practice B.4** | ***Bundling and Tying Clauses***   1. **As much as possible, banks should avoid tying or bundling services and products in ways that restrict competition or consumer choice.** 2. **In particular, whenever a borrower is obliged by a bank to purchase any product, including an insurance policy, as a pre-condition for receiving a loan from the bank, the borrower should be free to choose the provider of the product and this information should be made known to the borrower.** |
| **Description** | **a.** Tying refers to the sale of two or more products or services together as a single product and refusal of the seller to separate the products and sell each of them separately. Bundling refers to the sale of two or more products or services together as a package when the products can also be purchased separately.  Tying is usually considered a problem where the seller has dominance or significant market power in relation to one of the products, making it difficult for customers to obtain it from another source that does not require the purchase of the tied product. For important goods and services, however – including basic banking services – specialized regulations may prohibit tying by all sellers in order to protect consumers and ensure that such goods and services are available at an affordable price. In considering a tying case, the relevant question is often the relationship between the items that are “tied” and when they should be considered sufficiently unrelated that they should be sold separately.  Bundling of products together – that is, the offer of a combination of products, often at a discount compared to the price of separate purchase. – may be a problem if it misleads customers about the real prices of the products or retards the development of competition in the market for one of the bundled items. In a competitive market, however, offers of bundled products or services can provide significant benefits to consumers in the form of discounts.  Article 55(9) of the Law on Banking Activity specifically prohibits credit organizations from requiring obligatory purchase of additional services from the credit organization itself as a condition of the issuance of credit or the use of other services. Tying of unrelated products and/or services is also prohibited generally by Article 4, paragraph 3 of the Law on Competition.[[1]](#footnote-2) There does not appear to have been any further legal or regulatory definition of when specific banking services must be considered separate for the purposes of application of these rules.  All banks interviewed for the diagnostic review stated that they do not require the purchase of insurance or of any other products in connection with their loan activities or other services. In a limited number of test visits made to banks to inquire about available credit and savings products, no bank representative indicated that products were tied or that insurance of any kind would be required in relation to a loan. Some counterparts indicated that the current practice of requirement of security in property (real estate or valuables deposited with the bank) for loans gives banks recourse for loan repayment even in the event of death or disability of the borrower.[[2]](#footnote-3) Others indicated that available insurance on property (such as real estate) is beyond the means of most individual borrowers.  The spectrum of current bank offerings to consumers is narrow and products are relatively simple. There appears to be little packaging of multiple products and services or use of discounts on additional services. Many banks did report, however, that use of an existing deposit account as security for a loan was the most preferred arrangement for security on loans to individual entrepreneurs. As the law allows banks to set the rates for lending for each customer individually, it is possible that loans to those with deposit accounts might be found to have lower rates than others, but banks gave no indication that this is generally the case.[[3]](#footnote-4)  Some banks serve clients through accounts accessed by electronic means through the use of a card. In some cases, the descriptions of savings products offered by banks or of remittance services referred to the use of such accounts (e.g. for the receipt of periodic interest payments or of the remittances), and it was not always clear that the savings account could be opened in the absence of the card account. Although banks do not generally charge fees for the maintenance and use of card accounts, the withdrawal of money using ATMs is usually subject to a fee. There was some indication that banks may not always allow card account holders to access their money through means other than the use of the machines, such as the cashier’s window in a bank office. To the extent that this is true, a rule requiring a card account for the receipt of periodic interest payments or remittances (or for the receipt of pensions or other state payments) effectively imposes that service and those additional fees on the account holder. There was no indication that such fees are excessive or a cause of concern to consumers.  **b.** As there does not appear to be any tying of other products to banking services nor any requirement that additional services (such as insurance) be obtained, this issue has not arisen. |
| **Recommendation** | **a.** There is no indication that tying or bundling of differing kinds of banking services or of banking services and other products is currently a significant problem in Tajikistan and existing legal provisions appear to be adequate to the current situation on the market. NBT should monitor banking practices and issue more detailed instructions if this becomes necessary as banking services develop.  **b.**  Insurance purchases in relation to loans have been a particular problem in some other CIS jurisdictions, with widespread tying practices, bundling of insurance products with loans in ways that obscure the cost of both products, and collusion and kickbacks between banks and their “approved” list of insurance providers. With respect to insurance products, it would be appropriate for NBT and the insurance regulator to prevent problems by the development of appropriate instructions for both banks and insurance companies and joint monitoring of practices. |
| **Good Practice B.5** | ***Preservation of Rights***  **Except where permitted by applicable legislation, in any communication or agreement with a consumer, a bank should not exclude or restrict, or seek to exclude or restrict:**   1. **any duty to act with skill, care and diligence toward the consumer in connection with the provision by the bank of any financial service or product; or** 2. **any liability arising from the bank’s failure to exercise its duty to act with skill, care and diligence in the provision of any financial service or product to the consumer** |
| **Description** | Tajikistan’s laws do not rely on broadly worded duties or standards of care that are to be further interpreted in practice by courts and other authorities. This is a trait shared by most post-Soviet legal systems. Thus, there is no general provision requiring banks to act within such a standard, nor one that prohibits them from escaping such a requirement through contract or by unilateral statement. Although inclusion of such provisions in banking legislation might do no harm, it would also be unlikely to have significant practical effect at this time. Courts and other enforcement bodies are unfamiliar with consumer banking matters and are unaccustomed to applying broad behavioral standards to individual circumstances, and industry practices that could be relied upon to give substance to the standard of care have not yet developed. More effective protection is likely to be provided by the use of more specific rules concerning the treatment of consumers in particular circumstances.  Article 6 of the law “On Consumer Protection” prohibits contract conditions that limit the rights of consumers or worsen their position in comparison to what is otherwise established by legislation. Article 16 of the same law provides that such conditions are to be held void. This would apply to the provision of financial services to consumers, and could be used to invalidate provisions that reduce duties or liabilities directly imposed on banking and financial services providers by legislation, including by rules duly issued by NBT under its legal authority. In order for this provision to apply, however, the rights, duties or liabilities in question would need to be clearly stated, particularly in areas that would otherwise be governed by civil law rules providing for freedom of the parties to determine the content of a contract. Moreover, the rules would have to be clearly designed to protect consumers.  Banking laws and regulations do not, in most cases, clearly distinguish between banking services provided to individual consumers and similar services provided to businesses and other legal entities. Those that do distinguish do not have extensive provisions concerning individual consumers’ accounts or addressing the particular needs of individuals purchasing services for personal needs. NBT Instruction #186, for example, contains few provisions distinguishing the provision of consumer credit to individuals from the provision of credit to businesses and other legal entities. NBT Instruction #171 concerning the opening, transfer, and closure of customer accounts does have a separate section on the accounts of individual persons who are not registered individual entrepreneurs, noting that different documents will be required to open an account (since private individuals will not have some of those otherwise demanded) and requiring that the individual sign a statement that they have been informed about all of the conditions of the account and the fees that apply. But this is an exception, and there are few other provisions in the banking legislation or regulatory instructions designed to protect individual consumers or define their rights separately.  This may result in fewer legal protections for individual consumers, as the laws may avoid mandatory provisions to promote competition among banks and to retain flexibility for the negotiation of differing terms as required by more sophisticated business customers with more complex needs. It may be appropriate for NBT to consider a separate set of instructions for banks on the treatment of individual consumers, or more detailed provisions within existing instructions. Rights, duties, and liabilities defined in such separate documents or provisions would clearly be designed to protect the rights of consumers and as such would fall under the general provisions of the law “On Protection of Consumers” discussed here. While this would have the benefit of clearly establishing identifiable “consumer protection” standards in banking legislation, however, it does raise some questions concerning when and how the same individuals should be treated differently by banks when opening personal accounts than when opening an account for their small-scale income earning activity. To the extent that individuals need greater protection in relation to banking services purchased as individual entrepreneurs, it may be necessary to add separate provisions to the laws and instructions governing the relevant banking activity. |
| **Recommendation** | Consideration should be given to the issuance of separate rules and/or inclusion of separate provisions in banking legislation and regulatory instructions that more clearly define the rights of individual consumers (as opposed to the rights of all banking customers) and the duties of banks toward them in areas that are of special concern or importance. This would provide additional protection to consumers, allow rules to be differentiated for banking customers with differing sophistication levels, and ensure that the general rules and protections in the law “On the Protection of Consumers’ Rights” could be applied in the banking context. |
| **Good Practice B.6** | ***Regulatory Status Disclosure***  **In all of its advertising, whether by print, television, radio or otherwise, a bank should disclose the fact that it is a regulated entity and the name and contact details of the regulator.** |
| **Description** | Banks in Tajikistan are not required to indicate information about the bodies that regulate them and the means by which a consumer can contact those bodies.  The NBT is the primary bank regulator and the body that produces and is familiar with all of the laws and regulations that specifically regulate banking activities. But the NBT does not currently take complaints from the public or have a response mechanism for such complaints, so a reference to the NBT in bank advertising would not currently be particularly useful to a consumer.  The antimonopoly body does accept consumer protection complaints from the public, and in principal could accept and investigate complaints at its central body and its regional bodies. However, the antimonopoly body is poorly funded, is highly associated with control of monopolies rather than consumer protection, and has authority only in cases that involve a violation of the general competition, consumer protection or advertising laws. If a violation of the laws and instructions governing banking were found to injure consumers, it might well be considered a violation of the general law on consumer protection and within the jurisdiction of the antimonopoly body. |
| **Recommendation** | As a part of the improvement of the legal definition of responsibility for consumer protection in financial services (discussed above in section A.1.), responsibility for the antimonopoly body, the NBT, and/or any other bodies to receive and respond to consumer reports and complaints must be clearly defined and the appropriate institutional, procedural, and other supports put in place to allow it to begin to function. The law “On Banking Activity” and/or the regulatory instructions should be amended to indicate that body and to require banks to state the name of the body and its contact information in written advertising materials, as well as in other types of advertising where appropriate to the media involved. This information should also be required as a part of the package of materials that a bank customer must receive when purchasing a product or service from a bank. |
| **Good Practice B.7** | ***Terms and Conditions***  **Before a consumer opens a deposit, current (checking) or loan account at a bank, the bank should make available to the consumer a written copy of its general terms and conditions, as well as all terms and conditions that apply to the account to be opened. Collectively, these Terms and Conditions should include:**   1. **disclosure of details of the bank’s general charges;** 2. **a summary of the bank’s complaints procedures;** 3. **a statement regarding the existence of the office of banking ombudsman or equivalent institution and basic information relating to its process and procedures;** 4. **information about any compensation scheme that the bank is a member of;** 5. **an outline of the action and remedies which the bank may take in the event of a default by the consumer;** 6. **the principles-based code of conduct, if any, referred to in A.2 above;** 7. **information on the methods of computing interest rates paid by or charged to the consumer, any relevant non-interest charges or fees related to the product offered to the consumer;** 8. **any service charges to be paid by the consumer, restrictions, if any, on account transfers by the consumer, and the procedures for closing an account; and** 9. **clear rules on the reporting procedures that the consumer should follow in the case of unauthorized transactions in general, and stolen cards in particular, as well as the bank’s liability in such cases facilitates the reading of every word.** |
| **Description** | Law and regulatory instructions do not specifically describe either a general or a specific “statement of terms and conditions” or contain a single list of information that is to be provided to all customers. There are, however, several provisions in law and regulatory instructions that require banks to provide information on the terms and conditions of the accounts or loans opened with the bank. In general, the requirements relate to information that is to be provided in the contract rather than information presented as a separate document.  The law “On Banking Activity” requires generally that the relationship between the bank and customer be defined by contract, that the contract define the rates and fees to be charged, and that the bank inform the client about all requirements of the contract prior to beginning any services, including the rates, service fees, and any other additional costs to the customer (Article 55 (1)-(3)). This requirement would appear to cover the information referred to in points **(i)** and **(vii)** and the first item in **(viii)** in this good practice description.  In relation to credit accounts, NBT Instruction #186 “On the Procedure for the Provision of Credit and the Calculation of Interest by Credit Organizations” requires that a client must be informed in writing, prior to signing the contract, about all of the available types of credit and their terms (point 15). It further requires that the credit contract state: the sum borrowed, the term, the currency of the loan, the interest rate, the date of conclusion, the form in which the credit is to be issued, the security for the loan, the procedure and sources for payments, the procedure that will be followed if the payment is not made on time, the contact information for the parties, and information on provision of information to a credit bureau (point 30). In addition, the bank is required to present a schedule showing the details of how the credit is to be repaid, including a detailed description of the procedure, amounts, and dates for payments. This schedule must be confirmed at the time that the contract is signed and attached to the contract (point 31). The contract is specifically required to envision all of the types of liability that may be imposed and the measures that may be taken in the case of the failure of either party to meet their obligations (point 33). Taken together, these requirements would appear to cover the information referred to in points **(i)**, **(v)**, **(vii)**, and the portion of **(viii)** related to charges.  NBT Instruction #171, which concerns the opening, transfer and closure of bank accounts, requires that a contract for a bank account contain information on the conditions for the provision of services by the bank and the procedure for the payment of fees, and the procedure and conditions for the closure of the account (among other terms discussed in point 12). This would cover points **(i)**, and **(viii)** listed above. In addition, for accounts opened by natural persons who are not individual entrepreneurs, Instruction #171 requires that the client be made acquainted with all of the conditions of the bank account prior to the opening of the account and that the client personally make a note of this on the forms for the opening of the account and sign a statement that they have received this information (point 20).  NBT Instruction #190, which concerns the treatment of card accounts (credit, debit and prepaid cards), requires that the contract concerning the card account contain conditions describing the type and amount of fees to be paid, the procedures for notification of unauthorized transactions or loss of a card, and the procedure for the resolution of disputes, among others (point **ii**). This would cover the information referred to in points **(i)**, **(ix)**, and the portion of **(viii)** that relates to fees.  In general, banks do not appear to have formalized complaints procedures, and there is no requirement in law or regulatory instructions concerning information on complaints procedures or dispute resolution, except for the requirement in Instruction #190 concerning card accounts. (See section E.1 of this review, below.) There is currently no ombudsman or similar system in place in Tajikistan about which customers could be notified. (See section E.2 of this review, below.) A deposit guarantee system is in the process of formation, but it is not yet ready to function and banks are just beginning to inform customers about its existence. This information does not appear to be presented in any detail. (On guarantee schemes, see also sections B.10 and F.1 of this review.) There are no voluntary codes of conduct about which a customer might be informed. (See section A.2, above.) Thus, the information referenced in points **(ii),** **(iii),** **(iv)** and **(vi)** either does not exist or is not yet ready to be provided in detail to consumers.  Although requested, no contracts or customer information packages were received from banks for review during the diagnostic, making it difficult to determine in what form, with what detail, and how clearly the information required by the various Instructions is presented.  Overall, while the existing laws and regulatory instructions do contain some provisions intended to ensure that bank customers receive required information, the provisions are not detailed and vary in content from one type of account or service to another. For example, only the instructions concerning bank accounts require that the procedure and conditions for closure of the account must be covered, while those for a credit agreement and for card services do not. Only the instructions concerning card services require that the procedure for dispute resolution be specified. The instructions do not specify the form in which the information must be communicated to the customer – and in general only require that it appear in the contract. Individual consumers, who may not be sophisticated about banking services, would be better protected by clearer and more detailed requirements concerning the information to be provided to them by banks. |
| **Recommendation** | NBT should consider the development of a new instruction that would unify rules concerning the information that must be provided to consumers, the means by which it must be provided, any requirements concerning the form of the information, and model statements or notices where these are important in allowing consumers to understand their rights or to compare important aspects of banking services. This new instruction could be focused on the provision of information or could cover a broader spectrum of consumer protection issues (such as the requirement that banks have in place a dispute resolution system, discussed in section D.1., below). In the alternative, NBT could review the existing instructions governing bank accounts, credit agreements, card services, and other products and services and amend the instructions to add more detailed provisions regarding the information to be provided to bank customers in general, and to individual consumers in particular. |
| **Good Practice B.8** | ***Key Facts Statement***   1. **A bank should have a Key Facts Statement for each of its accounts, types of loans or other products or services and provide these to its customers and potential customers.** 2. **The Key Facts Statement should be written in plain language and summarize in a page or two the key terms and conditions of the specific banking product or service.** 3. **Prior to a consumer opening any account at, or signing any loan agreement with, the bank, the consumer should have delivered a signed statement to the bank to the effect that he or she has duly received, read and understood the relevant Key Facts Statement from the bank.** 4. **Key Facts Statements throughout the banking sector should be written in such a way as to allow consumers the possibility of easily comparing products that are being offered by a range of banks.** |
| **Description** | **a.- d.** Banks are not legally required to use “key facts statements” or other forms of plain language explanations of terms and conditions and do not appear to do so, despite that fact that a number of the banks interviewed stated that their customers have difficulty in understanding financial products and that most complaints arise from a customer’s failure to understand their contracts or bank products generally.  As discussed immediately above in section B.7, banks are required by law and regulatory instructions to provide consumers with certain information on the terms and conditions that apply to bank products and services or to include that information in the contract with the consumer. In a few instances, consumers are required to sign a statement that they have been provided with this information (e.g. at the opening of a deposit account for an individual consumer not acting as an individual entrepreneur). The time at which the information is provided (at the bank before application, during the application process, or simply within the contract) is not clearly regulated for most information, however, nor is the form in which it must be presented.  In practice, provision of information to consumers seems to vary widely among banks and full information in an easily understandable form does not appear to be regularly available***.***  Bank information sheets and advertising brochures varied considerably in their detail and most lacked some important information. Although a number of banks stated that copies of standard contracts were available to consumers to review before applying for loans or deposit accounts, no sample contract forms could be obtained in a small number of test visits to banks. |
| **Recommendation** | Further development of the applicable laws and instructions to more clearly define the time when information must be provided and the form in which it should be presented is needed to ensure that consumers have sufficient time to review and consider all of the relevant information and that they are able to properly compare the products and services offered by various banks***.*** NBT should develop an instruction providing more detailed guidance to banks on this issue, including a requirement for “key facts statements” or similar standardized form of description of account terms in plain language that would ensure that consumers can easily understand and compare the terms of products and services offered. Such descriptions should be required to be available to consumers upon their request at bank offices, so that consumers are not in the position of being informed of important terms only after they are already in the application process. Legal rules specifying a “key facts statement” or other simple form and content requirements should also be considered in relation to other issues that are of importance to consumers, including in particular a plain language explanation of the risks inherent in use of a home as security for a loan and the procedures by which the bank may execute on that security in the case of default. |
| **Good Practice B.9** | ***Advertising and Sales Materials***   1. **Banks should ensure that their advertising and sales materials and procedures do not mislead customers.** 2. **All advertising and sales materials of banks should be easily readable and understandable by the general public.** 3. **Banks should be legally responsible for all statements made in their advertising and sales materials (i.e. be subject to the penalties under the law for making any false or misleading statements)** |
| **Description** | **a. & b.** Banks are required by law to provide consumers with information on the terms and conditions that apply to their products and services, and for some credit products consumers are required to sign a statement that they have been provided with this information. These requirements, however, are directed toward work with a customer of the bank rather than to advertisements for banks and banking services. Bank advertising is little addressed by banking law or regulatory instructions.  No comprehensive review of bank advertising in the printed press or in other forms of mass media was undertaken for this diagnostic review. Advertising materials provided by banks in the form of brochures and information sheets suggest that some additional regulation may be required to ensure that consumers receive important information. The materials varied widely in their quality and the amount of information provided, ranging from very small photocopied sheets to glossy, professionally printed brochures with several pages. Many appeared to lack important information about the product being advertised. In particular, brochures on time deposits did not always state the consequences of early withdrawal of the deposit – which in many cases would be the loss of all of the expected interest payment. Loan advertisements ranged from those that included only the range of amounts that could be borrowed for a particular purpose (such as “travel credit” for labor migrants or mortgage credit) to more complete statements including interest rates. Only one clearly stated the ranges of available amounts, interest rates, and the types of security accepted. Materials provided appeared to be in reasonably plain and comprehensible language.  **c.** The general law “On Advertising” prohibits false advertising and misleading advertising, including advertising that misleads by failure to state important information (Article 6, paragraph 4). Article 18 of that law addresses financial services, and specifically includes banking, but its provisions appear to be designed primarily for advertisements related to securities. Two provisions could be applied to banking services: a prohibition on the inclusion of numerical information that does not have a direct relationship to the advertised service and a prohibition on failure to include information on all of the conditions of the contract if the advertisement mentions any condition of the contract. No information was received during the diagnostic review that would indicate that the provisions have been applied to banking services. In the event that a violation of the law was found, a bank could be ordered to correct the problem and/or to undertake corrective advertising, and to pay a very modest fine. Individuals or legal entities injured by illegal advertising behavior have the right to seek damages in court, but this is not likely in the case of misleading bank advertising, as damages would be difficult to prove.  In practice, the provisions of Article 18 would be difficult for courts and other enforcement bodies to apply to advertisements for banking services. Definitions of what information is not directly related to banking services may difficult, and the requirement that all conditions of contract be stated does not distinguish between significant and other conditions, thus literally requiring the impractical statement of every contract provision. The law does not distinguish, in relation to banking services requirements, between print advertisements, billboards and similar outdoor advertising, television and radio advertisements, and the advertising materials (brochures) produced by banks to be given to potential clients at the banking premises. Many advertisements for banking services, for example, include some information that could be considered a condition of the contract, such as the interest rate offered on a deposit account. If all provisions of the deposit account contract must be stated in all such advertisements, regardless of their type and placement, some kinds of advertising will simply become impractical for use. And if all conditions of the contract, including those that are important but do not define the particular product (e.g. privacy conditions, notifications requirements) must be included, this is likely to result in overly complex advertisements that are not clear to consumers and do not allow them to quickly and easily compare offers.  Advertising can play an important role in the development of competitive markets for banking services by ensuring that consumers are made aware of more of the competitors in the market (not only the largest or most established) and of newer products or better terms that are being offered. A desire to protect consumers by requiring additional disclosure must be balanced against the practical limits of particular forms of advertising and the ability of consumers to absorb information presented in those forms. Appropriate advertising regulation for banking services will change as markets develop and must take into account the sophistication level of the audience, the specifics of products offered, the capacities of the advertising media, and the surrounding regulatory environment (e.g. requirements for information provided to a consumer at other stages of the process). |
| **Recommendation** | More specific rules governing bank advertising are needed in order to ensure that consumers are receiving important information about banking products and that they are able to compare the products offered. With input from banks, the consumer protection association, and the antimonopoly body, NBT should develop and pass an instruction on bank advertising that establishes some basic requirements. These requirements should take account of the current sophistication of Tajikistan’s consumers, the products offered, and the capacities of the various advertising media. Banks should be required to retain copies of their advertisements and these should be reviewed by NBT as a part of its supervision of bank behavior.  The NBT or the antimonopoly body (or any other body taking responsibility for consumer protection in banking services) should monitor bank advertising to determine whether it meets the standards set in the NBT requirements and whether it is otherwise false or misleading. |
| **Good Practice B.10** | ***Third-Party Guarantees***  **A bank should not advertise either an actual or future deposit or interest rate payable on a deposit as being guaranteed or partially guaranteed unless there is a legally enforceable agreement between the bank and a third party who or which has provided such a guarantee. In the event such an agreement exists, the advertisement should state:**   1. **the extent of the guarantee;** 2. **the name and contact details of the party providing the guarantee; and** 3. **in the event the party providing the guarantee is in any way connected to the bank, the precise nature of that relationship.** |
| **Description** | Consumer deposits in the state bank are fully guaranteed by the state and this fact is, according to bank representatives, well known by the public and noted in at least some advertising materials of the bank. The extent of public faith and reliance on the guarantee, however, is uncertain. The current state bank is the legal successor to the Soviet state savings bank. Representatives of banks and a number of individuals noted the history of loss of value of savings deposits and significant consumer disappointment about the very low value of older savings deposits retrieved from the bank after long periods marked by economic dislocation and two currency reforms.  Other deposits are now protected by a law of August 2011 that created an insurance scheme for losses by individuals that result from the bankruptcy or other liquidation of a bank or MDO. The Fund has been organized and staffed and is now at the stage of building up its resources through periodic obligatory payments by banks and MDOs and creation of the procedures for payment of insured amounts in the case of necessity. Banks do not yet appear to be consistently informing their customers about the existence of the Fund and the nature and extent of insurance on interest-bearing accounts. This is quite appropriate at present, since the Fund has not yet built up its assets to the required levels and is still developing the procedures by which it will make payments on the insured accounts. The Fund is not yet in a position to execute its functions effectively, and as the majority of consumer deposits are for short terms, advertisement of insurance coverage might be more misleading than informative at present. A few banks do appear to be informing their customers or displaying a notice about the insurance in their premises. Displayed notices do not list all of the limits of the insurance coverage or discuss any of the excepted categories of accounts.  There are some legal questions related to the definition of the categories of accounts that are not protected by the Fund’s guarantee (listed in Article 24 of the relevant law). Banks have been interpreting these exceptions broadly and deducting the corresponding deposits from the base upon which their contribution to the Fund is calculated (thus lowering their payments to the Fund). However, deposit holders that fall into the stated categories would not receive the benefit of the Fund’s guarantee, and this would need to be clearly stated in bank materials for consumers. Broad interpretation of these categories could make this disclosure complex and difficult to understand.  As the Fund becomes established, banks will need to inform their customers about the Fund and the limits on its insurance. In order for this information to be communicated clearly and to avoid any confusion concerning the possibility that different banks are offering different terms of guarantee, it may be appropriate for the NBT, guarantee fund and/or Association of Banks of Tajikistan to develop model language for the notations to be included on bank advertising materials and the longer explanation that should be provided to customers opening accounts. |
| **Recommendation** | While the Fund that will guarantee some deposits is still in the process of formation and development of effective procedures, it may be appropriate for banks not to advertise guarantee of such deposits in order to avoid misleading holders of short-term deposit accounts. Once the Fund is fully functional, however, banks should be required to clearly inform their customers about the existence of the Fund and the nature and limits of the insurance provided, including all exceptions and conditions that might result in a refusal to pay. Banks should likewise be required to state the limits of the insurance in any advertising in which the insurance of the accounts is mentioned. In order to ensure clarity and uniformity, it may be appropriate for the NBT, the Fund and/or the Association of Banks of Tajikistan to develop model language for these customer notifications.  The law on liquidation of credit organizations should be amended to give depositors priority over repayment of monies provided to a bank by the Government or NBT. Exceptions to this rule may be appropriate for bank owners or stockholders that hold deposits in the bank.  The exceptions provisions in Article 24 of the law and their interaction with the legal requirements for payments into the Fund should be reexamined and any necessary amendments made to improve clarity and reduce the incentive for banks to exempt as many accounts as possible from the guarantee. One option to be considered would be payment of a lesser percentage on the basis of all deposits in the types of account subject to insurance, without subtraction of those that may be subject to exceptions under Article 24. |
| **Good Practice B.11.** | ***Professional Competence***   1. **In order to avoid any misrepresentation of fact to a consumer, any bank staff member who deals directly with consumers, or who prepares bank advertisements (or other materials of the bank for external distribution), or who markets any service or product of the bank should be familiar with the legislative, regulatory and code of conduct guidance requirements relevant to his or her work, as well as with the details of any product or service of the bank which he or she sells or promotes.** 2. **Regulators and associations of banks should collaborate to establish and administer minimum competency requirements for any bank staff member who: (i) deals directly with consumers, (ii) prepares any Key Facts Statement or any advertisement for the bank, or (iii) markets the bank’s services and products.** |
| **Description** | **a. & b.** The law “On Banking Activity” establishes specific requirements for the professional qualifications of senior bank staff, including educational background, experience in banking, and a requirement for attestation. It does not, however, address the knowledge or qualifications of bank staff members dealing with the public or those who may be involved in marketing or advertising activities, nor are specific standards established by regulation or instruction, or by any project of the association of banks. Banks interviewed stated that they have specific internal guidelines for the behavior of their staff and for the presentation of information in regarding to each of the types of products or services offered and some stated that they test their employees on their knowledge of bank products. As there is little or no specific information on consumer complaints to banks and complaints outside of the banking system to other bodies are nearly unheard of, there is no means to determine how often consumers feel that they have been given inaccurate or incomplete information about bank products and services. |
| **Recommendation** | At the present time, priority should be given to the establishment of institutional structures and institutional responsibility for consumer protection in banking, and to the creation and enforcement of basic rules, such as those concerning consumer receipt of information. Regulatory and association programs for the education and testing of bank employees may be helpful and should be encouraged, but should not be a first order priority until and unless there is indication of a systemic problem with inaccurate statements to consumers.  The NBT should include a general review of a bank’s programs and processes for the training of its employees as a part of its general supervision and review of bank activities. To the extent that this process, or the receipt of complaints by the antimonopoly body or consumer association, reveal significant problems or insufficiencies in training processes, NBT may wish to take further action. This could include issuance of more specific instructions on employee training and testing procedures or proposal that the Association of Banks of Tajikistan undertake such an initiative, together with one or more of the educational institutions that are now beginning to organize professional training in banking matters. |
| **SECTION C** | **CUSTOMER ACCOUNT HANDLING AND MAINTENANCE** |
| **Good Practice C.1** | ***Statements***   1. **Unless a bank receives a customer’s prior signed authorization to the contrary, the bank should issue, and provide the customer free of charge, a monthly statement of every account the bank operates for the customer.** 2. **Each such statement should: (i) set out all transactions concerning the account during the period covered by the statement; and (ii) provide details of the interest rate(s) applied to the account during the period covered by the statement.** 3. **Each credit card statement should set out the minimum payment required and the total interest cost that will accrue, if the cardholder makes only the required minimum payment.** 4. **Each mortgage or other loan account statement should clearly indicate the amount paid during the period covered by the statement, the total outstanding amount still owing, the allocation of payment to the principal and interest and, if applicable, the up-to-date accrual of taxes paid.** 5. **A bank should notify a customer of long periods of inactivity of any account of the customer and provide a reasonable final notice in writing to the customer if the funds are to be treated as unclaimed money.** 6. **When a customer signs up for paperless statements, such statements should be in an easy-to-read and readily understandable format.** |
| **Description** | **a.** Banks do not routinely provide statements of any kind showing the activity in individual consumer accounts and are not required to do so by law or regulations. This may in part be a function of the simple nature of the banking products that have been available to individual consumers. The ability to make payments from a bank account is a relatively new service for consumers, who have traditionally used cash for most purposes and banks only for a savings account accessed with a traditional passbook.  Banking products are now developing and becoming more complicated, making timely information on consumer accounts more important. Electronic card accounts that are now being offered by some banks (and required for receipt of some kinds of state payments) can be used for payment in some stores and for some utility and other charges. Banks offer a number of different kinds of interest-bearing deposits and consumers may wish to ensure that interest is being correctly calculated and timely deposited in the account. Without regular information on their accounts, it will be difficult or impossible for consumers to manage their accounts and their personal financial positions, to recognize when problems or errors have occurred, and to take timely action to correct them.  Banks asked directly stated that they would provide account statements if a customer requested it, but most continued on to say that their customers did not want this service. A few banks have recently begun offering monitoring services for an extra fee, such as text messages indicating transactions in a card account. This is, however, the exception rather than the rule and most customers keep track of their accounts through their own record keeping and calculations, on the basis of ATM balance information only (for card accounts), and with notations or receipts from periodic visits to the bank (such as in connection with receipt of monthly interest on an account).  **b.- f.** Statements are not provided, and therefore do not contain this information. |
| **Recommendation** | Banks should be legally required to provide customers with periodic statements of account that are sufficient for customers to manage their finances and monitor all of the account activity. If cost considerations prevent an immediate implementation of a requirement for paper statements for all accounts, the requirement could be phased in over a period of time and/or with a longer period for statements concerning accounts with limited activity. The only exception to this should be for customers that directly request not to receive such statements. |
| **Good Practice C.2** | ***Notification of Changes in Interest Rates and Non-interest Charges***   1. **A customer of a bank should be notified in writing by the bank of any change in:** 2. **The interest rate to be paid or charged on any account of the customer as soon as possible; and** 3. **A non-interest charge on any account of the customer a reasonable period in advance of the effective date of the change.** 4. **If the revised terms are not acceptable to the customer, he or she should have the right to exit the contract without penalty, provided such right is exercised within a reasonable period, unless variable rates are included in the contract and the terms vary within the parameters set by the contract.** 5. **The bank should inform the customer of the foregoing right whenever a notice of change under paragraph a. is made by the bank.** |
| **Description** | **a.-c. in general:** The banking products currently offered to consumers in Tajikistan do not appear to include variable interest rate products, such as variable rate deposits or adjustable rate loans. Loans are for fixed interest rates (and relatively short terms), as are time deposit accounts. The terms of these products are set by contract and both general civil law rules and Article 55(8) of the law “On Banking Activity” prevent a unilateral change unless the contract specifically provides for it. Banks do charge fees for some kinds of services, including the use of ATM machines and currency conversions, and they do pay interest on balances in some kinds of accounts that are not time limited. (These include savings deposits without term that pay monthly interest and the residual balances left in payment accounts accessed by electronic cards.)  Although they were requested both at diagnostic review meetings with banks and in a few test visits to banks, copies of standard contracts for deposit accounts or loan accounts could not be obtained for review. It is therefore not clear whether those contracts contain provisions on periodic adjustment of fees or interest rates on accounts that are not subject to a time limit and whether other adjustments may be envisioned.  **a.** There do not appear to be any clear rules requiring written notice to consumers concerning changes in rates or fees or governing the terms of a consumer’s withdrawal if the changes are not acceptable.  **b.** In practice, most of the types of consumer accounts to which such unilateral changes would be likely to apply would not involve penalties for consumer withdrawal in any case. However, in the absence of timely notice, consumers may be surprised by unexpected fees and changes in costs.  **c.** As there is no legal requirement specifically concerning changes in accounts, no notification is being made to consumers of such rights. As no contracts were obtained for review, there is no indication of whether the legal possibility to envision unilateral changes is being used by banks to include such provisions in contracts. |
