

Volume II: Technical Annex

Comparison with Good Practices

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CONTENTS

I. GOOD PRACTICES: BANKING SECTOR.....	4
CONSUMER PROTECTION INSTITUTIONS	4
DISCLOSURE AND SALES PRACTICES.....	59
CUSTOMER ACCOUNT HANDLING AND MAINTENANCE	74
PRIVACY AND DATA PROTECTION	94
DISPUTE RESOLUTION MECHANISMS.....	102
GUARANTEE SCHEMES AND INSOLVENCY	107
CONSUMER EMPOWERMENT	110
COMPETITION AND CONSUMER PROTECTION.....	112
II. GOOD PRACTICES: CREDIT REPORTING SYSTEM.....	115
PRIVACY AND DATA PROTECTION	115
CONSUMER EMPOWERMENT	119
ANNEXURE I. LEGAL AND REGULATORY FRAMEWORK.....	120
ANNEXURE II. COMPARISON BETWEEN CONSUMER LAW OF THE PHILIPPINES AND BSP LAWS	124

I. GOOD PRACTICES: BANKING SECTOR

NOTE: It is understood that a number of the recommendations below may be covered by the BSP Financial Consumer Protection Framework once it is given the force of law.¹ In particular, the mission team was advised that the recommendations concerning FCAG, transparency and disclosure and standards of conduct will be covered by the Framework.

NOTE: See Annexure 1 for a summary of the Legal and Regulatory Framework applying to the banking sector in the Philippines.

SECTION A.	CONSUMER PROTECTION INSTITUTIONS
Good Practice A.1.	<p>Consumer Protection Regime</p> <p>The law should provide clear consumer protection rules regarding banking products and services, and all institutional arrangements should be in place to ensure the thorough, objective, timely and fair implementation and enforcement of all such rules.</p> <p>a. Specific statutory provisions should create an effective regime for the protection of a consumer of any banking product or service.</p> <p>b. A general consumer agency, a financial supervisory agency or a specialized financial consumer agency should be responsible for implementing, overseeing and enforcing consumer protection regarding banking products and services, as well as for collecting and analyzing data (including inquiries, complaints and disputes).</p> <p>c. The designated agency should be funded adequately to enable it to carry out its mandates efficiently and effectively.</p> <p>d. The work of the designated agency should be carried out with transparency, accountability and integrity.</p> <p>e. There should be co-ordination and co-operation between the various institutions mandated to implement, oversee and enforce consumer protection and financial system regulation and supervision.</p> <p>f. The law should also provide for, or at least not prohibit, a role for the private sector, including voluntary consumer organizations and self-regulatory organizations, in respect of consumer protection regarding banking products and services.</p>

¹ The proposed Framework was reviewed during the CP Review Mission but had not been published at the time of preparing this report.

Description	<p>The current institutional arrangements for consumer protection in the banking sector are somewhat fragmented as there are overlapping, and to some extent inconsistent, provisions applying to BSP, DTI, SEC and CDA regulated entities.</p> <p>Relevant aspects of the legal framework at the time of the mission were as follows:</p> <p>The BSP has a broad mandate over the banking and quasi- banking sector expressed as follows in s. 3 of RA 7653 The New Central Bank Act of 1993 (emphasis added):</p> <p><i>“The Bangko Sentral shall provide policy directions in the areas of money, banking, and credit. It shall have supervision over the operations of banks and exercise such regulatory powers as provided in this Act and other pertinent laws over the operations of finance companies and non-bank financial institutions performing quasi-banking functions, hereafter referred to as quasibanks, and institutions performing similar functions.</i></p> <p><i>The primary objective of the Bangko Sentral is to maintain price stability conducive to a balanced and sustainable growth of the economy. It shall also promote and maintain monetary stability and the convertibility of the peso.”</i></p> <p>The above stated provisions do not expressly state that BSP’s functions include consumer protection or the market conduct of the institutions that it regulates. There is not even a reference to the BSP mandate covering financial stability. However, some reassurance should be provided by the express reference to the BSP mandate including policy directions in the areas of “banking and credit” and to its ability to supervise the operations of banks and quasi banks. It is nevertheless understood that consideration is being given to clarifying that the above mandate covers financial consumer protection issues (for the avoidance of doubt).</p> <p>A wide range of laws and of regulatory instruments issued by BSP (including Circulars) (together laws”) apply to the banking sector in the Philippines and support consumer protection. These laws are discussed as applicable below in the context of specific Good Practices. These include laws in relation to Truth in Lending for loan products, credit cards, microfinance, electronic banking, investment products, responsible lending practices, confidentiality and data protection, cross selling of products, outsourcing of bank functions and compliance systems. The laws specifically applicable to regulated banking institutions are consolidated in the voluminous 2008 BSP Manual of Regulations for Banks (MORB).</p> <p>There are a number of other institutions besides BSP which have responsibility for consumer protection relevant to debit and credit products. They are discussed in the following paragraphs.</p> <p>The Department of Trade and Industry (DTI) has responsibility for some, but not all, of the general consumer protection provisions as well as specific provisions concerning credit contracts in The Consumer Act of the Philippines of 1991 (Consumer Act). The Consumer Act applies to all entities providing credit (or indeed any financial service) as a business (including those regulated by BSP, the SEC, the IC and the CDA and also including those which are otherwise unregulated). The relevant provisions of the Consumer Act include the following:</p> <ul style="list-style-type: none"> • “Services” are defined to include any that are the subject of a “consumer transaction” and the latter term is defined to include “(ii) grant or provision of credit to a consumer” and “Consumer” is defined to mean “a natural person who is a purchaser, lease, recipient or prospective purchase, lease or recipient of consumer products, services or credit”; <p>Title III, Chapter I contains provisions concerning deceptive, unfair and unconscionable sales acts and practices;</p>
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	<ul style="list-style-type: none"> • Title III, Chapter VI deals with advertising and contains specific provisions concerning credit advertising (for which DTI is expressly stated to be the implementing agency); and • Title IV concerns credit transactions including provisions relating to disclosure, finance charges, delinquencies, prepayments, periodic statements of account. <p>It is not entirely clear who is responsible for supervising compliance with the Consumer Act so far as banks are concerned. Most of the Titles in the Consumer Act make it clear that the DTI has supervisory responsibility for the relevant provisions as the “<i>implementing authority</i>”. However, the Consumer Act is silent on the question as to who has responsibility for supervising Title IV, which contains specific provisions concerning credit transactions. The mission team was told that the DTI relies on two opinions from the DoJ to the effect that BSP is to be considered as the implementing agency for the application of the Consumer Act to BSP regulated institutions with respect to consumer credit card transactions. This is notwithstanding that the Consumer Act does not mention BSP (for example BSP is not included on the National Consumers Affairs Council referred to below) and that the DTI is mentioned as the implementing agency for some (but not all) of the relevant provisions (for example, concerning credit advertisements and the general consumer protection provisions). To make the position clearer, there is currently a DTI proposal to make BSP the implementing authority for the application of the Consumer Act to the institutions it regulates (although the mission team were advised that BSP had not been consulted on this proposal).</p> <p>The banking industry also seems to be uncertain as to whether the Consumer Act applies to them. Some of the banks the mission team interviewed said that they treated the Consumer Act as applying to them. For example, some (but not all) banks comply with the provision confirming a borrower’s right to prepay a credit contract.² However BSP does not at present actively supervise compliance with the Consumer Act, although the Financial Consumer Affairs Group seeks to resolve complaints arising under the Consumer Act which are referred to them by DTI.</p> <p>As well as the institutional uncertainties concerning the Consumer Act, there are overlapping and inconsistent provisions in the Consumer Act and in the legislation supervised by BSP. For example, both laws contain disclosure requirements for credit contracts but the Consumer Act has more specific provisions in relation to credit sale and installment contracts which reflect the nature of those products. There are also provisions in the Consumer Act dealing with prepayments, rebates due on prepayment and delinquency and deferral charges which do not appear in BSP laws. Annexure II contains further details of the differences between BSP laws and the Consumer Act.</p> <p>The SEC has jurisdiction over “Lending Companies” under the RA 9474 of the Lending Company Regulation Act of 2007 (SEC Lending Company Act). A “Lending Company” is defined in s. 3 (a) as follows:</p> <p><i>“(a)Lending Company shall refer to a corporation engaged in granting loans from its own capital funds or from funds sourced from not more than nineteen (19) persons. It shall not be deemed to include banking institutions, investment houses, savings and loan associations, financing companies, pawnshops, insurance companies, cooperatives, and other credit institutions already regulated by law. The term shall be synonymous with lending investors.”</i></p>
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² There is also a similar provision in the General Banking Law (s. 45).

The only specific consumer protection provision in the SEC Lending Company Act appears to be designed to ensure that loan agreements entered into by Lending Companies are consistent with RA 3765 *Truth in Lending Act* of 1963 (supervised by BSP) and with the Consumer Act. S. 7 provides (emphasis added):

*“(a) A lending company may grant loans in such amounts and reasonable interest rates and charges as may be agreed upon between the lending company and the debtor. Provided, That **the agreement shall be in compliance with the provisions of Republic Act No. 3765, known otherwise as the “Truth in Lending Act” and Republic Act 7364, otherwise known as the “Consumer Act of the Philippines”.** Provided further, That the Monetary Board, in consultation with the SEC and the industry, may prescribe such interest rate as may be warranted by prevailing economic and social conditions.”*

SEC Circular No 7 of 2011 also provides for the adoption of BSP Circular 730 of 2011 which contains *“Updated Rules Implementing the Truth in Lending Act to Enhance Loan Transaction Transparency”*.

There are also limited consumer protection provisions applying to cooperatives supervised by the Cooperative Development Authority (CDA) which provide credit or savings facilities. The CDA is responsible for regulating and registering cooperatives (which include credit cooperatives and the purposes of which can include the ownership of cooperative banks). The promotion and development of cooperative banks is described in the Cooperative Development Authority Act of 1990 RA 6939 as a *“major concern”* of the CDA, which is to be undertaken in collaboration with BSP.³ Further, Chapter VIII of the Cooperatives Code of the Philippines of 1990 contains detailed provisions concerning cooperative banks, but makes it clear they are under the supervision of BSP. There do not appear to be any consumer protection provisions in either the Cooperative Development Authority Act of 1990 or in the Cooperatives Code. However, the CDA has applied the BSP Truth in Lending Circular 730 to the institutions they regulate.

The Insurance Commission (IC) regulates insurance companies and mutual benefit associations, which may provide finance on the security of their policies and applies the BSP’s Truth in Lending rules to relevant companies. The IC, like the SEC and the CDA, has applied the Truth in Lending Act to the institutions they regulate.

Further consumer protection is provided for by the deposit insurance scheme administered by the Philippines Deposit Insurance Corporation (PDIC). The PDIC Charter provides for a deposit insurance scheme for member banks up to a prescribed limit which is currently 500,000 Pesos for both individual and corporate customers and which applies on a per customer / per institution basis. The scheme applies to banks incorporated under Philippine laws (such as universal and commercial banks, savings banks, development banks, rural banks, cooperative banks and stock savings and loan associations and branches and agencies of foreign banks in the Philippines). The PDIC also gives PDIC wide ranging powers to deal with insolvent banks. The PDIC powers are frequently used: the mission team was advised that, over the last 5 years, on average around 25 PDIC insured banks per year have been closed.

³ S. 12

	<p>The National Consumers Affairs Council (NCAC) has overarching coordination responsibility for consumer protection in the Philippines. The NCAC was established by the Consumer Act. It has wide ranging functions (in summary) to rationalize and coordinate the functions of all agencies charged with consumer protection in the Philippines; to advise on policy and legislation; and to conduct consumer education functions. Notwithstanding these broad functions, the mission team was advised that the NCAC has a very limited budget of around 2 million pesos and it has only 3 full time staff. Its members consist of 4 consumer representatives, 2 business and industry representatives and representatives of the DTI, Agriculture, Health and Education, Culture and Sports. Significantly, its members do not include a representative of BSP. However the mission team was advised that there is consultation with BSP on relevant programs.</p> <p>Active steps are also being taken to achieve coordination between relevant financial sector agencies (other than CDA and the DoJ) through the Financial Sector Forum. The Forum, which was launched in 2004, seeks to deepen coordination among its four participating agencies, including in relation to financial consumer protection and education issues. The four agencies involved are BSP, PDIC, IC and SEC (but not the CDA). Collaboration with DTI is also ongoing through the participation of BSP in the consumer protection initiatives of the NCAC (which is under the auspices of DTI). There is also ongoing collaboration between BSP and CDA through the participation of BSP in the coordinating committee organized by CDA which monitors programs, provides a system of consultation, and recommends policies related to the development of the cooperative sector.</p>
Recommendations	<p>BSP should continue to actively consult and collaborate with other supervisors of providers of debit and credit products, including DTI, SEC, IC and, in the future, also including CDA. This is important to ensure consistency of protection for consumers and to minimize the risk of regulatory arbitrage.</p> <p>There should be clarification of the extent to which the Consumer Act applies to BSP regulated entities and the products and services they provide, and of the BSP's supervision mandate in relation the Consumer Act. This might be achieved through the following steps:</p> <ul style="list-style-type: none"> • Conduct a careful review of the Consumer Act to identify those provisions which should appropriately apply to regulated banks but are not currently covered by other laws specifically applying to such banks (for example, the provisions dealing with unfair terms (see Article 52)); and • Then apply the relevant provisions to banks, whilst at the same time making it clear that the Consumer Act does not apply to banks. <p>An alternative approach would be for BSP to supervise compliance of regulated banks with the Consumer Act. However this approach would give rise to supervision and compliance complexities given the differences between the Consumer Act and BSP specific laws and the fact that the approach would require BSP to be designated as the "implementing authority" for the relevant general and specific provisions of the Consumer Act.</p> <p>In the long term, it could be helpful for there to be absolute clarity as to BSP mandate to regulate consumer protection issues. This should include clarity as to its powers to provide a binding complaints resolution service. However this is not an immediate concern as BSP's functions specifically extend to credit and the operations of banks and quasi - banks.</p>

Good Practice A.2	<p>Code of Conduct for Banks</p> <ol style="list-style-type: none"> 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. If a principles-based code of conduct exists, it should be publicized and disseminated to the general public. 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. Every such voluntary code should likewise be publicized and disseminated.
Description	<p>The principles based Banking Code for Consumer Protection (Banking Code) has recently come into effect but implementation and public awareness is at a very nascent stage. There do not appear to be any voluntary codes of the type contemplated by this Good Practice.</p> <p>The Banking Code was developed with the encouragement of BSP and appears to be supported by all relevant banking associations. This includes the Bankers Association of the Philippines (BAP), the Chamber of Thrift Banks (CTB), the Rural Bankers Association of the Philippines (RBAP), the Credit Card Association of the Philippines (CCAP), and the Bank Marketing Association of the Philippines (BMAP). BMAP led the project for updating the Code from its original 2004 version and is described in the Code as <i>"the keeper of the Code."</i></p> <p>The objectives of the Code are broadly described and support fundamental consumer protection principles. The objectives are stated as follows:</p> <ol style="list-style-type: none"> <i>"1. To promote transparency and better understanding and appreciation of banking products and services;</i> <i>2. To set minimum service standards that will help ensure customer/consumer protection;</i> <i>3. To further professionalize and uplift the local banking industry to world class standards; and</i> <i>4. To strengthen the relationship between banks and their respective customers."</i> <p>The Code has a wide range of provisions designed to protect consumers. They include:</p> <ul style="list-style-type: none"> An initial statement of Consumer Rights; Standards and promises concerning service delivery; multiple banking channels; elderly and disabled customers; internal complaint resolution standards (and a reminder as to the ability to raise unsatisfied complaints with FCAG and PDIC); privacy and confidentiality; advertising and marketing (Part A); Extensive advice for consumers as to: what they can (and should) expect from banks in relation to the product pre-sale, sale and post - sale process; information about different types of bank products; detailed questions consumers should ask of their banks; and the information that they should provide to banks and including advice about the PDIC (Part B); and Information for customers about the security measures that they should take to safeguard their bank facilities, such as electronic banking facilities (Part C).

	To date there has not been a systematic customer awareness campaign to alert bank customers to the existence of the Banking Code. Such a campaign is important as the Code is very much framed as a document advising customers as to what they can expect from banks and how customers should protect their own interests. It has numerous provisions designed to inform customers of their rights and to provide helpful advice for customers to assist them in their dealings with banks.
Recommendation	The BSP should encourage implementation and publication of the Banking Code for Consumer Protection by all relevant banks. This should be coupled with a public awareness campaign so that consumers are aware of its provisions and a requirement that the Banking Code be published on bank websites and readily made available in bank branches and other banking outlets (such as agents).

Good Practice A.3	<i>Appropriate Allocation between Prudential Supervision and Consumer Protection</i> Whether prudential supervision of banks and consumer protection regarding banking products and services are the responsibility of one organization or two institutions, the allocation of resources to these functions should be adequate to enable their effective implementation.
Description	<p>Although BSP supervises relevant consumer protection laws through on-site and off-site supervision and, through its Financial Consumer Affairs Group (FCAG), provides a comprehensive external complaints resolution service, there are limitations in this approach. From numerous meetings with BSP supervisory units and banks, it seems to be the case that BSP seeks to actively supervise the consumer protection laws currently in place. The limitation is that this supervision is currently carried out by the same team that undertakes prudential supervision. On-site supervision is dependent on annual visits (other than in exceptional cases approved by the Monetary Board or the Governor).</p> <p>Further, although the FCAG appears to provide a comprehensive complaint resolution service, it does not currently have the power to pro-actively supervise market conduct matters or conduct on-site supervision. However, if FCAG identifies a systemic issue with the complaints that is handling, it will notify the Central Point of Contact, which is the off-site supervision team for larger institutions, which may in turn notify the on-site supervision team. An example of the effectiveness of this approach is the relatively new rules on collection practices concerning credit cards. FCAG initially raised this issue as a result of receiving multiple complaints. FCAG is nevertheless dependent on action taken by the off-site supervision team - it is up to that team as to whether they take action and the timing of that action. It may well be the case that the supervision teams have other priorities and may be limited by the resources and the skill base that they have. This issue will be exacerbated if BSP takes up other recommendations in this report for further consumer protection measures (such as increased disclosure requirements), which will increase the pressure for market conduct supervision.</p> <p>The powers of FCAG will, however, be strengthened, if the proposed BSP Financial Consumer Protection Framework is given the force of law. In that case there would appear to be a commensurate need to increase FCAG's resources.</p>
Recommendation	Supervision of banking consumer protection laws should be separate from prudential supervision and be properly resourced so as to encourage pro-active supervision and to avoid conflicts between supervising financial institutions and protecting the interests of their customers. A practicable way to achieve this would be to provide FCAG with the relevant responsibilities (as we understand is currently proposed) on the assumption that FCAG would also be given the resources to undertake these new responsibilities.

Good Practice A.4	<p>Other Institutional Arrangements</p> <p>a. The judicial system should ensure that the ultimate resolution of any dispute regarding a consumer protection matter in respect of a banking product or service is affordable, timely and professionally delivered.</p> <p>b. The media and consumer associations should play an active role in promoting banking consumer protection.</p>
Description	<p>There are special procedures for Small Claims Cases in the Philippines involving amounts of up to 100,000 pesos. Further, the media seems to have no hesitation in reporting on issues concerning banks. Examples of media activism were the reporting of BSP regulation of ATM fees and reports about the Small Claims Cases procedures.</p> <p>The Small Claims Procedure was provided for in a Supreme Court resolution dated October 27, 2009 and commenced in 2010. Features of the Procedure are:</p> <ul style="list-style-type: none"> • The Procedure is provided for by a Supreme Court Rule; • It applies to procedures before the Metropolitan Trial Courts, Municipal Trial Courts in Cities, Municipal Trial Courts and Municipal Circuit Trial Courts for payment of money where the value of the claim does not exceed One Hundred Thousand Pesos (P100,000.00) exclusive of interest and costs; • It applies to money owed under a contract of loan or a contract of mortgage (as well as other claims and demands); • Lawyers are not permitted to represent parties; and • The required procedures are very much simplified as compared to those which would normally apply in a Supreme Court matter. <p>Consumer associations do not seem to play a key role in relation to financial services. A further concern is that the NCAC, as mentioned above, does not seem to have adequate resources to fulfill its broad consumer protection mandate. The mission team was advised that the NCAC has a very limited budget of around 2 million pesos and it has only 3 full time staff. This mandate is established by the Consumer Act and would appear to cover financial services as well as other services. The NCAC mandate is described as follows in article 153:</p> <p><i>“ARTICLE 153. Powers And Functions- The Council shall have the following powers and functions:</i></p> <ul style="list-style-type: none"> <i>a) to rationalize and coordinate the functions of the agencies charged with consumer programs and enforcement of consumer related laws to the end that an effective, coordinated and integrated system of consumer protection, research and implementation and enforcement of such laws shall be achieve;</i> <i>b) to recommend new policies and legislation or amendments to existing ones;</i> <i>c) to monitor and evaluate implementation of consumer programs and projects and to take appropriate steps to ensure that concerned agencies take appropriate steps to comply with the establish priorities, standards and guidelines;</i> <i>d) to seek the assistance of government instrumentalities in the form of augmenting the need for personnel, facilities and other resources; and</i> <i>e) to undertake a continuing education and information campaign to provide the consumer with, among others:</i> <ul style="list-style-type: none"> <i>1) facts about consumer products and services;</i> <i>2) consumer rights and the mechanism for redress available to him;</i> <i>3) information on new concepts and developments on consumer protection; and</i> <i>4) general knowledge and awareness necessary for a critical and better judgment on consumption;</i>

	<p>5) <i>such other matters of importance to the consumer's general well-being.</i>"</p> <p>BSP holds regular meetings with the various banking associations and the Compliance Officers in banks but not with consumer organizations.</p> <p>Apart from FCAG and the NCAC, there do not appear to be any bodies external to banking institutions to represent the interests of bank customers. The mission team was not able to identify any relevant civil society groups which might be interviewed to discuss issues relevant to consumers.</p>
Recommendation	<p>The mission team supports giving FCAG power to make decisions in relation to complaints which bind the financial institution concerned. See also Good Practice E.2 on external dispute resolution schemes more generally.</p> <p>Consideration might also be given by BSP to providing support for civil society groups which represent the interests of consumers.</p>

Good Practice A.5	<p><i>Licensing</i></p> <p>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.</p>
Description	<p>All banks in the Philippines are required to be licensed and to meet strong prudential standards apparently designed to meet their safety and soundness.</p> <p>The licensing requirements primarily arise under s.6 of the General Banking Law which provides that:</p> <p><i>No person or entity shall engage in banking operations or quasi-banking functions without authority from the Bangko Sentral: Provided, however, That an entity authorized by the Bangko Sentral to perform universal or commercial banking functions shall likewise have the authority to engage in quasi-banking functions.</i></p> <p>The General Banking Law further makes provision for wide ranging prudential and "safety and soundness" requirements, including in relation to:</p> <ul style="list-style-type: none"> • Organization, management and administration of banks (Chapter III); • The powers and investments of universal and commercial banks (Chapter IV, Articles I and II); • Risk based capital (s. 34); • Limits on loans, credit accommodations and guarantees (s. 35); • Restrictions on exposures to related parties (s. 36); • Minimum loan to security ratios (ss. 37, 38, 41 and 42 and see Good Practice B.2); • The purpose of loans and other credit accommodations (s. 39); • Assessment of credit worthiness (s. 40); • Amortisation of loans (s. 44); • Prepayment of loans (s. 45); • Foreclosures of real estate mortgages (s. 47 and see Good Practice B.2); • Provisions for Losses and Write-offs (s. 49); • Investments (ss. 50 and 51); • The factors to be considered by the Monetary Board in determining whether a bank is acting in an unsafe or unsound manner (s. 56); • A requirement to only declare dividends out of net profits (s. 57); and • Financial statements (ss. 60 and 61); <p>There are also provisions in the General Banking Act concerning the insolvency of banks and giving BSP wide ranging powers to deal with banks in distress. They include provisions on placing banks in conservatorship (s.67); voluntary liquidation (s. 68) and receivership and involuntary liquidation (s. 69).</p>

	<p>The General Banking Act also contains provisions concerning the safety and soundness of trust organisations (which may take deposits). This includes provisions concerning registration (s. 79), minimum capital (s. 82), the required security deposit (s. 84); a bond to be lodged with the relevant court by an administrator, trustee and other persons (ss. 85 and 86); and investments by the trust (ss. 88 to 90).</p> <p>The details of many of the abovementioned requirements are also contained in the MORB, including (for example):</p> <ul style="list-style-type: none"> • Basic Guidelines in establishing banks (X.102); • Minimum capitalization (X.111); • Risk based capital (X.115); • Directors, Officers and Employees (Section H); • Outsourcing of bank functions (X.162); • Risk Management (Section N); • Liquidation and Receivership (Section P); • Credit Exposure Limits (X.303); and • Loans and Other Credit Accommodations to Directors, Officers, Stockholders and their Related Interests (X. 326 – 340). <p>The Thrift Banks Act, the Rural Banks Act, and the Cooperative Code also contain provisions concerning the organization, ownership and capital requirements, powers, BSP supervision and general conduct of business of thrift banks, rural banks and cooperative banks. However it is clear that the provisions of the General Banking Law also apply to such banks to the extent they are not inconsistent with the bank – specific laws (s. 71).</p> <p>The Foreign Banks Liberalisation Act also makes provision for the establishment of foreign bank branches and subsidiaries in the Philippines. These provisions include requirements for registration and minimum capital requirements.</p>
Recommendations	There are no recommendations for the purposes of this Good Practice.

SECTION B.	DISCLOSURE AND SALES PRACTICES
Good Practice B.1	Information on Customers <ol style="list-style-type: none"> a. When making a recommendation to a consumer, a bank should gather, file and record sufficient information from the consumer to enable the bank to render an appropriate product or service to that consumer. b. The extent of information the bank gathers regarding a consumer should: <ol style="list-style-type: none"> (i) be commensurate with the nature and complexity of the product or service either being proposed to or sought by the consumer; and (ii) enable the bank to provide a professional service to the consumer in accordance with that consumer's capacity.
Description	<p>Although there are strong (and important) laws in place requiring record keeping by banks and requiring a thorough assessment of the credit worthiness of a customer, there are not specific rules in place requiring an overall assessment of the needs of needs of a customer as contemplated by this Good Practice.</p> <p>Paragraph (a)</p> <p>Banks are subject to a variety of record keeping obligations but there do not appear to be specific obligations relating to the keeping of those customer records which relate to the customer's product or service needs. For example, there are obligations relating to the keeping of minimum records for internal control purposes⁴, where the focus seems very much to be on the keeping of accounting records. Further, under the AML Act there are record keeping obligations in relation to evidence of a customer's identity and for transaction records:</p> <ul style="list-style-type: none"> • s.9(a) requires covered institutions to “establish and record the true identity of its clients based on official documents.”; and • s.9 (b) provides that “All records of all transactions of covered institutions shall be maintained and safely stored for five (5) years from the dates of transactions. With respect to closed accounts, the records on customer identification, account files and business correspondence, shall be preserved and safely stored for at least five (5) years from the dates when they were closed.” <p>Paragraph (b)</p> <p>There are no requirements of the type contemplated in this Good Practice.</p>
Recommendation	<p>It is recommended that consideration be given to requiring banks to keep written records of the type described above, and including records on the recommendations and advice that they provide to customers. Further, customers should be given a right of access to such records.</p> <p>This recommendation is in addition to the recommendation made in relation to Good Practice C.3.</p>

⁴ MORB X185

Good Practice B.2	<p>Affordability</p> <ol style="list-style-type: none"> 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. The consumer should be given a range of options to choose from to meet his or her requirements. Sufficient information on the product or service should be provided to the consumer to enable him or her to select the most suitable and affordable product or service. When offering a new credit product or service significantly increasing the amount of debt assumed by the consumer, the consumer's credit worthiness should be properly assessed.
Description	<p>There are provisions in place designed to ensure the affordability of loans made by BSP regulated entities but there do not appear to be requirements for a needs assessment, for consumers to be given a range of options or for consumers to be given specific information. Further, the consequences for a customer of an irresponsible needs assessment are not clear.</p> <p>Paragraph (a)</p> <p>There is no requirement to this effect.</p> <p>Paragraph (b)</p> <p>There is no requirement to this effect.</p> <p>Paragraph (c)</p> <p>Although there are requirements in place for the disclosure of finance charges and effective interest rates for certain credit products, it is not clear all credit products are covered and there are no equivalent provisions relating to deposit products. In summary, the relevant provisions require:</p> <ul style="list-style-type: none"> For loans: Disclosure of finance charges (which include interest, fees and all other charges); and disclosure of an effective interest rate⁵; and For credit cards: disclosure of an effective interest rate⁶. <p>Details of these requirements are in Good Practice B.6, together with a discussion of their limitations and recommendations for change.</p> <p>For completeness we note that there are requirements of the type contemplated by this Good Practice which apply to derivative products (see MORB Appendix 25).</p> <p>Paragraph (d)</p> <p>Regulated banks are required to undertake detailed credit worthiness assessments and to ensure that secured loans meet specified loan to valuation ratios. The obligation to undertake credit worthiness assessments arises primarily from the General Banking Act which provides (in summary and emphasis added):</p>

⁵ Circular 730 and Truth in Lending Act

⁶ MORB X320.4

	<ul style="list-style-type: none"> • Before a bank grants credit, “a bank must ascertain that the debtor is capable of fulfilling his commitments to the bank. Toward this end, a bank may demand from its credit applicants a statement of their assets and liabilities and of their income and expenditures and such information as may be prescribed by law or by rules and regulations of Monetary Board to enable the bank to properly evaluate the credit application which includes the corresponding financial statements submitted for taxation purposes to the Bureau of Internal Revenue. Should such statements prove to be false or incorrect in any material detail, the bank may terminate any loan or other credit accommodation granted on the basis of said statements and shall have the right to demand immediate repayment or liquidation of the bligation. In formulating rules and regulations under this Section, the Monetary Board shall recognize the peculiar characteristics of microfinancing, such as cash flow-based lending to the basic sectors that are not covered by traditional collateral.”(s. 40). <p>Other relevant requirements are as follows:</p> <ul style="list-style-type: none"> • MORB X304.1 contains detailed provisions relating to the information and documents that a bank must require of an applicant for credit; • Specific provisions relating to credit cards are contained in MORB X320.3; • MORB X320.3 contains detailed rules on the assessment of the credit worthiness of an applicant for a credit card; • Subject to any contrary rules of the Monetary Baord, credit secured by real estate to have a maximum 75 percent loan to valuation ratio of real estate plus 60 percent of the valuation of the insured's improvements (s. 37). These percentage figures have each been changed to 70 percent in MORB X311; • Subject to any contrary rules of the Monetary Baord, credit secured by chattels and intangible property to have a maximum loan to valuation ratio of 75 percent of the secured property (s.38); • The Monetary Baord can issue regulations as to maximum loan to valuation ratios for unsecured loans (s. 41); and <p>A bank is permitted to grant credit “only in amounts and for the periods of time essential for the effective completion of the operations to be financed. Such grant of loans and other credit accommodations shall be consistent with safe and sound banking practices”. The purpose of all loans and other credit accommodations shall be stated in the application and in the contract between the bank and the borrower. If the bank finds that the proceeds of the loan or other credit accommodation have been employed, without its approval, for purposes other than those agreed upon with the bank, it shall have the right to terminate the loan or other credit accommodation and demand immediate repayment of the obligation.” (s. 39). This provision is somewhat ambuiguous as it suggests that banks can only grant loans for business purposes i.e. for “operations to be financed”. It would be helpful for s. 39 to be clarified so that it is clear that there is not intended that there is any restriction on the grant of credit for consumption purposes (which is probably the intent).</p>
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Recommendations	<p>Consideration should be given to introducing requirements to ensure product suitability for all banking products. In particular, it is considered that there should be training and qualification requirements for staff or third party agents who advise on banking products and services (or indeed other products and services distributed by banks such as insurance or investment products), as well as requirements to ensure that sufficient information about the customer's needs is gathered so as to ensure that appropriate products and services are provided.</p> <p>The current regime requiring responsible lending practices should be reviewed with a view to introducing provisions which protect a consumer from the consequences of irresponsible lending and to ensuring consistency across different types of credit. A court might, for example, be given the right to adjust the amounts payable under the contract or order the discharge of a mortgage or make other changes to the contract terms. The new provisions should apply consistently to different credit products and to an increase in the amount of credit, as well as a new credit facility.</p>
Good Practice B.3	<p><i>Cooling-off Period</i></p> <ul style="list-style-type: none"> a. For financial products or services with a long-term savings component, a bank should provide the consumer a cooling-off period of a reasonable number of days (at least 3-5 business days) immediately following the signing of any agreement between the bank and the consumer. b. On his or her written notice to the bank during the cooling-off period, the consumer should be permitted to cancel or treat the agreement as null and void without penalty to the consumer of any kind.
Description	There is no requirement to this effect applicable to credit and debit banking products.
Recommendation	It is recommended that consideration be given to the introduction of a provision of the type proposed by this Good Practice. It is, however, recognized that there may be a need for some qualification to an automatic right of cooling off. For example, there could be a right to retain reasonable administrative fees relating to the cancellation of the contract or for the application for the facility. Further, it may be that the right should not apply where there has been a drawdown of a credit facility and a bank should be able to recover any loss arising from an early withdrawal of a fixed rate term deposit which loss arises because of a difference in interest rates. This would be in addition to any reasonable administrative fees associated with closure of the term deposit.

Good Practice B.4	<p><i>Bundling and Tying Clauses</i></p> <p>a. As much as possible, banks should avoid bundling services and products and the use of tying clauses in contracts that restrict the choice of consumers.</p> <p>b. In particular, whenever a borrower is obliged by a bank to purchase any product, including an insurance policy, as a pre-condition for receiving a loan from the bank, the borrower should be free to choose the provider of the product and this information should be made known to the borrower.</p>
Description	<p>There are specific (and quite onerous) provisions in the MORB dealing with cross-selling. However these provisions appear to be primarily focused on protecting the bank, rather than on the consumer protection issues covered by this Good Practice.</p> <p><i>Paragraph (a)</i></p> <p>Banks in the Philippines do engage in the cross selling of insurance products and may require mortgaged property insurance for secured loans. This may include life and general insurance products. It is understood that commissions are not always separately disclosed.</p> <p><i>Paragraph (b)</i></p> <p>There are various restrictions on cross – selling but they do not relate to the issues covered by this Good Practice. For example:</p> <ul style="list-style-type: none"> • A bank is prohibited from tele-marketing credit cards and insurance products and cross-selling except as permitted by the Monetary Board⁷. Further, there are strict requirements for universal and commercial banks as to the information that a bank must provide to BSP when seeking approval to cross-sell products. This information primarily relates to compliance with prudential requirements⁸; • Universal and commercial banks must make a clear distinction between bank products and those of its allied undertakings (such as an insurance company) so as to avoid any misunderstanding as to whether the third party product is protected by PDIC⁹; and • There are also requirements relating to the disclosure of insurance premiums payable in connection with loans and credit cards (but not other types of revolving credit products). However, there does not appear to be a requirement to disclose commissions.¹⁰ <p>It is also clear that insurance premiums can be financed.¹¹</p> <p>There is a specific requirement relating to the minimum required insurance over secured property.¹²</p>

⁷ MORB X162.11 and X162.12

⁸ MORB S. 1172.2-4

⁹ MORB S. 1172.1 and 1172.5

¹⁰ MORB X307.1 (e) and X320.3

¹¹ MORB X307.1(e)

¹² MORB X311.3

Recommendation	Subject to limited exceptions, it is recommended that a clear prohibition be introduced on insurance forcing practices, coupled with disclosure and rebate provisions. Such a prohibition should apply to a requirement to acquire an insurance policy from a particular insurer and to a requirement to pay for such service, in either case as a condition of providing a banking service (such as a loan). Further, where there is a tied insurance contract, banks should be required to give a proportionate refund of the applicable premium if the consumer pays out a loan early and to disclose separately all applicable commissions and premiums. The exceptions might relate to insurance over mortgaged property, mortgage indemnity insurance and insurance which is required by law (such as third party motor vehicle insurance).
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Good Practice B.5	<i>Preservation of Rights</i> 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: <ul style="list-style-type: none"> (i) any duty to act with skill, care and diligence toward the consumer in connection with the provision by the bank of any financial service or product; or (ii) any liability arising from the bank's failure to exercise its duty to act with skill, care and diligence in the provision of any financial service or product to the consumer.
Description	Although the mission team saw some examples of terms and conditions which purport to waive statutory rights, it is not clear whether this is a widespread practice.
Recommendation	It should be clear that any purported waiver of statutory rights given to a consumer is of no effect.