| **Recommendation** | An amendment to the law or instructions issued by NBT should clearly require written notice to consumers of any change in the fees, interest rates or other charges applicable to their accounts. In order to avoid disputes over actual receipt of notice or the inappropriate application of other forms of legal notice requirements to this function, the requirement should specify what constitutes acceptable notice (such as notice by mail to the registered address on the account or by another means specified by agreement between the bank and the consumer). As banking products offered to consumers develop, if variable rate contracts are offered to consumers for their personal needs, more complex rules will need to be in place concerning notices and the terms upon which the consumer may exit the contract. |
| **Good Practice C.3** | ***Customer Records***   * 1. **A bank should maintain up-to-date records in respect of each customer of the bank that contain the following:**  1. **a copy of all documents required to identify the customer and provide the customer’s profile;** 2. **the customer’s address, telephone number and all other customer contact details;** 3. **any information or document in connection with the customer that has been prepared in compliance with any statute, regulation or code of conduct;** 4. **details of all products and services provided by the bank to the customer;** 5. **all documents and applications of the bank completed, signed and submitted to the bank by the customer;** 6. **a copy of all original documents submitted by the customer in support of an application by the customer for the provision of a product or service by the bank; and** 7. **any other relevant information concerning the customer.**    1. **A law or regulation should provide the minimum permissible period for retaining all such records and, throughout this period, the customer should be provided ready access to all such records free of charge or for a reasonable fee.** |
| **Description** | **a.** There is no single provision in banking laws and regulatory instructions that defines the records to be kept about customers or the retention period for those records. Some regulatory instructions concerning specific types of products or services are very clear and specific on these issues. NBT Instruction #186, for example, contains very specific requirements concerning the information to be retained in the record of a **credit agreement**, which is to include all documents related to the credit agreement (client identification information, applications, supporting documents, contract, and all correspondence related to the credit, as well as all reports and internal bank documents required by the Instruction), and also notations on all of the meetings, conversations, telephone calls and other communications and discussions with the client (point 36). This list would cover most or all of the information listed in this good practice description.  Recordkeeping requirements for other types of banking services and accounts are not as clearly detailed. The regulatory instructions on card services and on the opening and maintenance of bank accounts do not specify the information to be included in their records or the period for their retention.  General provisions in the law “On Banking Activity” require that credit organizations retain specified records on every “transaction” for a period of not less than five years (Article 38). The records that must be retained are:  -- identification information on the client;  -- applications and all documentation on transactions (including credit agreements and provision of guarantees) and decisions on their approval;  -- notes of transactions with partners (creditors, debtors, and guarantors) and any other documentary evidence serving as the ground for the approval of these transactions;  --other documents as established by the NBT.  The language of the provision refers to “transactions” while references in other parts of the same law refer to “operations” conducted by clients through their accounts (e.g. the provision concerning secrecy of such operations in Article 48). This raises some question about the coverage of the general recordkeeping requirement.[[4]](#footnote-5) The listed information may (depending upon the interpretation of the term transaction) cover most of the financial movements in client accounts, it lacks some information that should be included in client records on specific accounts, such as records of complaints or errors and their resolution, record of closure of accounts, and records of loss or theft notifications on card accounts.  **b.** Records on credit agreements are required to be retained for not less than five years after the repayment of the credit (point 37 of NBT Instruction #186). Records required under the more general provisions of the law “On Banking Activity” must be retained in relation to every “transaction” for a period of five years. |
| **Recommendation** | NBT should consider the development and issuance of a new instruction on bank records that would both contain a broader general description of the records that must be kept (the list could be similar to that contained in the good practice description in this section or could be based on the list in Instruction #186), and specific provisions concerning records related to particular kinds of accounts or services. Such a new instruction could, if desired, also address questions of the secrecy and security of bank records and information and the required procedures for their storage and for access to them. The need for further instructions on that issue is discussed below in section D.1. In the alternative, the NBT could amend the existing instructions on the various types of accounts and services to include a provision similar to that included in Instruction #186 on credit agreements, with appropriate specifics for the relevant type of account or service. |
| **Good Practice C.4** | ***Paper and Electronic Checks***   1. **The law and code of conduct should provide for clear rules on the issuance and clearing of paper checks that include, among other things, rules on:** 2. **checks drawn on an account that has insufficient funds;** 3. **the consequences of issuing a check without sufficient funds;** 4. **the duration within which funds of a cleared check should be credited into the customer’s account;** 5. **the procedures on countermanding or stopping payment on a check by a customer;** 6. **charges by a bank on the issuance and clearance of checks;** 7. **liability of the parties in the case of check fraud; and** 8. **error resolution** 9. **A customer should be told of the consequences of issuing a paper check without sufficient funds at the time the customer opens a checking account.** 10. **A bank should provide the customer with clear, easily accessible and understandable information regarding electronic checks, as well the cost of using them.** 11. **In respect of electronic or credit card checks , a bank should inform each customer in particular:** 12. **how the use of a credit card check differs from the use of a credit card;** 13. **of the interest rate that applies and whether this differs from the rate charged for credit card purchases;** 14. **when interest is charged and whether there is an interest free period, and if so, for how long;** 15. **whether additional fees or charges apply and, if so, on what basis and to what extent; and** 16. **whether the protection afforded to the customer making a purchase using a credit card check differs from that afforded when using a credit card and, if so, the specific differences.** 17. **Credit card checks should not be sent to a consumer without the consumer’s prior written consent.** 18. **There should be clear rules on procedures for dealing with authentication, error resolution and cases of fraud.** |
| **Description** | **a. – f. inclusive** Customers are currently offered a limited range of products and services by banks, which do not appear to include use of paper or electronic checks. This eliminates any immediate need for detailed regulation of their use. As additional services are offered more widely by banks, the legislator, banking regulator and other bodies involved in consumer protection will need to expand rules and instructions as required to supplement the application of general rules to new products and services. This should not, however, be a priority at this time. The first order priority should be significant improvement of consumer protection in respect to the payment card, deposit, and loan accounts that are currently available to consumers. |
| **Recommendation** | General rules protecting consumers of banking services, including additional rules recommended for adoption in this document, should apply to protect consumers using any paper or electronic check services that begin to be offered by banks, as well as to other new forms of banking products. As those products become more widely available to consumers, NBT and bodies protecting consumers should monitor bank performance and any problems revealed by consumer complaints, and NBT should adopt more detailed rules concerning the terms, authentication methods, fraud prevention measures and other matters as required. |
| **Good Practice C.5** | ***Credit Cards***   1. **There should be legal rules on the issuance of credit cards and related customer disclosure requirements.** 2. **Banks, as credit card issuers, should ensure that personalized disclosure requirements are made in all credit card offers, including the fees and charges (including finance charges), credit limit, penalty interest rates and method of calculating the minimum monthly payment** 3. **Banks should not be permitted to impose charges or fees on pre-approved credit cards that have not been accepted by the customer.** 4. **Consumers should be given personalized minimum payment warnings on each monthly statement and the total interest costs that will accrue if the cardholder makes only the requested minimum payment.** 5. **Among other things, the legal rules should also:** 6. **restrict or impose conditions on the issuance and marketing of credit cards to young adults (below age of 21) who have no independent means of income;** 7. **require reasonable notice of changes in fees and interest rates increase;** 8. **prevent the application of new higher penalty interest rates to the entire existing balance, including past purchases made at a lower interest rate;** 9. **limit fees that can be imposed, such as those charged when consumers exceed their credit limits;** 10. **prohibit a practice called ―double-cycle billing‖ by which card issuers charge interest over two billing cycles rather than one;** 11. **prevent credit card issuers from allocating monthly payments in ways that maximize interest charges to consumers; and** 12. **limit up-front fees charged on sub-prime credit cards issued to individuals with bad credit.** 13. **There should be clear rules on error resolution, reporting of unauthorized transactions and of stolen cards, with the ensuing liability of the customer being made clear to the customer prior to his or her acceptance of the credit card.** 14. **Banks and issuers should conduct consumer awareness programs on the misuse of credit cards, credit card over- indebtedness and prevention of fraud.** |
| **Description** | **a.** Credit cards do not appear to be widely used in Tajikistan, although some banks are just beginning to offer them. Instruction #190 of the NBT “On the Procedure for the Provision of Services By Means of Bank Payment Cards” does envision the issuance of credit cards, as well as prepaid cards and debit cards attached to an account. The provisions of Instruction #190, however, are quite general and as currently written apply more to the latter two types of cards than to credit cards.  Chapter 2 of Instruction #190 covers requirements for both debit and credit cards, and requires that the terms for the issuance and use of the card be defined by contract. The contract must include provisions concerning:  -- the size and type of commissions to be paid;  -- the means and period for provision of statements concerning the card account;  -- basic requirements for security (use of a code, withdrawal limits, and actions to be taken in the case of theft or loss of the card);  -- procedure to inform the issuer about loss or theft;  -- liability of the parties in the case of loss, theft, or unauthorized use;  -- conditions under which the card may be blocked or withdrawn;  -- the procedure for the resolution of disputes;  -- the procedure for ending the contract.  The issuer is required to inform the potential customer about the fees and conditions for use of the card before the card is received, as well as about the risks of fraudulent use and measures that should be taken to avoid it. The issuer is likewise required to provide to the cardholder, in writing, rules for the use of the card and a statement of effective tariffs and rates. (This may also be provided in electronic form if the consumer agrees.) There are no requirements stated in the instructions concerning the content of the required provisions of the contract.  **f.** Credit card contracts were not available for review to determine whether requirements for customer information and for the inclusion of contract terms on dispute resolution and on the liability of the parties in cases of theft, loss, or fraud are sufficient to meet the standard of the good practice described in this section.  **b. – e. & g.** Instruction #190 does not regulate the substance of billing practices, calculation of interest, advertising or provision of credit cards to minors, or any of the other issues listed in items **(b)-(e)** and **(g)** of the good practice description. It is possible that a credit card might be treated as accessing a credit line extended under the terms of Instruction #186 on the issuance of credit, but many of the terms of Instruction #186 are poorly designed to apply to a credit card account, so this would not resolve the lack of appropriate legal regulation. |
| **Recommendation** | NBT will need to develop and issue appropriate regulatory instructions governing the issuance and use of credit cards and the requirements for bank billing and notification practices. Such instructions could be issued separately, or as an addition/amendment to Instruction #186. These instructions are important and should be in place before bank offers of credit to consumers through credit card agreements become common, but their development and passage should not take priority over issues related to the kinds of accounts and services that are currently being widely used by consumers. |
| **Good Practice C.6** | ***Internet Banking and Mobile Phone Banking***   1. **The provision of internet banking and mobile phone banking (m-banking) should be supported by a sound legal and regulatory framework.** 2. **Regulators should ensure that banks or financial service providers providing internet and m-banking have in place a security program that ensures:** 3. **data privacy, confidentiality and data integrity;** 4. **authentication, identification of counterparties and access control;** 5. **non-repudiation of transactions;** 6. **a business continuity plan; and** 7. **the provision of sufficient notice when services are not available.** 8. **Banks should also implement an oversight program to monitor third-party control conditions and performance, especially when agents are used for carrying out m-banking.** 9. **A customer should be informed by the bank whether fees or charges apply for internet or m-banking and, if so, on what basis and how much.** 10. **There should be clear rules on the procedures for error resolution and fraud.** 11. **Authorities should encourage banks and service providers to undertake measures to increase consumer awareness regarding internet and m-banking transactions.** |
| **Description** | **a. – f.** Internet banking services and mobile banking are not offered to consumers in Tajikistan at this time. A few banks have begun to offer internet banking services for business clients, and at least one bank has begun to offer account-monitoring services through text messages to a consumer telephone. Other forms of mobile banking are not yet available. There are not yet any legal rules or regulatory instructions in place specifically governing these forms of banking services. General rules on banking activity and banking services apply, including rules on data protection, information provided to customers, and other matters. |
| **Recommendation** | The priority at the present time should be improvement of consumer protection in relation to the types of accounts and services that are currently offered to consumers in Tajikistan. However, it is clear that the types of services offered are likely to expand to internet and mobile banking functions in the not-too-distant future. The NBT should begin to develop instructions regulating the provision of these services to consumers and standards for data protection and other relevant requirements. In the meantime, the general rules concerning banking services (including additional rules recommended here on provision of information, identification of avenues for complaint and other matters) should apply to protect consumers of these services as they begin to be offered. |
|  | ***Electronic Fund Transfers and Remittances***   1. **There should be clear rules on the rights, liabilities and responsibilities of the parties involved in any electronic fund transfer.** 2. **Banks should provide information to consumers on prices and service features of electronic fund transfers and remittances in easily accessible and understandable forms. As far as possible, this information should include:** 3. **the total price (e.g. fees for the sender and the receiver, foreign exchange rates and other costs);** 4. **the time it will take the funds to reach the receiver;** 5. **the locations of the access points for sender and receiver; and** 6. **the terms and conditions of electronic fund transfer services that apply to the customer.** 7. **To ensure transparency, it should be made clear to the sender if the price or other aspects of the service vary according to different circumstances, and the bank should disclose this information without imposing any requirements on the consumer.** 8. **A bank that sends or receives an electronic fund transfer or remittance should document all essential information regarding the transfer and make this available to the customer who sends or receives the transfer or remittance without charge and on demand.** 9. **There should be clear, publicly available and easily applicable procedures in cases of errors and frauds in respect of electronic fund transfers and remittances** 10. **A customer should be informed of the terms and condition of the use of credit/debit cards outside the country including the foreign transaction fees and foreign exchange rates that may be applicable.** |
| **Description** | There is a significant market for the transmission of remittances from Tajikistan’s large migrant labor population, and money transfers are one of the most commonly used banking services. The market appears to be quite competitive, with services available through a number of money transfer systems.  **a.** Legal and regulatory provisions concerning money transfers are limited. They do not define the rights, responsibilities, and liabilities of the parties in detail, nor do they address consumer protection questions such as the kind of information that must be given to users of the services and in what form it should be provided.  Transfers may be made into and out of existing bank accounts, or may be made directly through a money transfer system without the opening of an account. Transfers made through existing accounts are governed by the rules concerning banking services related to bank accounts and the conduct of operations within them. Transfers made without the opening of an account are also governed by some general rules relating to “banking activities” and or “banking services,” as well as by specific provisions related to money transfers. General banking rules that refer to “accounts,” however, do not cover direct transfers made without the opening of an account.  NBT Instruction #162 “On the Procedure for the Conduct of Money Transfer Operations by Natural Persons Without the Opening of Foreign Currency Accounts” governs foreign currency transfers. It is primarily concerned with the documents that are to be completed by the senders and receivers of transfers, the keeping of records on transfers, and the restrictions on the purposes of foreign currency transfers made without a foreign currency account (they may not be made within the country and must be for personal use and not be associated with entrepreneurial activity or investment). It does not contain any provisions concerning the information that must be provided to a consumer or the rights and responsibilities of the parties.  **b. & c.** The amount and types of information provided in practice by banks to customers concerning money transfers appears to vary. Banks did not provide copies of the brochures or information sheets that might be available describing the fees, time frames and other conditions of the transfers. Although there is no indication that there are significant misunderstandings on these issues, the lack of a consistent form for provision of the relevant information is likely to make it more difficult for customers to compare competing services.  **d.** Instruction #162 specifies the information that must be contained in a request for a foreign currency transfer by the sending party. This includes the relevant information about the transfer itself (amount, sender’s information, recipient’s information, and so forth), but does not include information about the costs of the transfer. There is no requirement in the instructions that a copy of the request be provided to the sender or any information on what should be included in any receipt provided to the sender. The Instruction also includes information on when a written record (Form 377) must be made concerning the receipt of a foreign currency transfer. Where such a record is made, the original must be given to the recipient, but Form 377 is mandatory only for transfers above US$10,000 and issued by request of the recipient for lesser amounts.  **e.** There are no provisions in law or regulations specifying the procedures that need to be observed in cases of fraud, error or other problem, nor any destination outside the bank or transfer point to which a customer can go to have a complaint resolved. A provision in the law “On Banking Activity” does require that in the case of a delay beyond statutory time limits in a transfer into a customer account, the bank must pay interest on the sum in the amount of the NBT refinance rate. Because this provision refers to customer accounts, it would not appear to be applicable to money transfers accomplished without the opening of an account.  **f.** Electronic payment cards are just coming into use in Tajikistan, and include cards used to access a specific deposit account for cash withdrawals and make debit payments, prepaid cards that do not access a specific account, and credit cards. Credit card accounts are still relatively rare. Card accounts are governed by the terms of the general laws on banking activity and Instruction #190 of the NBT “On the Procedure for the Provision of Services By Means of Bank Payment Cards.” Chapter 2 of the Instruction requires that the contract between the customer and the bank concerning a card account include provisions on (inter alia) the size and type of commissions (bank fees) to be paid. Although the Instruction does not specify fees for foreign transactions specifically, this requirement should, presumably, include the fees and commissions related to the use of the card in foreign locations, if such use of the card is possible. Whether such fees are, in practice, specified in relation to cards that can be used internationally is not clear as no standard bank contracts were obtain for review during the diagnostic. See also section C.5, above, concerning payment cards. |
| **Recommendation** | The NBT should issue clear instructions concerning the information that must be made available to customers concerning money transfer operations, the form in which it should be provided, the receipt or other records that are to be provided to the sender and recipient, and the rights and liabilities of the parties and proper procedures in the case of errors, delays, fraud. These provisions could be included in an expansion of Instruction #162. Banks should be required by these instructions to have a procedure in place to address problems and complaints and to provide clear information to consumers concerning how they should contact the bank in such instances. |
| **Good Practice C.8** | ***Debt Recovery***   1. **A bank, agent of a bank and any third party should be prohibited from employing any abusive debt collection practice against any customer of the bank, including the use of any false statement, any unfair practice or the giving of false credit information to others.** 2. **The type of debt that can be collected on behalf of a bank, the person who can collect any such debt and the manner in which that debt can be collected should be indicated to the customer of the bank when the credit agreement giving rise to the debt is entered into between the bank and the customer.** 3. **A debt collector should not contact any third party about a bank customer’s debt without informing that party of the debt collector’s right to do so; and the type of information that the debt collector is seeking.** 4. **Where sale or transfer of debt without borrower consent is allowed by law, the borrower should be:** 5. **notified of the sale or transfer within a reasonable number of days;** 6. **informed that the borrower remains obligated on the debt; and** 7. **provided with information as to where to make payment, as well as the purchaser’s or transferee’s contact information.** |
| **Description** | According to information provided by NBT during the diagnostic review, third party debt collection and sale of debt to others are not practiced in Tajikistan. Banks are responsible for collecting their own debts and do so through their internal legal departments.  **a.** NBT Instruction #186 “On the Procedure for the Provision of Credit and the Calculation of Interest in Credit Organizations” contains instructions to credit organizations concerning the treatment of loans that are in difficulty (Chapter 8). The instructions, however, appear designed to assist banks and other organizations in addressing these problems and suggesting steps to be taken rather than to prevent specific kinds of bad behavior by debt collection staff. Provisions of Instruction #186, as most other Instructions of NBT, do not distinguish between bank clients that are larger businesses or other legal entities, bank clients that are individual entrepreneurs, and bank clients that are private individuals using banking services for personal needs.  According to Instruction #186, a bank or other credit organization must create a structural subdivision to deal with all late and otherwise problematic credits (point 52). The Instruction requires or advises a variety of steps, including study of the liquidity and value of property serving as security, provision for payment of debt from other sources, and so forth. In addition, the bank is instructed to conduct continuing work with the borrower in the form of notices to the borrower that the credit is overdue for payment, conduct of negotiations, calling the borrower in to the bank office, and provision of information on the client to the credit bureau. All actions of the staff in relation to the client are to be in accordance with the laws and regulations, and “within the bounds of universally recognized ethical norms” (point 63).  In relation to credits that have been written off due to the poor likelihood of payment, banks are instructed (Chapter 9) to continue to conduct collection work to seek payment where possible. Measures to be taken by banks may include regular searches of the press and other mass media to locate information on the borrower that would indicate an ability to pay and also the maintenance of regular contact with relatives and friends of a borrower that is an individual if the failure to pay is connected with an inability to locate the debtor (point 74).  There are no further provisions regulating the acceptability of specific actions of debt collection staff. Actions such as false statements or other actions that could have the effect of damaging a consumer’s reputation may be punishable under general legal rules concerning libel or slander. There was no indication during the diagnostic review that abusive behavior by debt collectors is a significant problem in Tajikistan at this time, although it should be noted that there were no avenues to obtain information on this issue from bank clients.  For their part, banks reported difficulties in executing on property provided as security for a loan by individuals, including in particular real estate. According to the banks, difficulties are encountered even in cases in which all of the specific legal formalities for pledge of the property have been observed, due to both moral (social) concerns about eviction of families that may not have other housing options and more general legal questions based on the constitutional right or human right to adequate housing. While this is a specific issue, it may indicate the presence of broader social norms capable of deterring some of the worst forms of abuse seen in some other systems.  **b. & c.** There are no legal rules governing these practices and disclosures and no disclosure appears to be made by banks. As third party debt collection is not practiced, disclosures and rules would related only to bank staff.  **d.** Sale of debt does not appear to be practiced. |
| **Recommendation** | On the basis of the limited information available during the diagnostic review, systematic abuses by third party debt collectors and debt collection staff of banks did not appear to be a pressing problem at this time. Although it would not be inappropriate for NBT to issue more detailed rules preventing inappropriate behavior, the specific behaviors that might need to be addressed and rules that are needed are not clear. NBT, and also consumer protection authorities and organizations, should remain alert to indications that abusive behavior is, or is becoming, a problem and NBT should take immediate steps to address it in instructions and in its bank supervision activities if necessary. To the extent that any abusive behavior is occurring on an informal basis rather than through formal debt collection activity, other authorities (police, public prosecutors, local government bodies) may need to be involved and rules preventing such abuses may need to be embodied in the Code of Administrative Violations and/or the Criminal Code so that they can be enforced. |
| **Good Practice C.9** | ***Foreclosure of mortgaged or charged property***   1. **In the event that a bank exercises its right to foreclose on a property that serves as collateral for a loan, the bank should inform the consumer in writing in advance of the procedures involved, and the process to be employed by the bank to foreclose on the property it holds as collateral and the consequences thereof to the consumer.** 2. **At the same time, the bank should inform the consumer of the legal remedies and options available to him or her in respect of the foreclosure process.** 3. **If applicable, the bank should draw the consumer’s attention to the fact that the bank has a legal right to recover the balance of the debt due in the event the proceeds from the sale of the foreclosed property are not sufficient to fully discharge the outstanding amount.** 4. **In the event the mortgage contract or charge agreement permits the bank to enforce the contract without court assistance, the bank should ensure that it employs professional and legal means to enforce the contract, including regarding the sale of the property.** |
| **Description** | Consumer credit in Tajikistan is very limited. There was a report of consumer credit beginning to be available for purchase of durable household goods, but the availability of such credit and whether any security interest was taken in the goods or in other property could not be verified during the diagnostic. Credit to consumers is primarily available for purchase or improvement of housing, with a security interest taken in the house. Credit is also available to individuals for income-earning activities, and these loans also generally require security in real estate. In some cases, a bank will accept a security interest in valuables deposited at the bank, but this appears to be rare. Thus, mortgage of housing is the only commonly used security in property.  Chapter 6 of the law “On Banking Activity” contains some general principles on security in property, but these are applicable to all forms of such security and many are not appropriate for security in real estate that serves as the home of the borrower. Examples include requirements that the credit organization have a plan for control over the condition of the property and that the contract specify in detail all of the conditions for the use of the secured property and also the use of income from its use. The law also specifies, however, that relations between the parties are to be fully governed by the laws on mortgage and on security in property.[[5]](#footnote-6)  **a.** Chapter 8 of the law “On Banking Activity” requires the bank to notify the borrower when the credit is overdue for payment and explain the possible consequences and to conduct negotiation with the borrower about the possibilities for repayment.  **b. & c.** Neither the law nor any NBT regulatory instructions specify the content of the notice to be given, nor establish any requirements that bank inform customers concerning their rights during the process of execution against property.  **d.** The general rule, established by the law “On Mortgage,” is that execution against secured immoveable property takes place through a court proceeding. The only exception to this is in instances in which there is an agreement for execution without a court proceeding that is concluded between the parties after the grounds for execution against the security arose.  Banks report that in practice foreclosure on mortgaged real estate presents significant problems, due to the long legal processes involved and in some cases to legal questions about conflict with rights to housing or unwillingness of those participating in eviction processes to deprive a family of its housing if there are not clear alternatives. Foreclosure was described as taking a year or more. For this reason, banks make every attempt to avoid foreclosure proceedings. They describe a policy of work with debtors to reschedule and to find alternate means of repayment, and where sale of the property is necessary they attempt to work together with the debtor to arrange a voluntary sale for the highest price.  No information was available during the diagnostic on the prevalence of foreclosures as a means of debt repayment (or of voluntary sales in anticipation of foreclosure) or on consumer perceptions of the process.  Discussion with banks suggested that although customers must go through a significant number of formalities before being able to establish a security interest in real estate – including obtaining the consent of all parties who have an interest, such as family members and children – customers may still not fully understand the potential consequences of the agreement or the process by which the bank will seek to enforce it if necessary. It may be appropriate for a clear and simple statement to be developed that would be suitable for provision to borrowers at the time that they are considering the contract, and also again at the time that the bank notifies a borrower of the possibility of execution on the property. |
| **Recommendation** | NBT should, with input from banks and from representatives of consumers, develop a statement of basic information in plain language that makes clear to a consumer the meaning and risks of a security interest (mortgage) in property, the process for execution on the property if the debt is not paid, and the consumer’s rights during that process. Banks could be required to provide this statement to consumers taking mortgage loans (and also to individuals taking loans for income-earning activity that involve security interests in their homes) and to include a copy of the statement in the notice to the borrower that enforcement against the property is being considered. |
| **Good Practice C.10** | ***Bankruptcy of Individuals***   1. **A bank should inform its individual customers in a timely manner and in writing on what basis the bank will seek to render a customer bankrupt, the steps it will take in this respect and the consequences of any individual’s bankruptcy.** 2. **Every individual customer should be given adequate notice and information by his or her bank to enable the customer to avoid bankruptcy.** 3. **Either directly or through its association of banks, every bank should make counseling services available to customers who are bankrupt or likely to become bankrupt.** 4. **The law should enable an individual to:** 5. **declare his or her intention to present a debtor’s petition for a declaration of bankruptcy;** 6. **propose a debt agreement;** 7. **propose a personal bankruptcy agreement; or** 8. **enter into voluntary bankruptcy.** 9. **Any institution acting as the bankruptcy office or trustee responsible for the administration and regulation of the personal bankruptcy system should provide adequate information to consumers on their options to deal with their own unmanageable debt.** |
| **Description** | **a. – e.** Tajik law does not provide for bankruptcy proceedings in relation to private individuals and banks cannot therefore make a creditor’s petition for bankruptcy against an individual consumer who is in debt to the bank. At the present time, individual consumers are only able to obtain credit against a security interest in real estate or (in limited circumstances) deposit of valuables with the bank or guarantee by third parties. In the event of failure to pay, the bank’s recourse is to foreclose on the secured property. |
| **Recommendation** | No recommendation for changes in this area. A law on individual bankruptcy would not improve protection of individual debtors at this time, would be unlikely to be understood by consumers, and could be subject to abuses. |
| **SECTION D** | **PRIVACY AND DATA PROTECTION** |
| **Good Practice D.1** | ***Confidentiality and Security of Customers’ Information***   1. **The banking transactions of any bank customer should be kept confidential by his or her bank.** 2. **The law should require a bank to ensure that it protects the confidentiality and security of the personal data of its customers against any anticipated threats or hazards to the security or integrity of such information, as well as against unauthorized access.** |
| **Description** | **a.** Legal rules clearly define customer information as a banking secret and restrict the circumstances in which it may be transferred or revealed. Chapter 8 of the law “On Banking Activity” is devoted to confidentiality of customer information and defines (Article 48) as a banking secret information on:  -- the fact of existence of bank accounts, their owners, presence of funds in accounts, and transactions in accounts;  -- money transfers made without the opening of an account;  -- money and other valuables stored at a bank.  With respect to bank accounts, the secrecy of the information listed is also provided for in Instruction #171 of the NBT concerning procedures for opening, transfer and closure of bank accounts.  Secrecy of banking information remains in force after the termination of the business relationship between the bank and the client and binds bank employees after termination of employment, employees and inspectors of NBT, persons appointed to conduct supervision activity, and anyone else who by virtue of their profession or activity has access to the information (Article 49). In the case of termination of a banking relationship by death of a client, information can be provided to the person indicated in a will or to the court, notarial office, or foreign consular office handling the estate of the deceased client.  **b.** Banks have the right (but are not required) to create a specialized service within the bank to protect security of information and of property located in the bank, and may use special technological means and armed personnel.  The law and instructions do not address directly anticipated threats or hazards or require specific actions of the bank in relation to information security.  Bank employees or others with access due to an official or work position who reveal or use banking secrets may be subjected to criminal punishment in the form of fines of from 10,000 to 21,880 somoni[[6]](#footnote-7) or a term of imprisonment of up to five years, with deprivation of the right to hold certain kinds of positions for up to five years (Criminal Code, Article 278). But criminal liability is limited to those who use or reveal the information from motives of gain or personal interest, and only if significant damages are caused to a commercial organization or individual entrepreneur. Prosecution requires a private complaint from an injured party.  Illegal receipt of banking secrets is also a criminal offense (Article 277), punishable by a fine of from 10,000 to 14,400 somoni[[7]](#footnote-8) or imprisonment of up to two years. The receipt must be by illegal means (the article lists theft of documents, theft of electronic information, and bribery or threat as examples) and for the purpose of the revelation or illegal use of the information.  None of those interviewed for this diagnostic review were aware of any instance of the application of the criminal law provisions. This is not especially surprising, as the provisions seem somewhat inconsistent and may be difficult to apply. Illegal receipt of banking secrets related to private individuals would seem to be covered by the criminal provisions, but not the revelation or use of the same information, unless it causes commercial damage. If the initial revelation or the means of receipt was not illegal – for example, a bank employee was simply gossiping about a bank client or if the initial source of information cannot be shown – neither provision would seem to apply. The nature of damages and proof of causation by the revelation of banking information are also likely to be problematic.  There do not appear to be less serious, administrative sanctions available against individuals in relation to improper revelation of banking secrets. The law “On the National Bank of Tajikistan” provides for the NBT to undertake yearly inspections of banks to determine (among other things) whether the bank is in compliance with all of the applicable laws and regulations (instructions). A finding that a bank was failing to provide for the protection of bank secrets might qualify as a violation of the provisions of the law “On Banking Activity” on the issue and of those instructions that repeat secrecy requirements. Under these circumstances, the NBT could be authorized to take corrective measures under Article 48 of the law on the NBT. The primary measures available to remedy a problem would seem to be issuance of an order or directive to the bank and/or demand that the bank submit an action plan to eliminate problems.[[8]](#footnote-9) Even this form of enforcement of secrecy requirements may be difficult, however, since the existing law and instructions do not include specific rules for the treatment and storage of customer information and NBT would not necessarily receive an indication of a lax attitude toward secrecy during an inspection of bank premises and records.  Although banks interviewed for this diagnostic did not perceive a problem with customer confidentiality, some did note that consumers regularly expressed a desire to keep their banking matters completely confidential and did not, therefore, want the bank to send any written records to home or business. Banking customers and the general public, however, do not appear to believe that secrecy rules are enforced in practice and fear that their financial information will be revealed to tax and other authorities, local officials, or private parties who may have predatory intentions. Concern over this issue was a commonly cited reason for avoidance of use of the banking system. A visible improvement in this area will be necessary before some consumers will be willing to consider the use of banks for most or all of their financial dealings. |
| **Recommendation** | The NBT should draft, with input from the banking industry, a new NBT instruction on the confidentiality of customer information that goes further than a definition of what information is considered a banking secret and the circumstances under which it may be revealed. To the extent possible given the technology currently in use in banks, rules should be formulated governing the handling and storage of customer information in daily banking operations. These should be drafted with an eye both to preventing unauthorized access to banking secrets and to improving records concerning which authorized users have accessed that information so as to improve enforcement ability. Such a detailed regulatory instruction would also provide NBT with the substance and detail needed to review bank practices in this area during inspections and to impose appropriate corrective measures where necessary. If desired, regulatory instructions on this issue could be included in a new general instruction on bank recordkeeping, as discussed in the recommendation in section C.3.  Customers should be informed by the bank about the rules concerning secrecy of banking information and the exceptions to those rules when they open an account. If customers are not currently receiving that information under the requirements of point 20 of Instruction #171 of the NBT, that instruction should be amended to make clear that information on the secrecy rules and exceptions is a “condition” of a bank account that falls under the rules stated in point 20 for provision of information. In the alternative, rules concerning information to customers on bank secrecy and the exceptions to bank secrecy could be included in a new unified instruction on the provision of information to customers, as discussed in sections B.7 and B.8.  Amendments should be made to the criminal and administrative sanctions available in this area to resolve inconsistencies, extend coverage to banking secrets of private individuals, and provide for less serious and more easily administrable sanctions that can be imposed for violations of secrecy alone (without the need to show intent and damages). Once these rules are in place, a visible enforcement effort and commitment by authorities to improvement in this area may be necessary to allay concerns.  To the extent that the problems experienced by individuals whose information has been revealed are related to pressure from state or local officials or predatory behavior by corrupt organizations, individuals may be unwilling to report such incidents. In addition to other efforts, consideration should be given to provision of a means for consumers or customers to make confidential or even anonymous reports or complaints to the state body responsible for consumer protection in banking indicating that they believe that their banking information has been compromised. This could provide some additional means to assess the extent of actual problems experienced. |
| **Good Practice D.2** | ***Sharing Customer’s Information***   1. **A bank should inform its customer in writing:**     1. **of any third-party dealing for which the bank is obliged to share information regarding any account of the customer, such as any legal enquiry by a credit bureau; and**    2. **as to how it will use and share the customer’s personal information.** 2. **Without the customer’s prior written consent, a bank should not sell or share account or personal information regarding a customer of the bank to or with any party not affiliated with the bank for the purpose of telemarketing or direct mail marketing.** 3. **The law should allow a customer of a bank to stop or opt out of the sharing by the bank of certain information regarding the customer and, prior to any such sharing of information for the first time, every bank should be required to inform each of its customers in writing of his or her rights in this respect.** 4. **The law should prohibit the disclosure by a third party of any banking-specific information regarding a customer of a bank.** |