Good Practice B.6	<i>Regulatory Status Disclosure</i> 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	Although the MORB contains provisions concerning advertising by banks, the mission team was not able to identify a specific requirement of the type described in this Good Practice. ¹³
Recommendation	It is recommended that a requirement of the type described in this Good Practice be introduced.

¹³ MORB X104.1

Good Practice B.7	<p>Terms and Conditions</p> <p>a. Before a consumer opens a deposit, current (checking) or loan account at a bank, the bank should make available to the consumer a written copy of its general terms and conditions, as well as all terms and conditions that apply to the account to be opened. Collectively, these Terms and Conditions should include:</p> <ul style="list-style-type: none"> (i) disclosure of details of the bank's general charges; (ii) a summary of the bank's complaints procedures; (iii) a statement regarding the existence of the office of banking ombudsman or equivalent institution and basic information relating to its process and procedures; (iv) information about any compensation scheme that the bank is a member of; (v) an outline of the action and remedies which the bank may take in the event of a default by the consumer; (vi) the principles-based code of conduct, if any, referred to in A.2 above; (vii) information on the methods of computing interest rates paid by or charged to the consumer, any relevant non-interest charges or fees related to the product offered to the consumer; (viii) any service charges to be paid by the consumer, restrictions, if any, on account transfers by the consumer, and the procedures for closing an account; and (ix) clear rules on the reporting procedures that the consumer should follow in the case of unauthorized transactions in general, and stolen cards in particular, as well as the bank's liability in such cases facilitates the reading of every word. <p>b. The Terms and Conditions should be written in plain language and in a font size and spacing that facilitates the reader's comprehension.</p>
Description	<p>There is no requirement for disclosure of all terms and conditions although there are detailed provisions concerning disclosure of specified information and a requirement for certain credit card disclosures to be in 12 point font.</p> <p>Paragraph (a)</p> <p>There are general disclosure requirements applying under the Consumer Act as well as specific provisions which apply to regulated banks.</p> <p>The general provisions applying under the Consumer Act in relation to loans not being open-ended credit and not being part of a credit sale transactions are requirements to disclose:</p> <p><i>"a) the amount of credit of which the debtor will have the actual use, or which is or will be paid to him or for his account or to another person on his behalf;</i></p> <p><i>b) all charges, individually, itemized, which are included in the amount of credit extended but which are included in the amount of credit extended but which are not part of the finance charge;</i></p> <p><i>c) the total amount to be financed or the sum of the amounts referred to in paragraphs (a) and (b);</i></p> <p><i>d) the finance charge expressed in terms of pesos and centavos;</i></p> <p><i>e) the effective interest rate;</i></p>

	<p><i>f) the percentage that the finance charge bears to the total amount to be financed.”¹⁴</i></p> <p>Similar provisions apply in relation to a loan which is part of a credit sale and in relation to open-ended credit plans (Articles 140 and 141). There are, however, some variations to take account of the nature of the facility. For example, for credit sales there is a requirement to disclose the cash price or delivered price of the property or service to be acquired and the amount of any down payment.¹⁵ For open-ended credit contracts there are requirements to disclose when a finance charge will be payable and how the finance charge is calculated.¹⁶</p> <p>Following amendments to the Truth in Lending Act requirements provided for by BSP Circular 730, the required items of information to be disclosed to specified borrowers by regulated banks in relation to loan accounts are as follows (emphasis added):</p> <p>“X307.2 Information to be disclosed. As a general rule, loan terms shall be disclosed to all types of borrower. For small business/retail/consumer credit the following are the minimum information to be disclosed (sample form in Appendix 19):</p> <ul style="list-style-type: none"> <i>a. The total amount to be financed;</i> <i>b. The finance charges expressed in terms of pesos and centavos;</i> <i>c. The net proceeds of the loan; and</i> <i>d. The percentage that the finance charge bears to the total amount to be financed expressed as a simple annual rate or an effective annual interest rate (EIR) as described in item h of Subsection x307.1. EIR may also be quoted as a monthly rate in parallel with the quotation of the contractual rate.</i> <p><i>Banks are required to furnish to each borrower a copy of the disclosure statement, prior to the consummation of the transaction.”</i></p> <p>The terms “finance charge”, “simple annual rate” and “effective interest rate” are defined in Circular 730 as follows:</p> <ul style="list-style-type: none"> <i>“g. Finance charge includes interest, fees, service charges, discounts, and such other charges incident to the extension of credit.</i> <i>h. Simple annual rate is the uniform percentage which represents the ratio between the finance charge and the amount to be financed under the assumption that the loan is payable in one year with single payment upon maturity and there are no upfront deductions to principal.</i> <p><i>For loans with terms different from the above assumptions, the effective annual interest (EIR) rate shall be calculated and disclosed to the borrower as the relevant true cost of the loan comparable to the concept of simple annual rate.</i></p> <p><i>For loans with contractual interest rates stated on monthly basis, the effective interest rate may be expressed as a monthly rate.</i></p>
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¹⁴ Article 142

¹⁵ Article 140

¹⁶ Article 141

	<p><i>In accordance with the Philippine Accounting standards (PAS) definition, effective interest rate is the rate that exactly discounts estimated future cash flows through the life of the loan to the net amount of loan proceeds. For consistency, methodology and standards for discounted cash flow models shall be prescribed to be used for the purpose.”</i></p> <p>There are also specific disclosure requirement for credit cards issued by banks or their affiliates or subsidiaries. In summary, the requirements are for disclosure of:</p> <ul style="list-style-type: none"> • Non-finance charges i.e. those not related to the provision of credit (such as insurance premiums); • The percentage that interest bears to the total amount to be financed expressed as a simple monthly or annual rate, as the case may be, on the outstanding balance of the obligation; • The effective interest rate per annum; • Information about payments due in relation to instalment loans (but it is not clear why this is relevant to credit cards); • The conditions for imposing interest (such as an interest free period); • Information about how default rates and delinquency charges are calculated; • Information about interest rates and how each rate applies; • Information about fees; and <p>Information about foreign currency transactions.¹⁷</p> <p>The following disclosure requirements must be met in relation to deposits:</p> <p><i>“Sec. X243 Disclosure of Effective Rates of Interest. Banks are required to disclose to depositors the following information on interest computation and payments:</i></p> <ol style="list-style-type: none"> <i>Type/kind of deposit;</i> <i>Nominal rate of interest and period covered;</i> <i>Manner of interest payment, i.e., whether credited in advance or otherwise;</i> <i>Basis of interest payment, i.e., whether based on average daily balance compounded quarterly or otherwise;</i> <i>Effective rate of interest expressed as a simple annual rate, on the basis of the information above given and indicating the formula used to arrive at the effective rate of interest; and Illustration of basis of computing interest on a hypothetical deposit account.</i> <p><i>Copies of the abovementioned information shall be made available to each and every depositor by attaching these copies to savings deposit passbooks and time deposit certificates. Posters disclosing the above information and aggregate deposit rates shall also be displayed conspicuously within the bank premises.”</i></p>
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¹⁷ MORB X320.4

	<p>The abovementioned requirements, while very useful, are limited in that they require disclosure of specified information but do not require disclosure of all terms and conditions. Further, information about the following subjects referred to in paragraph (a) of this Good Practice is not required (in summary):</p> <ul style="list-style-type: none"> • So far as deposits are concerned – bank charges; • Complaints procedures (including FCAG); • Information about PDIC (but see Good Practice F.1 below); • Action by the bank on default; • Action in the event of unauthorized transactions; or • The Banking Code. <p>Paragraph (b)</p> <p>There is also not an overall requirement for clear language or minimum font sizes. This is clearly a concern as the mission team reviewed terms and conditions for some products which were virtually unreadable because the font size was so small.</p>
Recommendation	<p>Ideally, there would be a comprehensive, consistent contractual disclosure regime applied to banking services which goes beyond the current Truth in Lending regime and the disclosure rules for deposit products credit cards. The new rules should require disclosure of all applicable terms and conditions, as well as disclosure of the more important information. For credit products this should include requirements for disclosure of, at a minimum: the amount borrowed, the applicable interest rate and total interest charges, details of all fees and charges, whether interest rates are fixed or variable, the method of calculating interest charges (flat or on a declining basis); the amount and frequency of repayments, of any security given and the applicable default rate of interest; any applicable insurance premiums and commissions and a requirement to give reasonable notice of changes (say 20 days). For deposit products the minimum information should include the applicable interest rate, details of all fees and charges, whether interest rates are fixed or variable, the method of calculating interest charges (flat or on a declining basis); and any minimum balance requirement. Similarly, there should be a requirement for pre –contractual disclosure of all terms and applicable charges relevant to electronic banking and e-banking channels.</p> <p>This is the minimum information that should be given to customers if they are to be able to make an informed decision about the service and to be fully aware of their rights and responsibilities.</p> <p>Contract documents could also be made comprehensible through summaries of key information, clear language and format and explanations from bank staff in appropriate cases. This might be achieved by implementing the following specific recommendations:</p> <ul style="list-style-type: none"> • A Key Facts Statement should be provided on the first page of every contract summarizing the key terms. See Good Practice B.8 for further details; • Contracts should be both intelligible and legible and in a minimum of 12 point font; • Contract documents should be explained to customers who would not otherwise understand them; and • Customers should be given time to consider documents before the contract is signed. <p>Recommendations in relation to electronic banking are in Good Practice C.7.</p>

Good Practice B.8	<p>Key Facts Statement</p> <ol style="list-style-type: none"> A bank should have a summary statement, such as 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. The summary 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. 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 summary Statement from the bank. Summary 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	<p>The Truth in Lending Act makes provision for a simplified form of disclosure of certain essential loan terms. However, it is not clear that the sample format provided is mandatory, there are certain key items of information which are missing (such as the total amount to be repaid including the principal, the interest charges and all mandatory fees and charges) and ideally there would be specific form and content requirements. Further, there is no requirement for a Key Facts Statement for non-loan banking products.</p> <p>Paragraphs (a) and (b)</p> <p>See Good Practice B.7 for a description of the relevant law.</p> <p>There are key items of information which are not included in the Appendix 19 Statement. They include:</p> <ul style="list-style-type: none"> the total amount to be repaid including the principal, the interest charges and all mandatory fees and charges (this information can be useful for comparison purposes); the term of the loan; the total amount of repayments; and information about any security which must be provided (for example, in the case of a housing loan secured by real estate). <p>Other concerns in relation to the Circular 730 requirements are that:</p> <ul style="list-style-type: none"> The above “missing” information is not in any event part of the mandatory information which must be provided under the terms of Circular 730; The Appendix 19 Statement seems to be provided as a sample, rather than a mandatory form of disclosure and there is no requirement for a minimum font size (say 12 point font); and <p>Circular 730 only applies to loan contracts. It does not, for example, apply to credit cards or deposit products.</p>

Recommendation	<p>It is recommended that consideration be given to amending the requirements of Circular 730 so that it is clear that the use of the prescribed form is mandatory, it is required to be in a minimum of a 12 point font and so that the mandated information required to be disclosed includes all key terms of a loan contract. In particular, it is considered that the required information should also include the total amount to be repaid, the term of the loan, the total amount of repayments and information about any security which must be provided (for example, in the case of a housing loan secured by real estate).</p> <p>It is also recommended that consideration be given to new requirements to provide a “Key Facts Statement” for non – loan banking products. Examples are revolving credit products (such as credit cards and overdrafts) and deposit products.</p>
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Good Practice B.9	<p>Advertising and Sales Materials</p> <ol style="list-style-type: none"> Banks should ensure that their advertising and sales materials and procedures do not mislead customers. All advertising and sales materials of banks should be easily readable and understandable by the general public. 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	<p>Whilst there are general requirements relating to advertising as well as specific requirements relating to credit advertising which go some way to meeting the issues covered by this Good Practice, it is important that they are enforced.</p> <p>Paragraph (a)</p> <p>There are various provisions in the MORB specifically relating to regulated banks which appear aimed at ensuring that advertising is not misleading and deceptive (emphasis added):</p> <ul style="list-style-type: none"> There is a general provision relating to advertisements which might mislead depositors and to false claims etc, and concerning banking services more generally: “c. No bank shall place or cause to be placed any advertisement tending to mislead a depositor into believing that he will get more in benefits than what the bank is legally authorized to give. No bank advertisement shall contain any false claim or exaggerated representation as to its liquidity, solvency, resources, deposits or banking services.”¹⁸; There is a prohibition on advertisements which “degrade, deprecate or otherwise prejudice other banking and financial institutions.”¹⁹; and There is also a provision requiring “proper advertising disclosures” concerning e-banking services²⁰.

¹⁸ MORB X104 (c)

¹⁹ MORB X104 (a)

²⁰ MORB Appendix 70b, para (2) (d)

	<p>The following provisions of the Consumer Act are also relevant in this context:</p> <ul style="list-style-type: none"> • There is a prohibition on false, misleading and deceptive advertising (Article 110); • There are restrictions on misleading price comparisons (Article 111); • There is a prohibition on advertisements making claims about amounts of credit payments or installments or down payments unless the credit provider customarily arranges the relevant payment, installment or amount (Article 113); and • Advertisements about open-ended credit plans (e.g. for credit cards or cheques) must disclose “<i>the rate of interest and other material features of the plan...</i>” (Article 114); and <p>There is a prohibition on misrepresentations and false impressions in advertisements relating to derivatives²¹.</p> <p>It is also to be noted that, for the purposes of the AML Law, “<i>False, deceptive or misleading advertisements</i>” are treated as unlawful activities.²² This in turn suggests that they are intended to be prohibited at general law.²³ The position could, however, be clearer.</p> <p>Paragraph (b)</p> <p>There is not a specific requirement to this effect.</p> <p>Paragraph (c)</p> <p>MORB X104(g) makes it clear that “<i>Responsibility for compliance with the above rules and regulations rests with the bank officers or directors who caused the approval or placement of such advertisement.</i>”</p>
Recommendation	<p>It would provide clarity in the long term for there to be a general prohibition on misleading and deceptive conduct and false and misleading statements in relation to the sale, distribution and management of banking products and services (as well as other financial products and services). In any event, as mentioned in relation to Good Practice A.1, it is important that the application of the Consumer Act to banks be clarified and, in the context of this Good Practice, it is especially important that the provisions of the Consumer Act relating to advertising are enforced so far as banks are concerned (as well as those in the MORB).</p>

²¹ MORB Appendix 26, Section III

²² MORB, Appendix 52, Article 3i, para. 82

²³ MORB, Appendix 52, Article 3i, para. 79

Good Practice B.10	<p><i>Third-Party Guarantees</i></p> <p>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:</p> <ul style="list-style-type: none"> (i) the extent of the guarantee; (ii) the name and contact details of the party providing the guarantee; and <p>in the event the party providing the guarantee is in any way connected to the bank, the precise nature of that relationship.</p>
Description	<p>There is not a specific requirement to this effect in the Philippines, although there are general requirements relating to advertising and, of most relevance, a requirement that advertisements relating to deposits and banking services generally. Of particular relevance in MORB 104 (c), which provides that:</p> <p><i>“No bank shall place or cause to be placed any advertisement tending to mislead a depositor into believing that he will get more in benefits than what the bank is legally authorized to give. No bank advertisement shall contain any false claim or exaggerated representation as to its liquidity, solvency, resources, deposits or banking services.”</i></p> <p>It is also to be noted that, for the purposes of the AML Law, “False representations in advertisements as the existence of a warranty or guarantee” are treated as unlawful activities. This in turn suggests that they are intended to be prohibited at general law.²⁴ The position could, however, be clearer.</p>
Recommendation	<p>If there is a practice in the Philippines of referring to guarantees of applicable interest rates (for both debit and credit facilities) then it would be helpful to also require disclosure of the information referred to in Good Practice B.10.</p>

²⁴MORB, Appendix 52, Article 3i, para. 79

Good Practice B.11	<p>Professional Competence</p> <p>a. In order to avoid any misrepresentation of fact to a consumer, any bank staff member who deals directly with consumers, or who prepares bank advertisements (or other materials of the bank for external distribution), or who markets any service or product of the bank should be familiar with the legislative, regulatory and code of conduct guidance requirements relevant to his or her work, as well as with the details of any product or service of the bank which he or she sells or promotes.</p> <p>b. 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.</p>
Description	<p>There are no general requirements of the type described relating to professional competence of bank staff and no obligation to collaborate as envisaged by this Good Practice.</p> <p>Paragraph (a)</p> <p>The mission team was told by the banks we met with that there are training programs conducted on a regular basis in relation to the products and services that the bank provides and, to at least some extent, in relation to regulatory requirements. However, there are limited requirements currently in relation to the matters mentioned in this Good Practice, which will become more relevant if the recommendations made by the mission team are accepted. Then it will become even more important that staff understand their duties and obligations, and customer rights, under relevant laws.</p> <p>The limited requirements that currently exist relate to training requirements for:</p> <ul style="list-style-type: none"> • Directors, officers and other personnel of RBs/Coop Banks as required by BSP; • Directors and officers of a bank;²⁵ • Those officers engaged in investment banking under the terms of a licence for investment banking;²⁶ • Officers and staff responsible for microcredit operations;²⁷ • Trust officers;²⁸ • UIT fund marketing personnel²⁹; and • Employees engaged in anti-money laundering programs.³⁰ <p>Paragraph (b)</p> <p>As far as the mission team is aware, no such collaboration exists.</p>

²⁵ MORB s. 3147

²⁶ Appendix 3

²⁷ MORB X268.3

²⁸ MORB S. 2404 (f)

²⁹ MORB X410.8

³⁰ MORB X801.3

Recommendation	<p>It is considered that, at a minimum, it should be a banking license condition that the bank in question must ensure that their staff, third party agents and authorized representatives are adequately trained and have the skills, experience and professional qualifications necessary to ensure that they can competently carry out their functions. This would include, for example, a requirement that those staff and others who provide financial product advice have all the competencies and qualifications required to ensure that they perform the services that they are authorized to provide to an acceptable standard.</p> <p>Further, as mentioned in Good Practice B.3, consideration should be given to introducing express requirements to ensure product suitability. In particular, it is considered that there should be training and qualification requirements for staff or third party agents who advise on banking products and services, as well as requirements to ensure that sufficient information about the customer's needs is gathered so as to ensure that appropriate products and services are provided.</p>
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SECTION C.	CUSTOMER ACCOUNT HANDLING AND MAINTENANCE
Good Practice C.1	<p>Statements</p> <ol style="list-style-type: none"> 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. 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. 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. 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. 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. When a customer signs up for paperless statements, such statements should be in an easy-to-read and readily understandable format.