| **Description** | **a.** Instances in which banks must release customer information are stated in the law “On Banking Activity” (Articles 48 and 50). Nearly all of these relate either to authorized state bodies or to bodies or persons involved with banking supervision and audit. The law “On Banking Activity” does list provision of information to a credit bureau as a possibility, but such release is to be in accordance with the law “On Credit Histories,” which in turn requires that a bank obtain a customer’s written consent to release information to the bureau about that customer.  NBT’s regulatory instructions require that consumers opening an account be informed of the conditions applying to a bank account and the costs involved, and that a consumer sign a statement indicating that this has occurred (Instruction #171, point 20). The instructions do not, however, provide detail concerning whether the “conditions of the account” include matters such as confidentiality requirements and other legal rules, or only the specific contractual provisions applicable to the account (e.g. interest rate, penalties, fees, and so forth). If consumers are not receiving an explanation of the secrecy requirements and exceptions as a part of the information provided when opening an account, it may be appropriate for the cited instruction or the separate instruction discussed above in D.1. to include a requirement that this be done.  **b.** Current law does not envision any ability of banks in Tajikistan to share customer information with third parties for advertising or other purposes not envisioned by law. Banks reported that they can reveal customer information only with written customer consent unless provided by law, but the law does not even clearly provide the banks with the ability to obtain a general consent for other purposes. In theory, it would be possible for banks to include a provision in contracts allowing the release of customer information for such purposes. Although they were requested, no bank contracts could be obtained for this diagnostic and no review could be done on this issue. In conversations with banks and other counterparts, however, there was no indication that banks are currently attempting to use customer information even to market their own additional services.  **c.** No ability to “opt out” of information sharing is envisioned by law or regulations as they address only instances in which the bank is obligated to provide information. The only exception to this is the provision of information to a credit bureau, which requires the written consent of the consumer.  **d.** Third parties who receive information constituting a banking secret through their official positions or work duties are also obligated to protect it. Article 49 of the law “On Banking Activity” extends secrecy obligations to the staff of NBT, persons conducting inspections for NBT, and any other persons who have access to reports or information directly or indirectly as a result of their profession, position, or activities. The criminal provisions concerning revelation or use of banking secrets that are discussed in section D.1. also cover all persons who have access to such information as a result of their profession or official position. |
| **Recommendation** | On the basis of information available during the diagnostic review, there does not appear to be a pressing need for substantial change in the law in this area. If consumers are not receiving an explanation of the legal rules concerning bank secrets and the exceptions to those rules as a part of the written information provided when opening an account, Instruction #171 should be amended to require that this take place. Such a requirement could also be envisioned in a new Instruction on treatment of customer information, as discussed in D.1. |
| **Good Practice D.3** | ***Permitted Disclosures***  **The law should provide for:**   * 1. **the specific rules and procedures concerning the release to any government authority of the records of any customer of a bank;**   2. **rules on what the government authority may and may not do with any such records;**   3. **the exceptions, if any, that apply to these rules and procedures; and**   4. **the penalties for the bank and any government authority for any breach of these rules and procedures.** |
| **Description** | **(i)** The law “On Banking Activity” provides for release of customer information that constitutes a banking secret only to the account holder and to the following:  -- the NBT;  -- a court on the basis of a decision of the court;  -- a member of the court enforcement service on the basis of a decree of the court enforcer in connection with an execution order;  -- a credit bureau, in accordance with the law “On Credit Histories” (that law requires written consent of the client);  -- criminal investigation bodies in connection with a criminal investigation in relation to the customer, on the basis of a decree of the court in accordance with the criminal procedure code;  -- tax bodies concerning questions of the payment of taxes by a legal entity that is the subject of a tax inspection, on the basis of a letter of the head of the tax body and with presentation of a copy of the order of the tax body on the inspection, if this is envisioned by the tax code.  Upon the death of a client, information may be provided to the persons indicated in the client’s will, or to a court, notarial office, or foreign consulate that is handling the estate of the deceased client.  The law does not address the question of whether the bank must, may, or may not inform the customer in any of these instances. This is a particularly important issue in an environment where banking customers may fear use or revelation of their banking information for improper or predatory purposes. (Such fears were reported by some parties during the diagnostic review to be retarding the use of banks.) While in some cases (for example, some kinds of criminal investigation), confidentiality might be needed, it would add clarity and important protection for the consumer if the banking laws specifically required notice to the customer concerning some kinds of requests for banking information. Inclusion of the customer’s information in an NBT inspection, or in the information provided to a credit bureau after the customer’s written release, should not require notice, nor should inquiries from criminal investigation bodies or the courts if there is an appropriate order of the procurator or court concerning confidentiality in the specific case. However, if the release is in relation to a court decision that is a public matter, or in relation to an execution order or a proper tax audit or investigation, those are events about which a customer should have received notice and the bank should be required to notify the customer concerning the demand. This would allow the customer to take appropriate action if they have not received proper notice of the underlying events. If there are types of demand that are subject to abuse or that cause particular damage to public confidence in the safety of banking information, the requirement for notice could envision a delay period before the bank complies with the demand and an appropriate means for the customer to appeal the order on which it is based.  The provisions of the law “On Banking Activity” regarding release of information to tax bodies refer to information concerning the accounts of “legal entities” and so do not appear to cover access by tax inspectors to the bank records of individual persons (natural persons), including those conducting individual business activities. This does not appear to be consistent with either the provisions of the prior Tax Code or the recently adopted new Tax Code, both of which envision access by tax authorities to information on the accounts of both individuals and legal entities. This inconsistency may create legal uncertainty and should be resolved by an appropriate amendment.  The new Tax Code (Article 56), requires that a bank provide information on the existence of accounts of a taxpayer that is the subject of a verification (that is, an audit or investigation) and on the balances and movements of funds in those accounts. The information must be provided within 5 days of the receipt by the bank of a written demand by the tax bodies. There is no limitation of this requirement to legal entities, and individual taxpayers may be the subjects of a verification. A bank must also provide such information, on the same written demand and within the same period, on taxpayers that have officially been recognized as “irresponsible” on the basis of prior findings of violation and identified as such by a posting on the website of the authorized state body.  In addition to access to the banking and other information of a taxpayer that is subject to a primary audit or investigation to determine if taxes are being properly calculated and paid, the tax bodies may also demand information from other persons and entities concerning specific transactions or operations in order to determine whether they have been properly reported by another taxpayer that is being audited. The Tax Code uses the same term for nearly all forms of audit, investigation, or inquiry by the tax bodies – “verification.” (See Article 28, part 4 of the Tax Code.) As the provisions of Article 56 concerning access to bank account information specify only that a demand be in relation to a taxpayer that is the subject of a verification, it appears that a mandatory demand might be made upon the bank in these circumstances as well. This type of verification – called a “counter-verification” – is limited by the Code to confirmation of the payments or transactions in question, but a request for bank information required to make such a confirmation might conceivably be broader.  The new Tax Code itself does not define the level at which a decision concerning the verification of a specific taxpayer is to be made, nor does it specify the persons within the tax bodies who are authorized to issue a written demand for bank information. Such matters would normally be defined in the regulations and instructions issued under the Code, which were not available during this diagnostic review (and may not yet have been issued). There is no provision in the Code for independent review (by a court, procurator, or special office within the tax authority) either of decisions on the conduct of audits or investigations or of demands to banks for account information. As noted above, some participants in the diagnostic review indicated concern about the security of personal financial information and possible predation on the basis of improper access to or use of such information, including by employees of the tax authorities. If this perception is widely shared, it may be appropriate to consider the use of additional mechanisms for protection of customer information in relation to tax inquiries. Mechanisms that have been used in other systems include a requirement of notice to the customer before release of account information to the tax bodies (with an ability of the customer to appeal the order to an administrative or judicial officer or body), a requirement for specific customer consent for release of banking information to the tax bodies (with an ability of the tax authorities to obtain a mandatory order from an administrative or judicial body or officer if it is denied), or a requirement for prior approval of all such demands for banking information by a body or officer independent of the tax authority.  **(ii) & (iii)** The provisions of the laws on the basis of which access is to be sought generally govern how the body in question will request the information and how it must treat the information. Information that forms a part of the materials of a civil court case, for example, will be subject to the rules of Article 11 and Article 59 of the Code of Civil Procedure. These articles require the court to examine material containing a legally protected secret in a closed court session and to warn those who have access to information by way of their participation in the court case about legal liability for revelation of that information. Procedural rules concerning court treatment of legally protected information are currently somewhat undeveloped, and do not provide for the possibility for private judicial review, the use of redacted versions of filings, or special storage of case files containing such materials. Those governing the activity of other bodies are likely to be similarly limited.  In relation to access by tax bodies, the new Tax Code itself does not define the specific procedures to be used for protection of banking information obtained during an audit or investigation. Regulations and instructions that might provide such rules or guidance were not available during this diagnostic review (and may not yet have been issued under the new Code). Specific, binding rules should be issued that govern access to confidential banking information by employees of the tax authority, recording of which employees have had such access, secure storage of the information, and its destruction.  **(iv)** Persons who have access to information that constitutes a banking secret through their work in state bodies would be covered by the criminal law provisions on illegal use or revelation of that information that are discussed in section D.1. above. The recommendations in that section for less draconian and more easily applicable sanctions would apply here as well. It is not clear that the criminal provisions would be applicable to private parties who become aware of banking secrets as a result of their participation in a court case or as parties in a criminal investigation. Questions were also raised by some commentators during the review concerning whether private parties associated with a credit bureau would be subject to the same provisions, or would be subject to lesser sanctions on the grounds that they have ceased to be a banking secret when the customer approved their transfer to the bureau. |
| **Recommendation** | The law “On Banking Activity” should be amended to require a bank to notify a customer about a request for information from an authorized government body or official. In the alternative, this requirement could be included in a separate instruction on the treatment of customer information as discussed in D.1. Rules in this area should envision an obligation of the bank to inform the customer concerning any inquiry that is allegedly based on an event or order about which the customer should have received notice, and should obligate the bank to obtain and to provide to the customer all documents and information required to confirm the source and legitimacy of the demand.  Procedures and instructions governing access by tax bodies to banking information of individuals should ensure that proper grounds are required for the initiation of verifications (audits, investigations) and that written demands to a bank for account information are properly justified and the information protected. Serious consideration should be given to the use of additional mechanisms for protection of customer banking information in relation to inquiries from tax bodies. Mechanisms for consideration include a requirement of notice to the customer before release of account information to the tax bodies (with an ability of the customer to appeal the order to an administrative or judicial officer or body), a requirement for customer consent for release of banking information to the tax bodies (with an ability of the tax authorities to obtain a mandatory order from an administrative or judicial body or officer if it is denied), or a requirement for prior approval of all such demands for banking information by a body or officer independent of the tax authority (a court, procurator, or administrative body or officer).  Inconsistency between the provisions of the Tax Code and the provisions of the law “On Banking Activity” concerning access to banking information by tax authorities should be resolved to avoid legal uncertainty.  Eventually, more effective and comprehensive rules will be needed for the protection of confidential information (including banking secrets) that is involved in court consideration of any case in which such information is used. This is a larger task that will have to be undertaken as court practice in civil and administrative matters involving such information develops. |
| **Good Practice D.4** | ***Credit Reporting***   1. **Credit reporting should be subject to appropriate oversight, with sufficient enforcement authority.** 2. **The credit reporting system should have accurate, timely and sufficient data. The system should also maintain rigorous standards of security and reliability.** 3. **The overall legal and regulatory framework for the credit reporting system should be: (i) clear, predictable, non-discriminatory, proportionate and supportive of consumer rights; and (ii) supported by effective judicial or extrajudicial dispute resolution mechanisms.** 4. **In facilitating cross-border transfer of credit data, the credit reporting system should provide appropriate levels of protection.** 5. **Proportionate and supportive consumer rights should include the right of the consumer** 6. **to consent to information-sharing based upon the knowledge of the institution’s information-sharing practices;** 7. **to access his or her credit report free of charge (at least once a year), subject to proper identification;** 8. **to know about adverse action in credit decisions or less-than-optimal conditions/prices due to credit report information;** 9. **to be informed about all inquiries within a period of time, such as six months;** 10. **to correct factually incorrect information or to have it deleted and to mark (flag) information that is in dispute;** 11. **to reasonable retention periods of credit history, for instance two years for positive information and 5-7 years for negative information; and** 12. **to have information kept confidential and with sufficient security measures in place to prevent unauthorized access, misuse of data, or loss or destruction of data.** 13. **The credit registries, regulators and associations of banks should undertake campaigns to inform and educate the public on the rights of consumers in the above respects, as well as the consequences of a negative personal credit history.** |
| **Description** | **a. – f. inclusive:** A law was adopted in March 2009 authorizing the creation of a credit histories bureau that will collect credit information and provide credit histories to assist in the assessment of the creditworthiness of potential borrowers. The law provides for credit history information to be given to the bureau only if the subject of the information gives written consent and also for written consent for any access to the information held on a consumer by the credit bureau. It contains a number of provisions requiring the use of data protection technology and defines credit bureau information as confidential. This category provides some legal protection, but less than that accorded to information defined as bank secrets. NBT is designated as the regulator for the credit histories bureau, which has not yet been created in practice. There are not yet any detailed instructions from NBT on the treatment of data by the credit bureau(s).  Banks are eager for the credit bureau to begin work, as they experience serious problems in determining when a borrower (and especially an individual entrepreneur) is already indebted to other banks. However, there appear to be some misunderstandings and perhaps some legal uncertainties concerning the nature of the information that is provided to and provided by a credit bureau and the ways in which the records are kept and accessed. Some banks, for example, appeared to believe that the only information that would be submitted to the credit bureau concerning a customer would be their identity and the fact that they had taken a loan from a particular bank and had (or had not) repaid it. At least one bank had apparently assured customers that the amounts of money they had borrowed and the specifics of their repayments would not be reported. Provisions of the law “On Credit Histories” appear to require that the NBT be given copies of all “credit histories” held by the bureau. This would seem to indicate an understanding of the credit history as a file of information stored on a server and updated with periodic notations. In practice, most credit reporting systems do not retain files or data on individuals but rather provide a “data snapshot” that the reporting system assembles from reporting sources at the time of a request. These and other bumps and misunderstandings will need to be resolved as the first credit bureau begins to be formed and the NBT and participating banks and organizations become more familiar with its operation. |
| **Recommendation** | As the first credit bureau is formed and begins to put in place reporting structures and to train NBT and participating banks and organizations in its use, NBT should work to ensure that regulatory instructions and internal rules and procedures are in place to protect consumers and information about them. This should include requirements for consumers to receive clear and accurate information about the credit bureau, its functions, and their rights in relation to credit history information and its use by lenders. Specific procedures should be envisioned in NBT instructions to implement in practice the guarantees of confidentiality, rights to correct information, rights of review and other consumer protections envisioned in the law. |
| **SECTION E** | **DISPUTE RESOLUTION MECHANISMS** |
| **Good Practice E.1** | ***Internal Complaints Procedure***   1. **Every bank should have in place a written complaints procedure and a designated contact point for the proper handling of any complaint from a customer, with a summary of this procedure forming part of the bank’s Terms and Conditions referred to in B.7 above and an indication in the same Terms and Conditions of how a consumer can easily obtain the complete statement of the procedure.** 2. **Within a short period of time following the date a bank receives a complaint, it should:**     1. **acknowledge in writing to the customer/complainant the fact of its receipt of the complaint; and**    2. **provide the complainant with the name of one or more individuals appointed by the bank to deal with the complaint until either the complaint is resolved or cannot be processed further within the bank.** 3. **The bank should provide the complainant with a regular written update on the progress of the investigation of the complaint at reasonable intervals of time.** 4. **Within a few business days of its completion of the investigation of the complaint, the bank should inform the customer/complainant in writing of the outcome of the investigation and, where applicable, explain the terms of any offer or settlement being made to the customer/complainant.** 5. **When a bank receives a verbal complaint, it should offer the customer/complainant the opportunity to have the complaint treated by the bank as a written complaint in accordance with the above. A bank should not require, however, that a complaint be in writing.** 6. **A bank should maintain an up-to-date record of all complaints it has received and the action it has taken in dealing with them.** 7. **The record should contain the details of the complainant, the nature of the complaint, a copy of the bank's response(s), a copy of all other relevant correspondence or records, the action taken to resolve the complaint and whether resolution was achieved and, if so, on what basis.** 8. **The bank should make these records available for review by the banking supervisor or regulator when requested.** |
| **Description** | **a.** Most of the banks interviewed for the diagnostic review reported that they have a clear procedure and hierarchy for reviewing customer complaints. In most cases, however, the procedure described was not solely for customer complaint review but rather a general procedure and path for the resolution of problems of any type that could not be resolved by the local employee or manager that first encountered them. As such, they represent the banks general internal operating procedures and would not be in a form appropriate to inclusion in contracts or statements of terms and conditions. No bank indicated the existence of any formal, written policy or procedure for customer complaints that could be shared during the diagnostic review work. Several banks did emphasize that customers were given the opportunity to take a complaint to the highest level of bank management, both by the escalation procedures within the bank and also by the use of weekly “open door” hours on the part of senior bank officials.  **b. – e.** The formal written complaint and notification procedures described in these points of the good practice description do not appear to be a part of bank complaint resolution practices. The banks’ procedures were described as considerably less formal, particularly at the early stages of the process. Some banks did indicate that they provide information to customers on how to contact the bank with a complaint, but this did not appear to differ from the provision of general contact information for the bank. Although requested, no copies of customer contracts or information packets were obtained and so no review of their contents on this issue could be done.  **f. – h.** Banks are not required to keep detailed records of all complaints and their resolution or to make such records available to NBT or other bodies, and there does not appear to be any practice of this kind. Some banks do keep some kinds of internal records of both complaints and other kinds of inquiries in order to monitor bank performance. One bank was able to illustrate this practice, displaying a list of calls made to the bank with complaints and questions and an indication of where the calls were directed. Outcomes of the referral were not listed.  An exception on the issue of record keeping may be complaints in relation to loan accounts, which are covered by the more detailed requirements for records of such accounts contained in NBT Instruction #186. Point 36 of that instruction requires that all meetings and conversations, telephone conversations, results of negotiations and inspections, and also all correspondence connected with the credit account be kept in the credit record. This would seem to include any communication of a complaint. In theory, such complaints would be available to NBT during an inspection, but there is no requirement that they be reported or even particularly identified in any way. |
| **Recommendation** | NBT should issue instructions regarding the handling and recording of customer complaints by banks. Given the level of financial sophistication of consumers, the simplicity of banking products offered, and the apparent social constraints on the use of formal complaint mechanisms, care should be taken that the instructions ensure the proper handling and recording of complaints received by telephone and in person at the bank. Banks should be required to keep a record of all such complaints and their resolutions, and rules should be in place concerning when a written record should also be provided to the customer. The instructions will need to include a clear definition of what constitutes a “complaint” for these purposes – since there may be little to distinguish between a complaint and an inquiry and some “complaints” may be resolved by an explanation to customer.  Consideration could be given to defining the requirement for record keeping in terms of “inquiries” rather than or in addition to “complaints.” For example, a bank might record all inquiries concerning the accuracy of interest calculations, or about delayed, missing or inaccurate transactions in accounts. This would have the advantage of providing more accurate information about customer problems (including problems that are based on a misunderstanding rather than any bank error or misconduct) and could assist banks, the NBT, and other interested parties in devising better materials and programs to inform and educate consumers. In order not to overburden banks with reporting requirements, however, definitions would need to be clear concerning what must be reported and the reporting method would need to be simple.  Banks should also be required to have more formal, written procedures for those who might wish to use them, including identification of responsible parties, indication of the appropriate channel for escalation of a complaint to higher levels in the bank, rules concerning the timeframes in which customers must be informed about the results of consideration of the complaint, and other pertinent information.  NBT instructions that deal with customer accounts and information (such as Instruction #171 and Instruction #186) should require that customers be provided with a copy of the rules concerning the handling of complaints and inquiries, both oral and written, when opening an account and that the rules should be posted or available in written form in bank branches.  Banks should be required to keep records of complaints and their resolution and to make the information available to NBT. A requirement to publish information on complaints may be useful in providing incentives to avoid them, but it may be appropriate in the short term to provide banks with strong incentives to record and report complaints and problems and to develop good practices in addressing them rather than to provide a disincentive for disclosure in the form of publication. |
| **Good Practice E.2** | ***Formal Dispute Settlement Mechanisms***   1. **A system should be in place that allows customers of a bank to seek affordable and efficient recourse to a third-party banking ombudsman or equivalent institution, in the event the complaint of one or more of customers is not resolved in accordance with the procedures outlined in E.1 above.** 2. **The existence of the banking ombudsman or equivalent institution and basic information relating to the process and procedures should be made known in every bank’s Terms and Conditions referred to in B.7 above.** 3. **Upon the request of any customer of a bank, the bank should make available to the customer the details of the banking ombudsman or equivalent institution, and its applicable processes and procedures, including the binding nature of decisions and the mechanisms to ensure the enforcement of decisions.** 4. **The banking ombudsman or equivalent institution should be appropriately resourced and discharge its function impartially.** 5. **The decision of the banking ombudsman or equivalent institution should be binding upon the bank against which the complaint has been lodged.** |
| **Description** | **a. – e.** There is no financial ombudsman or any institution performing similar functions in Tajikistan.  Responsibility for the enforcement of consumer protection rules on the basis of specific complaints and own-initiative investigations currently rests with the antimonopoly body, which is tasked with enforcement of the competition law, consumer protection law, and advertising law. That body appears to lack any experience or expertise in banking matters and already faces significant resource constraints in meeting its higher profile obligation to deal with natural monopoly regulation and competition concerns across the economy as a whole. The antimonopoly body is a very new institution and as yet has no rules defining its procedures for investigation and decision-making in its areas of responsibility. Even when these processes have been defined, it is unlikely that they will be focused on a quick resolution of complaints, including through informal means, rather than the enforcement of the law through the issuance of orders and of fines and penalties.  Consumers currently lack any direct channels to quickly and effectively resolve disputes with banks that are not resolved by the banks’ own initial complaint procedures. Processes that involve escalating a dispute through the higher ranks of bank management, waiting for an investigation and ruling by the antimonopoly body, or filing a complaint in court will be unattractive in terms of cost and/or delay.  The creation of a body or institution with the power to undertake the rapid resolution of such matters is highly desirable, but may present institutional and resource challenges and is unlikely to be a priority until and unless the regulator and authorities begin to perceive a substantial need in the form of a significant number of consumer complaints. Options will include the creation of a unit or office under the authority of the NBT, the creation of a separate financial ombudsman or of financial ombudsman services within the office of the existing ombudsman’s office, or the creation of a complaints board with the participation of the Association of Banks of Tajikistan, the NBT and consumer protection authorities that would have similar powers. Binding authority may not be appropriate for the body or institution in the short term, particularly if it is created relatively soon. Laws and regulations are, in many areas of banking, still in the early stages of development, as are banking practices. With respect to many potential disputes, it is not clear what sources an ombudsman or similar institution would draw upon to define the requirements and limits of legal behavior. It is important that clear legal rules and standards be developed and that those rules and standards be consistent with and fit into the broader legal framework of Tajikistan, including constitutional, civil and administrative norms and procedures. Quick and binding resolution of disputes by an ombudsman where laws and regulations are inadequate may produce arbitrary results not based in law and/or retard necessary development of the legal framework and review of existing legislation. |
| **Recommendation** | If responsibility for investigation of consumer complaints in the banking sphere remains with the antimonopoly body, additional resources will need to be provided and corresponding amendments made in its statute and in rules governing its procedures to ensure appropriate involvement of banking experts and the banking regulator in its decisions. At a minimum, the rules should require that the antimonopoly body specifically assign responsibility for cases concerning banking and finance to a department, sub-department or official (to encourage the development of expertise) and should also require that decisions on such cases involve consultation with the regulatory authority. If desired, the procedure for decision on these categories of cases could require the participation of representatives of the regulatory body along with officials of the antimonopoly body.  In order to raise consumer confidence and willingness to deposit funds, it may be necessary for special mechanisms to be created for the quick resolution of particular types of disputes or for particular categories of consumers. On the basis of information received by the regulator concerning complaints and concerns of consumers, the regulator should consider whether special mechanisms for resolution of consumer problems are needed in relation to particular categories of problem or groups of consumers. The regulator should have the authority to convene a working group together with consumer protection authorities, representatives of the banking industry to consider workable solutions for these situations. Such solutions could be imposed by the regulator (if within its authority), voluntarily implemented by the industry alone or with the participation of consumer protection bodies, or created in another way.  The creation of an institutional mechanism for the rapid resolution of consumer disputes related to banking issues is desirable, but is unlikely to be a priority in the short term until the regulatory and other authorities begin to receive information on the existence, type, and prevalence of consumer problems in this area. There are a number of options that might be appropriate, including an ombudsman’s office, a dispute resolution board with participation of both public bodies and representatives of the industry, or other configurations. With respect to any such special mechanisms, care will need to be taken to ensure that arbitrary decision-making is avoided and that there is no retardation of necessary development of laws and regulations. Decisions should not be legally binding at the outset, or should at least be clearly subject to appeal. Mechanisms should be in place requiring communication between the ombudsman or other institution for dispute resolution and the other bodies that play important roles in the banking sphere (NBT, consumer organizations, the antimonopoly body) to ensure that information on complaints and problems is shared and that action can be taken by those bodies on a broader scale if required. |
| **Good Practice E.3** | ***Publication of Information on Consumer Complaints***   1. **Statistics and data of customer complaints, including those related to a breach of any code of conduct of the banking industry should be periodically compiled and published by the ombudsman, financial supervisory authority or consumer protection agency.** 2. **Regulatory agencies should publish statistics and data and analyses related to their activities in respect of consumer protection regarding banking products and services so as, among other things, to reduce the sources of systemic consumer complaints and disputes.** 3. **Banking industry associations should also analyze the complaint statistics and data and propose measures to avoid the recurrence of systemic consumer complaints.** |
| **Description** | **a.** There is currently no body that serves as the primary or central recipient of consumer complaints in the banking sector. All of the bodies that might receive such complaints reported that they have received few or no consumer complaints concerning banking activities (NBT, the antimonopoly body, the banking association, and the consumer association). Banks also reported that they receive few complaints. Neither the state bodies nor the banks publish information on consumer complaints.  **b. & c.** There is currently little or no enforcement activity in relation to consumer protection in banking and financial services, so there is nothing for regulatory agencies to report or for the banking association to analyze. The antimonopoly agency does publish an annual report on its general activities, but that agency has not yet addressed any issues related to banking. |
| **Recommendation** | A requirement for the collection and publication of the relevant statistics and information should be included in the duties of the body that is identified to the public as the proper recipient of complaints (see B.6 above). In the immediate period, while complaint numbers are very low, this requirement could be met by the inclusion of an appropriate statement or section in the annual report of the relevant body.  Banks should be required to keep records of complaints and their resolution and to make the information available to NBT, as discussed above in section E.1. A requirement that banks publish information on complaints may be useful in providing incentives to avoid them, but it may be appropriate in the short term to provide banks with strong incentives to record and report complaints and problems and to develop good practices in addressing them rather than to provide a disincentive for disclosure. Any requirement for publication of complaints that identifies the banks involved could be instituted at a later time. |
| **SECTION F** | **GUARANTEE SCHEMES AND INSOLVENCY** |
| **Good Practice F.1** | ***Depositor Protection***   1. **The law should ensure that the regulator or supervisor can take necessary measures to protect depositors when a bank is unable to meet its obligations including the return of deposits.** 2. **If there is a law on deposit insurance, it should state clearly:** 3. **the insurer;** 4. **the classes of those depositors who are insured;** 5. **the extent of insurance coverage;** 6. **the holder of all funds for payout purposes;** 7. **the contributor(s) to this fund;** 8. **each event that will trigger a payout from this fund to any class of those insured;** 9. **the mechanisms to ensure timely payout to depositors who are insured.** 10. **On an on-going basis, the deposit insurer should directly or through insured banks or the association of insured commercial banks, if any, promote public awareness of the deposit insurance system, as well as how the system works, including its benefits and limitations.** 11. **Public awareness should, among other things, educate the public on the financial instruments and institutions covered by deposit insurance, the coverage and limits of deposit insurance and the reimbursement process.** 12. **The deposit insurer should work closely with member banks and other safety-net participants to ensure consistency in the information provided to consumers and to maximize public awareness on an ongoing basis.** 13. **The deposit insurer should receive or conduct a regular evaluation of the effectiveness of its public awareness program or activities.** |
| **Description** | **a.** Deposits in the state bank are fully guaranteed by the state. In August of 2011, a law was passed creating a general insurance scheme for losses by individuals that result from the bankruptcy or other liquidation of a bank or MDO. The Fund has been organized and staffed and is now at the stage of building up its resources through periodic obligatory payments by banks and MDOs and creating the procedures for payment of insured amounts in the case of necessity.  **b.** The law on deposit insurance clearly creates and identifies the Deposit Insurance Fund as the organization responsible for the insurance scheme, the types of accounts that may be insured, the limit of the coverage (7000 Tajikistan somoni), the participants/contributors to the Fund, and the events that will trigger a payout (**b(i)** and **b(iii)-b(vi)**, above) According to the law, only interest-bearing deposits – “savings” deposits – of natural persons are covered, leaving non-interest-bearing deposits uninsured. Deposit Insurance Fund staff indicated that this definition currently includes the payments accounts of individuals, since small amounts of interest are currently paid on the funds in those accounts. Should banks cease to offer interest on those accounts, the language defining which accounts are insured would result in a loss of deposit insurance for those accounts. This has the potential to create confusion among consumers about what accounts are covered and fairness concerns in relation to the protection provided to individual account holders.  A lack of clarity in the language of the law’s provisions on exceptions to insurance payouts may also leave questions about which consumers are actually insured by the law and when a payout will be made (**b(ii)**). These questions are also reported by the Fund to be causing difficulty in building up the required amounts for the insurance fund and in administering contributions in an efficient manner.  With respect to the administration of contributions, the interpretation of Article 24 of the law, which defines payment exceptions (instances in which insurance will not be paid on an account) and its relationship to Article 16, defining quarterly payment obligations of banks, may need clarification. Currently, banks are interpreting the obligation to pay quarterly contributions as a percentage of insured amounts as applying only to accounts that do not fall within Article 24’s exceptions. They are undertaking a complicated accounting procedure to first subtract all of the accounts that may fall under Article 24 (as these are not considered by the banks to be insured), and then applying the quarterly payment obligation to the remaining accounts (thus reducing the amount of the quarterly payment). Application of these exceptions requires analysis of not only the legal but also the beneficial ownership of accounts, the existence and current size of security interests, and other matters that are subject to change and may not be well documented. The resulting amount is difficult for the Fund to confirm as correct and there have been a number of disputes and some instances of banks submitting and then withdrawing their calculations and payments on the grounds that errors have been made and recalculation is required. To the extent that these complications prevent the Fund from amassing the required insurance funds and from maintaining them in an efficient and legally certain manner, they may threaten the Fund’s ability to function.[[9]](#footnote-10)  Exceptions in the law are also likely to be difficult for consumers to understand and for Fund administrators to interpret. For example, savings that “according to a conclusion of the NBT facilitated the decline of the financial position” of the bank are exempted from payout under the insurance scheme. There is no indication of the basis on which NBT is to make that determination. In common international practice, this exception would be clearly limited to savings that were subject to specially advantaged rates or other special conditions that were beneficial to the client and injurious to the bank. Moreover, concern over such payouts is reduced where the insurance ceiling is low, as in Tajikistan’s new law, since the specially advantaged saver can receive a maximum of the low ceiling amount.  Similarly, savings that are subject to any security interest (not a security interest in favor of the failing bank, which is covered separately) are also exempted from insurance payments. While this is sometimes done in international practice, the intent is to allow the amount serving as security to be properly transferred in a manner that protects both the account holder and the rights of the holder of the security interest. There does not appear to be a procedure for this to occur, however, and in its absence the exception may result in unfair treatment of some consumers. Those consumers will lose their entire deposit, regardless of whether they are current on the obligation it secures, and may be forced into default on that obligation by the loss.  Procedures for Fund payouts in the event of a triggering event are still being developed and cannot yet be said to be efficient and reliable (**b(vii)**).  **c.- f.** Neither banks nor the Fund and regulator are yet undertaking general campaigns to inform customers about the existence of the Fund and the nature and extent of insurance on interest-bearing accounts. This is quite appropriate at present, since the Fund has not yet built up its assets to the required levels and is still developing the procedures by which it will make payments on the insured accounts. It does not appear that the Fund is yet in a position to execute its functions effectively, placing the reliability of the insurance it provides in question until these issues are resolved. As the Fund becomes established, however, banks will need to inform their customers about the Fund and the limits on its insurance. In order for this information to be communicated clearly and to avoid any confusion concerning the possibility that different banks are offering different terms of guarantee, it may be appropriate for the NBT, guarantee fund and/or banking association to develop model language for the notations to be included on bank advertising materials and the longer explanation that should be provided to customers opening accounts. |
| **Recommendation** | The definition of which accounts are covered by deposit insurance should be revised to include all consumer accounts (accounts held by natural persons), whether interest bearing or not. This will avoid confusion concerning what is insured and simplify Fund calculations.  The provisions of the law on deposit insurance should be reviewed and amendments proposed with an eye toward the clarification of the payout exceptions in Article 24 and of their relationship to the quarterly payments made by banks under Article 16. The goals of such amendments should be twofold: (1) clarification of the exceptions so that they can be easily understood by both consumers and Fund administrators and are fair to all depositors; and (2) definition of contributions such that they can be quickly and efficiently calculated and administered and do not result in large scale accounting tasks or protracted disputes.  As the Fund becomes established, banks will need to inform their customers about the Fund and the limits on its insurance. In order for this information to be communicated clearly and to avoid any confusion concerning the possibility that different banks are offering different terms of guarantee, the NBT, guarantee fund and/or banking association should develop model language for the notations to be included on bank advertising materials and the longer explanation that should be provided to customers opening accounts.  To the extent that the NBT or other bodies undertake consumer financial literacy surveys or consumer financial education efforts, information on the existence of deposit insurance and its basic features should be included. This may help to increase the willingness of small savers to place their funds in banks. |
| **Good Practice F.2** | ***Insolvency***   1. **Depositors should enjoy higher priority than other unsecured creditors in the liquidation process of a bank.** 2. **The law dealing with the insolvency of banks should provide for expeditious, cost effective and equitable provisions to enable the maximum timely refund of deposits to depositors.** |
| **Description** | **a.-b.** In the event of the liquidation of a bank (or other credit organization), the Law on the Liquidation of Credit Organizations defines the priority for payment of creditors claims. As a form of protection of banking customers, it is common for such laws to provide for a high priority for depositors’ claims. These are usually subordinate only to the immediate expenses associated with the bankruptcy procedure itself and wages owed to employees of the bank. Article 35 of the Law on Liquidation of Credit Organizations, however, makes all claims of depositors that are not subject to payment by the Fund subordinate to the repayment of monies provided by the Government or by the NBT to the bank in question. Provision of such monies seems likely to be a common occurrence in relation to a bank that has been on the edge of solvency for some time, so this provision is, in practice, likely to prevent depositors from recovering more than the limit of insurance in many if not all cases. |
| **Recommendation** | The law “On the Liquidation of Credit Organizations” should be amended to give depositors priority over repayment of monies provided to a bank by the Government or NBT. Exceptions to this rule may be appropriate for bank owners or stockholders that hold deposits in the bank. |