Description	<p>Other than in relation to checks, the current regulatory framework does not require banks to give customers regular statements of account or up-dated account information on request, although it is understood that, as a matter of practice, some banks make such statements available. This information would enable customers to check for the accuracy of balances and debits and credits and generally facilitate management of their accounts. This is particularly important for long term and revolving credit facilities (such as an overdraft or a credit card contract) and variable rate contracts.</p> <p>Check account statements must be provided monthly but there are no requirements as to the information that must be in such statements. The MORB simply requires:</p> <p><i>“In case of checking accounts, the banks shall ensure that the monthly statement of accounts reach the depositors.”³¹</i></p> <p>The Banking Code contemplates that statements may be provided but acknowledges that <i>“The availability of the statements of accounts and the frequency of its publication and release depend on the feature of the financial product or service”³²</i></p>
Recommendation	<p>At a minimum, there should be a requirement for regular periodic statements of account to be provided to the holders of both debit and credit products. We suggest that the relevant period be at least monthly in the case of a line of credit facility (such as a credit card or an overdraft) and otherwise six monthly (such as for a home loan).</p> <p>Such statements should provide details of the following matters in the applicable period:</p> <ul style="list-style-type: none"> • The opening and closing balances; • All debit and credit transactions in the applicable period (including details of any saction); • Any amount currently payable and the date it became due; • Any amounts currently overdue and when each such amount became due; • Separate itemization of any fees and charges debited in the period; • Clear specification of any interest debited or credited in the relevant period; • The applicable interest rate in the relevant period; and • The amount of any interest charge or payment debited or credited to the account. <p>Statements could be required to be given electronically or in person as well as by post. If these avenues are not reasonably practicable, statements should at least be available to the customer on request.</p> <p>Exceptions to the new requirement should be allowed for as appropriate. For example, there might be exceptions for fixed rate contracts, for loans which have been written off and for facilities where there have not been any debits or credits in the relevant period.</p> <p>We also recommend that customers be given advance notice if an account is to be closed and if moneys are to be treated as unclaimed money.</p>

³¹ MORB X185.12(c)

³² MORB S.B 1.d

Good Practice C.2	<p>Notification of Changes in Interest Rates and Non-interest Charges</p> <ol style="list-style-type: none"> a. A customer of a bank should be notified in writing by the bank of any change in: <ol style="list-style-type: none"> (i) The interest rate to be paid or charged on any account of the customer as soon as possible; and (ii) A non-interest charge on any account of the customer a reasonable period in advance of the effective date of the change. b. If the revised terms are not acceptable to the customer, he or she should have the right to exit the contract without penalty, provided such right is exercised within a reasonable period. c. The bank should inform the customer of the foregoing right whenever a notice of change under paragraph a. is made by the bank.
	<p>Description</p> <p>There does not appear to be an obligation to inform a customer directly of a change to interest rates or fees and charges. However, it is clear that a customer can pre-pay a loan early for any reason (even a fixed rate loan) and that there is no practicable impediment to closing a deposit account.</p> <p>Paragraph (a)</p> <p>Although banks may have a practice of notifying customers about changes to interest rates and fees and charges, either directly or through their website or by way of notices in branches, there does not seem to be a legal requirement to do so. However the Banking Code contemplates that there should be at least a practice of giving such notice. Paragraph 1(a) of section B provides in this regard:</p> <p><i>“Established practice requires your bank to advise you through various ways, of changes in the features and/or cost of its regular products and services, prior to their effective date, or as may be required by regulation.</i></p> <p><i>Your bank may state in its notices/advisories the reason for the changes in product/service features and/or cost.</i></p> <p><i>Your bank will post the information on changes in its product features and/or prices in any or combination of the following:</i></p> <ul style="list-style-type: none"> • Website; • ATM screens; • Statement-of-account notice; • Statement-of-account insert; • Posters in its offices including branches; • Phone banking; • E-mail.”

	<p>Paragraph (b)</p> <p>There do not appear to be impediments to terminating a banking contract early, even a fixed rate loan contract. On the contrary, there is a Consumer Act provision to the effect that all credit contracts can be prepaid early, without penalty.³³ The General Banking Law also provides that the credit can be pre-paid in whole or in part subject to “<i>such reasonable terms and conditions as may be agreed</i>”.³⁴ There is also apparently no cost for closing a deposit account.</p> <p>Paragraph (c)</p> <p>It does not appear to be the case that any such warning is given.</p>
Recommendation	<p>It is recommended, at a minimum, that there be a legal requirement for a customer be given notice of changes in interest charges, repayments and fees and charges as follows:</p> <ul style="list-style-type: none"> • Notice of a change in interest rates should be given before the change takes effect, either personally or by newspaper notice. In the latter case, the notice should be also be given in the next statement of account. • There should be at least 20 days advance, personalized notice of a change in the amount of a repayment (but if it is a reduction, it could be notified in the next statement of account); and <p>20 days advance, personalised notice of a change in the amount of a fee, or a new fee should also be given.</p>

³³ Article 119

³⁴ S.45

Good Practice C.3	<p>Customer Records</p> <p>a. A bank should maintain up-to-date records in respect of each customer of the bank that contain the following:</p> <ul style="list-style-type: none"> (i) a copy of all documents required to identify the customer and provide the customer's profile; (ii) the customer's address, telephone number and all other customer contact details; (iii) any information or document in connection with the customer that has been prepared in compliance with any statute, regulation or code of conduct; (iv) details of all products and services provided by the bank to the customer; (v) a copy of correspondence from the customer to the bank and vice-versa and details of any other information provided to the customer in relation to any product or service offered or provided to the customer; (vi) all documents and applications of the bank completed, signed and submitted to the bank by the customer; (vii) a copy of all original documents submitted by the customer in support of an application by the customer for the provision of a product or service by the bank; and (viii) any other relevant information concerning the customer. <p>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.</p>
Description	<p>Although there are requirements concerning the keeping of records about credit and other documentation files, complaints, electronic funds transfer transactions, there are no overarching requirements relating to the keeping of customer records in general.</p> <p>Paragraph (a)</p> <p>Although customer records are likely to be kept in practice, there are no record keeping obligations of the general type contemplated in the legislation we have reviewed. There are, however, the following specific requirements:</p> <ul style="list-style-type: none"> • There are obligations on regulated banks relating to the keeping of minimum records for internal control purposes³⁵, where the focus seems very much to be on the keeping of accounting records;

³⁵ MORB X185

	<ul style="list-style-type: none"> Under the AML Act there are extensive record keeping obligations, which have been expanded by provisions in the MORB. In relation to evidence of a customer's identity and for transaction records, s.9(a) requires covered institutions to <i>"establish and record the true identity of its clients based on official documents."</i> s.9(b) also provides that <i>"All records of all transactions of covered institutions shall be maintained and safely stored for five (5) years from the dates of transactions. With respect to closed accounts, the records on customer identification, account files and business correspondence, shall be preserved and safely stored for at least five (5) years from the dates when they were closed."</i> Further, the MORB expressly provides requirements to keep records of identification documentation and transactions for 5 years from the relevant event.³⁶ Banks and their affiliate / subsidiary credit card companies are required to have written policies, procedures and internal control guidelines about various matters, including complaints.³⁷ Further, MORB s. 9.2.a in Appendix 52 makes clear that the required records include the full and true identity of the owners or holders of the accounts involved in the covered transactions and all other customer identification documents. Rural and cooperative banks have extensive record keeping requirements set out in MORB Appendix 50, including in relation to keeping records of complaints and court proceedings (which must be kept permanently) and a "catch all" requirement to keep records of all transactions (including loans and investments, disposal of assets, deposit liabilities and borrowings, expenditures and income, disbursements and disposal of assets. These records have to be kept for 10 years from the date when the account or the matter was closed /disposed/settled. <p>Paragraph (b)</p> <p>Customers do not appear to have a right of access to their customer records, other than as provided for by the Data Privacy Act.</p>
Recommendation	<p>It is recommended that consideration be given to expanding the record keeping obligations of a bank so as to explicitly require retention of the following customer records (as well as those currently provided for as described above):</p> <ul style="list-style-type: none"> Contact details of the customer and of any security provider; Details of all products and services provided to the customer; All account information relevant to each such service (i.e. not just customer transaction information – details of all debits and credits, interest rates and fees and charges should also be retained); Full details of any collateral provided for a loan; All communications related to the account; and A copy of any disclosures made to the customer or any security provider (including a copy of the terms and conditions of the account). <p>Consideration should also be given to requiring records to be kept for a minimum period after termination of the business relationship with the customer (such as 5 years).</p> <p>It is also recommended that customers be given a right of access to their personal information held by a bank.</p>

³⁶ MORB Appendix 52, rule 9.2

³⁷ MORB X320.2 (p)

Good Practice C.4	<p><i>Paper and Electronic Checks</i></p> <ul style="list-style-type: none"> a. The law and code of conduct should provide for clear rules on the issuance and clearing of paper checks that include, among other things, rules on: <ul style="list-style-type: none"> (i) checks drawn on an account that has insufficient funds; (ii) the consequences of issuing a check without sufficient funds; (iii) the duration within which funds of a cleared check should be credited into the customer's account; (iv) the procedures on countermanding or stopping payment on a check by a customer; (v) charges by a bank on the issuance and clearance of checks; (vi) liability of the parties in the case of check fraud; and (vii) error resolution. b. A customer should be told of the consequences of issuing a paper check without sufficient funds at the time the customer opens a checking account. c. A bank should provide the customer with clear, easily accessible and understandable information regarding electronic checks, as well the cost of using them. d. In respect of electronic or credit card checks , a bank should inform each customer in particular: <ul style="list-style-type: none"> (i) how the use of a credit card check differs from the use of a credit card; (ii) of the interest rate that applies and whether this differs from the rate charged for credit card purchases; (iii) when interest is charged and whether there is an interest free period, and if so, for how long; (iv) whether additional fees or charges apply and, if so, on what basis and to what extent; and whether the protection afforded to the customer making a purchase using a credit card check differs from that afforded when using a credit card and, if so, the specific differences. e. Credit card checks should not be sent to a consumer without the consumer's prior written consent. f. There should be clear rules on procedures for dealing with authentication, error resolution and cases of fraud.
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Description	<p>The New Central Bank Act has provisions concerning the issue and legal effect of demand deposits in the form of checks³⁸, but does not specifically address the issues covered by this Good Practice. Nor does the Banking Code, although it does contain advice on security issues associated with checks.³⁹</p> <p>Paragraph (a)</p> <p>There are limited rules on the issuance and clearing of checks, but there is not a strong focus on providing for the consumer protection concerns inherent in this Good Practice. For example:</p> <ul style="list-style-type: none"> • There are stringent penalties for issuing a check which is later dishonored, but there is no obligation to warn the customer of those consequences;⁴⁰ and • MORB X203 has detailed rules concerning the dishonour and return of checks but again there is no obligation to advise customers of what these rules are. <p>Paragraph (b)</p> <p>There is no such obligation to advise a customer.</p> <p>Paragraphs (c),(d) and (e)</p> <p>Electronic or credit card checks do not seem to be available in the Philippines.</p> <p>Paragraph (f)</p> <p>There do not seem to be any rules dealing with the issue covered by this Good Practice.</p>
Recommendations	<p>Users of check accounts should have explained to them (in plain language) the implications of issuing checks and their liability as drawers or endorsers of checks. The issues that might be covered could include, at a minimum:</p> <ul style="list-style-type: none"> • the time generally taken for clearing a check and how a cheque may be specially cleared; • the effect of crossing a check, the meaning of “<i>not negotiable</i>” and “<i>account payee only</i>” and the significance of deleting “<i>or bearer</i>” when any of these expressions appear on a check; • how and when a check may be stopped; • how a cheque may be made out so as to reduce the risk of unauthorised alteration; and • the consequences of the dishonour of a check for any reason (for example, because of insufficient funds or because it is post-dated or stale). <p>Ideally BSP would work with the commercial banks to prepare a simply expressed brochure which explains these matters.</p> <p>Consideration should also be given to implementing the above Good Practices in relation to credit card checks, if their use becomes common in the market. However this would not be a priority at this stage given the very limited availability of credit card cheques.</p> <p>If the recommendations in Good Practice A.2 were implemented, this would also be helpful for the purposes of this Good Practice.</p>

³⁸ New Central Bank Act ss. 58 - 60

³⁹ Paragraph 3, section C

⁴⁰ Batas PambansaBlg. 22: An Act Penalizing the Making or Drawing and Issuance of a Check Without Sufficient Funds or Credit, 1979

Good Practice C.5	<p>Credit Cards</p> <ul style="list-style-type: none"> a. There should be legal rules on the issuance of credit cards and related customer disclosure requirements. b. Banks, as credit card issuers, should ensure that personalized disclosure requirements are made in all credit card offers, including the fees and charges (including finance charges), credit limit, penalty interest rates and method of calculating the minimum monthly payment. c. Banks should not be permitted to impose charges or fees on pre-approved credit cards that have not been accepted by the customer. d. Consumers should be given personalized minimum payment warnings on each monthly statement and the total interest costs that will accrue if the cardholder makes only the requested minimum payment. e. Among other things, the legal rules should also: <ul style="list-style-type: none"> (i) restrict or impose conditions on the issuance and marketing of credit cards to young adults who have no independent means of income; (ii) require reasonable notice of changes in fees and interest rates increase; (iii) prevent the application of new higher penalty interest rates to the entire existing balance, including past purchases made at a lower interest rate; (iv) limit fees that can be imposed, such as those charged when consumers exceed their credit limits; (v) prohibit a practice called —double-cycle billing— by which card issuers charge interest over two billing cycles rather than one; (vi) prevent credit card issuers from allocating monthly payments in ways that maximize interest charges to consumers; and (vii) limit up-front fees charged on sub-prime credit cards issued to individuals with bad credit. f. There should be clear rules on error resolution, reporting of unauthorized transactions and of stolen cards, with the ensuing liability of the customer being made clear to the customer prior to his or her acceptance of the credit card. g. Banks and issuers should conduct consumer awareness programs on the misuse of credit cards, credit card over- indebtedness and prevention of fraud.
Description	<p>There are extensive rules relating to the issuance of credit cards by banks and their affiliates / subsidiaries which cover many aspects of this Good Practice.</p> <p>Paragraph (a)</p> <p>The MORB contains detailed rules on the risk management systems for credit card issuers and on the procedures that issuers must adopt to ensure that applicants possess good credit standing and are financially capable of fulfilling their credit commitments. Further, MORB X320.4 contains rules on disclosure requirements for credit cards. However, the disclosure rules are subject to the limitations described in paragraph (b) below.</p>

	<p>Paragraph (b)</p> <p>The MORB contains specific disclosure requirement for credit cards issued by banks or their affiliates or subsidiaries. In summary, the requirements are for disclosure of:</p> <ul style="list-style-type: none"> • Non-finance charges i.e. those not related to the provision of credit (such as insurance premiums); • The percentage that interest bears to the total amount to be financed, expressed as a simple monthly or annual rate, as the case may be, on the outstanding balance of the obligation; • The effective interest rate per annum; • Information about payments due in relation to instalment loans (but it is not clear why this is relevant to credit cards); • The conditions for imposing interest (such as an interest free period); • Information about how default rates and delinquency charges are calculated; • Information about interest rates and how each rate applies; • Information about fees; and • Information about foreign currency transactions.⁴¹ <p>The Consumer Act also contains disclosure requirements for an “open-ended credit contract” which would include credit cards. These requirements include:</p> <p><i>“a) The conditions under which a finance charge may be imposed, including the time period, if any within which any credit extended may be repaid without incurring a finance charge;</i></p> <p><i>b) The method of determining the balance upon which a finance charge may be imposed;</i></p> <p><i>c) the method of determining the amount of the finance charges, including any minimum of fixed amount imposed as a finance charge;</i></p> <p><i>d) where one or more periodic rates may be used to compute a finance charge, each such rate, the range of balances to which it is applicable, and the corresponding simple annual rate;</i></p> <p><i>e) the conditions under which the creditor may impose a security lien and a description of the goods to which such lien may attach.”⁴²</i></p> <p>The abovementioned requirements, while very useful, are limited in that they require disclosure of specified information but do not require disclosure of all terms and conditions. Further, there could usefully be a requirement to disclose information about the method of calculation of the minimum monthly payment as well as all applicable terms and conditions.</p>
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⁴¹ MORB X320.4

⁴² Consumer Act ss. 1(a) and 141

	<p>Paragraph (c)</p> <p>Banks are required to provide information to consumers about the terms and conditions associated with the usage of e-banking products such as credit cards, including in relation to fees and charges associated with the purchase, use or redemption of the product".⁴³ This Good Practice is also impliedly covered by the requirement to disclose information about charges before the charges are imposed.⁴⁴</p> <p>Paragraph (d)</p> <p>There is no requirement for minimum payment warnings to be included on credit cards.</p> <p>Paragraph (e)</p> <p>Although none of these Good Practices are explicitly covered, there are strict rules requiring an assessment of credit worthiness of an applicant for a credit card. These rules are contained in s. 40 of the General Banking Law and in MORB X320.3.</p> <p>Paragraph (f)</p> <p>Although there are not any rules precisely to the effect described in this Good Practice, the complaint resolution service provided by FCAG goes some way to meeting its requirements.</p> <p>Paragraph (g)</p> <p>The mission team is not aware of any such program being systematically conducted. On the contrary, it is understood that the take up of credit cards is very actively promoted. However, the Banking Code helpfully contains advice on security issues associated with credit cards, PINS and passwords.⁴⁵</p>
Recommendations	<p>As well as requiring disclosure of all terms and conditions, the disclosure regime which applies to credit cards should be expanded so that there is a specific requirement to disclose information about the method of calculation of the minimum monthly payment, and the amount (or percentage) of that payment. There should also be a requirement to give consumers at least annually a clear and prominent warning about the need to safeguard cards and related security devices (such as PINs).</p> <p>Further, as mentioned in relation to Good Practice C.1, there should be a requirement for regular periodic statements of account to be provided to the holders of credit card accounts. Such statements should be provided at least monthly in the case of a line of credit facility (such as a credit card or an overdraft) and should include the information specified in Good Practice C.1, as well as the warnings referred to in paragraph (d) above.</p> <p>Consideration should also be given to explicitly prohibiting sending customers' unsolicited credit cards and invitations to increase credit limits.</p> <p>Finally, it is proposed that, when the financial literacy diagnostic is conducted, it would be helpful to consider the extent to which consumer awareness programs might be introduced on the misuse of credit cards, credit card over-indebtedness and prevention of fraud.</p>

⁴³ MORB Appendix 70b

⁴⁴ MRON 320.4

⁴⁵ Paragraph 3, section C

Good Practice C.6	<p>Internet Banking and Mobile Phone Banking⁴⁶</p> <ul style="list-style-type: none"> a. The provision of internet banking and mobile phone banking (m-banking) should be supported by a sound legal and regulatory framework. b. Regulators should ensure that banks or financial service providers providing internet and m-banking have in place a security program that ensures: <ul style="list-style-type: none"> (i) data privacy, confidentiality and data integrity; (ii) authentication, identification of counterparties and access control; (iii) non-repudiation of transactions; (iv) a business continuity plan; and (v) the provision of sufficient notice when services are not available. c. Banks should also implement an oversight program to monitor third-party control conditions and performance, especially when agents are used for carrying out m-banking. d. A customer should be informed by the bank whether fees or charges apply for internet or m-banking and, if so, on what basis and how much. e. There should be clear rules on the procedures for error resolution and fraud. f. Authorities should encourage banks and service providers to undertake measures to increase consumer awareness regarding internet and m-banking transactions.
Description	<p>The Philippines has strong consumer protection rules relating to e-banking which address the substantive issues covered by this Good Practice.</p> <p>Paragraph (a)</p> <p>BSP has clear authority to regulate electronic transactions under s. 59 of the General Banking Act, which provides:</p> <p><i>‘The Bangko Sentral shall have full authority to regulate the use of electronic devices, such as computers, and processes for recording, storing and transmitting information or data in connection with the operations of a bank, quasi-banks or trust entity, including the delivery of services and products to customers by such entity.’</i></p>

⁴⁶“Internet banking” is defined as banking services that customers may access via the Internet. The access to the Internet could be through a computer, mobile phone (“mobile banking”), or any other suitable device. Payment services that are only initiated via the internet using a mobile phone (e.g. by a mobile banking application using an app on a smart phone) are not considered to be mobile payments; instead they are categorized as internet payments. This interpretation is consistent with the view of the Committee on Payment and Settlement Systems (CPSS) of the Bank for International Settlements (BIS), who is the relevant standard setting body on payment and settlement systems. However, for practical reasons and due to the importance of mobile money in the country, Good Practice C.6 is intended here as also covering mobile payments and, to some extent, e-money.

	<p>MORB X705 and Appendix 70d MORB sets out extensive consumer protection rules relating to "e-banking" (which term appears to cover internet banking and mobile banking). These rules deals with issues such as the need for BSP approval to e-banking services; oversight by the relevant bank's Board of Directors; compliance systems; risk management and internal controls (including in relation to system security and unauthorized transactions); complaint systems; and consumer awareness programs and disclosures.</p> <p>Paragraph (b)</p> <p>There are strong provisions in MORB 705 relating to security programs. Of particular relevance are the following paragraphs and the related Appendices 70a and 70b:</p> <p><i>"Banks should ensure that their information security measures and internal control related to e-banking are installed, regularly updated, monitored and is appropriate with the risks associated with their products and services."</i></p> <p><i>Appendices 70a and 70b provide for the minimum security measures that banks should employ in their ATM facilities and internet/mobile banking activities, respectively, to protect depositors and consumers from fraud, robbery and other-banking crimes.</i></p> <p><i>Banks should also take into account other relevant industry security standards and sound practices as appropriate, and keep up with the most current information security issues (e.g., security weaknesses of the wireless environment), by sourcing relevant information from well-known security resources and organizations"</i></p> <p>Appendices 70a and 70b contain detailed rules on security measures for ATMs and internet banking and mobile banking.</p> <p>Paragraph (c)</p> <p>There are detailed provisions in place relating to the outsourcing of bank functions. Outsourcing of information technology systems relevant to internet and mobile banking functions is governed by the provisions of MORB s. X162.2 and outsourcing of other banking functions by MORB X162.3. . Both banks and non-banks issuing electronic money are required to comply with the provisions of MORB s. 649.⁴⁷ Banks are also required to have "a comprehensive process for managing risks associated with increased complexity of and increasing reliance on outsourcing relationships and third-party dependencies to perform critical e-banking functions".⁴⁸</p> <p>MORB X705.2 also provides that "Whenever critical systems or processes are outsourced to third parties, management should ensure that the appropriate logging and monitoring procedures are in place and that suspected unauthorized activities are communicated to the bank in a timely manner."</p> <p>For completeness it is to be noted that banks are not allowed to outsource "inherent banking functions", which are defined as "servicing the deposit transactions" of a bank.⁴⁹ This would appear to prevent reliance on agents for the delivery of traditional banking services as has happened in other countries. However, e-money services are well developed (see Volume 1 of this report and Good Practice C.8 below).</p>
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⁴⁷ S. 3 of Circular 649 of 2009

⁴⁸ MORB X705.1

⁴⁹ MORB X162.1. See also s.2.1 of BSP Circular 268 of 2000

	<p>Paragraph (d)</p> <p>There do not appear to be any requirements relating to disclosure of fees and charges specifically relating to the usage of internet or mobile banking service channels, although there is a requirement to make “adequate disclosure of information”.⁵⁰ This is in contrast to the position concerning e-banking products. As mentioned in Good Practice C.5, banks are required to provide information to consumers about the terms and conditions associated with the usage of a range of e-banking products such as credit cards, including in relation to fees and charges associated with the purchase, use or redemption of the product”.⁵¹</p> <p>Paragraph (e)</p> <p>Banks are required to have complaint resolution processes for e-banking which seem to meet the requirements of this Good Practice.⁵² In particular, these procedures must cover unauthorized transactions, loss or theft.</p> <p>Paragraph (f)</p> <p>MORB Appendix 70c sets out detailed minimum standards on the Electronic Banking Customer Awareness Program that banks are required to provide to their customers.⁵³ These requirements include provisions concerning security of personal information, log-in IDs, passwords and PINs, protecting personal computers from hackers etc., understanding the provider’s privacy policies and safe use of ATMs and credit cards.</p>
Recommendation	<p>There are no specific recommendations in relation to this Good Practice other than to note the need to have full disclosure requirements for internet and mobile banking channels, as well as for the products which are used through these channels.</p>

⁵⁰ MORB X705.4

⁵¹ MORB Appendix 70b

⁵² MORB X705.5

⁵³ MORB Appendix 70d

Good Practice C.7	<p>Electronic Fund Transfers and Remittances</p> <ol style="list-style-type: none"> a. There should be clear rules on the rights, liabilities and responsibilities of the parties involved in any electronic fund transfer. b. Banks should provide information to consumers on prices and service features of electronic fund transfers and remittances in easily accessible and understandable forms. As far as possible, this information should include: <ol style="list-style-type: none"> (i) the total price (e.g. fees for the sender and the receiver, foreign exchange rates and other costs); (ii) the time it will take the funds to reach the receiver; (iii) the locations of the access points for sender and receiver; and (iv) the terms and conditions of electronic fund transfer services that apply to the customer. c. To ensure transparency, it should be made clear to the sender if the price or other aspects of the service vary according to different circumstances, and the bank should disclose this information without imposing any requirements on the consumer. d. A bank that sends or receives an electronic fund transfer or remittance should document all essential information regarding the transfer and make this available to the customer who sends or receives the transfer or remittance without charge and on demand. e. There should be clear, publicly available and easily applicable procedures in cases of errors and frauds in respect of electronic fund transfers and remittances. f. 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	<p>Most of the requirements of this Good Practice would appear to be met.</p> <p>Paragraph (a)</p> <p>There are two electronic money providers in the Philippines:</p> <ul style="list-style-type: none"> • The SMART Money card enables customers to engage in a wide variety of payments transactions through either the Smart MasterCard debit card functionality or through an e-wallet which accesses electronic money acquired through purchasing airtime. SMART Money is an electronic wallet, similar to a bank account, that allows bill payment, reloads of airtime and money transfers using a SMART Mobile phone. With the SMART Money MasterCard, a cardholder can also do ATM and debit card transactions. It is considered to be a bank based model because the card can be re-loaded from bank accounts.

	<p>GCash presents a nonbank-based model of branchless banking. GCash clients load cash onto electronic “wallets” on their mobile phones from which they can then make payments (via SMS) to other GCash clients using their Globe mobile phone. Other services include the ability to use the service to pay for utilities, credit cards, Globe Telecom bills and top ups for mobile phones. Value in GCash accounts, and information about transactions, is held by G-Xchange, Inc (GXI), a wholly-owned subsidiary of Globe that is registered with BSP as a remittance agent.</p> <p>BSP clearly has a policy of appropriately regulating payment services as envisaged by this Good Practice. This is evidenced by the following statement of policy as well as the provisions relating to e-banking discussed in relation to Good Practice C.7:</p> <p><i>“It is the policy of the BSP to promote the efficient delivery of competitively-priced remittance services by banks and other remittance service providers by promoting competition and the use of innovative payment systems, strengthening the financial infrastructure, enhancing access to formal remittance channels in the source and destination countries, deepening the financial literacy of consumers, and improving transparency in remittance transactions, consistent with sound banking practices.”⁵⁴</i></p> <p>There are various regulatory provisions which appear to give effect to this policy. They include:</p> <ul style="list-style-type: none"> • Circular 649 on E-Money; • Circular 471 on Foreign Exchange Dealers, Money Changers and Remittance Agents; • MORB X162 -Duties and Responsibilities of Banks and their Directors/Officers in All Cases of Outsourcing of Banking Functions; • MORB X705 - Consumer Protection for Electronic Banking; • MORB X906 - Disclosure of Remittance Charges and Other Relevant Information; • MORB Appendix 70c – Electronic Banking Consumer Awareness Program; and • MORB Appendix 70d – Disclosure Requirements. <p>Paragraph (b)</p> <p>MORB X906 contains appropriate requirements for disclosure of fees and other relevant information relating to overseas remittances, but does not cover remittance with the Philippines or other forms of electronic payment services. The information which is required to be disclosed in relation to overseas remittances includes that relating to transfer/ remittance fees, exchange rates, other currency conversion charges, all other charges, the amount of money the recipient can expect to receive, the expected delivery date. Relevant information is also required to be posted on bank websites and prominently in premises and in remittance / service centers.</p> <p>Paragraph (c)</p> <p>See paragraph (b).</p>
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⁵⁴ MORB X906

	<p>Paragraph (d)</p> <p>There is not a requirement as described by this Good Practice, other than the general record keeping obligations imposed on banks.</p> <p>Paragraph (e)</p> <p>The Electronic Banking Customer Awareness Program that banks are required to provide to their customers would seem to meet the requirements of this Good Practice.⁵⁵ This is on the assumption that the extensive “e-banking” provisions discussed in the context of Good Practice C.7 cover electronic fund transfer and remittance services provided by banks.</p> <p>Paragraph (f)</p> <p>MORB X320.4 requires information about foreign currency transactions concerning credit cards to be disclosed.</p>
Recommendation	<p>There should be stronger disclosure requirements for the terms and conditions (including relevant charges) relating to all payments services provided by banks. For example, the current rules on disclosure of fees related to overseas remittances should also apply to remittances and other payments services provided within the Philippines (electronic or over the counter). Further, there should be a requirement relating to disclosure of all terms and conditions and fees and charges relating to electronic payments services.</p> <p>Banks should also be required to give customers a receipt relating to an electronic payment and including remittances. Such a receipt might be in an electronic or paper form.</p>

Good Practice C.8	<p>Debt Recovery</p> <ol style="list-style-type: none"> a. A bank, agent of a bank and any third party should be prohibited from employing any abusive debt collection practice against any customer of the bank, including the use of any false statement, any unfair practice or the giving of false credit information to others. b. The type of debt that can be collected on behalf of a bank, the person who can collect any such debt and the manner in which that debt can be collected should be indicated to the customer of the bank when the credit agreement giving rise to the debt is entered into between the bank and the customer. c. A debt collector should not contact any third party about a bank customer’s debt without informing that party of the debt collector’s right to do so; and the type of information that the debt collector is seeking. d. Where sale or transfer of debt without borrower consent is allowed by law, the borrower should be: <ol style="list-style-type: none"> (i) notified of the sale or transfer within a reasonable number of days; (ii) informed that the borrower remains obligated on the debt; and (iii) provided with information as to where to make payment, as well as the purchaser’s or transferee’s contact information.
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⁵⁵ MORB Appendix 70d

Description	<p>There are strong requirements in place in relation to debt collection practices concerning credit cards, but they do not apply in relation to other credit products. However to some extent this gap is met by the outsourcing requirements contained in BSP Circular 705 on Outsourcing and other provisions of the MORB.</p> <p>MORB X320.14 provides as follows for debt collection practices concerning credit cards:</p> <p>“Unfair collection practices</p> <p><i>Banks, subsidiary/affiliate credit card companies, collection agencies, counsels and other agents may resort to all reasonable and legally permissible means to collect amounts due them under the credit card agreement: Provided, That in the exercise of their rights and performance of duties, they must observe good faith and reasonable conduct and refrain from engaging in unscrupulous or untoward acts.</i></p> <p><i>Without limiting the general application of the foregoing, the following conduct is a violation of this Subsection:</i></p> <ol style="list-style-type: none"> <i>a. the use or threat of violence or other criminal means to harm the physical person, reputation, or property of any person;</i> <i>b. the use of obscenities, insults, or profane language which amount to a criminal act or offense under applicable laws;</i> <i>c. disclosure of the names of credit cardholders who allegedly refuse to pay debts, except as allowed under Subsec. X320.9⁵⁶;</i> <i>d. threat to take any action that cannot legally be taken;</i> <i>e. communicating or threat to communicate to any person credit information which is known to be false, including failure to communicate that a debt is being disputed;</i> <i>f. any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a cardholder; and</i> <i>g. making contact at unreasonable/ inconvenient times or hours which shall be defined as contact before 6:00 A.M. or after 10:00 P.M., unless the account is past due for more than sixty (60) days or the cardholder has given express permission or said times are the only reasonable or convenient opportunities for contact.”</i> <p>Although there are not specific provisions concerning debt collection practices other than in relation to credit cards, the general BSP requirements concerning outsourcing and service providers are helpful. Relevant provisions of BSP’s Circular on Outsourcing (Circular 705) are as follows:</p> <p><i>“Subsection X162.1. Governance in All Cases of Outsourcing of Banking Functions. When outsourcing is allowed by law, a Bank shall:</i></p> <p><i>Be responsible for the performance of the outsourced activity in the same manner and to the same extent as if it was performing directly the said activity;</i></p> <ol style="list-style-type: none"> <i>a. Comply with all laws and regulations applicable in the Philippines including labor laws and those governing the banking activities/services performed by the qualified services providers on the bank’s behalf; and</i> <i>b. Monitor and review on an ongoing basis the performance of the service providers undertaking the outsourced activity and/or service;</i>
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⁵⁶Subsec. X302.9 relates to the confidentiality of cardholder information.