# Consumer Protection in the Microfinance Sector

## Overview

1. **The Law on Microfinance Organizations defines three types of formal MFOs (MFOs) in Tajikistan.** These are micro-credit deposit organizations (MDO), micro-lending organizations (MLO) and micro-lending funds (MLF). A MDO and a MLO shall be formed as a closed type joint stock company or a limited liability company, whereas a MLF may only operate as a social fund, with no capital requirement.
2. **The relative size of the microfinance sector has practically doubled over the past five years.** The MFOs’ microcredit portfolio has expanded from about US$44.6 million (1.21 percent of GDP) in 2007 to US$182.2 million (2.49 percent of GDP) as of September 2012, which represented an increase of 308 percent in absolute terms (106 percent in relative terms). In the same period, the microcredit portfolio of banks and credit societies[[10]](#footnote-11) increased 55 percent (from US$142 million to US$220 million). Thus, the MFOs’ share of microcredit granted by all formal credit providers increased from 24 percent in 2007 to 41 percent by March 2012 (Table 1).

Table : Total Microcredit Portfolio of Microfinance Organizations

|  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Type of** | **2007** | | **2008** | | **2009** | | **2010** | | **2011** | | **IIIQ 2012** |
| **Microcredit**  **Provider** | **US$ mill.** | **% of GDP** | **US$ mill.** | **% of GDP** | **US$ mill.** | **% of GDP** | **US$ mill.** | **% of GDP** | **US$ mill.** | **% of GDP** | **US$ mill.** |
| **Micro-credit deposit organizations** | 6.35 | 0.17 | 12.05 | 0.23 | 19.79 | 0.42 | 34.25 | 0.77 | 48.51 | 0.85 | 68.29 |
| **Micro-lending organizations** | 7.54 | 0.20 | 47.77 | 0.93 | 42.83 | 0.91 | 53.48 | 1.15 | 72.40 | 1.30 | 101.34 |
| **Micro-lending funds** | 30.73 | 0.83 | 19.16 | 0.37 | 9.68 | 0.21 | 10.81 | 0.18 | 11.42 | 0.18 | 12.58 |
| **Total MFOs** | 44.61 | 1.21 | 78.98 | 1.54 | 72.30 | 1.53 | 98.53 | 2.09 | 132.33 | 2.33 | 182.21 |
| **Total formal credit providers** | 186.62 | 5.05 | 307.17 | 5.99 | 245.67 | 5.21 | 288.21 | 5.14 | 344.70 | 5.45 | 441.50 |
| **Total MFOs / total formal credit providers** | 23.9% |  | 25.7% |  | 29.4% |  | 34.2% |  | 38.4% |  | 41.3% |

*Source: National Bank of Tajikistan*

1. **The expansion of the microfinance sector has been led by MLOs.** The value of the MLO microcredit portfolio has grown almost tenfold over the past five years, whereas its share of microloans granted by formal credit providers has increased from 4 percent in 2007 to 21 percent in 2011. In terms of clientele, the MLO segment increased its market participation from 7 percent to 53 percent in the same period. At the same time, the number of MLF clients decreased significantly, which led to a decline in the MLFs’ share of the number of MFO clients from 80 percent in 2007 to 17 percent in 2011. Table 2 shows that before 2009 the greater number of MLO borrowers was associated with the entry of new MLOs; however from 2009 to 2011 only one MLO entered the market, and the number of borrowers increased by 73 percent showing higher penetration efforts of existing MLOs.

Table : Number and Outreach of Microfinance Organizations

|  |  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
|  | **Number of MFOs** | | | | | | | **Number of borrowers** | | | | |
|  | **2005** | **2006** | **2007** | **2008** | **2009** | **2010** | **2011** | **2007** | **2008** | **2009** | **2010** | **2011** |
| **Micro-credit deposit organizations** | 0 | 5 | 8 | 14 | 31 | 35 | 34 | 17,463 | 23,705 | 39,181 | 48,114 | 57,337 |
| **Micro-lending organizations** | 1 | 20 | 24 | 37 | 42 | 42 | 43 | 10,047 | 62,773 | 57,239 | 70,020 | 99,124 |
| **Micro-lending funds** | 20 | 30 | 38 | 41 | 43 | 44 | 45 | 113,367 | 67,316 | 45,251 | 30,087 | 31,651 |
| **Total MFOs** | 21 | 55 | 70 | 92 | 116 | 121 | 122 | 140,877 | 153,794 | 141,671 | 148,221 | 188,112 |

*Source: National Bank of Tajikistan*

1. **There are two authorities with responsibilities on consumer protection issues for the microfinance sector in Tajikistan.** The ***National Bank of Tajikistan (NBT)*** is an independent legal entity that reports to the lower house of the Parliament. Its main goals, according to its statutory law, are: to support a stable level of prices within the limits of its authority, to assure development and strengthening of the country's banking system, and to facilitate efficient and smooth operation of the payment system. The NBT also has the exclusive right to regulate and supervise the activities of credit institutions, with the main goal of maintaining stability of the system and protecting the interests of depositors and creditors. The ***Antimonopoly Agency (AMA)*** is in charge of enforcing and monitoring compliance with the Law on Consumer Protection, and has the rights to go to court when detecting infringements of consumer rights, to represent a class of consumers in court, and to demand the termination of an activity that violates the law, among others. AMA is also in charge of monitoring compliance with the Law on Advertising, and has the authority to order the cessation of violations of the law, and to go to court representing a group of consumers affected by noncompliance with the law. AMA also monitors compliance with the Law on Competition and Restriction of Monopolistic Activity on Goods Markets.
2. **There is one industry association representing the microfinance sector.** The ***Association of Microfinance Organizations of Tajikistan (AMFOT)*** is a non-commercial organization which offers different services to its member MFOs on a voluntary basis, including training, lobbying and dissemination of information. Although AMFOT was officially registered in January 2004, it started its activities in 2000 when several national and international NGOs involved in implementing microfinance programs in Tajikistan formed a voluntary microfinance coalition. AMFOT now has more than 70 members. Consistent with its mission, AMFOT contributes to developing a favorable legal environment, provides professional training and technical assistance to MFOs and promotes the introduction of standards in the microfinance sector.
3. **There is also a consumer organization active in several economic areas, but not in the financial sector. *Consumers Union of Tajikistan*** is a non-profit, public, non-governmental organization created with the purpose of providing assistance in consumers’ rights and interests’ protection, and building a fair and competitive market of goods and services in Tajikistan. The Consumers Union was founded in July 2002 as a local Dushanbe-based association, and in 2007 it transformed into a national organization, which now has offices in Khujand and Qurghon-Teppa. The Consumers Union has organized consumer rights awareness events for both the adult and young population, has developed a school program named “Basics of consumer knowledge” that is being taught in 20 schools in Tajikistan, and implemented special programs for judges and state officials on consumer rights protection. Since 2003, the Consumers Union has administered a hotline for consumers, which has helped them receive more communications from consumers. The Consumers Union has received over 3,500 consumer complaints and more than 60 cases have been taken to the courts. Most complaints relate to public utilities and housing projects. The Consumers Unions has not received any complaints related to the financial sector.

## List of Reviewed Laws and Regulations

1. The main laws, regulations and guidelines relevant for the assessment of MFOs are as follows:

* *Law on the National* *Bank of Tajikistan,* Law No. 383 of December 1996, as amended by Law No. 548 of August 2009
* *Law on* *Microfinance Organizations*, May 2004
* *Law on Credit Histories*, Law No. 492 of March 2009
* *Law on Banking Activities*, Law No. 524 of May 2009
* *Law on Insurance of Deposits of Individuals*, Law No. 758 of August 2011
* *Law on Liquidation of Credit Organisations*
* *Law on Advertising*, July 2003, as amended in 2007 and 2008
* *Law on Consumer Protection*, December 2004
* *Law on Competition and Restriction of Monopolistic Activity on Goods Markets*, Law No. 198, July 2006, as amended in 2008
* *Law on State Registration of Legal Entities and Individual Entrepreneurs*, July 2009
* *Civil Code* of the Republic of Tajikistan
* *Instruction No. 135 on the Order of Regulation of Microcredit Deposit Organizations*, January 2011
* *Instruction No. 136 on the Order of Regulation of the Activities of Microlending Organizations*, April 2011
* *Instruction No. 137 on the Order of Regulation of the Activities of Microlending Funds*, April 2011
* *Instruction No. 186 on Procedures on Issuance of Credit and Accrual of Interest at Credit Organizations*, April 2011
* *Rules of calculation and collection of interest on loans by banks, non-bank financial institutions and microfinance institutions*, Resolution No. 388 of October 2008

## Good Practices: Non-Bank Credit (/Microfinance) Institutions

|  |  |  |
| --- | --- | --- |
| **SECTION A** | | **CONSUMER PROTECTION INSTITUTIONS** |
| **Good Practice A.1** | | ***Consumer Protection Regime***  **The law should provide clear consumer protection rules in the area of non-bank credit institutions, and there should be adequate institutional arrangements to ensure the thorough, objective, timely and fair implementation and enforcement of all such rules, as well as of sanctions that effectively deter violations of these rules.**   1. **There should be specific statutory provisions, which create an effective regime for the protection of consumers of non-bank credit institutions.** 2. **There should be a government authority responsible for implementing, overseeing and enforcing consumer protection in the area of non-bank credit institutions.** 3. **The supervisory authority for non-bank credit institutions should have a register which lists the names of non-bank credit institutions.** 4. **There should be coordination and cooperation among the various institutions mandated to implement, oversee and enforce consumer protection and financial sector regulation and supervision.** 5. **The law should provide for, or at least not prohibit, a role for the private sector, including voluntary consumer associations and self-regulatory organizations, in respect of consumer protection in the area of non-bank credit institutions.** |
| **Description** | | **a. The Law on Microfinance Organizations includes some general provisions that touch upon consumer protection issues.** According to the Law on Microfinance Organizations, the National Bank of Tajikistan (NBT) is the government authority responsible for the authorization, regulation and supervision of all types of MFOs in Tajikistan (including prudential supervision of microdeposit organizations). This Law includes several general provisions that deal with consumer protection issues, such as disputes (Art. 40), confidentiality (Arts. 27 and 39) and consumer disclosure (Arts. 15 and 16). Some regulations issued by the NBT also include provisions that deal with consumer protection issues, such as disclosure of information and business practices.  Some general laws include provisions that could be applicable to the microfinance sector. Although the Law on Consumer Protection does not include any explicit article dealing with financial services, the overall scope of the law refers to all types of goods and services (which by default include financial services). The Law on Advertising does have a specific article on financial services, including banking, insurance and securities (Art. 18), in addition to more general provisions on unethical, unfair, misleading, false and hidden advertising that could be applicable to microfinancial services.  **Regarding micro-credit deposit organizations (MDOs), the Law on Insurance of Deposits of Individuals approved in 2011 restructured the Individuals' Deposit Guarantee Fund**, to provide depositors with insurance compensation in cases of bankruptcy or withdrawal of license of credit institutions, including MDOs. The Law requires credit institutions to prominently display in the premises information on the extent of the insurance and membership in the Fund. The maximum coverage of the Fund is 7,000 Somoni (about US$1,470) per depositor in a credit institution. However, Article 24 of the Law also indicates several exclusions of coverage under criteria that are not clearly defined or verifiable by the Fund (e.g. deposits which in the opinion of the NBT aggravated the financial situation of a credit institution, or deposits from third parties who entered into a deposit agreement with a credit institution on behalf of members of its Supervisory Council or family members). At least one MDO underreported the amount of covered deposits based on their interpretation of excludable deposits, and ended up significantly underpaying its contribution.  **It is also worth noting that, according to the microfinance legislation, the Law on Liquidation of Credit Organizations shall apply in the event of the liquidation of an MDO.** This Law indicates that all deposits not covered by the deposit guarantee fund have lesser priority than the repayments to the Government or the NBT. This would put depositors at a disadvantage and drastically reduce their chances to recover more than the amount paid by the fund.  **b. The overall legal framework does not provide the NBT with a clear and specific consumer protection mandate in the financial sector, let alone in the microfinance segment.** The Law on the NBT mentions that the “*main goal of regulating and supervising activity of credit institutions shall be to maintain stability of the banking system and to* ***protect the interests of depositors and creditors*”** (Art. 42), which could be interpreted as assigning consumer protection responsibilities to the NBT. However, this could also be interpreted as the typical mandate of a prudential supervisor. A review of other pieces of financial legislation does not give a clear indication regarding NBT’s mandate for consumer protection either. On the one hand, the Banking Law includes a section on “Protecting interests of customers” that covers some consumer protection issues. On the other hand, NBT’s Instruction 186 on disclosure of information to consumers (not applicable to MFOs) was issued in the context of a **prudential** provision in the Banking Law -- specifically Article 29 “Prudential Regulations”, item 5 “*The National Bank of Tajikistan may set requirements regarding the interest rate, maturities and other conditions applicable to loans and attracting funds (including deposits) or off-balance-sheet liabilities*”.  **The Antimonopoly Agency (AMA) is the only government body with a clear mandate to oversee consumer protection, competition and advertising issues in the entire economy.** The AMA is in charge of enforcing the Law on Consumer Protection and the Law on Advertising mentioned above, as well as the Law on Competition and Restriction of Monopolistic Activity on Goods Markets (although Art. 2 of this law indicates that it does not apply to financial services unless activities in the financial sector affect competition in goods markets). The AMA also has the power to represent consumers in courts when detecting infringements of consumer rights, and present collective consumer action in court. However, the AMA does not yet have basic rules in place governing procedures for investigations and decisions on individual cases. In addition, the AMA has very limited resources to enforce those three laws in all types of goods and services markets, let alone specialized staff dealing with financial sector issues. Also, the AMA has neither received any complaint against microfinance institutions, nor started any investigation against microfinance institutions.  **c** The NBT’s website includes a list of all the MFOs, including contact information and names of Directors and Chief Accountants.  **d.** In general, there are no cooperation mechanisms (e.g., memorandum of understanding) between the AMA and the NBT. These mechanisms have not yet been necessary given that the AMA has not dealt with any consumer protection issues in the microfinance sector.  **e. The Law on Microfinance Organizations provides for a role for industry associations** to “protect and represent common interests of their members, coordinate activities and satisfy informational and professional interests” (Art. 10). At the same time, the Law clearly prohibits MFOs from using these associations to set interest rates or commissions.  **The Law on Public Associations provides consumers with the right to form associations**, which includes the right “to establish voluntary public associations for the purpose of protection of their common interests and attainment of common goals, to join existing public associations or refrain from joining them, and to withdraw from such organizations without any hindrance” (Art. 4). Consumers are entitled to form such voluntary, self-governed and non-profit associations without the need of prior authorization from any government authority (Arts. 4 and 5). |
| **Recommendation** | | The NBT should have a clear, explicit mandate to regulate and supervise consumer protection issues in the microfinance sector. For this matter, either the Law on the NBT or the Microfinance Law should be amended to incorporate consumer protection as a mandate or function of the NBT. Consequently, the Law on Consumer Protection should also be amended to recognize the NBT’s consumer protection regulatory and supervisory authority in the microfinance sector. The AMA would still bear responsibility to monitor compliance with the law in the case of any financial product or service that could be offered by entities that are outside the remit of the NBT (such as private moneylenders or retail stores).  The NBT should set up a unit to deal with consumer protection issues in the financial (banking and microfinance) sector. The unit should be responsible to propose regulations in areas such as disclosure of information to consumers, business-to-consumer practices, complaints handling and disputes resolution, customer account handling, debt collection, and data protection. The unit should also elaborate manuals for offsite and onsite supervision of consumer protection; participate in offsite and onsite supervision (eventually developing a risk-based conduct-of-business supervision methodology); propose corrective measures, sanctions or fines; require and analyze reports from supervised institutions on consumer protection issues, including reports on complaints. In order to prevent or minimize conflicts of interests, the consumer protection unit should be located outside the prudential supervision department and report to a different Board member. The consumer protection unit should at a minimum elaborate a report discussing and analyzing key consumer protection issues, to be included in the NBT’s Annual Report.  Although currently the AMA is responsible for enforcing the Law on Advertising in the financial sector, it would be useful to reassign the responsibility for enforcing such rules applicable to the microfinance sector (and the banking sector) to the NBT. Given that the NBT regulations on consumer disclosure and business-to-consumer practices would have to include provisions on advertising, the NBT could be better positioned to centralize all responsibilities to supervise and regulate advertising practices in microfinance (and banking). In this case, either the Law on Advertising should be amended to recognize the NBT’s authority, or the relevant provisions should be removed from the Law on Advertising and included in a new piece of legislation applicable to the banking and microfinance sectors.  If responsibility for investigation of individual disputes from microfinance customers remains with the AMA, substantial additional resources and support will need to be provided. Also, at a minimum, the AMA should include in its statutes and procedural rules the requirements to assign responsibility in cases concerning microfinance and other financial sector issues to a specific unit or official, and to consult with the NBT when issuing a decision regarding microfinance products or services (further recommendations on dispute resolution are presented in Good Practice E.2). In addition, the AMA should collaborate and consult with the NBT in relation to competition issues in the microfinance sector.  The NBT and the AMA should jointly prepare and sign a memorandum of understanding (MoU), and communicate to the public their responsibilities on consumer protection, competition, advertising and/or dispute resolution matters. The MoU would provide an official framework for collaboration and cooperation among the authorities and clarify each authority’s role in the aforementioned matters.  Regarding MDOs, the exceptions of coverage by the deposit guarantee fund should be reviewed in order to follow international good practices and eliminate uncertainties and unfairness regarding the definition of insured deposits. There should also be clearer disclosure of the fund’s coverage of deposits offered by MDOs, in all advertising materials, in the premises of the MDOs and in the deposit contracts given to depositors.  The Law on Liquidation of Credit Organizations should be revised in order to give deposits from individuals a higher priority than payments to the Government or NBT in the event of bankruptcy. |
| **Good Practice A.2** | | ***Code of Conduct for Non-Bank Credit Institutions***   1. **There should be a principles-based code of conduct for non-bank credit institutions that is devised in consultation with the non-bank credit industry and with relevant consumer associations, and that is monitored by a statutory agency or an effective self-regulatory agency.** 2. **If a principles-based code of conduct exists, it should be publicized and disseminated to the general public.** 3. **The principles-based code should be augmented by voluntary codes on matters specific to the industry (credit unions, credit cooperatives, other non-bank credit institutions).** 4. **Every such voluntary code should likewise be publicized and disseminated.** |
| **Description** | | **a.** The microfinance industry has started to undertake initiatives to promote rules of business conduct. The Association of Microfinance Organizations of Tajikistan (AMFOT) developed a general Code of Business Ethics that is mandatory for all members to sign and comply with. However, there is no mechanism yet in place for AMFOT (or the NBT) to monitor compliance with the Code. The Code includes a set of ethical values that should guide staff behavior towards clients and the community, but does not cover principles related to consumer protection issues. In order to address these more specific issues, AMFOT has also endorsed the Smart Campaign’s Client Protection Principles,[[11]](#footnote-12) and four staff members have been trained to become accredited social performance evaluators and in turn become trainers for the microfinance industry. There is no mechanism in place yet to monitor compliance with these principles either by AMFOT or the NBT. AMFOT is evaluating the implementation of a social rating mechanism to oversee compliance with the client protection principles and other social performance practices.  **b.** Some microfinance representatives interviewed by the mission did not know of the Smart Campaign. While some MFOs display internal codes of conduct or ethics in their premises, many of them do not display any code on the walls of their premises, or their website, let alone give a copy of the code to their customers.  **c, d.** There are no other voluntary codes of conduct on matters specific to MDOs, MLOs or MLFs, at a sector level. Some MFOs have developed internal codes of conduct on specific topics, such as communications with clients, telephone calls, or debt collection practices. |
| **Recommendation** | | AMFOT should actively promote the endorsement and concrete application of the Smart Campaign’s Client Protection Principles by its members. AMFOT should continue engaging in programs of training of trainers on social performance and promote that member associations conduct self-assessments on the way they are applying the client protection principles. AMFOT should also consider the incorporation of these principles in a new consumer protection code of conduct or the expansion of the existing code of ethics to include the consumer protection principles. In either case, its members would have to be required not only to comply with the code but also to adequately disseminate the code to staff and customers (e.g., by displaying the code in a prominent place at its premises and attaching a copy of the code to each contract). AMFOT should also implement a mechanism to monitor and enforce compliance with client protection principles (e.g. hotline to receive consumer complaints, mystery shopping exercises to verify application of principles when dealing with consumers, client protection external evaluations). It would also be important for the NBT to monitor compliance with the code. |
| **Good Practice A.3** | | ***Other Institutional Arrangements***   1. **Whether non-bank credit institutions are supervised by a financial supervisory agency, the allocation of resources between financial supervision and consumer protection should be adequate to enable their effective implementation.** 2. **The judicial system should ensure that the ultimate resolution of any dispute regarding a consumer protection matter with a non-bank credit institution is affordable, timely and professionally delivered.** 3. **The supervisory authority for non-bank credit institutions should encourage media and consumer associations to play an active role in promoting consumer protection regarding non-bank credit institutions.** |
| **Description** | | **a.** Regarding financial supervision, the NBT just recently set up a specialized microfinance unit with 9 staff in charge of overseeing more than 120 MFOs. The unit plans to undertake at least one onsite inspection every two years for each MDO. The unit focuses on prudential and financial supervision. There is no separate unit for consumer protection in the NBT. In theory, the microfinance unit would currently also be responsible to cover some consumer protection issues, for example regarding compliance with regulatory provisions on disclosure of information to consumers. However, there is no manual or guideline for the unit to undertake this type of tasks, and the unit faces significant constraints to diverge resources from their primary prudential/financial supervisory focus to also deal with consumer protection.  **b.** In the judicial system, the economic courts handle disputes between MFOs and their clients. The vast majority of cases relate to debt collection, seizure of collateral and other disputes raised by MFOs rather than consumers. In some cases the NBT has been invited by the court to clarify legal provisions. In general, neither consumers nor financial organizations trust the courts, especially because the court processes are slow, unpredictable and handled by low-paid judges.  Regarding non-financial disputes, some consumers have asked the AMA or Consumers Union (consumer organization) for help, and they have contacted firms to correct wrongdoing. Both institutions may represent consumers in courts when detecting infringements of consumer rights, and present collective consumer action in court, although this procedure has not been used yet. Despite their potential to play a role in financial sector disputes, neither institution has undertaken any action yet in that sector.  There is also a human rights ombudsman office, responsible for ensuring the protection of rights and freedoms of citizens and the observance and respect of those rights by all types of public authorities and officials (Article 1 of its institutional law). One of its main tasks is to ensure that a person’s violated rights are restored. In this context, the ombudsman may intervene when a consumer presents a complaint against how his/her case was dealt with by the courts, provided that there is a violation of his/her rights and the complaint is submitted within one year of occurrence of such violation.  **c.** The NBT has not interacted with the media or Consumers Union regarding financial consumer protection or financial education issues. |
| **Recommendation** | | As mentioned in Good Practice A.1, the NBT should set up a unit to deal with consumer protection issues in the financial (banking and microfinance) sector. In order to prevent or minimize conflicts of interests, and to ensure an adequate allocation of resources within the NBT, the consumer protection unit should be located outside the prudential supervision department and report to a different Board member. The unit should elaborate manuals for offsite and onsite supervision of consumer protection; participate in offsite and onsite supervision; propose corrective measures, sanctions or fines; and require and analyze reports from supervised institutions on consumer protection issues, including reports on complaints. Consideration should be given to developing a risk-based supervisory approach for consumer protection in the microfinance sector, which may include delegating monitoring functions to other institutions (e.g. supervision of MFOs’ compliance with microfinance code of conduct by AMFOT, regular reporting of results of mystery shopping exercises conducted by Consumers Union).  Once the legal framework for financial consumer protection is strengthened, NBT and AMFOT should consider organizing regular seminars for prosecutors and judges in the economic courts, as well as seminars for representatives of the media and civil society, to improve their knowledge on retail finance and financial consumer protection issues.  NBT should also involve consumer associations in consultative processes for new pieces of legislation, and preparation of financial sector strategies or programs. NBT should interact with the media more often and provide them with consumer-friendly information on overall financial sector and more specific retail finance and microfinance issues. |
| **Good Practice A.4** | | ***Registration of Non-Bank Credit Institutions***  **All financial institutions that extend any type of credit to households should be registered with a financial supervisory authority.** |
| **Description** | | All MFOs shall be registered by a tax authority or state registration body, according to the Law on State Registration of Legal Entities. The state registration body is in charge of recording all the organization’s information required by the law in the Single State Register.  According to the Microfinance Law, all MDOs and MLOs shall operate on the basis of a license issued by the NBT, following the procedures established in the general Law on licensing of individual types of activities. In addition, the Law allows the NBT to deny a license on the basis of: noncompliance of documents attached to the application with requirements set up by the NBT, failure of candidates to senior executive or other key positions to satisfy ‘fit and proper’ requirements, or inadequate financial situation of the founder of an MDO or MLO. The Law indicates that the ‘fit and proper’ requirements shall be established by the NBT and relate only to education, working experience and absence of previous convictions for committing an acquisitive intended crime. Instruction 135 on the Order of Regulation of Microcredit Deposit Organizations specifies that senior executives of MDOs shall have higher economic education, not have been convicted of intentional self-serving crime, and have professional experience in the microfinance or banking sector.  Regarding MLFs, in order to start operations they must obtain a registration certificate from the NBT, following the procedures established in the Microfinance Law. The Law also indicates that the NBT may refuse to issue or may revoke a certificate on the basis of: noncompliance of documents attached to the application with requirements set up by the Law, provision of false information in the documents attached to the application, or failure to meet requirements set forth in the Law.  The Microfinance Law indicates that the NBT shall maintain a register of licensed MDOs and MLOs (which shall be accessible to the public) and a register for MLFs. The registers shall be published once a year in an official publication of the NBT, and any changes and additions in the registers shall be published within one month of occurrence. The NBT does not include such lists in its Annual Report, but maintains a section on its website with a list of all non-bank credit institutions, including MDOs, MLOs and MLFs, with the name of the institution, its contact information and the names of Directors and Chief Accountants. |
| **Recommendation** | | No recommendation. |
| **SECTION B** | | **DISCLOSURE AND SALES PRACTICES** |
| **Good Practice B.1** | | ***Information on Customers***   1. **When making a recommendation to a consumer, a non-bank credit institution should request sufficient information from the consumer to enable the institution to render an appropriate product or service to that consumer. If the consumer takes up a product or service, such information should be recorded and filed.** 2. **The extent of information the non-bank credit institution gathers regarding a consumer should:** 3. **be commensurate with the nature and complexity of the product or service either being proposed to or sought by the consumer; and** 4. **enable the institution to provide a professional service to the consumer in accordance with that consumer’s capacity.** |
| **Description** | | **a, b.** The existing legal framework in Tajikistan does not include provisions related to this good practice applicable to MFOs. The Microfinance Law only mentions that MLOs and MDOs may issue microloans in accordance with their internal lending policies. Instruction 137 on the “Order regulating the activities of microloan funds” only mentions that MLFs may provide microloans to businesses and individuals (Art. 19).  In 2011 the NBT issued Instruction 186 on “Procedures on issuance of credit and accrual of interest at credit organizations”. Chapter 4 includes information to be gathered from consumers before granting a credit (e.g. information on the borrower and the sector of the economy that the credit resources are expected to be used for; credit history of the borrower; conversation with borrower to determine competency, professional and psychological preparedness; credit request, financial reports, cash flow forecasts, business plan, list of properties with their value or any other information that can help assess the borrower’s financial position). However, this Instruction is currently not applicable to MFOs. |
| **Recommendation** | | The NBT should incorporate this good practice in the existing legislative framework, for example in the Microfinance Law or in the instructions regulating the activities of MLOs, MDOs and MLFs. For example, the NBT should make the provisions of Instruction 186 on borrower’s information also applicable to MFOs. The NBT should complement these provisions with requirements for MFOs to request sufficient information from a borrower when evaluating the renewal, increase or restructuring of a credit. More generally, the NBT should require all MFOs to request sufficient customer information before recommending any type of product or service (e.g., savings products by MDOs), commensurate with the nature and complexity of such product or service. The NBT should also require that all information gathered by MFOs is properly recorded and filed once the product or service is provided to the customer. |
| **Good Practice B.2** | | ***Affordability***   1. **When a non-bank credit institution makes a recommendation regarding a product or service to a consumer, the product or service it offers to that consumer should be in line with the need of the consumer.** 2. **Sufficient information on the product or service should be provided to the consumer to enable him or her to select the most suitable and affordable product or service.** 3. **When a non-bank credit institution offers a new credit product or service that significantly increases the amount of debt assumed by the consumer, the consumer’s credit worthiness should be properly assessed.** |
| **Description** | | **a.** There is no specific legal or regulatory requirementfor MFOs to take into account a client’s needs when offering him or her a financial product or service. At a more general level, the Law on Consumer Protection (Article 6) states that, if the seller of a product or service (e.g., a MFO) has been informed by its customer of the goals for the acquired product or service (e.g., a loan or a deposit), then the seller is obliged to provide a product or service that is suitable for such purposes.  **b.** Instructions 136 and 137 require MLOs and MLFs, respectively, to display in their premises information on interest rates and other conditions of the microloans they offer, following the format included in such instructions. The format includes information on average and maximum loan terms, late fees, as well as average interest rates for unsecured, secured, domestic currency and foreign currency loans. However, Instructions 136 and 137 require MFOs only to have these formats on display and available for consumers, but not to give individual consumers information on different financial products that would allow them to choose the most suitable and affordable option.  Instruction 186 (currently not applicable to MFOs) indicates that, prior to the signing of a credit agreement, a customer must be provided with written information about all types of credit provided, terms of lending, terms of repayment, total amount of credit, and acceptable types of collateral. However, the Instruction does not require that this information be provided to a client early enough to allow him or her to evaluate different alternatives.  At a more general level, the Law on Consumer Protection (Article 9) mentions that the consumer has the right to demand, and the seller the obligation to provide in due time, all necessary and reliable information about the products or services being offered, to give the customer the opportunity to make the right choice.  **c.** There is no requirement of affordability assessments in the existing legal or regulatory framework for MFOs.  The Law on Credit History provides the basic legal framework for the set up of, collection of information from, and provision of information to, credit bureaus in Tajikistan, which would facilitate affordability assessments by MFOs. For example, the Law requires all credit providers to get permission from the borrower for the disclosure of credit information to the credit history bureau, as well as to provide exact borrower’s information to the credit history bureau. The Law also states that all credit providers “are obliged to provide information foreseen by this law only to the credit history bureau”.  In terms of actual requirements for financial institutions to use the credit bureau in their process of granting credits, Instruction 186 does include such requirement, but it is not applicable to MFOs.  In any case, there is no credit bureau yet operating in Tajikistan. AMFOT promoted exchange of information of borrowers’ credit exposure among MFOs, and members could access such database after signing an agreement with AMFOT. A few MFOs that are concerned on multiple borrowing by their existing or potential clients routinely exchange information of borrowers, on a voluntary basis, to avoid having consumers with parallel loans. Although it is good that the industry has tried to come up with solutions to overcome the lack of credit history information in Tajikistan, these initiatives have several weaknesses, such as lack of information of the total exposure of a borrower in the financial sector, not clear procedures on how to correct wrong data, and absence of confidentiality and privacy rules for their users. Also, the voluntary nature of this data exchange greatly limits its effectiveness. This situation highlights the need to have an operative credit history bureau system in Tajikistan.  The Mission learned that some MFOs are transferring foreign exchange risk to borrowers, by issuing them credits denominated in foreign currency (with lower rates than domestic-currency loans), but requiring that all transactions be made in domestic currency, i.e. disbursing and requiring borrowers to pay back principal and interests in the equivalent amount in Somonis, based on the foreign exchange rate of the NBT. Borrowers would have difficulties to know the exact amount due by the payment date. |
| **Recommendation** | | The NBT should incorporate the requirements of suitability and affordability assessments in the existing legislative framework, for example in the Microfinance Law or in instructions applicable to MLOs, MDOs and MLFs. The NBT should also require that all MFOs provide consumers with sufficient information of financial products or services early enough in the selling process, for consumers to be able to choose the most suitable option to their needs. This information should be simple, easy to read, concise and clear, for example in the form of a key facts statement (as described in Good Practice B.5).  There is urgent need to establish a credit history system to have an official mechanism to exchange credit information of borrowers and facilitate the conduction of affordability assessments of microfinance customers.  In addition, the NBT should closely monitor the practices of issuing ‘indexed’ loans that transfer foreign currency risk to low-income borrowers, whether this type of loan is requested by consumers, their risks properly explained to them and understood by them, and the difficulties they may be facing during the life of the contract. |
| **Good Practice B.3** | | ***Cooling-off Period***   1. **Unless explicitly waived by the consumer in writing, a non-bank credit institution should provide the consumer a cooling-off period of a reasonable number of days immediately following the signing of an agreement between the institution and the consumer.** 2. **On his or her written notice to the non-bank credit institution during the cooling- off period, the consumer should be permitted to cancel or treat the agreement as null and void without penalty to the consumer of any kind.** |
| **Description** | | **a, b.** There is no cooling-off period provision in the legal or regulatory framework for MFOs in Tajikistan.  The Civil Code in a way incorporates the spirit of the cooling-off period, by establishing that “the borrower shall have the right to refuse to receive credit in whole or in part” (Article 840), as long as the borrower notifies the creditor of the refusal “before the time established by the contract for granting of the credit.” Therefore there is no definition of time periods after the agreement is signed, or the inapplicability of penalty against the borrower.  Furthermore, there is no requirement for MFOs to give a copy of the financial contract to the consumer once it is signed. The Mission learned that MFOs might only give the payment schedule to their clients, but not a copy of the actual contract after the consumer signed the original. Also, it is not common industry practice to let the consumer take a copy of the contract home to read it or share it with relatives or friends before signing it.  It is worth noting, however, that some MFOs do provide short cooling-off periods as part of their own business practices rules. |
| **Recommendation** | | The NBT should require MFOs to provide consumers with a cooling-off period that is reasonable, taking into account the term of the product (e.g. 5 days for 1-month credits). In the case of credit products, MFOs should not disburse funds during the cooling-off period. If a MFO offers short-term quick loans, special rules may need to apply restricting cancelation to customers who return any disbursed funds simultaneously with the written cancelation notice.  The NBT should also require that MFOs give one free copy of the signed contract to the borrower. |
| **Good Practice B.4** | | ***Bundling and Tying Clauses***   1. **As much as possible, non-bank credit institutions should avoid the use of tying clauses in contracts that restrict the choice of consumers.** 2. **In particular, whenever a borrower is required by a non-bank credit institution to purchase any product, including an insurance policy, as a pre-condition for receiving a loan, the borrower should be free to choose the provider of the product and this information should be made known to the borrower.** 3. **Also, whenever a non-bank credit institution contracts with a merchant as a distribution channel for its credit contracts, no exclusionary dealings should be permitted.** |
| **Description** | | **a.** Tying refers to the sale of two or more products or services together as a single product and refusal of the seller to separate the products and sell each of them separately (or allow the buyer to buy one of them from another seller). Bundling refers to the sale of two or more products or services together as a package when the products can also be purchased separately.  Bundling and tying practices are not common in Tajikistan. MFOs do not yet require or offer insurance when issuing a credit. The variety of products offered by MFOs to consumers is limited, so there is little packaging of multiple products and services or discounts on additional services. At least one MDO has recently thought of offering bundles of products to clients (e.g., remittances and savings accounts, savings accounts and loans), with discounts or better conditions for the products included in the bundle compared to the products offered separately.  **b.** The microfinance legal framework has not contemplated bundling or tying practices yet either. At a more general level, the Law on Competition in its Article 4 (Abuse of market) prohibits the practice of tying unrelated products and/or services. |
| **Recommendation** | | Even though tying practices are not common in Tajikistan, it would be useful already to prohibit MFOs from requiring obligatory purchase of additional services from the MFO itself as a condition to the issuance of a financial product or service. This provision would be similar to the existing article 55(99) of the Law on Banking Activity. Also the NBT should monitor tying and bundling practices undertaken by MFOs, and evaluate the need to issue more detailed instructions if necessary.  Several countries have witnessed increasing consumer problems raising from widespread tying and bundling practices, for example, requiring a client to purchase a life insurance policy from a specific insurer (or from an insurer included in a list of preferred insurers) before obtaining any consumer credit, or requiring a client to purchase a new policy before getting a new loan with the same institution even though the existing policy would still be valid for some more months. It is important that the NBT and the insurance regulator maintain a close dialogue regarding this issue and jointly monitor the development of such type of practices. |
| **Good Practice B.5** | ***Key Facts Statement***   1. **Non-bank credit institutions should have a Key Facts Statement for each type of account, loan or other products or services.** 2. **The Key Facts Statement should be written in plain language, summarizing in a page or two the key terms and conditions of the specific financial product or service, and allowing consumers the possibility of easily comparing products offered by different institutions.** |
| **Description** | **a, b.** The Microfinance Law allows for the implementation of a requirement to present a key facts statement in the future. Article 15 states that the NBT may require MFOs to submit “information in a standard format on their interest rates and commission fees to allow clients and prospective clients to compare the cost of borrowing.” As a good first step, the NBT issued Instructions 136 and 137 regulating the activities of MLOs and MLFs, respectively, requiring such organizations to disclose “information on interest rates and other conditions of service regarding microloans”, by placing a specific format in the premises of the MFOs, in a place accessible to consumers. The format includes information on the average and maximum term of microloans; the average and maximum size of microloans; the interest rates for unsecured, secured, domestic currency and foreign currency loans; and the fine to be charged in the event of failure or inadequate performance. It also explains how the interest rates are calculated, and indicates that interest rates are annual and accrued on the unpaid balance of the loan. |
| **Recommendation** | In addition to the average information required to be disclosed by MFOs in the format “information on interest rates and other conditions of service regarding microloans”, the NBT should require the disclosure of standardized “key facts statements” that summarize in plain language the key terms and conditions of specific contract agreements and that allow comparison of offers by different providers. To ensure comparability, the standardized 1-2 page key facts statements should be consistent for all types of institutions that provide the same financial product (e.g. agricultural loans by banks, MLFs, MLOs, MDOs; savings offered by banks and MDOs). The key facts statements could be progressively developed for basic loans by the NBT, in close collaboration with the microfinance and banking industry associations. It would also be helpful to undertake consumer testing of key facts statements in order to make sure that their content is easily understood by consumers and that the format covers all key information needed by them. The key facts statement for a consumer credit should include: (1) the total amount of the credit; (2) the amounts of monthly payments; (3) the final maturity of the credit; (4) the total amount of payments to be made; (5) all fees, including prepayment and overdue penalty fees, taxes, and any other charges that could be incurred; (6) if the loan is indexed in foreign currency, a clear indication of the exchange rate to be used to calculate disbursements and repayments; (8) any collateral that is required to maintain the credit; (10) if the credit is used to finance a product, the cash price of the product without financing charges; (11) warnings on key risks assumed by the consumer, such as foreign currency risk, risk of having negative information in the credit bureau, risk of losing a home or other collateral; (12) mechanisms for recourse available to the consumer in the event of a complaint. It is also important that key facts statements be available in the language most spoken in the location where the financial product or service is offered. Key facts statements have been developed in the EU, USA, Peru, South Africa, Ghana, Australia, Mexico, among other countries. |
| **Good Practice B.6** | | ***Advertising and Sales Materials***   1. **Non-bank credit institutions should ensure that their advertising and sales materials and procedures do not mislead customers.** 2. **All advertising and sales materials should be easily readable and understandable by the general public.** 3. **Non-bank credit institutions should be legally responsible for all statements made in advertising and sales materials (i.e. be subject to the penalties under the law for making any false or misleading statements).** |
| **Description** | | **a, b.** The Law on Advertising explicitly applies to the financial sector, according to Article 1. This law defines and prohibits unethical, unfair, misleading, false and hidden advertising, and mentions cases that could easily apply to the financial system (e.g., unfair advertising would include practices that take advantage of the consumer’s lack of experience and knowledge or that omit substantial information, while misleading advertising would include practices that contain false information on cost or price). In addition, Article 18 of the law specifically prohibits certain advertising practices in the financial sector, including two that are relevant to the microfinance sector, such as providing information that has no direct relation to the advertised financial service and holding back at least one of the conditions of the financial service contract (which would be impractical to comply with given the length and complexity of the financial services contract).  There is no requirement for MFOs to properly disclose information on interest rates and cost of credit in their advertising and marketing materials. Currently, Instructions 136 and 137 define the way that MLOs and MLFs have to calculate their interest rates and disclose this information in their premises, but neither instruction refers to the way the interest rates have to be advertised by MLOs, MLFs and MDOs.  **c.** The Law on Advertising indicates that the advertiser is responsible for any violation of the law, unless it is proved that the violation was made by the producer or the distributor of the advertisement. The advertiser shall be liable for violations related to the design and production of the advertisement (Art. 30). |
| **Recommendation** | | The NBT should issue regulations dealing with advertising and marketing materials in the microfinance sector (and the banking sector). These regulations could start by applying key concepts included in the Law on Advertising (e.g., unfair, misleading and false advertising) to the particularities of the microfinance sector. The NBT regulations should provide that every time MFOs include any information on interest rates in their advertisements and marketing materials, they must also prominently disclose the effective interest rate (if this is not the advertised interest rate). The NBT should define the interest rate calculation method that all MFOs should use. The NBT should also require that a minimum font size be used to disclose the effective interest rate and any other key information for the consumer.  The NBT should coordinate with AMA to ensure that advertising of MFOs is properly monitored, including regarding compliance with requirements on disclosure of interest rate. |
| **Good Practice B.7** | | ***General Practices***  **Specific rules on disclosure and sales practices should be included in the non-bank credit institutions’ code of conduct and monitored by the relevant supervisory authority.** |
| **Description** | | In 2011 the NBT issued a regulation on issuance of credit and accrual of interest (Instruction 186), which provides guidance on the minimum information that a credit agreement must contain, as well as the minimum information required to be obtained from, and disclosed to, a consumer before a credit contract is signed. However, this regulation is not applicable to MFOs. Some of those issues were addressed by the NBT’s Instructions 136 and 137 that required MLOs and MLFs, respectively, to display in their premises a format with information on average and maximum loan terms, late fees, and average interest rates for unsecured, secured and domestic and foreign currency loans. However, the Instructions do not include any minimum standards on advertising. There is no similar instruction applicable to MDOs (Instruction 135 focused on prudential requirements, initial capital and management skills of MDOs). Several MFOs currently use different methods of calculation of interest rate (e.g., flat interest instead of declining balance), which makes it hard for consumers to compare offers advertised by different providers and to understand the real cost of credit.  AMFOT’s code of ethics deals with the fair treatment of clients by staff of MFOs, along with other ethical values to be followed by staff when dealing with clients. However, there is no mechanism to enforce this code by either AMFOT or the NBT.  AMFOT is also starting to promote the endorsement of the Smart Campaign’s client protection principles by its members. These principles include transparency (i.e. provision of clear, sufficient and timely information in a manner and language that is understandable by clients so that they can make informed decisions, particularly information on pricing and terms and conditions of products); prevention of over-indebtedness (i.e. determination of clients’ capacity to repay without becoming overindebted in all phases of the credit process, and implementation and monitoring of internal systems that improve market level credit risk management); fair and respectful treatment of clients (i.e., ensuring safeguards to detect and correct corruption and aggressive or abusive treatment by providers’ staff and agents, particularly during loan sales); and responsible pricing (i.e., setting pricing, terms and conditions that are affordable to clients while allowing for financial institutions to be sustainable). |
| **Recommendation** | | Following on the recommendation from Good Practice A.2, AMFOT should continue promoting the endorsement and implementation of the Smart Campaign’s client protection principles by all its members, and then work on the development of a code of conduct to be complied with by all its members. The code should take into account the Smart Campaign’s principles, and incorporate guidance on minimum requirements of information from borrowers, and disclosure of information to borrowers.  The NBT should also consider making some provisions from Instruction 186 applicable to MFOs, especially related to the minimum contract requirements, disclosure of information to borrowers and gathering of information from borrowers. Also, the NBT should issue regulations on advertising applicable to MFOs, so that if they include any information on interest rates, they also display the effective interest rate, using the calculation defined by the NBT. The NBT should properly monitor compliance with all these regulations. |
| **Good Practice B.8** | | ***Disclosure of Financial Situation***   1. **The relevant supervisory authority should publish annual public reports on the development, health, strength and penetration of the non-bank credit institutions, either as a special report or as part of the disclosure and accountability requirements under the law that governs these.** 2. **Non-bank credit institutions should be required to disclose their financial information to enable the general public to form an opinion regarding the financial viability of the institution.** |
| **Description** | | **a.** The NBT publishes statistics on the microfinance sector in their periodic public reports, including information on the size of the portfolio of the three microfinance segments, and prudential information on MDOs.  **b.** All MFOs are required to have an annual audit by external auditors, and to submit their annual reports to the NBT. In addition, the Microfinance Law requires MDOs to publish their audited annual report, including balance sheet and profit and loss statements, in accordance with forms and by the date established by the NBT. |
| **Recommendation** | | No recommendation. |
| **SECTION C** | **CUSTOMER ACCOUNT HANDLING AND MAINTENANCE** |
| **Good Practice C.1** | ***Statements***   1. **Unless a non-bank credit institution receives a customer’s prior signed authorization to the contrary, the non-bank credit institution should issue, and provide the customer with, a monthly statement regarding every account the non-bank credit institution operates for the customer.** 2. **Each such statement should: (i) set out all transactions concerning the account during the period covered by the statement; and (ii) provide details of the interest rate(s) applied to the account during the period covered by the statement.** 3. **Each credit card statement should set out the minimum payment required and the total interest cost that will accrue, if the cardholder makes only the required minimum payment.** 4. **Each mortgage or other loan account statement should clearly indicate the amount paid during the period covered by the statement, the total outstanding amount still owing, the allocation of payment to the principal and interest and, if applicable, the up-to-date accrual of taxes paid.** 5. **A non-bank credit institution should notify a customer of long periods of inactivity of any account of the customer and provide reasonable final notice in writing to the customer if the funds are to be transferred to the government.** 6. **When a customer signs up for paperless statements, such statements should be in an easy-to-read and readily understandable format.** |
| **Description** | MFOs do not provide customers with regular statements of accounts. Industry practice is to provide customers with a payments schedule that they would use to keep track of their payments. However customers may pay their monthly installment without presenting their payments schedule and not given any sort of document that informs the customer on how the balance or interest of the credit was reduced. MFOs told the mission that customers are free to ask for information on the status of their loans either in person or through the hotline, and could ask for a new copy of the payments schedule for free at any time. |
| **Recommendation** | The NBT should require MFOs to provide simple periodic statements of account to their customers unless the customer waives this right in writing (in a document separate from the standard contract). These statements might not need to be submitted to the client’s mailing address, but at a minimum they should be given or shown to the client when he pays his monthly owed amount in the premises of the MFO. |
| **Good Practice C.2** | ***Notification of Changes in Interest Rates and Non-Interest Charges***   1. **A customer of a non-bank credit institution should be notified in writing by the non-bank credit institution of any change in:** 2. **the interest rate to be paid or charged on any account of the customer as soon as possible; and** 3. **a non-interest charge on any account of the customer a reasonable period in advance of the effective date of the change.** 4. **If the revised terms are not acceptable to the customer, he or she should have the right to exit the contract without penalty, provided such right is exercised within a reasonable period.** 5. **The non-bank credit institution should inform the customer of the foregoing right whenever a notice of change under paragraph a. is made by the institution.** |
| **Description** | **a.** According to Article 15 of the Microfinance Law, a MFO may not unilaterally change interest rates on microloans, or the commissions, fees and terms of these loan agreements with clients, except as provided in the loan agreement. In practice, this provision could be interpreted in a way that would end up not protecting a consumer. For example, in some cases the loan agreement could indicate that interest rates and other conditions could change upon the decision of the management. In practice, such type of contract clause would allow for unilateral changes of terms of the loan agreement.  **b, c.** At the same time, the Law does not address the customer’s right to exit the contract without penalty if he/she does not agree with the changes in the contract terms. |
| **Recommendation** | The NBT should modify Article 15 of the Microfinance Law to incorporate the provisions indicated in this Good Practice. |
| **Good Practice C.3** | ***Customer Records***   1. **A non-bank credit institution should maintain up-to-date records in respect of each customer of the non-bank credit institution that contain the following:** 2. **a copy of all documents required to identify the customer and provide the customer’s profile;** 3. **the customer’s address, telephone number and all other customer contact details;** 4. **any information or document in connection with the customer that has been prepared in compliance with any statute, regulation or code of conduct;** 5. **details of all products and services provided by the non-bank credit institution to the customer;** 6. **a copy of all correspondence from the customer to the non-bank credit institution and vice-versa and details of any other information provided to the customer in relation to any product or service offered or provided to the customer;** 7. **all documents and applications of the non-bank credit institution completed, signed and submitted to the non-bank credit institution by the customer;** 8. **a copy of all original documents submitted by the customer in support of an application by the customer for the provision of a product or service by the non-bank credit institution; and** 9. **any other relevant information concerning the customer.** 10. **A law or regulation should provide the minimum permissible period for retaining all such records and, throughout this period, the customer should be provided ready free access to all such records.** |
| **Description** | **a.** There is no specific legal, regulatory or code of conduct provision regarding maintenance of customer records by MFOs. Some MFOs maintain customer records with contact information, copies of identity documents, applications, and documents signed and submitted by customers, but copies of offers and other documents provided by a MFO to its customers are not often included in their records.  **b.** MFOs have different retention periods of customer records (e.g., 3 and 5 years), and they do not provide customers with ready free access to such records. |
| **Recommendation** | The NBT should issue a regulation covering this Good Practice, applicable to MFOs. |
| **Good Practice C.5** | ***Debt Recovery***   1. **All non-bank credit institutions, agents of a non-bank credit institutions and third parties should be prohibited from employing any abusive debt collection practice against any customer of the non-bank credit institution, including the use of any false statement, any unfair practice or the giving of false credit information to others.** 2. **The type of debt that can be collected on behalf of a non-bank credit institution, the person who can collect any such debt and the manner in which that debt can be collected should be indicated to the customer of the non-bank credit institution when the credit agreement giving rise to the debt is entered into between the non-bank credit institution and the customer.** 3. **A debt collector should not contact any third party about a non-bank credit institution customer’s debt without informing that party of the debt collector’s right to do so and the type of information that the debt collector is seeking.** 4. **Where sale or transfer of debt without borrower consent is allowed by law, the borrower should be:** 5. **notified of the sale or transfer within a reasonable number of days;** 6. **informed that the borrower remains obligated on the debt; and** 7. **provided with information as to where to make payment, as well as the purchaser’s or transferee’s contact information.** |
| **Description** | **a.** Currently debt recovery is undertaken by special departments within MFOs. AMFOT’s code of ethics deals with the ethical behavior of staff when dealing with clients, including debt collection. The Smart Campaign includes a client protection principle on fair and respectful treatment of clients that refers to the need of providers to ensure adequate safeguards to detect aggressive or abusive treatment by staff and agents, particularly during debt collection processes.  **b.** There is no specific legal or regulatory provision regarding debt collection practices by MFOs, and no disclosure appears to be made by MFOs in the contract agreement..  **c, d.** According to information provided by the NBT and MFOs during the mission, third-party debt collection practices and sale or transfer of debt are not practiced in Tajikistan. |
| **Recommendation** | The NBT should issue a regulation covering this Good Practice, applicable to MFOs. |
| **SECTION D** | | **PRIVACY AND DATA PROTECTION** |
| **Good Practice D.1** | | ***Confidentiality and Security of Customers’ Information***   1. **The financial transactions of any customer of a non-bank credit institution should be kept confidential by the institution.** 2. **The law should require non-bank credit institutions to ensure that they protect the confidentiality and security of personal data of their customers against any anticipated threats or hazards to the security or integrity of such information, and against unauthorized access.** |
| **Description** | | **a, b.** Article 39 of the Law on MFIs protects the confidentiality of the customers of any MFO, by prohibiting all its founders, shareholders, employees and agents from disclosing to third parties, or from wrongfully using, any confidential information to which they had access while performing their duties. This prohibition includes: (i) not allowing the use of information received from any client for the benefit of the MFO or any other person, except with the permission or upon the instruction of the client; and (ii) not disclosing available information to third parties, except as otherwise provided by law. Exceptions to the duty of secrecy include cases of reorganization and liquidation of MFOs, and any other exceptions provided by law.  In addition, MDOs and MLOs are subject to the provisions on banking secrecy as defined in the Banking Law (Chapter 8). This law defines and describes confidential information, indicates who could receive confidential information and under which circumstances. The law also indicates that executives, employees, current or former staff of a MFO, employees and inspectors of the NBT are prohibited from disclosing confidential information to third parties, or divulging or enabling its analysis. In addition, the law specifies exceptions to the confidentiality provisions, which are related to audits, anti-money laundering activities, information on customer indebtedness necessary for the NBT to analyze soundness of the system, judicial disputes, and information provided by the NBT to other supervisory authorities according to its statutory law.  In addition to the provisions in the Microfinance and Banking laws, the Law on Credit History requires the future users of credit bureaus (e.g. MFOs) to maintain confidentiality of the credit report and not to disclose the information contained therein to third parties, and to use the information contained in the credit report only for purposes foreseen by the law (Article 20).  Despite all these provisions on protection of confidentiality of customer information, it is widely reported that customers have the perception that their information is not adequately protected, especially by banks, but also by MFOs, which negatively affects their confidence in the financial sector. In the microfinance sector, consumers may not know or fully understand the existing agreements between MFOs to exchange information on the credit exposure of borrowers, through AMFOT and other more specific agreements (more information in Good Practice D.2).  The Mission learned that a recently proposed amendment to the tax code would require credit institutions to provide information on customer accounts and transactions to the tax authority, without a court order or presentation of fraud evidence by a tax inspector. This legal change is concerning since it would contribute to the public concern on the lack of protection of customer information. |
| **Recommendation** | | The NBT should pay special attention to the monitoring of compliance with requirements on confidentiality and security of customers’ information by MFOs. The NBT should also issue provisions regarding maintenance of security of customers’ information in physical and electronic means, especially considering the increasing use of technology by MFOs.  The NBT should coordinate with the tax authority to make sure that confidentiality of customer information is adequately protected in the tax code, and that the proposed amendments do not give the tax authority unrestricted access to customers’ information. |
| **Good Practice D.2** | | ***Credit Reporting***   1. **Credit reporting should be subject to appropriate oversight, with sufficient enforcement authority.** 2. **The credit reporting system should have accurate, timely and sufficient data. The system should also maintain rigorous standards of security and reliability.** 3. **The overall legal and regulatory framework for the credit reporting system should be: (i) clear, predictable, non-discriminatory, proportionate and supportive of consumer rights; and (ii) supported by effective judicial or extrajudicial dispute resolution mechanisms.** 4. **Proportionate and supportive consumer rights should include the right of the consumer** 5. **to consent to information-sharing based upon the knowledge of the institution’s information-sharing practices;** 6. **to access his or her credit report free of charge (at least once a year), subject to proper identification;** 7. **to know about adverse action in credit decisions or less-than-optimal conditions/prices due to credit report information;** 8. **to be informed about all inquiries within a period of time, such as six months;** 9. **to correct factually incorrect information or to have it deleted and to mark (flag) information that is in dispute;** 10. **to reasonable retention periods of credit history; and** 11. **to have information kept confidential and with sufficient security measures in place to prevent unauthorized access, misuse of data, or loss or destruction of data.** 12. **The credit registers, regulator and associations of non-bank credit institutions should undertake campaigns to inform and educate the public on the rights of consumers in the above respects, as well as the consequences of a negative personal credit history.** |
| **Description** | | **a.** The Law on Credit History establishes the NBT as the authority in charge of overseeing the system. Although the law was approved in 2009, this system has not yet been implemented.  **b.** MFOs are in dire need of having a mechanism to ensure that their clients are not becoming overindebted due to irresponsible multiple or parallel borrowing. In this context, AMFOT developed a credit database that allowed exchange of information on borrowers among its members. Later, several credit institutions (MFOs and banks) agreed to exchange information among themselves in the context of the creation of a credit bureau; however not all institutions agreed to participate in this exchange. These arrangements have been an industry reaction to the lack of an official credit database. However, they seem to be contributing to the general perception that customer confidentiality and security of information is not well protected.  **c, d.** The Law on Credit History indicates the rights of credit history entities (i.e. borrowers), including the rights: to consent to sharing information on the borrower and on his or her personal credit history; to get a free personal credit report once a year (and any other time subject to charge); to request from the credit report user a copy of the credit report or to be familiarized with it, during the process of application for credit; to contest information contained in the credit report; to request from sources of information to correct invalid information. The Law indicates that the credit bureau maintains records up to 5 years from the date of receiving the latest information. The Law also requires credit bureaus to take measures to secure confidentiality and security of information of borrowers, including conditions of implementation of organizational, technical and technological measures by information providers and recipients.  The Law does not include the rights of borrowers to know about adverse action in credit decisions or less-than-optimal conditions (e.g., credit refusal, high interest rate, low credit limit) due to credit history information, to be informed about all inquiries within a period of time, and to mark information that is in dispute. |
| **Recommendation** | | There is urgent need to establish a credit bureau to have an official mechanism to exchange credit information of borrowers, which would follow appropriate confidentiality, privacy and security requirements. The NBT should ensure that the rights of consumers are well protected, through an adequate legal framework, consumer awareness campaigns and supervisory mechanisms.  The NBT should consider amending the Law on Credit History to incorporate the rights of consumers to know about adverse action in credit decisions or less-than-optimal conditions due to credit history information, to be informed about all inquiries within a period of time, and to mark information that is in dispute. The NBT should also make sure that a similar level of protection of confidentiality of customer information, which is currently required of banks and MFOs, is also required of other providers and recipients of credit history information, once the credit bureau starts to operate.  The NBT should also ensure that consumers are well informed about the credit bureau, its functions and their rights in relation to credit history information and its use by lenders. Clear and simple brochures and other disclosure formats should be given to consumers when they sign a contract with a MFO. Consideration could be given to the agreement on a simple consent form that is commonly used by all credit providers, so that it is easier for consumers to identify and understand. Reference to negative reporting in the credit bureau should also be included in key facts statements for credit products. The NBT, AMFOT and consumer organizations should coordinate in the development of campaigns to raise awareness on consumers’ rights regarding the credit history system. |
| **SECTION E** | | **DISPUTE RESOLUTION MECHANISM** |
| **Good Practice E.1** | | ***Internal Complaints Procedure***  **Complaint resolution procedures should be included in the non-bank credit institutions’ code of conduct and monitored by the supervisory authority.** |
| **Description** | | AMFOT’s code of ethics does not include provisions on complaints resolution procedures. One of the client protection principles included in the Smart Campaign refers to the need for microfinance providers to have in place timely and responsive mechanisms for complaints and problem resolution for their clients and to use these mechanisms both to resolve individual problems and to improve products and services. However the specific procedures are not included in any code, let alone monitored by AMFOT or by the NBT.  Several microfinance institutions have some form of internal mechanism to receive complaints from the public. The mission was told that microfinance institutions usually have a locked box in all their premises in order to receive inquiries or complaints by consumers (or even staff); the box is locked and only the internal auditor opens it about once a week and then gets in touch with the correspondent staff that can address such complaint. Also, several microfinance institutions have hotlines to attend consumer inquiries or complaints, and the number is given to consumers when they receive the contract. In some cases statistics on complaints are produced and analyzed. However, the information of the hotline does not seem to be clearly displayed in the premises. |
| **Recommendation** | | At a minimum, the NBT should require that all MFOs have a contact person or unit in charge of receiving and handling complaints, and that the information of this person or unit is given (and easily displayed) to the consumer. The NBT should also establish guidelines on the internal procedure for MFOs to handle complaints, including for example: (1) include a summary of the internal procedure in the institution’s general terms and conditions and “key facts” given to customers; (2) provide the customer with detailed information of the person or unit appointed to deal with any complaints, both in the documents given to the consumer and in posters displayed in the premises; (3) provide the complainant with a regular written update on the progress of the investigation of the complaint; (4) inform the customer in writing of the outcome of the investigation within a maximum number of days; (5) explain in simple terms the nature of any offer of settlement made to the customer; (6) offer to treat a verbal complaint as a written complaint; (7) maintain up-to-date records of all complaints received; (8) make these records available for review by authorities; (8) produce internal reports on number and types of complaints received and how they were dealt with internally.  The NBT should also require MFOs to send statistics on consumer complaints, and then the NBT should use this information as input to their supervisory activities. Complaints statistics provide with important warning signs not only on consumer protection, but also on reputational and operational risks. Based on the analysis of complaint statistics, the NBT could also propose guidelines, instructions or awareness campaigns that address the common problems identified in complaints reports. |
| **Good Practice E.2** | | ***Formal Dispute Settlement Mechanisms***   1. **A system should be in place that allows consumers to seek affordable and efficient third-party recourse, such as an ombudsman, in the event the complaint with the non-bank credit institution is not resolved to the consumer’s satisfaction in accordance with internal procedures.** 2. **The role of an ombudsman or equivalent institution in dealing with consumer disputes should be made known to the public.** 3. **The ombudsman or equivalent institution should be impartial and act independently from the appointing authority, the industry and the parties to the dispute.** 4. **The decisions of the ombudsman or equivalent institution should be binding upon non-bank credit institutions. The mechanisms to ensure the enforcement of these decisions should be established and publicized.** |
| **Description** | | There is no external dispute resolution mechanism for MFOs. Consumers have to go to the Economic Court of Tajikistan when complaints or disputes are not responded satisfactorily by the financial institutions. The court also deals with disputes from MFOs against their clients on matters such as debt collection and seizure of collateral, and in some cases the court has invited the NBT to clarify legal provisions. In general, neither consumers nor MFOs trust the courts, especially because the court processes are slow, unpredictable and handled by low-paid judges with limited knowledge on financial sector issues.  Consumers have also approached the NBT in a few cases, although the NBT does not have explicit responsibility to deal with individual disputes. The AMA is responsible for the enforcement of the consumer protection, advertising and competition laws, on the basis of specific complaints and own-initiative investigations. However, the AMA has very limited resources to enforce these laws across all sectors, and in particular in the financial sector. The AMA has neither received any complaint against MFOs, nor started any investigation against MFOs.  The Microfinance Law leaves room for the setup of an out-of-court dispute resolution mechanism, by stating that “disputes between MFOs and their clients (individuals and legal entities) shall be settled in the manner established by the legislation of the Republic of Tajikistan” (Art. 40). |
| **Recommendation** | | Consumers should have an external recourse mechanism that helps them resolve their complaints against MFOs before going to the courts. Currently, very few consumers complain to NBT, AMA or the Consumers Union on general issues, let alone on financial consumer protection issues, either because consumers do not know how those institutions could help them or because consumers do not trust such institutions would do anything for them. It is important that the authorities start to raise awareness on the consumers’ right to complain when their rights are violated. AMA and NBT should develop a MoU to clarify their roles in handling consumer complaints, to establish mechanisms for NBT to provide technical expertise on financial sector issues to AMA regarding specific complaints against financial institutions, and for NBT to receive periodic information from AMA on the number of cases they investigate in the financial sector.  In the long-term, consideration should be given to the establishment of a financial services ombudsman, including an assessment of the most appropriate institutional set-up for Tajikistan. The analysis should take into account issues of independence, sustainability, accessibility for consumers, and capacity to make binding decisions to ensure the effectiveness of the system. Several institutional options can be evaluated, following on successful international experiences, for example a scheme established by law to function as an independent institution (UK), or a requirement for financial institutions to join a central bank-approved ombudsman scheme with binding rules for all member institutions (Armenia). Regardless of the way in which the scheme is established, it should be developed in close consultation with all relevant stakeholders including relevant Ministries, the financial industry, NBT and consumer representatives. |