	<i>Subsection X162.9. Service Providers. The bank shall carry out due diligence in selecting service providers. It must ensure the integrity, technical expertise, operational capability, financial capacity and suitability of the service provider to perform the outsourced activity. In cases where the clients are prejudiced due to errors, omissions and frauds by the service provider, the bank shall be liable in providing the appropriate remedies as may be allowed by laws or regulations, without prejudice to recourse by the bank to the service provider.”</i>
Recommendation	Provisions equivalent to MORB X320.14 should be applied in relation to all credit facilities. Consideration might also be given to: <ul style="list-style-type: none"> • Removing the exceptions to the time limit requirements in paragraph X320.9 (g) so that contact can only be made between the hours of 10.00 pm and 6.00am with the express prior consent of the debtor; and Limiting the number of times a debtor may be contacted in a week to say 3 times.

Good Practice C.9	<p><i>Foreclosure of mortgaged or charged property</i></p> <ol style="list-style-type: none"> 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. 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. If applicable, the bank should draw the consumer’s attention to the fact that the bank has a legal right to recover the balance of the debt due in the event the proceeds from the sale of the foreclosed property are not sufficient to fully discharge the outstanding amount. <p>In the event the mortgage contract or charge agreement permits the bank to enforce the contract without court assistance, the bank should ensure that it employs professional and legal means to enforce the contract, including regarding the sale of the property.</p>
Description	Although the General Banking Law provides a borrower with a generous right of redemption when their mortgaged real estate is the subject of foreclosure proceedings ⁵⁷ , there do not appear to be any legal requirements of the type contemplated by this Good Practice. On the contrary, there are some provisions which limit the rights of mortgagors. A particular example is the provisions to the effect that thrift, rural and cooperative banks are not required to advertise in newspapers the foreclosure of mortgages secured by real estate where the amounts secured by the mortgage are less than P100,000. ⁵⁸
Recommendation	Consideration should be given to implementing the requirements of this Good Practice over time (except to the extent that they are covered by the general law on mortgages).

⁵⁷ General Banking Law s.47, s.6 of the Rural Banks Act, s.6 of the Thrift Banks Act and see also MORB X311.5

⁵⁸ See s. 6 of the Rural Banks Act, .6 of the Thrift Banks Act and see also MORB ss. 2311.4 and 3311.5

Good Practice C. 10	<p><i>Bankruptcy of Individuals</i></p> <ol style="list-style-type: none"> a. A bank should inform its individual customers in a timely manner and in writing on what basis the bank will seek to render a customer bankrupt, the steps it will take in this respect and the consequences of any individual's bankruptcy. b. Every individual customer should be given adequate notice and information by his or her bank to enable the customer to avoid bankruptcy. c. Either directly or through its association of banks, every bank should make counseling services available to customers who are bankrupt or likely to become bankrupt. d. The law should enable an individual to: <ol style="list-style-type: none"> (i) declare his or her intention to present a debtor's petition for a declaration of bankruptcy; (ii) propose a debt agreement; (iii) propose a personal bankruptcy agreement; or (iv) enter into voluntary bankruptcy. <p>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 debt and rehabilitation process in the event of bankruptcy.</p>
Description	<p>RA 10142 of 2010, The Rehabilitation and Liquidation of Financially Distressed Individuals and Enterprises Act (Insolvency Act) makes provision for the voluntary and involuntary liquidation of individuals and for court approved schemes for the suspension of payments by individuals. However a number of issues covered by this Good Practice are not covered by the Insolvency Act.</p> <p><i>Paragraphs (a) – (c) and (e)</i></p> <p>Although there are not any specific requirements in the Insolvency Act reflecting these Good Practices, the mission team is not aware of any concerns in practice. It is also to be noted that the Banking Code does not deal with bankruptcy issues (although it does contain general advice for consumers who are in default), which may also indicate that individual bankruptcies are not common.</p> <p><i>Paragraph (d)</i></p> <p>The insolvency Law provides for most aspects of this Good Practice. See, in particular,:</p> <ul style="list-style-type: none"> • Sections 94 -102 which provide for an agreement with creditors relating to suspension of payments; • Sections 103 and 104 dealing with voluntary liquidations; and <p>Sections 105 – 107 dealing with involuntary liquidations.</p>
Recommendation	<p>The various bankers associations in the Philippines should be encouraged to require that their members provide the advice and counselling services referred to in this Good Practice.</p>

SECTION D.	PRIVACY AND DATA PROTECTION
Good Practice D.1	<p>Confidentiality and Security of Customers' Information</p> <ol style="list-style-type: none"> The banking transactions of any bank customer should be kept confidential by his or her bank. 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	<p>The Philippines has strict rules on the confidentiality of banking transactions, which are primarily contained in the Secrecy of Bank Deposits Act, the Data Privacy Act, the AML Act and specific provisions relating to matters such as e-banking transactions.</p> <p>Paragraph (a)</p> <p>The main examples relating to the rule concerning the confidentiality of customer information are as follows:</p> <ul style="list-style-type: none"> The Secrecy of Bank Deposits Act makes it clear that all “<i>deposits of whatever nature with banks or banking institutions in the Philippines</i>” are to be considered as “<i>absolutely confidential</i>”; There is an express statement in s.2 of the AML Act that “<i>It is hereby declared the policy of the State to protect and preserve the integrity and confidentiality of bank accounts</i>”; and <p>Importantly, the Data Privacy Act imposes strict obligations in relation to the processing of personal information, which appear to be designed to maintain the confidentiality of personal information held by institutions such as banks and limit the purposes for which such information can be collected, used and disclosed.⁵⁹ More specifically, s. 20(c) of the Act provides that “<i>The employees, agents or representatives of a personal information controller who are involved in the processing of personal information shall operate and hold personal information under strict confidentiality if the personal information are not intended for public disclosure. This obligation shall continue even after leaving the public service, transfer to another position or upon termination of employment or contractual relations.</i>”</p> <p>Paragraph (b)</p> <p>There are also various provisions concerning the security of personal data. They include the following examples.</p> <p>The Data Privacy Act has strict rules requiring personal information to be kept secure to the following effect:</p> <p>“SEC. 20. Security of Personal Information. – (a) <i>The personal information controller must implement reasonable and appropriate organizational, physical and technical measures intended for the protection of personal information against any accidental or unlawful destruction, alteration and disclosure, as well as against any other unlawful processing.</i></p>

⁵⁹ Data Privacy Act ss. 11 and 12

	<p><i>(b) The personal information controller shall implement reasonable and appropriate measures to protect personal information against natural dangers such as accidental loss or destruction, and human dangers such as unlawful access, fraudulent misuse, unlawful destruction, alteration and contamination.</i></p> <p><i>(c) The determination of the appropriate level of security under this section must take into account the nature of the personal information to be protected, the risks represented by the processing, the size of the organization and complexity of its operations, current data privacy best practices and the cost of security implementation. Subject to guidelines as the Commission may issue from time to time, the measures implemented must include:</i></p> <ol style="list-style-type: none"> <i>(1) Safeguards to protect its computer network against accidental, unlawful or unauthorized usage or interference with or hindering of their functioning or availability;</i> <i>(2) A security policy with respect to the processing of personal information;</i> <i>(3) A process for identifying and accessing reasonably foreseeable vulnerabilities in its computer networks, and for taking preventive, corrective and mitigating action against security incidents that can lead to a security breach; and</i> <i>(4) Regular monitoring for security breaches and a process for taking preventive, corrective and mitigating action against security incidents that can lead to a security breach; and</i> <p><i>(d) The personal information controller must further ensure that third parties processing personal information on its behalf shall implement the security measures required by this provision."</i></p> <p>S.9(b) of the AML Act also provides that records of transactions of covered institutions must be "safely" stored for 5 years. There is a similar requirement for the records on customer identification, account files and business correspondence of closed accounts, which must be kept for 5 years from when the account is closed.</p>
Recommendations	We make no recommendations in relation to this Good Practice.

Good Practice D.2	<p>Sharing Customer's Information</p> <ul style="list-style-type: none"> a. A bank should inform its customer in writing: <ul style="list-style-type: none"> (i) of any third-party dealing for which the bank is obliged to share information regarding any account of the customer, such as any legal enquiry by a credit bureau; and (ii) as to how it will use and share the customer's personal information. b. Without the customer's prior written consent, a bank should not sell or share account or personal information regarding a customer of the bank to or with any party not affiliated with the bank for the purpose of telemarketing or direct mail marketing. c. The law should allow a customer of a bank to stop or – opt out of the sharing by the bank of certain information regarding the customer and, prior to any such sharing of information for the first time, every bank should be required to inform each of its customers in writing of his or her rights in this respect. <p>The law should prohibit the disclosure by a third party of any banking-specific information regarding a customer of a bank.</p>
Description	<p>The Data Privacy Act contains provisions covering the issues covered by this Good Practice, and in some respects goes further.</p> <p>Paragraph (a)</p> <p>A data subject is required to be informed of various matters before their information is processed (or as soon as practicable afterwards). This information includes information about how their information will be processed, including the recipients or classes of recipients to whom the information is or may be disclosed.⁶⁰</p> <p>Given the limitations on the processing of personal information (which would include disclosure to third parties and as to which see paragraph (b) below), it would seem to be the case that the customer's prior consent would be needed before a disclosure is made to a third party, unless another exception applies. However, there is not a specific provision dealing with disclosures to credit bureaus (as to which see Good Practice D.4).</p> <p>Paragraph (b)</p> <p>As mentioned below, the starting point is that the processing of personal information is permitted only if not otherwise prohibited by law, and when at least one of the specified exceptions apply. These exceptions include where the data subject has given consent and where the processing is necessary for compliance with a legal obligation to which the personal information controller is subject.⁶¹ There is no provision allowing for disclosures for marketing purposes. A customer would accordingly need to consent before any such disclosure should take place. Further, the term “<i>consent</i>” is quite narrowly defined as follows in s.2 (emphasis added):</p>

⁶⁰ Data Privacy Act s. 16(b)

⁶¹ Data Privacy Act s.12

	<p>“Consent of the data subject refers to any freely given, specific, informed indication of will, whereby the data subject agrees to the collection and processing of personal information about and/or relating to him or her. Consent shall be evidenced by written, electronic or recorded means. It may also be given on behalf of the data subject by an agent specifically authorized by the data subject to do so.”</p> <p>The term “processing” is also broadly defined as follows in s.3(j) (emphasis added)::</p> <p>“Processing refers to any operation or any set of operations performed upon personal information including, but not limited to, the collection, recording, organization, storage, updating or modification, retrieval, consultation, use, consolidation, blocking, erasure or destruction of data.”</p> <p>Paragraph (c)</p> <p>See paragraph (b).</p> <p>Paragraph (d)</p> <p>Although the Bank Secrecy Act obligations as to the absolute confidentiality of information about bank deposits apply to “any person, government official, bureau or office “, they do not apply to other information about bank accounts. However, the Data Privacy Act would seem to fill the gaps.⁶² That Act also requires that a personal information controller use “contractual or other reasonable means” to ensure that third parties to whom it discloses information provide a level of protection for personal information disclosed to them which is comparable to that provided for by the Act.</p>
Recommendations	We make no recommendations in relation to this Good Practice.

⁶² Bank Secrecy Act s.2

Good Practice D.3	<p><i>Permitted Disclosures</i></p> <p>The law should provide for:</p> <ul style="list-style-type: none"> (i) the specific rules and procedures concerning the release to any government authority of the records of any customer of a bank; (ii) rules on what the government authority may and may not do with any such records; (iii) the exceptions, if any, that apply to these rules and procedures; and (iv) the penalties for the bank and any government authority for any breach of these rules and procedures.
Description	<p>The Data Privacy Act contains provisions of the type contemplated by this Good Practice, and in some respects goes even further.</p> <p>The starting point is that the processing of personal information is permitted only if not otherwise prohibited by law, and when at least one of the specified exceptions apply. These exceptions include where the data subject has given consent and where the processing is necessary for compliance with a legal obligation to which the personal information controller is subject.⁶³ Paragraph (b) of Good Practice D.2 has further details.</p> <p>There are also strict rules imposed on government agencies and instrumentalities relating to security of the personal information they have on their records.⁶⁴ The National Privacy Commissioner also has power to petition or compel any government instrumentality or agency to comply with its orders concerning privacy or take action on a matter affecting data privacy; to monitor their compliance with security and technical measures and make recommendations concerning data protection; and coordinate with them (and the private sector) on efforts to formulate and implement plans and policies to strengthen the protection of personal information.⁶⁵</p> <p>The detailed penalty provisions in the Data Privacy Act would seem to apply to government agencies and instrumentalities as well as their officials.⁶⁶</p>
Recommendations	We make no recommendations in relation to this Good Practice.

⁶³ Data Privacy Act s.12

⁶⁴ Data Privacy Act ss. 22-24

⁶⁵ Data Privacy Act s.7(1)

⁶⁶ Data Privacy Act Chapter VIII

Good Practice D.4	<p>Credit Reporting</p> <ul style="list-style-type: none"> a. Credit reporting should be subject to appropriate oversight, with sufficient enforcement authority. b. The credit reporting system should have accurate, timely and sufficient data. The system should also maintain rigorous standards of security and reliability. c. The overall legal and regulatory framework for the credit reporting system should be: (i) clear, predictable, non-discriminatory, proportionate and supportive of consumer rights; and (ii) supported by effective judicial or extrajudicial dispute resolution mechanisms. d. In facilitating cross-border transfer of credit data, the credit reporting system should provide appropriate levels of protection. e. Proportionate and supportive consumer rights should include the right of the consumer <ul style="list-style-type: none"> (i) to consent to information-sharing based upon the knowledge of the institution's information-sharing practices; (ii) to access his or her credit report free of charge (at least once a year), subject to proper identification; (iii) to know about adverse action in credit decisions or less-than-optimal conditions/prices due to credit report information; (iv) to be informed about all inquiries within a period of time, such as six months; (v) to correct factually incorrect information or to have it deleted and to mark (flag) information that is in dispute; (vi) to reasonable retention periods of credit history, for instance two years for positive information and 5-7 years for negative information; and (vii) to have information kept confidential and with sufficient security measures in place to prevent unauthorized access, misuse of data, or loss or destruction of data. <p>The credit registries, regulators and associations of banks should undertake campaigns to inform and educate the public on the rights of consumers in the above respects, as well as the consequences of a negative personal credit history.</p>
Description	<p>The new public credit reporting agency, the Credit Information Corporation (CIC) is subject to oversight by the SEC but private credit bureaus are not similarly regulated. Other aspects of this Good Practice are covered by the CIS Act (for the CIC) and the Data Privacy Act for private credit bureaus (with some gaps in the latter case).</p> <p>Paragraph (a)</p> <p>There are no rules requiring oversight of private credit bureaus in the Philippines, although the CIC is subject to extensive oversight as well as having to comply with the credit reporting specific rules in the CIC Act.</p>

	<p>The mission team identified two private credit bureaus operating in the banking sector in the Philippines. The BAP Credit Bureau is operated by the Bankers Association of the Philippines, which provides positive and negative information (p.htm) http://www7.bapcb.com/v2_services.ba. The other credit reporting service is provided by TransUnion in relation to credit cards (http://www.transunion.ph/philippines/business/service-solutions/credit-reporting.page).</p> <p>Importantly, private credit bureaus are not required to be licensed under Philippines law (unlike the CIC) and accordingly their credit reporting activities are not subject to any form of supervision. The CIC, however, is a statutory corporation which operates pursuant to the provisions of the CIS Act and is supervised by the SEC and a Congressional Oversight Committee.⁶⁷</p> <p>Private credit bureaus would, however, be subject to the new Data Privacy Act of 2012 and the banks using their services would be required to comply with relevant BSP rules (for example, the rule requiring banks to keep up to date information they have given credit bureaus). However, private credit bureaus and their subscribers are not subject to data protection rules specific to credit reports. For example, there is no obligation to inform a loan applicant that their information will be disclosed to a credit bureau and private credit bureau debtors do not have the right to be informed if credit is refused because of an adverse credit report. As a result, they have no opportunity to seek correction of any alleged incorrect information or to request that disputed information be flagged on the system. On the contrary, the loan and credit card application forms reviewed by the mission team all contained a provision to the effect that the debtor has no right to be informed of the reason why credit is refused.</p> <p>This position is in contrast to that which applies to the CIC under the CIS Act. Under that Act, a number of the protective provisions mentioned above apply in relation to the records maintained by the CIC. They are discussed further below.</p> <p>The Banking Code also contains a reminder for consumers that their information may be disclosed to a credit bureau. It states that: <i>Credit standing. Your credit standing will give the bank an indication of your propensity to repay loans. Thus, your bank will require that you furnish it with credit references. It will also check your credit records with credit bureaus.</i>⁶⁸</p> <p>Paragraph (b)</p> <p>Both the CIC Act and the Data Privacy Act contain provisions concerning the accuracy of data. The CIC is required to “<i>acquire and use state-of-the art technology and facilities in its operations to ensure its continuing competence and capability to provide up to date negative and positive credit information ... and to insure accuracy of collected, stored and disseminated credit information.</i>”</p> <p>See Good Practices – Credit Reporting System, paragraph (j) in relation to the issue concerning security of data.</p> <p>Paragraph (c)</p> <p>See Good Practices – Credit Reporting System for a detailed assessment of consumer rights in relation the credit reporting system.</p>
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⁶⁷ CIS Act ss.5, 8 and 9