# Consumer Protection in the Insurance Sector

## Overview

1. The commercial insurance sector in Tajikistan commenced operation after the collapse of the Soviet Union and independence in 1991. Prior to 1991, insurance coverage was provided by two state-owned insurers. Although in the development stage, the sector has shown signs of rapid growth, especially the non-life segment. The last audited figures (2007) put gross written premiums at USD 27 million up from USD 0.50 million in 2000. By comparison, the life segment is small with gross written premiums of less than USD 1 million (2007). The main risks written in the non-life segment are property, marine and liability. There is no data available for the life segment.
2. The market is serviced by 15 insurers which are permitted to write both life and non-life business. Of the fifteen insurers, two are state-owned entities. The insurance market is dominated by the larger of the two state companies, Tajik Sugurta, which is the successor to Tajik Gosstrakh, and a more recent private company in 2004, Orien Insurance. Tajik Sugorta enjoys, together with the other state company, Tajik Sarmoya, a legal duopoly in the provision of all the compulsory insurances, but the position of Tajik Sugorta, for many years the market leader, has been eclipsed by Orien, which had a market share in 2007 of over 67% in the non-compulsory lines of insurance. Still, a major obstacle to the development of the insurance sector is the existence of the monopoly positions of the two state-owned insurance entities and the number of compulsory insurance covers that are required, which limits competition, in turn raising costs and reducing the quality of services.
3. Insurers were operating initially under the insurance law that was passed in 1994; this is very basic legislation. A new Law on Insurance Activities was passed in 2010 but is deficient in a number of areas when compared with best practice and IAIS requirements. These deficiencies include the structure and powers of the supervisory agency and the area of consumer rights and protection.
4. The State Insurance Supervisory Services (SISS) has been established as a department in the Ministry of Finance and is financed directly from the state budget. The structure of the SISS does not meet most of the recommendations of the International Association of Insurance Supervisors (IAIS). The agency is understaffed and underpaid, and in urgent need of institutional strengthening. There is no formal training in place for staff or any mechanism to deliver training. Presently, the supervisory agency does not so much supervise the industry as simply monitor it. In fact, there are no formal documented procedures for either on-site inspection of insurers or off-site reviews of their financial performance. Active, prudential regulation of the market by the agency is conspicuous by its absence. The existing law does not spell out the powers of the supervisor.
5. The dissemination of information about insurers and their financial performance is critical to developing an open and competitive sector and encouraging households to use insurance products to transfer risk. While insurers submit monthly reports to the authority, the agency does not have a mechanism to publish any reports on the activities of insurers or the state of the industry, and the public is largely unaware of the stability and performance of the industry.

## Comparison with Good Practices for the Insurance Sector

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| **SECTION A** | **CONSUMER PROTECTION INSTITUTIONS** |
| **Good Practice A.1** | ***Consumer Protection Regime***  **The law should provide for clear rules on consumer protection in all matters of insurance and there should be adequate institutional arrangements for implementation and enforcement of consumer protection rules.**   1. **There should be specific provisions in the law, which create an effective regime for the protection of retail consumers of insurance.** 2. **The rules should prioritize a role for the private sector, including voluntary consumer organizations and self-regulatory organizations.** |
| **Description** | Comprehensive protection of consumers in relation to insurance generally involves fair competition, prudential supervision and conduct-of-business rules. Fair competition requires a level playing field among insurance providers and choice for consumers. The main prudential issues include: the solvency of the insurance company; the character of those who control it; and the training and experience of its staff. Conduct-of-business issues relate to how individual consumers are dealt with.  (a) Law  In Tajikistan, prudential issues are dealt with by the Law on Insurance Activity. This provides for the state to license and supervise insurers and insurance brokers. Licenses are issued through the Ministry of Finance. Supervision is carried out by the State Insurance Supervisory Service (SISS).  Conduct-of-business issues are dealt with only by general provisions in the Civil Code and the Law on Consumer Protection.  Consumer protection is the responsibility of the State Anti-Monopoly Body.  *Law on Insurance Activity*  The statute Law on Insurance Activity was adopted in 2010, replacing an earlier statute from 1994. The 2010 law provides for three major types of insurance: compulsory state insurance (which the state must provide for certain officials and state employees); compulsory insurance (which the state requires citizens to take out) and voluntary insurance.  Under the 1994 law, both types of compulsory insurance had to be provided through state insurance companies. Under the 2010 law, compulsory state insurance must be provided through state insurance companies, but other compulsory insurance is to be opened to private insurers under separate statutes.  Insurance companies must be licensed by the state. Licenses are issued through the Ministry of Finance. From 2014, insurance companies must have qualified actuaries (also licensed by the state). If an insurer includes foreign participation, its management must be in Tajikistan; at least half of the board of directors must be Tajikistan citizens; its share capital must be in Tajikistan currency; and SISS must be told of any increase in the proportion owned by foreign investors.  For all insurers, whether or not there is foreign participation, the state sets a minimum for the amount of the paid-up share capital. SISS can set regulations for financial stability. The financial stability of an insurer is to be assessed on the basis of: commercially sound insurance rates; sufficiency of reserves; extent of own funds; and extent of reinsurance.  Insurance companies must cooperate with SISS in its supervision of their activities. SISS can specify the financial and statistical information that insurance companies must provide to it. The amount of an insurance company’s reserves must be approved by SISS.  SISS can suspend or withdraw an insurance company’s license, under the Code on Administrative Violations, but does not have power to impose any graduated sanctions, such as a public warning or fine.  The head and the chief accountant of an insurance company must have a relevant degree-level qualification and two years’ relevant experience. An insurance actuary must have a relevant degree-level qualification and actuarial qualification.  The rate of premiums for compulsory insurance is set by the state. Other insurance rates must be based on actuarial calculations and be within limits approved by SISS. Insurance companies must publish their audited annual accounts in the relevant official publications and mass media. When consumers take out policies, they can ask for a copy of the insurance company’s annual accounts.  Insurance brokers must be licensed by the state. SISS can specify the information that insurance brokers must provide to it. In a particular transaction, the broker must act for the insured or for the insurer, and not for both simultaneously. The head and the chief accountant of an insurance broker must have a relevant degree-level qualification and two years’ relevant experience. There are no licensed insurance brokers yet, although there is one current application.  Insurance agents (acting only for insurers) do not have to be licensed. Insurance brokers and agents cannot place insurance with foreign insurers or brokers – but this does not prevent reinsurance abroad.  Disputes relating to insurance issues are to be resolved in court.  *Civil Code*  The Civil Code contains general provisions on contracts and, in chapter 51, some specific provisions about insurance contracts. Insurance is to take the form of a contract between the parties but, in the case of compulsory insurance, conditions may be set by statute. Certain types of insurance are prohibited, including: unlawful interests, betting losses and ransom.  Articles 1014 to 1018 define certain types of non-mandatory insurance: property (which can include a bearer contract with no named beneficiary); liability to third parties; liability for breach of contract; loss of profits; and personal insurance (of the insured or a named beneficiary) payable on death, injury, reaching a specified age or reaching a specified life event. The 2010 Law on Insurance Activities includes a wider range than this.  Articles 1019 to 1021 cover compulsory insurance. This may be required by statute to cover harm to another, or the insured’s liability to another. The Civil Code provided that no-one could be required to insure their own life or health, but that has been reversed by the 2010 Law on Insurance Activity.  Articles 1022 to 1053 cover insurers and insurance policies. These include some consumer-protection provisions. Insurers are to be licensed in accordance with separate statutes. Insurance contracts must be in writing. The terms of the policy cannot reduce any rights given to the insured by statute. The insurer can only avoid the contract for non disclosure if it asked the insured relevant questions. The insurer owes the insured a duty of confidentiality. The insured may withdraw from the contract.  *Law on Consumer Protection*  The statute Law on Consumer Protection was adopted in 2004, replacing an earlier statute from 1994. It covers services as well as goods and works – and provides that internationally-recognized legal acts also apply.  Consumers are entitled to freedom of choice. A provider cannot require a consumer to take an additional service, for example, a lender cannot require a consumer to buy insurance from it. The provider must assist freedom of choice by providing trustworthy information, which must identify the entity/entities providing the service and the information. The state can make rules on the format of the information which must be provided.  The role of the State Anti-Monopoly Body is wider than its name implies. It is the body with the responsibility to enforce the consumer protection law and can impose sanctions for general infringements. It can also take court action on its own behalf or on behalf of consumers.  The law provides that: state education should include education on consumer rights; consumers are entitled to form consumer associations; these are entitled to be consulted on consumer protection rules; they can commission independent appraisals of any state-set tariffs; and they can bring class actions in court on behalf of consumers.  *State bodies*  Both SISS and the State Anti-Monopoly Board are constrained by limited resources.   1. SISS currently lacks sufficient independence, training and specialist expertise (insurance, actuarial and legal). It is better placed to monitor the activities of the insurance industry than to actively supervise them. 2. SISS currently lacks the capacity and ability to fully analyze the information it collects and to publish it in a form that fosters fair competition and consumer choice by providing an overall picture of the stability and performance of the industry.   This is particularly important because there is no insurance guarantee or compensation scheme – and consumers retain the memory of significant defaults in the early post-Soviet era.   1. SISS has power to suspend or withdraw the license of an insurance company, but this is appropriate only for serious misconduct. It lacks the power to impose lesser sanctions (such as public warnings and fines) to punish and discourage lesser misconduct.   (b) Role of the private sector  The only consumer body is the Consumers Union of Tajikistan. It is not active in the field of insurance (or other financial services). Its main focus is on utilities.  There are no self-regulatory bodies in the field of insurance. In particular, there is no association of insurers. Some insurance companies (both private and state companies) are in favor of setting up an association. However, they indicated that the idea had been raised in the past without commanding all-round agreement, and they were now awaiting some initiative from the state. |
| **Recommendation** | The government should ensure that the legal and regulatory framework for opening up compulsory insurance to private insurance companies is put in place as soon as possible – so that competition can increase consumer confidence, and grow the market, through improved value for money and customer service.  SISS should become an independent supervisory authority with all the appropriate powers (including powers to issue public warnings and to fine), resources and capacity – so as to bring it closer to internationally accepted standards – with any future change to the leadership of the authority following a transparent process that ensures public confidence. The government should consider whether the cost should continue to be paid from taxation or be levied on the insurance industry. Alternatively, the government should consider integrating SISS into the National Bank of Tajikistan (which is legally independent and better resourced) to create a Financial Supervisory Authority.  SISS should strongly encourage and facilitate the creation of an insurance association, to: provide a focus for effective discussions with the industry; act collectively in order to raise standards and improve the availability of trained and experienced insurance professionals; and provide generic information about insurance to consumers.  The 2010 Law on Insurance Activity should be amended, to give SISS an explicit objective, and the necessary legal powers, to take the lead on consumer protection in insurance. This should include legal powers to set rules in relation to conduct-of-business, to supervise them and (where necessary) impose sanctions.  SISS should exercise that power to set conduct-of-business rules unless the insurance industry itself speedily adopts a comprehensive and effective code of practice that is enforceable as a result of being incorporated automatically into every insurance contract with a consumer. Aspects that should be included in conduct-of-business rules are discussed in the Good Practices below.  The amendment to the 2010 Law on Insurance Activity should also give SISS power, when it considers it appropriate:   * to set training and qualification requirements for the staff of insurers and insurance intermediaries (not to be exercised until there is a larger pool of trained and experienced insurance professionals); * to create a requirement and process for licensing sales agents who are not full-time employees remunerated primarily by salary.   SISS’s current practice is to assess an insurer’s reserves on a total basis (that is, a single reserve for all classes of insurance). It would be more prudent, and in accordance with internationally-recognized prudential standards for SISS to assess reserves by class of insurance. |
| **Good Practice A.2** | ***Contracts***  **There should be a specialized insurance contracts section in the general insurance or contracts law, or ideally a separate Insurance Contracts Act. This should specify the information exchange and disclosure requirements specific to the insurance sector, the basic rights and obligations of the insurer and the retail policyholder and allow for any asymmetries of negotiating power or access to information.** |
| **Description** | There are no specific provisions concerning insurance contracts and information. There are some general provisions (described above) in the Civil Code and the Law on Consumer Protection. |
| **Recommendation** | The 2010 Law on Insurance Activity should be amended to give SISS legal powers to set rules in relation to conduct-of-business (including on information exchange and disclosure requirements), to supervise them and (where necessary) impose graduated sanctions.  Conduct-of-business rules should be introduced into a new insurance contracts law or as amendments in the insurance law –unless implemented through an effective industry code of practice that is supervised by SISS. |
| **Good Practice A.3** | ***Codes of Conduct for Insurers***   1. **There should be a principles-based code of conduct for insurers that is devised in consultation with the insurance industry and with relevant consumer associations, and that is monitored and enforced by a statutory agency or an effective self-regulatory agency.** 2. **If a principles-based code of conduct exists, insurers should publicize and disseminate it to the general public through appropriate means.** 3. **The principles-based code should be augmented by voluntary codes for insurers on such matters specific to insurance products or channels.** 4. **Every such voluntary code should likewise be publicized and disseminated.** |
| **Description** | There is no insurance code of conduct. |
| **Recommendation** | The 2010 Law on Insurance Activity should be amended to give SISS the necessary legal powers to set conduct-of-business rules unless the insurance industry itself speedily adopts a comprehensive and effective code of practice that is enforceable as a result of being incorporated automatically into every insurance contract with a consumer.  SISS should monitor compliance with the conduct of business rules (or code of practice) and impose sanctions in the event of non-compliance.  Conduct of business rules (or the code of practice) should include:   * in relation to sales and distribution: * ensuring advertising and promotional material is clear, fair and not misleading; * providing written pre-contract information in clear language in the form of ‘key facts’ documents; * controlling insurance intermediation arrangements and the use, training, remuneration and control of agents; * disclosing to the consumer the status of any intermediary and the amount of any commission paid to the intermediary by the insurer; * clarifying the circumstances in which the insurer (or its agent) is required to check the appropriateness of the policy; * clarifying the circumstances in which the insurer (or its agent) is required to make clear that no advice is being given; * giving a ‘cooling-off’ period of at least 7 days during which consumers can cancel with a full refund. * in relation to renewals: * at least 14 days prior written notice of the date when a policy is due to be renewed; * at least 14 days prior written notice if the insurer wishes to change the terms on renewal, or refuse renewal. * in relation to insurance contracts where the value is subject to variation (for example, as a result of additions/withdrawals and/or investment performance): * provision of an up-front projection of the value of the policy, on a basis specified by SISS; * provisions of periodic statements at least once per year, with information on how consumers can dispute its accuracy. * in relation to insurance claims: * giving clear written details of the procedure to be followed in the event of an insurance claim; * avoiding the need to involve the police or other state agencies except where that is absolutely unavoidable; * prohibiting rejection of a claim for non-disclosure that is not material, or which arose from lack of clarity in the insurer’s question. * in relation to complaints (including any dissatisfaction with the handling of a claim); * giving clear written details of a process for insurers to deal fairly, effectively and promptly with any complaint; * adequate notice to consumers of the existence of the complaints process and how to access it; * appointment of a suitable person/department to deal independently with complaints, and to keep records of this; * time limits for giving the consumer a full written response. |
| **Good Practice A.4** | ***Other Institutional Arrangements***   1. **Prudential supervision and consumer protection can be placed in separate agencies or lodged in a single institution, but allocation of resources between prudential supervision and consumer protection should be adequate to enable the effective implementation of consumer protection rules.** 2. **The judicial system should provide credibility to the enforcement of the rules on financial consumer protection.** 3. **The media and consumer associations should play an active role in promoting consumer protection in the area of insurance.** |
| **Description** | (a) Prudential supervision and consumer protection  Prudential supervision is assigned to SISS; consumer protection is assigned to the State Anti-Monopoly Body; neither body has sufficient resources to fulfill its role in relation to insurance; and both lack independence, powers and expertise to fulfill their responsibilities or exercise their authority.  (b) Judicial system  The Law on Insurance Activities provides that disputes relating to insurance issues are to be resolved in court. But consumers appear to lack confidence in the courts as a means of enforcing consumer rights against more powerful businesses. Insurers reported that they had not been taken to court by a consumer in relation to a disputed claim.  (c) Media and consumer associations  The State Anti-Monopoly Body reported that television seldom covers consumer-protection issues, but that the print media often do.  The only consumer body (the Consumers Union of Tajikistan) is not active in the field of insurance. |
| **Recommendation** | The consumer protection mandate in the insurance sector should be placed in SISS, which should become an independent supervisory authority with all the appropriate powers, resources and capacity to supervise busines conduct in the insurance sector and take enforcement actions when necessary.  The State Anti-Monopoly Body can still fulfill a valuable role by publicising, and signposting consumers to, the arrangements provided by SISS. |
| **Good Practice A.5** | ***Bundling and Tying Clauses***  **Whenever an insurer contracts with a merchant or credit grantor (including banks and leasing companies) as a distribution channel for its contracts, no bundling (including enforcing adhesion to what is legally a single contract), tying or other exclusionary dealings should take place without the consumer being advised and able to opt out** |
| **Description** | Bundling and tying is contrary to the Law on Consumer Protection. All the insurers interviewed by the mission reported that they were not party to any bundling or tying arrangements. Some insurers reported that particular credit providers might recommend customers to them. Some insurers said they suspected that some credit providers might have arrangements to ‘strongly encourage’ consumers to use insurance companies related to the lender. |
| **Recommendation** | While the law provides the necessary provisions, its enforcement appears to be weak. SISS and the State Anti-Monopoly Body should have adequate capacity, resources, and powers to supervise and enforce this provision of the law. |
| **SECTION B** | **DISCLOSURE & SALES PRACTICES** |
| **Good Practice B.1** | ***Sales Practices***   1. **Insurers should be held responsible for product-related information provided to consumers by their agents (i.e. those intermediaries acting for the insurer).** 2. **Consumers should be informed whether the intermediary selling them an insurance contract (known as a policy) is acting for them or for the insurer (i.e. in the latter case the intermediary has an agency agreement with the insurer).** 3. **If the intermediary is a broker (i.e. acting on behalf of the consumer) then the consumer should be advised at the time of initial contact with the intermediary if a commission will be paid to the intermediary by the underwriting insurer. The consumer should have the right to require disclosure of the commission and other costs paid to an intermediary for long-term savings contracts. The consumer should always be advised of the amount of any commission and other expenses paid on any single premium investment contract.** 4. **An intermediary should be prohibited from identically filling brokering and agency roles for a given general class of insurance (i.e. life and disability, health, general insurance, credit insurance).** 5. **When a bank is the intermediary, the sales process should ensure that the consumer understands at all times that he or she is not purchasing a bank product or a product guaranteed by the bank.** 6. **Sanctions, including meaningful fines and, in the case of intermediaries, loss of license, should apply for breach of any of the above provisions.** |
| **Description** | (a) Because Tajikistan is a primarily rural country, insurers are dependent on agents to reach much of the population. A limited number of these agents are paid by a combination of salary and commission. But the dominant business model involves the use of agents employed on short-term commission-only contracts going out and about to seek customers. Insurers, however, were not entirely confident that agents made it clear to consumers that they acted for the insurer and did not give independent advice.  The Law on Consumer Protection requires that consumers be given appropriate information, including about the entity providing the service, so consumers can exercise freedom of choice. But there is no licensing, training or conduct requirement for insurance agents. Most of them do not have continuity of employment and they are paid only if they make a sale. Supervision of their agents by insurers appears to be minimal, and there is a shortage of trained insurance professionals, so there is a high probability that poor sales practices are common.  b.  The Law on Consumer Protection requires that consumers be given appropriate information, including about the entity providing the service, so consumers can exercise freedom of choice. A significant number of sales are made by intermediaries acting as agent for one company. But control of their agents by insurers is weak, and insurers were not entirely confident that agents made it clear to consumers that they acted for the insurer and did not give independent advice.  Under the Law on Insurance Activities, the broker must act for the insured or for the insurer in a particular transaction, and not for both simultaneously. There are currently no intermediaries who are brokers. There is one application pending, but it is believed that the applicant intends to act as agent for several companies and does not intend to give independent advice to consumers. So there is currently no prospect of consumers receiving independent advice on insurance.  There are group insurance arrangements which, though not unusual internationally, do not appear to fit easily within the current regulatory framework, which assumes that the beneficiaries of insurance are named in the policy. An example is where an insurer sells travel cover to a travel agent, which then passes on the benefit of the cover to consumers as part of a travel contract. It is unclear, in terms of the regulatory arrangements, whether the travel agent is acting as an agent of the insurer or in some other capacity.  (c) There are currently no insurance brokers. There are no legal requirements for brokers or agents to disclose their commissions or other costs paid to the intermediary, and given the lack of supervision of agents, it is unlikely that such disclosure is made.  (d) The Law on Insurance Activities requires that the broker must act for the insured or for the insurer in a particular transaction, and not for both simultaneously. However, there is no prohibition in the law that would prevent a person or entity from being a broker in one transaction for a given general class of insurance while being an agent in another transaction for the same general class of insurance.  (e) There is no evidence that banks work as intermediaries or that consumers believe insurance is guaranteed by a bank.  (f) There is no licensing of intermediaries who are agents. There is licensing for intermediaries who are brokers, though no licenses have been issued yet. SISS can suspend or withdraw a license, but does not have power to impose any lesser sanctions, such as a fine. |
| **Recommendation** | 1. SISS should:  * examine the channels through which insurance is distributed – both outside Dushanbe and, particularly, in more rural areas; * consider the implications for sales practices of the use of largely untrained short-term commission-only agents; * examine the passing-on to individual consumers of the benefit of group cover by traders (for example, travel agents); * consider how that passing-on of cover by traders as part of another service fits into the regulatory arrangements for insurance.   In relation to sales and distribution, and specifically to address a-f above, conduct of business rules should include:   * controlling insurance intermediation arrangements and the use, training, remuneration and control of agents; * disclosing to the consumer the status of any intermediary and the amount of any commission paid to the intermediary by the insurer; * clarifying the circumstances in which the insurer (or its agent) is required to check the appropriateness of the policy; * clarifying the circumstances in which the insurer (or its agent) is required to make clear that no advice is being given. |
| **Good Practice B.2** | ***Advertising and Sales Materials***   1. **Insurers should ensure their advertising and sales materials and procedures do not mislead customers. Regulatory limits should be placed on investment returns used in life insurance value projections.** 2. **Insurers should be legally responsible for all statements made in marketing and sales materials they produce related to their products.** 3. **All marketing and sales materials should be easily readable and understandable by the general public.** |
| **Description** | The Law on Consumer Protection requires that providers assist freedom of choice by providing trustworthy information. In addition, the 2003 Law on Advertisements requires that materials must be easy to understand and not be deceptive or misleading. There is no regulatory limit on the investment returns used in life insurance value projections.  One state insurance company did not share its marketing material, and referred instead to its website – where the information the mission was seeking could not be found. Consumers reported that they found it particularly difficult to obtain information on compulsory insurance. The other state insurance company and the private companies shared promotional material that was largely in line with practice in western Europe. Some insurers reported that they were prepared to provide consumers, on request, with a copy of policy terms.  But there was a lack of ‘key facts’ documents, which are available in some countries and are recommended as good practice. These would provide more detailed information than the promotional material about the terms of the coverage available, in language that is shorter and less technical than the policy terms themselves, to help customers make an informed choice before taking out the insurance contract. |
| **Recommendation** | Insurers are legally responsible for the material they provide. But other aspects of good practice are lacking. SISS, with an expanded mandate to regulate and supervise consumer protection in the insurance sector, should monitor advertising practices and have the power to levy fines or other penalties on violators.  In relation to sales and distribution, and specifically to address a-c above, conduct of business rules should include:   * ensuring advertising and promotional material is clear, fair and not misleading; and * providing written pre-contract information in clear language in the form of ‘key facts’ documents. |
| **Good Practice B.3** | ***Understanding Customers’ Needs***  **The sales intermediary or officer should be required to obtain sufficient information about the consumer to ensure an appropriate product is offered. Formal ― fact finds should be specified for long-term savings and investment products and they should be retained and be available for inspection for a reasonable number of years.** |
| **Description** | There does not appear to be any legally-enforceable requirement to obtain sufficient information about the consumer to ensure an appropriate product is offered, and SISS says that there is currently no such requirement in practice. None of the sales processes described by the insurance companies involved such a step. |
| **Recommendation** | In view of the undeveloped nature of the market in Tajikistan, specific provisions for long-term savings and investment products would be premature.  But, conduct of business rules imposed by SISS (or a code of practice adopted by the insurance industry) should include:   * clarifying the circumstances in which the insurer (or its agent) is required to check the appropriateness of the policy; * clarifying the circumstances in which the insurer (or its agent) is required to make clear that no advice is being given. |
| **Good Practice B.4** | ***Cooling-off Period***  **There should be a reasonable cooling-off period associated with any traditional investment or long-term life savings contract, after the policy information is delivered, to deal with possible high pressure selling and mis-selling.** |
| **Description** | There does not appear to be any legally-enforceable requirement to this effect, and SISS says that there is currently no such requirement in practice, though it could be a term of the agreement between the parties. None of the sales processes described by the insurance companies involved such a provision. |
| **Recommendation** | Conduct of business rules imposed by SISS (or a code of practice adopted by the insurance industry) should include giving a ‘cooling-off’ period of at least 7 days during which consumers can cancel with a full refund. |
| **Good Practice B.5** | ***Key Facts Statement***  **A Key Facts Statement should be attached to all sales and contractual documents, disclosing the key factors of the insurance product or service in large print.** |
| **Description** | A key facts statement is not mentioned in any law, regulation, or code of conduct in Tajikistan, and SISS says that there is currently no such requirement in practice. No insurance companies visited by the mission provide such a document to their potential customers. The promotional material of some companies was better than others in highlighting a few key features of the policy. |
| **Recommendation** | Conduct of business rules imposed by SISS (or a code of practice adopted by the insurance industry) should include providing written pre-contract information in clear language in the form of ‘key facts’ documents. |
| **Good Practice B.6** | ***Professional Competence***   1. **Sales personnel and intermediaries selling and advising on insurance contracts should have sufficient qualifications, depending on the complexities of the products they sell.** 2. **Educational requirements for intermediaries selling long-term savings and investment insurance products should be specified, or at least approved, by the regulator or supervisor.** |
| **Description** | Under the Law on Insurance Activities, the head and the chief accountant of an insurance company and of an insurance broker must have a relevant degree-level qualification and two years’ relevant experience. There are no qualification or experience requirements for sales, administration or claims staff either in the law or in SISS regulations. SISS reported that there is a shortage of experienced personnel. Some insurers reported that this includes not only those involved in sales and administration but also those involved in technical assessments associated with claims. There is also a shortage of actuaries. |
| **Recommendation** | The establishment of an insurance association would enable insurers to act collectively in order to enhance the standing of the industry by raising standards and improving the availability of trained and experienced insurance professionals.  Once there is a larger pool of trained and experienced insurance professionals, SISS should consider setting appropriate training and qualification requirements for the staff of insurers and insurance intermediaries. |
| **Good Practice B.7** | ***Regulatory Status Disclosure***   1. **In all of its advertising, whether by print, television, radio or otherwise, an insurer should disclose: (i) that it is regulated, and (ii) the name and address of the regulator.** 2. **All insurance intermediaries should be licensed and proof of licensing should be readily available to the general public, including through the internet.** |
| **Description** | There does not appear to be any legally-enforceable requirement for an insurer should disclose: (i) that it is regulated, or (ii) the name and address of the regulator. SISS says that there is currently no requirement for an insurer to disclose its regulatory status in such material. In practice, some insurers do so in their offices and on their promotional material and/or provide a copy of their license on their websites.  Insurance intermediaries who are brokers are required to be licensed. although no such licenses have yet been issued. Insurance intermediaries who are agents are not required to be licensed. |
| **Recommendation** | Conduct of business rules imposed by SISS (or a code of practice adopted by the insurance industry) should include:   * ensuring advertising and promotional material is clear, fair and not misleading (but the specific requirement mentioned above in B.7(a) is not considered necessary in current circumstances in Tajikistan); * SISS should be given the legal power to create a requirement and process for licensing sales agents who are not full-time employees remunerated primarily by salary. |
| **Good Practice B.8** | ***Disclosure of Financial Situation***   1. **The regulator or supervisor should publish annual public reports on the development, health, strength and penetration of the insurance sector either as a special report or as part of the disclosure and accountability requirements under the law governing it.** 2. **Insurers should be required to disclose their financial information to enable the general public to form an opinion with regards to the financial viability of the institution.** 3. **If credible claims paying ability ratings are not available, the regulator or supervisor should periodically publish sufficient information on each insurer for an informed commentator or intermediary to form a view of the insurer’s relative financial strength.** |
| **Description** | (a) SISS does not publish annual public reports on the development, health, strength and penetration of the insurance sector.  (b) The Law on Insurance Activities requires insurance companies to publish their audited annual accounts in the relevant official publications and mass media. Moreover, when a consumer takes out a policy, he/she can ask for a copy of the insurance company’s annual accounts.  (c) SISS does not publish information about the ratio between insurers’ premium income and claims. |
| **Recommendation** | SISS should publish annual public reports on the overall insurance sector and the financial standing of individual insurers, including the ratio between insurers’ premium income and claims for each class of insurance. |
| **SECTION C** | **CUSTOMER ACCOUNT HANDLING AND MAINTENANCE** |
| **Good Practice C.1** | ***Customer Account Handling***   1. **Customers should receive periodic statements of the value of their policy in the case of insurance savings and investment contracts. For traditional savings contracts, this should be provided at least yearly, however more frequent statements should be produced for investment-linked contracts.** 2. **Customers should have a means to dispute the accuracy of the transactions recorded in the statement within a stipulated period.** 3. **Insurers should be required to disclose the cash value of a traditional savings or investment contract upon demand and within a reasonable time. In addition, a table showing projected cash values should be provided at the time of delivery of the initial contract and at the time of any subsequent adjustments.** 4. **Customers should be provided with renewal notices a reasonable number of days before the renewal date for non-life policies. If an insurer does not wish to renew a contract it should also provide a reasonable notice period.** 5. **Claims should not be deniable or adjustable if non-disclosure is discovered at the time of the claim but is immaterial to the proximate cause of the claim. In such cases, the claim may be adjusted for any premium shortfall or inability to recover reinsurance.** 6. **Insurers should have the right to cancel a policy at any time (other than after a claim has occurred – see above) if material non-disclosure can be established.** |
| **Description** | (a) to (c) There does not appear to be any legal requirements that customers receive periodic statements, that customers be able to dispute the accuracy of the transactions recorded in the statement, or that insurers be required to disclose the cash value of a traditional savings or investment contract. There is currently no requirement for projected cash values to be provided at the time of the initial contract or any subsequent adjustments. Values can be disputed only at the end of the policy term.  (d) There does not appear to be any legally-enforceable requirement that customers be provided with renewal notices before the renewal date for policies or that they be notified if the insurer does not wish to renew a contract. SISS reported that it is up to the policyholder to remember to pay any renewal premium.  (e) and (f) Insurers can cancel a policy for non-disclosure, but the non-disclosure has to be material. The Civil Code provides that an insurer can avoid the contract for non-disclosure only if it asked the insured relevant questions. |
| **Recommendation** | Conduct of business rules imposed by SISS (or a code of practice adopted by the insurance industry) should include:   * Relevant to (a) to (c) in relation to insurance contracts where the value is subject to variation (for example, as a result of additions/withdrawals and/or investment performance): * provision of an up-front projection of the value of the policy, on a basis specified by SISS; * provisions of periodic statements at least once per year, with information on how consumers can dispute its accuracy. * Relevant to (d) in relation to renewals: * at least 14 days prior written notice of the date when a policy is due to be renewed; * at least 14 days prior written notice if the insurer wishes to change the terms on renewal, or refuse renewal. * Relevant to (e) to (f) in relation to insurance claims: * giving clear written details of the procedure to be followed in the event of an insurance claim; * avoiding the need to involve the police or other state agencies except where that is absolutely unavoidable; * prohibiting rejection of a claim for non-disclosure that is not material, or which arose from lack of clarity in the insurer’s question. |
| **SECTION D** | **PRIVACY & DATA PROTECTION** |
| **Good Practice D.1** | ***Confidentiality and Security of Customers’ Information***  **Customers have a right to expect that their financial transactions are kept confidential. Insurers should protect the confidentiality and security of personal data, against any anticipated threats, or hazards to the security or integrity of such information, and against unauthorized access.** |
| **Description** | Article 1030 of the Civil Code provides that an insurer cannot divulge information about the insured, any beneficiary, their health or their property. The 2002 Law on Protection of Information does not appear to impose detailed requirements on the processing of personal information such as are found in more advanced economies concerning the security of systems in which data are held, the circumstances in which data can be shared, whether data can be transferred abroad (and, if so, what protections must exist in the recipient country) and the right of people to access copies of the data about them and to correct any mistakes. |
| **Recommendation** | There should be legal requirements on the processing of personal information (for example: security, sharing, transfer and correction) such as are found in more developed economies. The European Union Data Protection Directive would provide a checklist of the issues to be considered. |
| **SECTON E** | **DISPUTE RESOLUTION MECHANISMS** |
| **Good Practice E.1** | ***Internal Dispute Settlement***   1. **Insurers should provide an internal avenue for claim and dispute resolution to policyholders.** 2. **Insurers should designate employees to handle retail policyholder complaints.** 3. **Insurers should inform their customers of the internal procedures on dispute resolution.** 4. **The regulator or supervisor should investigate whether insurers comply with their internal procedures regarding consumer protection.** |
| **Description** | (a) We distinguish between ‘claims’ (meaning asking the insurer to pay out under the terms of an insurance contract) and ‘complaints’ (meaning complaining about an insurer’s refusal of a claim or other alleged misconduct).  SISS has previously taken the view that claims and complaints are matters for the terms of the insurance contract, and an issue of customer service rather than consumer protection. The focus of its supervision of claims is on the adequacy of reserves.  State and private insurers reported that they had departments to deal with claims. So far as the mission was able to verify the details of these procedures from the information the insurers made available, they ranged from the bureaucratic to the accessible. Some private insurers (especially those providing cover for international bodies and their staffs) claimed to have a telephone hotline available 24 hours per day 7 days per week.  In some cases, assessment of the claim might involve: inspection by an expert appointed and employed by the insurer (for example, inspecting the site of an accident); obtaining a report from the police (for example, in the case of a traffic accident); and/or obtaining a valuation from an appraiser approved by the relevant state authority (for example, valuation of a car by an appraiser approved by the Ministry of Transport).  The larger state insurance company reported that it did receive a number of complaints about its decisions in claims, but that such complaints were always resolved to the satisfaction of the insured. It had no record of the number of complaints. It reported that consumers could escalate complaints to senior management in accordance with details on its website. However, the mission could not find these details on the company’s website.  All of the other insurers reported that all claims were settled to the entire satisfaction of the insured.  Consumers reported that claims were seldom made in respect of compulsory third-party liability motor insurance, partly because it was necessary to involve the police.  (b) and (c) The mission found no insurer which had specific employees designated for the handling of complaints, or which had a published complaints procedure. It does not appear to be the practice for insurance policies, or promotional materials, to set out details of how customers can make a complaint if they are dissatisfied.  (d) The mission found no documented complaints procedures that SISS could check against. |
| **Recommendation** | Conduct of business rules imposed by SISS (or a code of practice adopted by the insurance industry) should include:  in relation to insurance claims:   * giving clear written details of the procedure to be followed in the event of an insurance claim; * avoiding the need to involve the police or other state agencies except where that is absolutely unavoidable; * prohibiting rejection of a claim for non-disclosure that is not material, or which arose from lack of clarity in the insurer’s question.   in relation to complaints (including any dissatisfaction with the handling of a claim);   * giving clear written details of a process for insurers to deal fairly, effectively and promptly with any complaint; * adequate notice to consumers of the existence of the complaints process and how to access it; * appointment of a suitable person/department to deal independently with complaints, and to keep records of this; * time limits for giving the consumer a full written response. |
| **Good Practice E.2** | ***Formal Dispute Settlement Mechanisms***   1. **A system should be in place that allows consumers to seek affordable and efficient third-party recourse, which could be an ombudsman or tribunal, in the event the complaint with the insurer cannot be resolved to the consumer’s satisfaction in accordance with internal procedures.** 2. **The role of an ombudsman or equivalent institution *vis-à-vis* consumer disputes should be made known to the public.** 3. **The ombudsman or equivalent institution should be impartial and act independently from the appointing authority and the industry.** 4. **The decisions of the ombudsman or equivalent institution should be binding upon the insurers. The mechanisms to ensure the enforcement of these decisions should be established and publicized.** |
| **Description** | The Law on Insurance Activities says that disputes relating to insurance issues are to be resolved in court. Insurers reported that there have been very few court cases related to insurance in the last ten years and they had not been taken to court by a consumer in relation to a disputed claim.  The State Anti-Monopoly Body reported that court cases brought by consumers were very rare. Consumer issues might end up in court occasionally if a provider appealed to court against a sanction imposed by the State Anti-Monopoly Body.  Consumers appear to lack confidence in the courts as a means of enforcing consumer rights against more powerful businesses. The Human Rights Ombudsman told the mission that about a third of the complaints he received were about the courts, though these were not always justified.  There is no specialist financial or consumer ombudsman, nor any other specialist third-party recourse mechanism.  *State bodies*  SISS reported that it has pursued individual insurance cases that were referred to it by consumers, although it lacks this explicit authority under the law. It has power to make recommendations. If appropriate, it can suspend or withdraw an insurer’s license, but it lacks the power to impose lesser administrative sanctions (such as a public warning or a fine). SISS is constrained by limited resources. It took up fewer than 30 insurance cases on behalf of consumers in 2011.  The State Anti-Monopoly Body reported that it pursues individual cases that were brought to it by consumers, or which it saw reported in the media, but that consumers are passive and seldom complain. It has power to impose administrative sanctions on providers. The Body itself, re-established in 2010, is constrained by limited resources. It took up fewer than 20 cases on behalf of consumers across the whole consumer sector in 2011 (none in financial services), though its work on competition issues also had consumer-protection benefits.  *Alternative dispute resolution*  There is no mechanism for consumers to obtain affordable and effective redress against insurers through an ombudsman or other alternative dispute resolution body.  There is no entity or inter-company arrangements, for resolving the distribution of costs between two insurers involved in providing indemnity in relation to one incident. The issue has to be pursued by one insurer arranging for court proceedings against the consumer covered by the other insured – unnecessarily putting the consumer through court proceedings when the dispute is between insurers. |
| **Recommendation** | In the short term, SISS can continue with its ad hoc arrangements for the limited number of consumer disputes that arise. The law should be amended to explicitly give SISS authority to regulate consumer protection in the insurance sector and to enforce these regulations.  In the medium term, once more complaints start to emerge from the new complaints procedures to be established by insurers, an independent ombudsman should be established in order to provide a low-cost, informal, effective and prompt means of resolving disputes between consumers and insurance companies, in accordance with internationally-recognized principles.[[12]](#footnote-13)  An ombudsman might be established under the joint sponsorship of the industry body and consumer-protection bodies or, failing this, be established by law. There are precedents from elsewhere within the CIS. For example, in Kazakhstan, an insurance ombudsman was established – initially to resolve disputes between insurers, and then opened up to deal with disputes raised by consumers. In Armenia, a financial ombudsman (for the whole financial sector) was established by law. |
| **SECTION F** | **GUARANTEE SCHEMES AND INSOLVENCY** |
| **Good Practice F.1** | ***Guarantee Schemes and Insolvency***   1. **With the exception of schemes covering mandatory insurance (and possibly long-term insurance), insolvency guarantee schemes are not to be encouraged for insurance because of the opaque nature of the industry and the scope for moral hazard. Strong governance and prudential supervision are better alternatives.** 2. **Nominal defendant arrangements should be in place for mandatory insurances such as motor third party liability insurance to cover situations where there is no insured guilty party.** 3. **Assets covering life insurance mathematical reserves and investment contract policy liabilities should be segregated or at the very least earmarked, and long-term policyholders should have preferential access to such assets in the event of a winding-up.** |
| **Description** | (a) There is no insolvency guarantee scheme for insurance in Tajikistan. The Law on Insurance Activities provides SISS with authority to oversee the financial position of insurance companies but not their governance.  (b) SISS reports that there is no arrangement for a nominal defendant. For example, a victim of a ‘hit and run’ accident is unable to make a claim if the guilty party is not identified or insured.  (c) There is currently no long-term life insurance in Tajikistan; short-term policyholders do not have preference over other creditors; but there are arrangements in place to transfer existing insurance contracts from an insolvent insurer to another insurer nominated by SISS. |
| **Recommendation** | (a)  The government should consider whether to establish a guarantee scheme, to give consumers confidence in the insurance industry, starting first with compulsory insurance. SISS should have all necessary powers to regulate and supervise prudential norms and governance in the insurance sector.  (b) The government should consider establishing arrangements for a nominal defendant for third-party claims in relation to compulsory insurance (for example, a claim by a victim of a ‘hit and run’ accident where the guilty party is not identified or is not insured) – to be financed by a levy on providers of compulsory insurance, in proportion to their premium income.  (c) The government should change the law in order to give policyholders preference over other creditors of insurance companies. |

# Financial Literacy

## Overview

1. **Ensuring high levels of financial literacy is one of the most effective forms of consumer protection in the long term.** Financially literate consumers are best able to understand their own rights and responsibilities, financial disclosures, and the risks and rewards of financial products. The financial literacy of the population in Tajikistan is relatively low. The household survey of financial capability undertaken in 2012 showed that consumers in Tajikistan lack the basic knowledge required to make sensible financial decisions. On average, Tajiks were able to correctly answer 4.1 out of 7 financial literacy related questions. Slightly more than half of the population was able to provide correct answers to at least 4 such questions. Nevertheless, only around 15 percent of the population was able to answer correctly at least 6 questions, and less than 2 percent answered all 7 questions correctly. Lower financial knowledge is associated with rural areas, lower educational attainment, being a woman, and not saving at an early age. Tajiks’ knowledge about services offered by financial institutions other than currency exchange offices or money transfer points is very limited.
2. **There are several financial literacy initiatives, but there is no comprehensive financial education program in Tajikistan.** There are several NGOs and donors undertaking financial literacy activities, in collaboration with AMFOT, the Center for Training and Development of Microfinancing of Tajikistan (CTMT), ABT, and specific financial institutions, to train clients on financial literacy topics in specific regions of the country. However, there are no comprehensive financial literacy programs led by a government agency, the central bank, or other regulators. In addition, the Consumers Union of Tajikistan does not deal with issues in financial services, and has not been involved in financial literacy activities.

## Comparison with Good Practices for Financial Literacy

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| **SECTION G** | **CONSUMER EMPOWERMENT** |
| **Good Practice G.1** | ***Broadly based Financial Capability Program***   1. **A broadly based program of financial education and information should be developed to increase the financial capability of the population.** 2. **A range of organizations, including those of the government, state agencies and non-government organizations, should be involved in developing and implementing the financial capability program.** 3. **The government should appoint an institution such as the central bank or a financial regulator to lead and coordinate the development and implementation of the national financial capability program.** |
| **Description** | There is no comprehensive financial education program in Tajikistan. There are several NGOs and donors undertaking financial literacy activities, in collaboration with the Association of Microfinance Organizations of Tajikistan (AMFOT), CTMT under AMFOT, the Association of Banks of Tajikistan, and specific financial institutions, to train clients on financial literacy topics in specific regions of the country. However, there is no comprehensive financial literacy program led by a government agency, the central bank, or other regulators.  The Consumers Union of Tajikistan has not dealt with consumer issues in financial services, and has not been engaged in financial literacy activities. |
| **Recommendation** | The NBT should be designated as the lead agency, and in coordination with multiple stakeholders, should develop and implement a national strategy and program on financial education. The NBT could serve this role as the financial sector supervisor with a broad view of the issues in the financial sector. The NBT should then be supported by a working group consisting of a broad range of stakeholders, e.g., ministries (Ministry of Finance, Ministry of Education, and other relevant ministries), SISS, financial institutions, financial industry associations, consumer associations, educational bodies, the media, NGOs, and other relevant partners. |
| **Good Practice G.2** | ***Using a Range of Initiatives and Channels, including the Mass Media***   * 1. **A range of initiatives should be undertaken by the lead agency to improve people's financial capability regarding financial products and services.**   2. **The mass media should be encouraged by the lead agency to provide financial education, information and guidance to the public regarding financial products and services.**   3. **The government should provide appropriate incentives and encourage collaboration between governmental agencies, regulators, the financial sector industry and consumer associations in the provision of financial education, information and guidance regarding financial products and services.** |
| **Description** | There is no agency that has taken the lead in establishing a range of initiatives to improve financial capability. Government agencies, regulators, and the industry have not yet formulated a vision to work together on the financial education agenda.  The NBT has not led financial capability initiatives yet, but has identified financial education as an important component of the recent Banking Sector Strategy. NBT staff has also participated in training programs organized by AMFOT.  AMFOT is the most active actor in the microfinance sector undertaking financial education initiatives. After several years engaged in training staff of microfinance organizations, in 2010 AMFOT founded the CTMT, with the objectives of developing and improving the professionalism and qualification of staff of microfinance organizations and commercial banks; developing microfinance services through implementation of innovative products; and providing high-quality trainings, research and other services to the microfinance sector. CTMT’s trainings are targeted to all types of microfinance staff, including managers, directors, accountants and cashiers. Areas covered in the trainings undertaken in the first half of 2012 include ethics of business, consumer credit, and skills of working with clients. Besides financial training, AMFOT has implemented several financial education initiatives for actual and potential clients.  Some microfinance organizations also organize seminars or roadshows to talk with potential or new clients about financial products and services, budget planning, and financial management in cases of farmers and micro-entrepreneurs.  The State Anti-Monopoly Body reported that they sponsor a number of local workshops around the country for small numbers of individual consumers on consumer rights in general, but not specifically on financial literacy.  SISS provides some training for industry staff (within the constraints of its resources) but does not have power or resources to take action to improve the financial capability of consumers.  There is also a limited involvement by the media in providing information to the public about financial services. Asia Plus newspaper periodically publishes articles on personal finance topics.  Some recent financial literacy projects in Tajikistan include:   * AMFOT partnered with the French Agency for Technical Cooperation and Development (ACTED) to provide financial education training to over 8,000 farmers in 2008 and 2009. * AMFOT partnered with Development Alternatives Incorporated (DAI), a USAID contractor, to train about 2,500 farmers in the Khatlon region on improving their financial capability, maintaining records of their farm businesses, and understanding requirements for loan applications. * An ongoing EBRD funded project managed by Developing Market Associates (DMA) has placed independent financial consultants in five banks providing financial training to recipients of remittances. Between December 2011 and May 2012, more that 23,000 people received financial education. According to the banks, as a result, more than 1,000 deposit accounts have been opened in the amount of US$ 2.5 Million. This project will run until September 2012. * Mercy Corps has partnered with Aflatoun to develop a child financial literacy and social empowerment program for middle-school and high scholl children. They have trained student trainers to deliver trainings on budgets, managing savings, etc. * In 2011, GIZ’s Microfinance and Financial Instruments Project started a Financial Literacy Improvement Initiative for households and SMEs in the Sugdh oblast. In 2012, the plan is to expand the project and conduct training for a large number of trainers in the Sugdh oblast and build local partnerships for implementation. * A pilot project by Imon International (a microfinance organization) and Oikocredit (a Dutch financier of microfinance organizations) was launched in early 2012 with the objective of improving the financial literacy of low-income women. 20 trainings are planned per year, and as of June 2012, 11 trainings had taken place with 160 participating women. The trainings provide information on preparing a financial plan, managing a budget, basic information on financial products, etc. Imon International also organizes financial literacy trainings for students at the university level. * In 2009 and 2010, Habitat for Humanity collaborated with the First Microfinance Bank on a “Financial Services for Rural Areas” project, with the objective to promote formal savings of remittances in the Rasht district of Tajikistan. The project designed a remittance-linked housing loan product for low-income rural families. It organized “Training of Trainers” sessions designed to build the capacity of new trainers in delivering financial education workshops on remittances and innovative financial housing products tied to remittances. Trainings included modules such as the use of remittances, saving tools, loan application procedures, and Habitat’s housing model construction. The target group consisted of about 10,000 young males in the Rasht Valley who worked in Russia and their families in Tajikistan, who rely heavily on remittances. Valley. During the project, 30 households received a loan to improve their houses with a savings component and with repayments coming from remittances. Habitat for Humanity is integrating a financial education component in all of their projects. * In 2010 and 2011, the Microfinance Centre[[13]](#footnote-14) in partnership with the CTMT under AMFOT[[14]](#footnote-15) designed a “Plan your Future” training and counseling module with the objective of improving the financial capability of low-income households. The main activities included training of trainers of microfinance organizations to deliver financial education and delivering workshops to low-income households. 23 trainers were trained from microfinance organizations and over 500 low-income households were reached (more than 300 low-income people were trained in group trainings and more than 100 with counseling sessions), with around 40% of participants coming from rural or semi-rural areas[[15]](#footnote-16). The module covered topics such as family budgeting, savings, information on basic financial products, etc. |
| **Recommendation** | A wide range of programs should be used to deliver financial education. These programs include introducing financial education in schools, in the workplace, taking advantage of “teachable moments,” setting up personal finance websites, producing publications and brochures, etc.  The mass media should also be involved. Informational campaigns in the media, popular TV shows, soap operas, radio programs etc. can be used to deliver financial education messages. Experience has shown that financial education works best when delivered to adults during “teachable moments”, such as the time a consumer is interested in taking out a mortgage loan, or when the consumer receives remittances. In Tajikistan, financial education programs should be extended to migrants so that they learn about issues related to remittance transfers. Opportunities to provide financial education in schools need to be explored, as basic principles of financial literacy (such as budgeting, savings, consumer credit, etc.) should be acquired at a young age.  Financial institutions can play an important role in supporting and delivering financial education programs, as long as they are trusted by consumers and if they do not mix marketing and educational messages. Often programs by financial institutions are used for marketing purposes. It is important to ensure that consumers receive adequate financial education, by avoiding mixing marketing and educational messages.  The NBT should play a more active role in the coordination of financial education initiatives and in the implementation of initiatives. The NBT should also contact the media more frequently to provide objective and easy-to-understand information on financial sector issues that can be retransmitted to the general public. The NBT could also encourage coordination of financial education and consumer awareness activities among relevant stakeholders from the public sector, financial industry, private sector and civil society. |
| **Good Practice G.3** | ***Unbiased Information for Consumers***   1. **Regulators and consumer associations should provide, via the internet and printed publications, independent information on the key features, benefits and risks –and where practicable the costs– of the main types of financial products and services.** 2. **The lead agency should encourage efforts to enable consumers to better understand the products and services being offered to consumers by financial institutions, such as providing comparative price information and undertaking educational campaigns.** |
| **Description** | Currently there is no regulator or Government agency that provides sufficient information about the features, benefits, risks, or comparative prices of financial products on the internet or in printed publications.  The Consumers Union of Tajikistan does not deal with issues in financial services, and has not been engaged in financial literacy activities.  The NBT, according to Article 44 of the NBT Law, may request from all types of credit institutions information on the “rates of interest received and paid, service charges received and paid”, among others. The same article allows NBT to publish non-confidential information submitted by credit institutions, in accordance with their nature of activity. |
| **Recommendation** | The NBT, in cooperation with other stakeholders, should develop a guide on key benefits, features, and risks of financial products. The SISS should follow NBT’s lead and develop similar guides for the insurance market.  The regulators (NBT and SISS) should conduct price comparisons of financial products and publish them. They should also provide consumers with reliable and objective information on financial sector issues (e.g. glossary of terms, brochures, etc.), showing them what they should expect and what their rights are. This information should be provided on the internet and via printed publications.  The NBT could publish tariff surveys or tables with information on average effective interest rates offered by all financial service providers. The tariff surveys or tables could be published online and in newspapers, along with a consumer awareness campaign to promote comparison shopping. This information could help promote transparency and competition in the financial sector. It is important that this type of campaign use different channels, including radio and road shows and visits to rural villages and community centers. |
| **Good Practice G.4** | ***Consulting Consumers and the Financial Services Industry***   1. **The lead agency should consult consumers, industry associations and financial institutions to help them develop financial capability programs that meet financial consumers' needs and expectations.** 2. **The lead agency should also undertake consumer testing with a view to ensuring that proposed initiatives have their intended outcomes.** |
| **Description** | No regulator or Government institution has been actively involved in consulting with the industry or consumer associations on the development of financial capability programs.  The NBT often consults with AMFOT and the Banking Association on new regulatory or legislative proposals. However, NBT does not interact with these industry associations or consumers on financial education or consumer protection activities.  The Antimonopoly agency maintains closer communication with consumer associations on general consumer protection matters, but it has not undertaken educational initiatives on financial sector issues.  Currently, there is no insurers’ association and the information provided by individual insurers is almost-exclusively promotional in nature. |
| **Recommendation** | It is important that all stakeholders are consulted so that they are actively involved in the development and implementation of a financial literacy strategy and program. Stakeholders will benefit from improved financial literacy, and can contribute through determining priorities, funding initiatives, developing materials, undertaking projects, etc. All initiatives should be piloted prior to implementation.  The NBT should coordinate closely with AMFOT and the Banking Association regarding the development of a financial education strategy. It could benefit especially from AMFOT’s experience in financial education activities. The NBT should also invite consumer associations to present comments on legal and regulatory proposals, and to participate in financial education and consumer protection events, in order to improve their knowledge of financial consumer protection issues. |
| **Good Practice G.5** | ***Measuring the Impact of Financial Capability Initiatives***   1. **The financial capability of consumers should be measured, amongst other things, by broadly-based household surveys and mystery shopping trips that are repeated from time to time.** 2. **The effectiveness of key financial capability initiatives should be evaluated by the relevant authorities or institutions from time to time.** |
| **Description** | At the request of the NBT, the World Bank organized a nationally representative household survey on financial literacy in June 2012. There have been no other nationwide financial literacy surveys in Tajikistan.  A 2010 MFC study to assess the market potential for savings in Tajikistan included some financial literacy questions. Questions were designed to measure the ability to compute percentages, knowledge of the inflation rate, and knowledge of interest rates on bank deposits. The majority of people were able to compute percentages, but knowledge of the inflation rate and deposit interest rates was rather limited. |
| **Recommendation** | The results of the survey should be used by the proposed working group (see G.1 above) to inform the design of financial education programs and to evaluate them later. The results of this survey will provide valuable inputs on the main financial literacy issues of the population and inform the development of a national strategy and program on financial education, as well as the regulator’s work on financial consumer protection. Such a survey serves as a baseline for the evaluation of the financial education program. The survey should be undertaken every 3-5 years to measure the impact of financial literacy initiatives, monitor developments, and tailor financial education programs accordingly. The results should be widely disseminated and the data should be made available to all relevant stakeholders.  Financial education programs should be implemented using a phased approach, starting with pilots of initiatives that, based on international experience, seem to be more effective in leading to increases in levels of financial capability and positive changes in behavior.  Financial education programs should be evaluated. International experience in financial education demonstrates that increasing the number of financial education programs does not automatically lead to increases in the level of financial literacy or positive change in consumer behavior. It is important to evaluate the results of educational programs in order to identify the ones that are the most beneficial. Randomized controlled trials, using control groups as a basis for comparison against the results of education programs provided to treatment groups, provide an effective means of determining the effectiveness of financial education programs. The programs which prove to be the most effective should receive wide support and be widely publicized. |

# TAJIKISTAN: Annex 1: Consumer Protection Issues in the Remittances Market

**Introduction and Context**

1. **Transparency of prices and other terms and features of remittance services is critical for a competitive, safe, and efficient remittance market.** Remittance service providers (RSPs) should therefore be encouraged to provide information about their services in clear, understandable terms and in ways that allow this information to be accessed easily by consumers, so that consumers can make informed choices between different services and providers. Full information (transparency) on these services should include the total cost to the sender and receiver: that is, all fees paid on both the sending and receiving sides of any transaction, foreign exchange rates including the margins charged, and any other costs to the sender and/or receiver should be clearly disclosed. It is also important for RSPs to provide transparent, clear and accurate information on the maximum amount of time that it will take funds to move from sender to receiver for each type of transfer service, and the specific locations and operating hours of access points for services in both sending and receiving countries. Each RSP should clearly distinguish the specific terms and other characteristics of the different remittance services it makes available to the market—and spell out clearly the circumstances and conditions when terms on offer may vary. For example, it should be clear to the sender if the price or other aspects of the service vary according to how the receiver is paid (e.g., in cash or by crediting an account).
2. **Both remittance senders and receivers should have adequate protection of their rights as consumers including access to effective and affordable dispute-resolution procedures.** Although many countries have working mechanisms to resolve domestic consumer disputes, the cross-border nature of remittances combined with cultural and language barriers can make such procedures complex and therefore out of reach for many remittance consumers. In the case of international remittance transfers, there may be significant gaps in protection of consumers in some markets, particularly where there is a lack of clarity about which national regulatory regime oversees the remittance activities of RSPs. Where appropriate, authorities may therefore wish to evaluate the adequacy of existing dispute-resolution procedures, national regulatory oversight of remittance services, and other consumer protection provisions in the context of remittance services.