⁶⁸ Section 2

	<p>Paragraph (d)</p> <p>The CIC Act does not contain any provisions concerning cross border flows of data; the Data Privacy Act makes it clear that a data controller's responsibilities under the Act apply to data which is under its custody or control, including data which is processed internationally.⁶⁹ ⁷⁰ The Act requires that a personal information controller use “<i>contractual or other reasonable means</i>” to ensure that third parties to whom it discloses information provide a level of protection for personal information disclosed to them which is comparable to that provided for by the Act.</p> <p>Paragraph (e)</p> <p>See Good Practices – Credit Reporting System for a detailed assessment of consumer rights in relation the credit reporting system.</p> <p>Paragraph (f)</p> <p>See the Good Practices – Credit Reporting System for a discussion about public awareness campaigns concerning credit reporting systems.</p>
Recommendations	<p>Private credit bureaus should be required to be licensed and subject to regulatory oversight through legislation which is similar to the CIS Act. This is in order to maintain a level playing field between the CIC and the private credit bureaus and ensure that consumers get the same level of protection, regardless of which credit bureau has their information.</p> <p>See the Good Practices – Credit Reporting System for other recommendations concerning the credit reporting system in the Philippines.</p>

⁶⁹ Data Privacy Act s.21 (a)

⁷⁰ Bank Secrecy Act s.2

SECTION E.	DISPUTE RESOLUTION MECHANISMS
Good Practice E.1	<p data-bbox="479 247 867 279"><i>Internal Complaints Procedure</i></p> <ol style="list-style-type: none"> <li data-bbox="526 296 1477 478">a. Every bank should have in place a written complaints procedure and a designated contact point for the proper handling of any complaint from a customer, with a summary of this procedure forming part of the bank's Terms and Conditions referred to in B.7 above and an indication in the same Terms and Conditions of how a consumer can easily obtain the complete statement of the procedure. <li data-bbox="526 495 1477 772">b. Within a short period of time following the date a bank receives a complaint, it should: <ol style="list-style-type: none"> <li data-bbox="574 569 1477 632">(i) acknowledge in writing to the customer/complainant the fact of its receipt of the complaint; and <li data-bbox="574 648 1477 772">(ii) provide the complainant with the name of one or more individuals appointed by the bank to deal with the complaint until either the complaint is resolved or cannot be processed further within the bank. <li data-bbox="526 789 1477 873">c. The bank should provide the complainant with a regular written update on the progress of the investigation of the complaint at reasonable intervals of time. <li data-bbox="526 890 1477 1045">d. Within a few business days of its completion of the investigation of the complaint, the bank should inform the customer/complainant in writing of the outcome of the investigation and, where applicable, explain the terms of any offer or settlement being made to the customer/complainant. <li data-bbox="526 1062 1477 1146">e. The bank should also inform the customer/complainant of the availability of the services of a financial ombuds service or other form of alternative dispute resolution. <li data-bbox="526 1163 1477 1287">f. 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. <li data-bbox="526 1304 1477 1367">g. 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. <li data-bbox="526 1383 1477 1539">h. 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. <li data-bbox="526 1556 1477 1608">i. The bank should make these records available for review by the banking supervisor or regulator when requested.

Description	<p>Although all banks met by the mission team have internal complaints resolution systems, there are no mandated requirements relating to such schemes.</p> <p>There are, however, some provisions concerning credit card complaints. For example, banks and their affiliates / subsidiaries seeking approval to issue credit cards must provide details of their written policies, procedures and internal control guidelines about various matters, including complaints.⁷¹ They must also give customers 20 days after delivery of their card statement to dispute a transaction.⁷²</p> <p>The Banking Code also has extensive provisions setting out what customers can expect from their bank's complaints procedures. In summary, it provides that:</p> <ul style="list-style-type: none"> • Complaints can be delivered in a range of ways such as a website, by SMS, through social media and by email (as well as in person); • Complaints may be handled by a customer service center or branch officers or managers; • Complaints will be acknowledged in 10 days and should be resolved in 3 weeks; and <p>Customers can also take matters up with FCAG and the PDIC.⁷³</p>
Recommendation	<p>Organizations regulated by BSP should be required to meet internal dispute resolution standards approved by BSP. At a minimum, the standards should set timelines for resolving complaints, require regular reporting to the customer and reasons for adverse decisions and require reporting of complaint statistics to BSP. International standards on complaint resolution could be helpful in this context, as well as the provisions of this Good Practice.⁷⁴</p> <p>BSP should also strictly monitor, and enforce, compliance with the abovementioned requirements. This might be done by officers in FCAG. Banks could be required to comply with these requirements as a licensing condition.</p>

⁷¹ MORB X320.2 (p)

⁷² MORB X 320.13

⁷³ Part A, s. 2 (d)

⁷⁴ See e.g. AS ISO 10002-2006 Customer satisfaction - Guidelines for complaints handling in organizations (<http://infostore.saiglobal.com/store/details.aspx?ProductID=341668>)

Good Practice E.2	<p><i>Formal Dispute Settlement Mechanisms</i></p> <ol style="list-style-type: none"> 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. 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. 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. The banking ombudsman or equivalent institution should be appropriately resourced and discharge its function impartially. The decision of the banking ombudsman or equivalent institution should be binding upon the bank against which the complaint has been lodged.
Description	<p>At present the responsibility for providing an external dispute resolution system in the Philippines rests primarily with FCAG in BSP.⁷⁵ FCAG receives, processes and evaluates complaints against BSP-supervised financial institutions. It is a unit within the Central Supervisory Sub-sector of the Supervision and Examination Division of the BSP. It was established pursuant to BSP Officer Order No. 892 on 15 October 2006 to support the Supervision and Examination Sector of BSP (SES) through the following functions:</p> <ul style="list-style-type: none"> Facilitating communication with BSP supervised financial institutions to address consumer complaints or disputes; Initiating the adoption or modification of policies, rules and regulations in line with consumer protection laws and BSP's financial literacy programs (but FCAG does not itself have the relevant powers (e.g. to make regulations although it can (and does) make suggestions for changes); and Provide liaison activities and advice between BSP supervision departments and the public, the legislature and financial institutions.⁷⁶ <p>Although FCAG does not have a power to issue binding decisions, it is understood that regulated banks in practice comply with the decisions arrived at through FCAG facilitation services.</p> <p>Complaints must be lodged in writing but can be delivered personally, by email or fax to the FCAG office in the BSP Manila building. FCAG will then take the issue up with the financial institution, which is required to reply directly to the complainant, with a copy to FCAG. FCAG may also facilitate a meeting between the complainant and the financial institution. The purpose of the meeting is to provide an opportunity to both parties to explain each other's position on the issues and possibly find ways to reconcile differences and resolve the concerns. In 2012, FCAG received 1,854 complaints from the public.</p>

⁷⁵http://www.bsp.gov.ph/about/advocacies_fin_cam.asp

⁷⁶<http://www.bsp.gov.ph/about/ConsumerAssistanceMechanismFlyer.pdf>

	<p>FCAG may also raise issues of individual or systemic concern with relevant BSP supervisors. For example, the mission team was advised that FCAG raised an issue concerning debt collection practices in relation to credit cards which resulted in the introduction of strong BSP rules concerning such practices. ⁷⁷</p> <p>There are, however, significant limits to FCAG's powers. In particular, FCAG does not have power to make binding decisions, to impose sanctions or to conduct on – site examinations of financial institutions. Accordingly any issues of concern (whether individual or systemic) can only be raised with the relevant BSP supervisory department. The mission team was advised that these issues may be provided for under the proposed BSP Financial Consumer Protection Framework. However details of the new proposals were not publicly available at the time of the mission.</p> <p>The Supervised Banks Complaints Evaluation Group (SBCEG) is the next level of handling complaints; its public assistance panel conducts voluntary mediation proceedings. The Panel is specifically tasked to help resolve disputes between BSP-supervised institutions and/or their directors/trustees/officers and their public clients. However, it has no jurisdiction over cases involving violation of banking laws, rules and regulations and cannot make binding decisions. The mission team is not aware of the number of consumer cases that go to mediation.</p>
Recommendation	<p>Although the complaint resolution service offered by the FCAG seems to operate effectively in a number of respects, there are ways in which the current operations might be improved in the interests of complying with international best practices on financial ombudsman schemes. In particular, having regard to the World Bank's publication on <i>Resolving Disputes between Consumers and Financial Businesses: Fundamentals for a Financial Ombudsman</i>, it is proposed that:</p> <ul style="list-style-type: none"> • FCAG could be given the power to make decisions which bind the financial institution concerned; • Regulated banks might be required to advise customers with whom they have a dispute that the customer can take the complaint to FCAG (but only after the customer has first tried to have their bank deal with the complaint); and • FCAG might undertake a public awareness campaign of the availability of its services. <p>Further, consideration should be given as to whether FCAG will have the necessary resources once it takes on further supervisory functions under the proposed BSP Financial Consumer Protection Framework.</p>

⁷⁷ See Good Practice C.8 and MORB X320.14

Good Practice E.3	<p><i>Publication of Information on Consumer Complaints</i></p> <ul style="list-style-type: none"> a. Statistics and data of customer complaints, including those related to a breach of any code of conduct of the banking industry should be periodically compiled and published by the ombudsman, financial supervisory authority or consumer protection agency. b. Regulatory agencies should publish statistics and data and analyses related to their activities in respect of consumer protection regarding banking products and services so as, among other things, to reduce the sources of systemic consumer complaints and disputes. c. Banking industry associations should also analyze the complaint statistics and data and propose measures to avoid the recurrence of systemic consumer complaints.
Description	Although it is understood that FCAG analyses complaint statistics and takes up any systemic issues with the bank supervision team, It does not appear to be the case that complaints statistics are published or that the various banking associations in the Philippines analyze complaints as contemplated by this Good Practice.
Recommendation	It is recommended that BSP publish complaints statistics as contemplated by this Good Practice.

SECTION F.	GUARANTEE SCHEMES AND INSOLVENCY
Good Practice F.1	<p><i>Depositor Protection</i></p> <ol style="list-style-type: none"> a. The law should ensure that the regulator or supervisor can take necessary measures to protect depositors when a bank is unable to meet its obligations including the return of deposits. b. If there is a law on deposit insurance, it should state clearly: <ol style="list-style-type: none"> (i) the insurer; (ii) the classes of those depositors who are insured; (iii) the extent of insurance coverage; (iv) the holder of all funds for payout purposes; (v) the contributor(s) to this fund; (vi) each event that will trigger a payout from this fund to any class of those insured; (vii) the mechanisms to ensure timely payout to depositors who are insured. c. On an on-going basis, the deposit insurer should directly or through insured banks or the association of insured commercial banks, if any, promote public awareness of the deposit insurance system, as well as how the system works, including its benefits and limitations. d. Public awareness should, among other things, educate the public on the financial instruments and institutions covered by deposit insurance, the coverage and limits of deposit insurance and the reimbursement process. e. The deposit insurer should work closely with member banks and other safety-net participants to ensure consistency in the information provided to consumers and to maximize public awareness on an ongoing basis. f. The deposit insurer should receive or conduct a regular evaluation of the effectiveness of its public awareness program or activities.
Description	<p>The Philippines has a comprehensive deposit insurance scheme, the Philippine Deposit Insurance Corporation (PDIC), with the only issues from a consumer protection point of view seeming to be the acknowledged need to increase public awareness of the limits on the deposits which are protected and also the failure to cover deposits in non-stock savings and loan associations.</p>

	<p>Paragraph (a)</p> <p>The PDIC Charter is provided for under RA 3591 and provides for a deposit insurance scheme for member banks up to a prescribed limit which is currently 500,000 Pesos and which applies on a per customer / per institution basis. The scheme is a wide reaching one which applies to both individual and corporate customers of banks incorporated under Philippine laws (such as universal and commercial banks, savings banks, development banks, rural banks, cooperative banks and stock savings and loan associations and branches and agencies of foreign banks in the Philippines. The relevant accounts include commercial, checking, savings, time and thrift accounts.⁷⁸</p> <p>Insured banks are required to pay a premium for coverage of .02 percent of their total deposits (as measured at the end of the relevant quarter). However, if deposit insurance will continue even if the premium is not paid by the relevant bank.⁷⁹</p> <p>The PDIC scheme does not, however, extend to:</p> <ul style="list-style-type: none"> • Investment products such as bonds and securities, trust accounts, and other similar instruments; • Deposit accounts or transactions which are unfunded, or that are fictitious or fraudulent; • Deposit accounts or transactions constituting, and/or emanating from, unsafe and unsound banking practice/s, as determined by PDIC in consultation with BSP (we were not able to ascertain whether any such determinations had been made): • Deposits that are determined to be the proceeds of an unlawful activity as defined under RA 9160; and • E-money issued by banks⁸⁰; and • non-stock savings and loan associations. <p>The PDIC Charter also gives the PDIC wide powers to deal with insolvent banks. In particular the PDIC:</p> <ul style="list-style-type: none"> • May be appointed as a receiver of a bank on order of the BSP Monetary Board;⁸¹ and • If it is of the view that a bank is in danger of closing, the PDIC may make loans to, or purchase the assets of, or assume liabilities of, or make deposits in the insured bank;⁸² and • The BSP Monetary Board may issue sanctions against banks which it considers are engaging in “unsafe and unsound” practices.⁸³ <p>BSP also has powers to deal with insolvent banks under the General Banking La, including to:</p> <ul style="list-style-type: none"> • Place a bank under conservatorship;⁸⁴ and • Place a bank under receivership or in liquidation.⁸⁵
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⁷⁸ See definitions of “bank” and “banking institution” and “deposits” in s. 4 of the PDIC Charter and s.5

⁷⁹ S.7

⁸⁰ Definition of “deposits” in s. 4 of the PDIC Charter and E Money Circular 649

⁸¹ S.10

⁸² S.17

⁸³ S. 7

⁸⁴ S.67

	<p>The PDIC powers are widely used. The mission team were advised that, over the last 5 years, on average around 25 banks per year have been closed. These are mostly small banks with few branches, with the exception of the closure in 2011 of the Bank of the Philippines (62 branches) and the closure in 2012 of the Export and Industrial Bank (50 branches). To deal with this workload the PDIC have around 600 employees and 500 project based temporary employees.</p> <p>The principal issues relating to the PDIC coverage and practices identified by the mission team are:</p> <ul style="list-style-type: none"> • The fact that non stock savings and loan associations are not covered. The mission team were told that a recent review by the International Association of Deposit Insurers identified this as an issue of concern; • The PDIC do not write to depositors of smaller banks which become insolvent. Instead they rely on notices on bank premises, newspaper notices and making available a toll free number; and <p>The PDIC has some concerns as to whether they have sufficient resources for the depositor education programs they wish to run. At the moment the focus is on education banks and the print media but they are also considering TV and radio campaigns.</p> <p>Paragraph (b)</p> <p>Overall, there appears to be compliance with this Good Practice having regard to the PDIC Charter and the practices which we understand are followed by the PDIC.</p> <p>Paragraph (c)</p> <p>The PDIC itself acknowledges that it needs to improve its public awareness programs so that depositors understand the limits on which deposits are covered and the effect of having a joint account. However they do currently undertake some education campaigns and produce useful brochures as well as requiring banks to provide notices on branch doors and on ATMS to the effect they are insured by the PDIC. The PDIC has also been working with the Consumer Protection and Financial Education Committee of the Finance Sector Forum to produce a poster highlighting the need for consumers to “Protect their Money” by banking with insured entities. Further, it is understood that questions concerning awareness of the PDIC scheme are being included in the Household Financial Capability Survey to be conducted in the Philippines with the support of the World Bank.</p> <p>Paragraph (d)</p> <p>See paragraph (c)</p> <p>Paragraph (e)</p> <p>The PDIC works with banks and bankers’ associations as well as other relevant bodies (such as those representing pensioners). Their current areas of focus are on retirees, overseas workers and their families and small companies.</p> <p>Paragraph (f)</p> <p>It is understood that the PDIC does not currently conduct evaluations of the effectiveness of its programs. However, it has asked if questions on understand of PDIC can be included in the forthcoming Financial Capability Household Survey.</p>
Recommendations	<p>Public awareness of the PDIC scheme, especially in relation to limits on coverage and implications of holding funds in a joint account, should be improved.</p> <p>Consideration might also be given to covering depositors in non –stock savings and loan associations.</p>

Good Practice F.2	<i>Insolvency</i> <ol style="list-style-type: none"> Depositors should enjoy higher priority than other unsecured creditors in the liquidation process of a bank. 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	Although there do not appear to be specific provisions of the type contemplated by this Good Practice, this is no doubt because of the deposit insurance scheme which applies in the Philippines. See Good Practice F.1 for details.
Recommendation	We make no recommendation in this context.