**The Remittances Market in Tajikistan**

1. **Officially recorded remittance flows to Tajikistan were estimated at US$2.3 billion in 2010,[[16]](#footnote-17) boosted by economic recovery in Russia, the top remittance-sending economy*.*** Expressing remittance inflows as a percentage of GDP, Tajikistan was the largest single country destination for remittances worldwide, receiving recorded remittances equivalent to 31 percent of GDP in 2011. Migrant remittances are a critical supplement to household incomes in Tajikistan, particularly those of the rural poor. Remittance inflows are also an important source of foreign exchange for Tajikistan, and they represent a largely untapped source of savings and investment for migrants and their families, which, if channeled into safe interest-earning financial instruments, could provide an important spur to Tajikistan’s development. According to the results of a survey of remittance recipients conducted in 2010 by the NBT,[[17]](#footnote-18) 87.4 percent of remittances were sourced from Russia, 4.8 percent from Kazakhstan, 2 percent from Uzbekistan, 1.3 percent from Kyrgyzstan, 1.7 percent from “other close foreign countries,” and the remaining 2.8 percent from “other far foreign countries.”
2. **The average total cost for international remittance transfers to Tajikistan is relatively low.** For example, the cost is 2.0 percent for sending US$200 in the Russia-Tajikistan remittance corridor as of the first quarter of 2012, with Western Union (3.2 percent) at the higher end.[[18]](#footnote-19) Transfers in the Russia-Tajikistan corridor ranked third least costly worldwide of the 212 corridors tracked by the World Bank Remittance Prices Worldwide (RPW) database.
3. **Fees for international remittance transfers to Tajikistan are also relatively transparent.** The vast majority of transfers between CIS countries are conducted in the same currency; that is, the sending and receiving currencies are the same (rouble-rouble; US dollar-US dollar). This reduces the average total cost as the foreign exchange margins are eliminated. Even in those cases where a foreign exchange transaction occurs to enable payout in local currency, participating banks indicated that they inform the remittance recipient of the exchange rate used in the payout (typically the daily spot rate) before he/she receives the money, and the exchange rate is typically printed on the transaction receipt when the recipient cashes out. No fee is charged to the remittance recipient by money transfer operators (MTOs), most banks, and other RSPs in Tajikistan. The remittance sender bears the entire cost of the transfer.
4. **Receiving international remittances through informal channels is less prevalent in Tajikistan than in many other developing countries, due to the competitive MTO transfer fees.** The vast majority of remittance flows to Tajikistan are channeled cash-to-cash electronically through MTOs working with banks. Banks that provide remittance services typically have multiple partnership agreements with the MTOs that serve Tajikistan. A high level of public distrust of banks remains, however, two decades after the massive loss of savings that occurred with the dissolution of the USSR, and continues for a number of reasons, including a tendency of many banks, particularly when encountering liquidity problems, to require clients to wait hours or even days before being able to collect remittance proceeds and/or withdraw money from their accounts. Remittance recipients generally have more trust in MDOs than in banks. MDOs typically also have better physical access than most banks to remote rural areas where some of poorest recipients reside.
5. **Volumes transmitted via other formal channels are relatively small.** Two other channels for remittances are wire transfers of money orders through almost 600 branches of Tajik Post, which has partnership agreements with MTOs Western Union and Migom, and through banks on an account-to-account basis. The microfinance organization (MFO) subsector in Tajikistan has been growing rapidly in the past few years. As of 2011, it geared just under one-third of its loans to the agriculture sector[[19]](#footnote-20) and it sought to reach potential rural clients by making services including financial literacy seminars available by vehicle to those residing in remote areas.[[20]](#footnote-21) MFOs may be well placed to play a greater role in remittance delivery to clients in rural areas.
6. **Banks providing remittance services tend to assume credit and liquidity risks, disbursing funds to the beneficiary before they receive the funds from the sending bank or MTO.** Each MTO serving the market has its own transfer system with its associated security and other risks, including risk of theft if a third party were to gain access to transaction PIN codes. A few banks indicated that there have been a few, infrequent cases where money sent via international remittance transfer has been temporarily “lost.”
7. **International remittance transfers through technologies such as payment cards, mobile phones, etc. are not yet commonly available, largely due to telecoms infrastructure impediments.** This could change in the next few years, given that the use of electronic payment instruments and services in Tajikistan has been increasing recently, however, and a number of banks have been introducing debit, reloadable prepaid, and other payment card products, mainly for in-country transactions, particularly in urban areas.[[21]](#footnote-22)

**Legal and regulatory framework**

1. **Because there is no specific mention of remittance transactions in existing laws or regulations that govern banks and consumer protection, it is unclear whether existing laws and regulations would apply to consumer protection issues that could arise in the case of remittance transfer services.** For example, Article 55, “Protecting bank clients’ interests,” of the Law “on banks and bank activities” (May 2009) legally requires banks to inform their customers about the requirements associated with a transaction prior to the “credit service,” including service charges, interest rates, and “other additional costs to the client.” It is unclear, however, whether this article would apply to remittance transfer services, as it specifies only “credit service[s].” Similarly, to ensure that banks uphold pre-agreed terms of their contracts with customers, Article 55 states that a bank “has no right to unilaterally change… service charges and terms of contracts with customers, except as under contract with the customer.” Where there is a delay or error in transferring a customer’s funds to his account, Article 55 requires the bank to compensate the client for each day of delay in funds’ transfer to the account at the NBT refinancing rate. Again, because there is no specific mention of remittance transfer transactions, however, it is unclear whether delays in these transactions, including cash payout, would entitle the customer to some form of recompense. There is also uncertainty about whether the remittance transactions of MTOs and other nonbank RSPs would be covered by existing consumer protection laws and regulations. Although problems in the area of customer disputes were described by banks as nonexistent or infrequent, the lack of any standard, independent national regulations, mechanisms, and procedures to redress customer complaints related specifically to remittances, complemented by supervisory oversight, appears to be a shortcoming in providing adequate consumer protection.
2. **NBT “Regulations for Electronic Payments through the Payments System” (Resolution of the NBT Board No. 345 of 24 December 2009) establish the NBT as the owner and operator of Tajikistan’s payment system.** This system transacts interbank payments through correspondent accounts held by the following institutions: the NBT, commercial banks, credit societies, MFOs, the Main Department of Central Treasury of the Ministry of Finance of Tajikistan, the Central Stock Exchange of Tajikistan, Interstate Bank in Moscow, and a branch of the Foreign Commercial Bank “Tijorat” of the Islamic Republic of Iran in Dushanbe.[[22]](#footnote-23) The NBT’s Settlement Center has responsibility for the security of information transmitted via the system and for timely processing and settlement.
3. **Under the Law of the Republic of Tajikistan "on banks and banking activities” of May 2009, the Department of Banking Supervision within the NBT grants banks in Tajikistan licenses to perform financial services including international remittance transfers and supervises bank operations.** Under Article 20 of the Law “on microfinance organizations,” licensed microcredit deposit organizations (MDOs) are permitted to transact money transfers of customers, as well as provide microloans and other financial services. MTOs, which work in partnership with banks, currently have no direct reporting requirements to the NBT or other national authority in the country, however. The majority of MTOs are Russia-based, so they are supervised by the Russian authorities with no direct oversight in Tajikistan. Remittance services provided by MTOs in Tajikistan are regulated only inasmuch as their services are regulated through the NBT's oversight of the banks acting as their agents. The NBT does not regulate the contracts between banks and MTOs.
4. **Tajik Post’s remittance services are also not subject to oversight by the NBT or other national authority.** Although it accounts for a small and falling share of the remittances market in Tajikistan, the lack of licensing requirements and direct regulatory oversight of Tajik Post’s remittance services, coupled with its financial difficulties, could pose risks to its customers. Moreover, having undergone several restructurings in terms of ministry oversight of its overall operations, the fluid and unclear regulatory and supervisory context poses financial, governance, and operational risks.
5. **A draft payment system law includes provisions that would formally grant the NBT the power to license all providers of payment services.** Under this draft law, NBT would also oversee the specific criteria and procedures applied to the instruments and services they provide, providing for sanction and enforcement authority as warranted, and establish the duties of payment institutions towards customers for the use of new payment instruments (such as ATMs, payment cards, internet, and mobile phones).

**Institutional arrangements**

1. **Although not required in law or regulation, the NBT’s Department of Banking Supervision handles RSP customer complaints on issues related to remittance transactions as these relate to the role of banks.** Under its current institutional structure, however, the NBT lacks adequate oversight and supervisory powers to monitor activities of MTOs and other nonbank RSPs. Thus, there are gaps in the supervisory institutional framework, in that the NBT does not directly oversee the remittance transfer services provided by MTOs, which are mainly Russian-based. These gaps produce potential vulnerabilities for MTOs’ customers (see also above).
2. **A draft payment systems law would provide the legal basis for effective NBT powers of oversight over MTOs and other RSPs, including sanction and enforcement authority.** The draft law would formally grant the NBT the power to license providers of payment services, authorize payment and settlement systems, impose conditions on their activities, and establish the duties of payment institutions towards customers.

**Business practices**

1. **It is not clear whether the banking law protects customers against errors in remittance transfers.** Article 55, “Protecting bank clients’ interests,” of the 2009 Law “on banks and bank activities” compels banks to compensate a customer in a case where there is a delay or error in transferring a customer’s funds to his account. Because the law does not specifically mention remittance transfer transactions as a type of “credit service,” however, it is unclear whether the law covers remittance transfer services.
2. **Each of the MTOs operating in Tajikistan has its own transfer system.** Each system has its own security and other risks, including the risk that third party access to a PIN code could result in theft.
3. **Some business practices may be negatively affecting the use of financial services by remittance recipients.** While transfer fees are relatively low and typically do not include hidden foreign-exchange fees, the limited practice (by at least one bank) of charging remittance recipients a fee for transferring remittance proceeds into the recipient’s bank account could encourage cash payout and provide some disincentive to further financial access of recipients.

**Consumer disclosure**

1. **There are weaknesses in the legal and regulatory framework and industry practices regarding disclosure of information to remittance customers.** There is a lack of clear, mandatory, standard procedures for banks and other RSPs to follow in providing information to consumers on prices, terms, and other service features of electronic fund transfers and remittances.[[23]](#footnote-24) Also, banks and MTOs currently focus their promotional and general information dissemination efforts for remittance and remittance-linked financial services on the sender (typically, migrants residing in Russia), rather than the recipient. In addition, there is currently no centralized, publicly available information source for comparative cost information on remittance transactions.

**Dispute resolution mechanisms**

1. **There is no formal out-of-court mechanism, such as an ombudsman service, that deals with consumer complaints or disputes related to remittance transfer services.** The only formal external option is the court system, which can be costly, unpredictable, and time-consuming.
2. **Each MTO serving Tajikistan’s remittance market has its own customer care center, which handles dispute and grievance issues for remittance transfer service customers, should these emerge.** Some banks indicated that they will, as a service to customers, liaise between the customer and MTO for communication purposes, if a dispute or problem arises—but are under no legal obligation to do so. Banks and other RSPs do not typically include information on how to make a customer complaint in promotional and/or other information disseminated to prospective or actual customers.
3. **None of the banks participating in discussions with World Bank staff as part of a remittances market assessment in 2011 indicated that they have a standard procedure for handling customer disputes.** Tajik Post’s senior management also indicated that they handle customer disputes that emerge on an ad hoc basis, with no systematic procedure in place.

**Recommendations**

1. ***Institutional arrangements.*** Expeditious passage of the draft payment system law would enable the NBT to effectively license all authorized providers of payment services, and it would formally endow the NBT with more comprehensive oversight and supervision of all RSPs’ procedures, activities, and instruments related to remittance services in Tajikistan. The current lack of direct supervisory oversight of MTOs’ activities in Tajikistan, in particular, could render banks and remittance customers vulnerable. The capacity of NBT for providing adequate oversight and supervision of MTOs may need further strengthening,[[24]](#footnote-25) particularly if this subsector continues to increase rapidly. By maintaining an official list of all licensed RSPs that pass “fit and proper” (and other specified) licensing requirements, the NBT would further bolster consumer protection by improving public disclosure of the sector’s activities.
2. ***Consumer disclosure.*** As the national regulator of and repository of information and data on remittance transactions, the NBT would be well placed to regularly publish and disseminate comparative price information on remittance transactions. Disseminating comparative fee information regularly through channels including newspapers circulated to potential recipients in Tajikistan and migrants in Russia, and posting and continuously updating this information regularly on the NBT website, could help maintain and further improve remittance market competitiveness. This would further increase transparency and boost public confidence in remittance and other financial services, and could further increase remittances sent through RSP channels.
3. Public authorities, led by the NBT, should require banks and other RSPs to develop, and disseminate at remittance payout points, basic informational materials on their available remittance transfer and other financial services, with clearly presented information on typical transaction times, and other transparently presented information on costs and other terms of remittance transfer and remittance-linked financial services. This could help increase remittance recipients’ awareness of, and confidence in, financial services more broadly. It would also be important to ensure that these materials be developed to reach underbanked and unbanked people of lower financial literacy levels (see below).
4. The NBT could raise awareness of the World Bank’s Remittance Prices Worldwide database[[25]](#footnote-26), publish its data related to the cost of remittances sent to Tajikistan, and use the database as an example of the type of information that may be collected and published on the NBT’s website.
5. ***Business practices.*** All MTOs providing transfer services in Tajikistan should be required to secure a license from the NBT and their activities in Tajikistan monitored on an ongoing basis.
6. Strengthening NBT oversight of remittance services would improve consumer protection and confidence by enabling it to ensure all RSPs’ compliance with international financial reporting standards, rules on corporate governance, and risk management practices. It will also be important for the NBT to set and implement appropriate standards for MTOs serving Tajikistan’s market in the areas of AML/KYC, capital requirements, consumer information, and dispute resolution. This would help enhance the transparency and overall predictability and efficiency of Tajikistan’s regulatory framework for cross-border remittances. As well as strengthening their compliance with accounting and supervisory standards, banks should revise their operating policies to improve the quality of their customer service and the overall efficiency of their services (e.g., improving service delivery times, putting in place standard procedures for handling customer disputes, assuring customers that the confidentiality of their personal information will be maintained). This would also raise the trust of remittance recipients and other bank clients.
7. Requiring that RSPs serving Tajikistan’s remittance market consolidate all fees associated with a transaction to render them payable by the sender upfront (rather than imposing some share of the cost on the recipient) would also further enhance transparency. At the least, the NBT could enhance consumer protection in this area by issuing rules on unfair imposition of fees and other unfair commercial practices and/or unfair contract terms.
8. ***Dispute resolution.*** In the longer-term, the NBT, in collaboration with local banks and other RSPs, should establish a dedicated and independent ombudsman service—covering transactions related to remittances and all other personal financial services and products. This would give clarity to dispute resolution procedures, which is currently lacking, and enhance and facilitate overall consumer protection. Establishing an ombudsman service for consumer protection in remittance and other financial service transactions could also further increase public trust and confidence in financial institutions, assuming the ombudsman is implemented and operated effectively. In the meantime, the roles of the NBT and the Anti-Monopoly Agency (which is currently authorized to deal with all consumer protection issues) should be strengthened to be better able to address consumer protection in financial services.
9. Banks and other providers of remittance services in Tajikistan should be required to improve their internal complaints handling procedures and mechanisms and to standardly include information on how to make a customer complaint (including a toll free phone number) in promotional and other information they disseminate about their services. Consumer protection could also be enhanced by implementing a NBT Department of Monetary Policy and Statistics proposal[[26]](#footnote-27) that banks and other RSPs make available a “hotline”/toll free number and complaint boxes in their branches and outlets to provide customers recourse in the event that employees ask for additional charges or unofficial payments in the course of carrying out transactions.
10. ***Financial education.*** Banks must do more to raise awareness about how remittance and other financial services work. Public authorities, led by the NBT, should motivate RSPs to develop relevant financial literacy materials and gear more of their information dissemination directly to remittance recipients, which could help increase their awareness of, and confidence in, financial services more broadly.
11. Banks face the challenge that, even where they develop and raise awareness of innovative savings instruments geared to remittance recipients in underserved populations, they must take steps to address the legacy of public distrust. Such steps must involve changing their business practices including improving their customer service (see above), the overall efficiency of their banking services, and forms of outreach that they provide to this market; and strengthening their compliance with financial standards.
12. With more than 70 percent of remittance recipients in Tajikistan residing in rural areas, there is a particular need to improve outreach to increase this population’s access to remittance and other financial services. Microcredit deposit organizations (MDOs) may be well placed for a greater role in remittance delivery to these recipients, having both access to them and typically being more trusted than banks. However, MDOs are at a relative disadvantage to banks in that they typically are less adept at marketing and disseminating information about their services, tending to attract new deposits mainly through informal channels such as word-of-mouth referrals by existing clients.
13. Awareness campaigns supported by the NBT that provide for a core financial literacy component about banks’ and other RSPs’ financial services—made available at remittance payout points and perhaps supplemented by individual RSPs with incentives to attract remittance recipients—could increase access of these customers to formal financial services. This may also further reduce and maintain low transfer costs. Banks should also do more to increase awareness of debit/prepaid cards and ATMs outside urban areas of Tajikistan.
14. Analysis of Good Practice on Electronic Fund and Remittances from the angle of RSPs:

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| **Good Practice** | ***Electronic Fund Transfers and Remittances***   1. **There should be clear rules on the rights, liabilities and responsibilities of the parties involved in any electronic fund transfer.** 2. **Banks should provide information to consumers on prices and service features of electronic fund transfers and remittances in easily accessible and understandable forms. As far as possible, this information should include:** 3. **the total price (e.g. fees for the sender and the receiver, foreign exchange rates and other costs);** 4. **the time it will take the funds to reach the receiver;** 5. **the locations of the access points for sender and receiver; and** 6. **the terms and conditions of electronic fund transfer services that apply to the customer.** 7. **To ensure transparency, it should be made clear to the sender if the price or other aspects of the service vary according to different circumstances, and the bank should disclose this information without imposing any requirements on the consumer.** 8. **A bank that sends or receives an electronic fund transfer or remittance should document all essential information regarding the transfer and make this available to the customer who sends or receives the transfer or remittance without charge and on demand.** 9. **There should be clear, publicly available and easily applicable procedures in cases of errors and fraud in respect of electronic fund transfers and remittances.** 10. **A customer should be informed of the terms and conditions of the use of credit/debit cards outside the country, including the foreign transaction fees and foreign exchange rates that may be applicable.** |
| **Description** | * 1. The NBT regulates and supervises the systems for clearing inter-bank payment transactions under NBT “Regulations for Electronic Payments through the Payments System (No. 345 of December 2009). There is no legislation yet in place, however, that deals with electronic payments and provides clear rules on the rights, liabilities and responsibilities of the parties involved in any electronic fund transfer. Inbound international remittances sent via electronic fund transfers provided by MTOs, which tend to be Russia-based, are only supervised indirectly, through NBT oversight of banks acting as their agents. Financial innovations linking remittance transfers to electronic payment instruments such as debit/prepaid cards are being introduced for in-country, non-migrant remittance transactions, particularly in urban areas—but they are not yet commonly used for international transfers by Tajik migrants. There is a draft payments system law that would cover electronic payments. Passage of this draft law would enable the NBT to effectively license all authorized RSPs and would strengthen consumer protection by formally endowing the NBT with more comprehensive oversight and supervision of all RSPs’ procedures, activities, and services related to remittance services.   2. There is a lack of clear, mandatory, standard procedures for banks and other remittance service providers (RSPs) to follow in providing information to consumers on prices, terms, and other service features of electronic fund transfers and remittances. Article 55, “Protecting bank clients’ interests,” of the 2009 NBT “Law on banks and bank activities” legally requires banks to inform their customers about the requirements associated with a transaction prior to the “credit service,” including service charges, interest rates, and other additional costs to the client.” Where there is a delay or error in transferring a customer’s funds to his account, Article 55 also requires the bank to compensate the client for each day of delay in funds’ transfer to the account at the NBT refinancing rate. It is unclear, however, whether Article 55 would apply to remittance transfer services, as it specifies only “credit service[s]” and includes no specific mention of remittance transfer transactions. It is thus also unclear whether delays in these transactions, including cash payout, would entitle the customer to some form of recompense. Banks and the largely Russia-based MTOs currently focus their promotional and general information dissemination efforts for remittance transfer services on the senders (based overseas), rather than the Tajikistan-based recipients. The extent to which most banks are reaching out to communicate fees and other terms of remittance services to the remittance recipients, through promotional material and other channels, is unclear. A few participating banks (e.g., AIB and Tojiksodorot) indicated that they make available to customers information about remittance transfer prices and other terms through brochures or pamphlets circulated in the local areas in Tajikistan where they have branches or other outlets, along with advertising their remittance transfer and financial services on their websites. One of the banks further indicated that it advertises customer service telephone numbers, in ads that it runs periodically in newspapers and on promotional pocket calculators, which potential customers in Tajikistan may phone to obtain information about costs and other terms of its remittance transfer services.   3. As reported by the NBT, individual commercial banks in Tajikistan are expected to provide information on prices and other aspects of remittance services to the public in the course of offering these services. However, the banks with which the senders initiate the transaction do not follow a standardized mechanism for providing this information to the senders themselves. The majority of senders are located in Russia, where the services provided by banks and other RSPs would be governed by Russian financial market authorities.   4. Participating banks indicated to a World Bank-FIRST Initiative mission team in 2011 that they inform the remittance recipient of the transaction fee and exchange rate used in the payout (typically the daily spot rate) before he/she receives the money. The exchange rate and fee for the transaction also are typically printed on the transaction receipt when the recipient cashes out. Fees for international remittance transfers to Tajikistan are relatively transparent because the vast majority of transfers between CIS countries (where the vast majority of senders reside) are conducted in the same currency.  1. Because there is no specific mention of remittance transfer transactions in existing laws and regulations that govern banks and consumer protection (such as the NBT “Law on banks and bank activities”), it is unclear whether more generic provisions in laws and regulations would apply to cases of error, fraud and other consumer protection issues that could arise in the case of international remittance transfer services. For example, under Article 55 of the NBT “Law on banks and bank activities,” banks are obliged to compensate a customer in a case where there is a delay or error in transferring a customer’s funds to his account for all “credit service” transactions. Because this law does not specifically mention remittance transfer transactions as a type of “credit service,” its applicability to remittance services is unclear. 2. The use of credit/debit cards by senders outside the country in the transfer of remittances to recipients in Tajikistan is not yet common. Debit/prepaid cards are being introduced for in-country, non-migrant remittance transactions, particularly in urban areas—but improvements to payment infrastructure in Tajikistan would be needed before these financial innovations could be rolled out on a large scale for efficient and cost-effective remittance transfer transactions.[[27]](#footnote-28) |
| **Recommendation** | There is a need for clear rules on the rights, liabilities and responsibilities of the parties involved in any electronic fund transfer. Tajikistan’s national authorities are urged to expedite passage of the draft payment system law, which would enable the NBT to license all authorized providers of electronic payment services; oversee the specific criteria and procedures applied to the services that they provide; and establish the duties of payment institutions towards customers for the use of new payment instruments for transactions (including ATMs, payment cards, internet, and mobile phones). Formally endowing the NBT with more comprehensive oversight and supervision of nonbank RSPs’ procedures, activities, and instruments under this draft law would level the playing field by providing direct supervisory oversight of all RSPs and could therefore render banks as well as remittance customers somewhat less vulnerable.  Public authorities, led by the NBT, should also require by law that banks and other RSPs develop, and disseminate at remittance payout points, clearly presented information on prices, transaction times, terms and conditions, and other service features of electronic fund transfers and remittances in easily accessible, transparent and understandable forms. This information should include all matters referred to in i. through iv. of item b. of this Good Practice.  In addition, if the price, transaction times, or other aspects of the service vary according to different circumstances, banks, MTOs and other RSPs should be obliged by law to disclose this information without imposing any requirements on the consumer.  Also, an RSP that sends or receives an electronic fund transfer or remittance should be compelled to document all essential information regarding the transfer and make this available on demand and without charge to the customer who sends or receives the transfer.  Furthermore, there should be clear, publicly available and easily applicable procedures in cases of errors and fraud in respect of electronic fund transfers and remittances. In the longer term, an effective ombudsman service established by the NBT in collaboration with local market players—covering transactions related to all personal financial services including electronic transfers and remittances—would give clarity to dispute resolution procedures and enhance overall consumer protection. In the meantime, the NBT and the Anti-Monopoly Agency, which is currently authorized to deal with all consumer protection issues, should be strengthened to be better able to address consumer protection in financial services.  And finally, a customer should be informed by the card-issuing bank of the terms and conditions of the use of any credit/debit cards outside Tajikistan, including the foreign transaction fees and foreign exchange rates that may be applicable. |

1. This kind of restriction is usually imposed by a competition law only on dominant economic entities, but Tajikistan’s law applies the restriction across the board. [↑](#footnote-ref-2)
2. At least one bank, however, indicated that it had a policy of cancelling debts where a head of household borrower became disabled or died before payment could be made, rather than executing on any security for the loan. This would suggest that security in property would not substitute for insurance in such cases. [↑](#footnote-ref-3)
3. One bank did indicate that a slight discount on loan rates would be made for an individual holding a deposit account in the bank. [↑](#footnote-ref-4)
4. The law was reviewed in the Russian language. It is possible that this is a translation issue. [↑](#footnote-ref-5)
5. There are some areas in which the provisions of those laws differ from the law “On Banking Activity.” For example, Article 15 of the Law on Mortgage, which specifies that a contract may never deprive the owner of the right to use the mortgaged property for its intended purposes and that the owner is presumed to retain the right to the use of the fruits or income from the property unless otherwise agreed by contract. [↑](#footnote-ref-6)
6. The fine is calculated by the use of an “accounting figure” that is set each year by the law on the budget. The use of such a figure is a device that has been employed by a number of countries to allow fines to be adjusted regularly to account for high inflation rates or other circumstances without requiring many individual amendments to the laws or codes in which they appear. In 2012, the “accounting figure” is 40 somoni, and the fine referenced is from 250 to 547 times that figure. [↑](#footnote-ref-7)
7. The range is from 250 to 360 times the accounting figure. [↑](#footnote-ref-8)
8. Article 48 does allow the NBT to impose a variety of other measures, but many of these are designed to address problems with a bank’s financial position (e.g. restrictions on issuance of credit, demand for additional reserves, or prevention of dividend payments). NBT does have the power to impose a fine of up to 1% of the minimum authorized capital of the bank, and to demand removal or dismissal of some bank executives or board members and the law does not specify the kinds of bank violations that would justify these measures. Other kinds of penalty sanctions against bank officials can be applied only where they are separately envisioned by law. [↑](#footnote-ref-9)
9. The existing interpretation also provides some inappropriate incentives to banks to skew their reporting and accounting practices in a manner that minimizes their obligatory contribution to the Fund by maximizing the number of deposits subject to exceptions. This could result, for example, in delayed release of security interests registered against deposit accounts or other similar problems. [↑](#footnote-ref-10)
10. The number of credit societies (including credit unions) has decreased from eight in 2007 to one as of September 2012. [↑](#footnote-ref-11)
11. The Smart Campaign is a coalition of microfinance institutions, networks, associations, and other professionals working within the microfinance industry. The Smart Campaign is asking microfinance institutions, their networks and associations, to endorse the Campaign and implement a set of seven core Client Protection Principles, which represent minimum standards that clients should expect to receive when engaging with a microfinance institution. [↑](#footnote-ref-12)
12. <http://siteresources.worldbank.org/EXTFINANCIALSECTOR/Resources/Financial_Ombudsmen_Vol1_Fundamentals.pdf> [↑](#footnote-ref-13)
13. The Microfinance Centre, headquartered in Poland with a regional office in Bishkek, is an international network of over 100 microfinance institutions in Eastern Europe and Central Asia. [↑](#footnote-ref-14)
14. The project was funded by the Inter Church Organization for Development Cooperation (ICCO). [↑](#footnote-ref-15)
15. For further information, see <http://www.amfot.tj/bitrix/images/socialservices/Financial_education_Tajikistan_ENG.pdf> [↑](#footnote-ref-16)
16. Source: National Bank of Tajikistan, “Questionnaire for the Central Bank: Application of CPSS-World Bank General Principles for International Remittance Services,” February 2011. [↑](#footnote-ref-17)
17. The NBT conducts periodic interviews with remittance recipients and publishes the results. These data are sourced from the most recently published report, NBT, *Report No. 14 on Money Transfer Analysis in Tajikistan*, August 2010. [↑](#footnote-ref-18)
18. World Bank, Remittance Prices Worldwide database, First quarter 2012. [↑](#footnote-ref-19)
19. AMFOT, *Analysis of statistical data of AMFOT members*, Fourth quarter 2011. [↑](#footnote-ref-20)
20. Meeting with AMFOT, 4 March 2011. [↑](#footnote-ref-21)
21. According to data compiled by the NBT, 4.2mn payment card transactions were recorded in the year ending January 1, 2012 by payment cards issued by banks in Tajikistan, up 109% from the previous one-year period, and the number of ATM, POS and other electronic terminals in Tajikistan for payment cards increased 59% over the same period, although infrastructure and usage outside Dushanbe is still limited. See NBT, “*Market review of payment cards*” available on the internet at http://www.nbt.tj/en/pl\_sys/cards.php. [↑](#footnote-ref-22)
22. NBT, *Payment System of the Republic of Tajikistan*, available on the Internet at http://www.nbt.tj/en/pl\_sys/. [↑](#footnote-ref-23)
23. Article 55, “Protecting bank clients’ interests,” of the NBT “Law on banks and bank activities” (May 2009) requires banks to inform their customers about the requirements associated with a transaction prior to the “credit service,” including service charges, interest rates, and other additional costs to the client.” It is unclear whether Article 55 would apply to remittance transfer services, however, as it specifies only “credit service[s]” and includes no specific mention of remittance transfer transactions. See also the Good Practice C.7 document for Tajikistan. [↑](#footnote-ref-24)
24. This is also a recommendation in ADB, *Tajikistan:* *Microfinance Systems Development Program* report, November 2010. [↑](#footnote-ref-25)
25. <http://remittanceprices.worldbank.org/> [↑](#footnote-ref-26)
26. NBT, *Report No. 14 on Money Transfer Analysis in Tajikistan*, August 2010. [↑](#footnote-ref-27)
27. This section draws partly on information in the First Initiative Project Proposal, *Tajikistan: Payment System Modernization*, January 2011. [↑](#footnote-ref-28)