SECTION G.	CONSUMER EMPOWERMENT
Good Practice G.1	<i>Broadly based Financial Capability Program</i> <ol style="list-style-type: none"> A broadly based program of financial education and information should be developed to increase the financial capability of the population. 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. 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	Issues related to Financial Capability are to be the subject of a separate diagnostic.
Recommendation	N/A

Good Practice G.2	<i>Using a Range of Initiatives and Channels, including the Mass Media</i> <ol style="list-style-type: none"> A range of initiatives should be undertaken by the relevant ministry or institution to improve people's financial capability regarding banking products and services. The mass media should be encouraged by the relevant ministry or institution to provide financial education, information and guidance to the public regarding banking products and services. The government should provide appropriate incentives and encourage collaboration between governmental agencies, banking regulators, the banking industry and consumer associations in the provision of financial education, information and guidance regarding banking products and services.
Description	Issues related to Financial Capability are to be the subject of a separate diagnostic.
Recommendation	N/A

Good Practice G.3	<i>Unbiased Information for Consumers</i> <ol style="list-style-type: none"> Regulators and consumer associations should provide, via the internet and printed publications, independent information on the key features, benefits and risks –and where practicable the costs– of the main types of banking products and services. The relevant authority or institution should encourage efforts to enable consumers to better understand the products and services being offered to consumers by banking institutions, such as providing comparative price information and undertaking educational campaigns. The relevant authority or institution should adopt policies that encourage non-governmental organizations to provide consumer awareness programs to the public regarding banking products and services.
Description	Issues related to Financial Capability are to be the subject of a separate diagnostic.
Recommendation	N/A

Good Practice G.4	<i>Consulting Consumers and the Financial Services Industry</i> <ol style="list-style-type: none"> The relevant authority or institution should consult consumers, banking associations and banking institutions to help them develop financial literacy programs that meet banking consumers' needs and expectations. The relevant authority or institution should also undertake consumer testing with a view to ensuring that proposed initiatives have their intended outcomes.
Description	Issues related to Financial Capability are to be the subject of a separate diagnostic.
Recommendation	N/A

Good Practice G.5	<i>Measuring the Impact of Financial Capability Initiatives</i> <ol style="list-style-type: none"> The financial literacy of consumers should be measured, amongst other things, by broadly-based household surveys and mystery shopping trips that are repeated from time to time. The effectiveness of key financial literacy initiatives should be evaluated by the relevant authorities or institutions from time to time.
Description	Issues related to Financial Capability are to be the subject of a separate diagnostic.
Recommendation	N/A

SECTION H.	COMPETITION AND CONSUMER PROTECTION
Good Practice H.1	<p><i>Regulatory Policy and Competition Policy</i></p> <p>Regulators and competition authorities should be required to consult one another for the purpose of ensuring the establishment, application and enforcement of consistent policies regarding the regulation of financial services.</p>
Description	<p>At this stage, there are no formal requirements for consultation of the type described. This is probably because the Philippines does not have a comprehensive competition law (although it is understood that various attempts have been made to have such a law passed by Congress in recent years). However the 1987 Constitution (Article XII, Section 19) prohibits anticompetitive conduct and unfair competition and there are numerous Acts dealing with various competition issues. So far as the banking sector is concerned, it is particularly relevant to note that MORB X108.1 is to the effect that bank mergers and consolidations require BSP approval (including as to terms and conditions).</p> <p>Further, under Executive Order No. 45 the Department of Justice (DoJ) has been designated as the Competition Authority and an Office for Competition (OFC) has been established to exercise this function. Pursuant to Department Circular 011, the DoJ has issued detailed guidelines as to how the Office for Competition is to operate (OFC Guidelines). These Guidelines cover the process for investigating complaints and contemplates the possibility of referrals to the relevant government agency. Relevantly, the OFC Guidelines provide that:</p> <p>“... the OFC shall adopt and implement a mechanism for cooperation with the Department of Trade and Industry (DTI) to investigate anti-competitive conduct within consumer welfare laws, including those that are implemented under Republic Act No. 7394 or the Consumer Act of the Philippines, Republic Act No. 7581 or the Price Act.</p> <p>Such mechanisms shall consider the DOJ-DTI Memorandum of Agreement (MOA) specifying measures on the promotion and protection of consumers’ economic interests, along with standards for the safety and quality of consumer goods and services; distribution facilities for essential consumer’ goods and services; measures enabling consumers to obtain redress; and education and information programmes, among others.”</p> <p>The OFC Guidelines are limited in scope as there is no general Competition Law in the Philippines and so they can only apply to a fragmented range of Acts dealing with different competition issues. Specifically, they apply to “investigations conducted by the OFC on cartels, monopolies and combinations in restraint of trade as defined in competition laws” including various specified Acts, the most relevant of which appears to be a 1925 “Act to prohibit Monopolies and Combinations in Restraint of Trade”. It is also noted that the OFC Guidelines are an administrative order only and do not appear to have the force of law.</p> <p>The above described arrangements were presumably implemented as the proposed new overarching Competition Law has not yet been passed by Congress.</p> <p>Also relevant in this context are the competition provisions of the Consumer Act. The Consumer Act imposes penalties for such behavior as deceptive, unfair and unconscionable sales practices in relation to consumer goods and services (which would seem to include financial services).</p> <p>Finally, it is noted that the Philippines banking sector has a very wide range of banking institutions which suggests that it is competitive (see Volume 1).</p>

Recommendation	Whilst supporting the development of an overarching Competition Law (as exists in many countries), it seems unlikely that such a law will be passed in the near future. In the interim, we encourage BSP in the interim to liaise with DoJ as to anti-competitive conduct concerning the banking industry.
Good Practice H.2	<p><i>Review of Competition</i></p> <p>Given the significance of retail banking to the economy as a whole and to the welfare of consumers, competition authorities should:</p> <ul style="list-style-type: none"> (i) monitor competition in retail banking; (ii) conduct, and publish for general consumption, periodic assessments of competition in retail banking (such as the range of interest rates across banks for specific products); and (iii) make recommendations publicly available on enhancing competition in retail banking.
Description	<p>It is not clear to what extent either BSP or DoJ engages in activities the subject of this Good Practice. However, the preliminary view of the mission team is that the banking market is healthy from a competition perspective. This view is expressed on the basis that:</p> <ul style="list-style-type: none"> • The great variety in types of banks, and their numbers (see Volume 1 of this report for details); and • The mission team were told customers often hold more than one bank account and frequently have more than one credit card. <p>From the interviews conducted, but with at least one exception, it appears that it is not common practice to impose fees beyond an administrative cost for customers who prepay their loan contracts (even fixed rate contracts). This is apparently because of the Consumer Act provisions to the effect that all credit contracts can be prepaid early, without penalty.⁸⁶ The General Banking Law also provides that the credit can be pre-paid in whole or in part subject to “<i>such reasonable terms and conditions as may be agreed</i>”.⁸⁷ There is also apparently no cost for closing a deposit account.</p>
Recommendations	We do not make any recommendations in this context.

⁸⁶ Article 119

⁸⁷ S. 45

Good Practice H.3	<i>Impact of Competition Policy on Consumer Protection</i> The competition authority and the regulator should evaluate the impact of competition policies on consumer welfare, especially regarding any limitations on customer choice and collusion regarding interest and other charges and fees.
Description	The mission team did not see any evidence of BSP and DoJ undertaking this activity.
Recommendations	The only recommendation is, as stated above, to express support for an overarching competition Law and an appropriately resourced regulator.

II. GOOD PRACTICES: CREDIT REPORTING SYSTEM

SECTION A.	PRIVACY AND DATA PROTECTION
<p>Good Practice A.1</p>	<p><i>Consumer Rights in Credit Reporting</i></p> <p>Laws and regulations should specify basic consumer rights in these respects. These rights should include:</p> <ul style="list-style-type: none"> a. The right of the consumer to consent to information-sharing based upon the knowledge of the institution's information-sharing practices. b. The right to access the credit report of the individual, subject to proper identification of that individual and free of charge (at least once a year). c. The right to know about adverse action in credit decisions or less-than-optimal conditions/prices due to credit report information. In this process, consumers should be provided with the name and address of the credit bureau. d. The right to be informed about all inquiries within a period of time, such as six months. e. The right to correct factually incorrect information or to have it deleted. f. The right to mark (flag) information that is in dispute. g. The right to decide if the consumer's credit information (for purposes not related to the granting of credit) can be shared with third parties. h. The right to have sensitive information especially protected (not included in the credit report), such as race, political and philosophical views, religion, medical information, sexual orientation or trade union membership. i. The right to reasonable retention periods such as those for positive information (for example, at least two years) and negative information (for example, 5-7 years.) <p>The right to have information kept confidential and with sufficient security measures in place to prevent unauthorized access, misuse of data, or loss or destruction of data.</p>

Description	<p>Debtors whose credit records are maintained by private credit bureaus do not have the same credit record –specific protections as debtors whose records will be maintained by the new Credit Information Corporation (CIC) ⁸⁸once it is operational. There are two private credit bureaus operating in the banking sector in the Philippines:</p> <ul style="list-style-type: none"> • The BAP Credit Bureau is operated by the Bankers Association of the Philippines, which provides positive and negative information (http://www7.bapcb.com/v2_services.bap.htm); and • The other credit reporting service is provided by TransUnion in relation to credit cards (http://www.transunion.ph/philippines/business/service-solutions/credit-reporting.page). <p>These private credit bureaus would be subject to the new Data Privacy Act of 2012 and the banks using their services would be required to comply with relevant BSP rules (for example, the rule requiring banks to keep up to date information they have given credit bureaus).⁸⁹ However, private credit bureaus and their subscribers are not subject to data protection rules specific to credit reports.</p> <p>This position is in contrast to that which applies to the CIC under the Credit Information System Act 2008 (CIS Act). Under the CIS Act, a number of the protective provisions mentioned above apply in relation to the records maintained by the CIC. The CIC is, however, not yet operational as it is still in the process of procuring the computer systems it will need to operate.</p> <p>The specific position in relation to each of the paragraphs in this Good Practice is as follows:</p> <p>Paragraph (a)</p> <p>Although there is no provision specifically requiring borrowers to consent to the submission of data to either the CIC or a private credit bureau, there are some helpful provisions in the CIS Act and the Data Privacy Act. The Data Privacy Act allows for the “<i>processing</i>” of information with the consent of the data subject where it is necessary for contract formation purposes (such as to process a loan application).⁹⁰ The data subject must also be informed when information about him has been “<i>processed</i>” (which is very broadly defined and would seem to include disclosures to a credit bureau).⁹¹ Further, the CIS Act requires banks to inform borrowers that they are required to submit “<i>basic credit data</i>” to CIC.⁹² The term “<i>basic credit data</i>” is defined (in summary) to include both positive and negative information and any information on credit worthiness but does not include information on deposits and clients’ funds protected by the Secrecy of Bank Deposits Act, the Foreign Currency Act or the General Banking Act.⁹³</p>
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⁸⁸ <http://creditinfo.gov.ph/>

⁸⁹ MORB X306.7

⁹⁰ Data Privacy Act s.12

⁹¹ Data Privacy Act s.16(a)

⁹² CIS Act s. 4(f)

⁹³ CIS Act s. 3(b)

Paragraph (b)

Broad access and correction rights are provided for by s. 4(o) of the CIS Act. In summary, these rights include:

- A right of “*ready and immediate access*” to their credit information; and
- A right to dispute “erroneous, incomplete, outdated or misleading credit information” and the CIC must respond within 5 working days, failing which the borrower has a right of indemnity.

Although these credit report –specific rights do not apply to debtors whose information is held by a private credit bureau, broad access and correction rights apply under s.16 (c) and (d) of the Data Privacy Act. Private credit bureaus should be required to comply with these obligations.

Paragraph (c)

A borrower covered by the CIS Act has the right to know of credit being refused where the financial institution uses basic credit data as a reason for the decision. S.4(n) of the CIS Act provides in this regard that: “*The borrower has the right to know the causes of refusal of the application for credit facilities or services from a financial institution that uses basic credit data as basis or ground for such refusal.*”

There is not an equivalent obligation imposed on private credit bureaus. For example, there is no obligation to inform a loan applicant that their information will be disclosed to a credit bureau and private credit bureau debtors do not have the right to be informed if credit is refused because of an adverse credit report. As a result, they have no opportunity to seek correction of any alleged incorrect information or to request that disputed information be flagged on the system. On the contrary, the loan and credit card application forms reviewed by the mission team all contained a provision to the effect that the debtor has no right to be informed of the reason why credit is refused.

Paragraph (d)

There does not appear to be any such provision in the Philippines.

Paragraphs (e) and (f)

See the comments on paragraph (b).

Paragraph (g)

This right would seem to be implicit so far as the CIC is concerned, given the strong provisions on confidentiality provided for in the CIS Act (see paragraph (j) below). Further private credit bureaus should be required to comply with the limitations on data processing provided for by s. 12 of the Data Privacy Act. With specified exceptions, data processing can only occur with the consent of the data subject.

	<p>Paragraph (h)</p> <p>Private credit bureaus would be subject to the provisions of the Data Privacy Act relating to sensitive information, but these provisions do not apply to the CIC.⁹⁴ The Data Privacy Act, in summary, provides, in summary, that the processing of broadly defined “<i>sensitive information</i>” is prohibited, subject to limited exceptions (such as with consent or where required by law).⁹⁵</p> <p>Paragraph (i)</p> <p>The CIS is required to maintain negative credit information for no more than 3 years⁹⁶, but there does not seem to be any limitation on the amount of time for which positive credit information must be held. The Data Privacy Act does not have any particular provisions applying to credit reports, although its general rules of the retention of personal information are helpful. S. 11(e) provides in this regard that personal information can be “<i>retained only for as long as necessary for the fulfillment of the purposes for which the data was obtained or for the establishment, exercise or defense of legal claims, or for legitimate business purposes, or as provided by law,</i>”.</p> <p>Paragraph (j)</p> <p>The CIC, and all related parties, are required to keep credit information strictly confidential and to only use the information to establish credit worthiness.⁹⁷ Although these provisions do not apply to private credit bureaus, they are subject to provisions in s. 12 of the Data Privacy Act relating to confidentiality of information.</p> <p>Both the CIS Act and the Data Privacy Act contain provisions concerning security of information. S. 5(i) of the CIS Act requires that the CIC “<i>acquire and use state-of-the art technology and facilities in its operations to ensure its continuing competence and capability to provide up to date negative and positive credit information: ...and to insure accuracy of collected, stored and disseminated credit information.</i>”</p> <p>S. 20 (a) of the Data Privacy Act requires a personal information controller to “<i>implement reasonable and appropriate organizational, physical and technical measures intended for the protection of personal information against any accidental or unlawful destruction, alteration and disclosure, as well as against any other unlawful processing</i>”.</p>
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⁹⁴ CIS Act s.4 (e)

⁹⁵ Data Privacy Act s.13

⁹⁶ CIS Act s. 3(h)

⁹⁷ CIS Act s.6

Recommendations	<p>The data protection rules applying in relation to credit reports maintained by the private credit bureaus should be revised so as to include a requirement for debtors to specifically consent to the inclusion and correction of their information, to be informed if credit is refused because of an adverse credit report and to have access and correction rights and a right to have disputed information flagged. At a minimum, the same protective provisions as exist under the CIS Act should apply in relation to credit reports maintained by private credit bureaus.</p> <p>Credit bureaus should also be asked to conduct a public awareness campaign about their activities and relevant consumer rights. This would be consistent with the obligation imposed on CIC under s.7 of the CIS Act. The design of effective methods for financial education can be informed by the new evidence and insights on financial education produced recently by the World Bank⁹⁸.</p> <p>It is also suggested that consideration be given to allowing a data subject one free request for correction of a report per year. This would be consistent with the World Bank's Credit Reporting Principles, 2011.</p> <p>Finally, consideration could be given to requiring private credit bureaus to be licensed and appropriately supervised.</p>
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SECTION B.	CONSUMER EMPOWERMENT
Good Practice B.1	<p><i>Unbiased Information for Consumers</i></p> <p>Financial regulators should provide, via the internet and printed publications, independent information for consumers that seek to improve their knowledge for actively managing the credit report.</p>
Description	Issues related to Financial Capability are to be the subject of a separate diagnostic. This diagnostic should cover issues the subject of this Good Practice.
Recommendation	We make no recommendations in this context.

Good Practice B.2	<p><i>Awareness of Credit Reporting</i></p> <p>In order to ensure that financial consumer protection and educational initiatives are appropriate, it is necessary to measure financial capability with large-scale surveys that are repeated periodically. These surveys should include questions on credit reporting and scoring.</p>
Description	The Philippines is conducting a household survey on financial capability, with the assistance of the World Bank.
Recommendation	We make no recommendations in this context.

⁹⁸ Additional information can be found in www.finlitedu.org.

ANNEXURE I. LEGAL AND REGULATORY FRAMEWORK

The principal laws relevant to consumer protection for credit and debit products in the Philippines at the time of the mission were as follows (in summary):

NAME OF LAW / CIRCULAR	TOPIC COVERED	REGULATOR / SUPERVISOR
BANKING		
New Central Bank Act	Provides for the establishment and organization of BSP	BSP
General Banking Law of 2000 (General Banking Law)	Provides for the creation, organization and operations of banks (especially universal, commercial, rural, thrift, cooperative and savings banks), non-banks with quasi-banking functions and trusts	BSP
Rural Banks Act of 1992, RA 7353 (Rural Banks Act)	Provides for the creation, organization and operations of rural banks	BSP
Thrift Banks Act R.A .7906 (Thrift Banks Act)	Provides for the creation, organization and operations of thrift banks	BSP
The Consumer Act of the Philippines of 1991 RA 7394 (Consumer Act)	The Consumer Act has general consumer protection provisions which apply to all service providers (including financial services providers) and specific provisions which apply to providers of credit products.	The DTI is stated to be the implementing authority for most of the provisions applicable to banks but the Act is silent on the question as to who is the implementing authority for Title IV, which contains specific provisions concerning credit contracts. The mission team was told that the DTI relies on two opinions from the DoJ to the effect that the BSP is to be considered as the implementing agency for the application of the Consumer Law to BSP regulated institutions.
Pawnshop Regulation Act of 1973 (Pawnshop Act)	Regulates the establishment and operations of pawnshops	BSP
Revised Non-Stock Savings and Loan Association Act of 1997, RA 8367 (Savings and Loan Act)	Provides for the registration and operations of non-stock savings and loan associations	BSP
Manual of Banking Regulations 2008 (MORB)	Provides a compilation of banking regulations and policy issuances of the Monetary Board of BSP up until 2008	BSP
Batas PambansaBlg. 22: An Act Penalizing the Making or Drawing and Issuance of a Check Without Sufficient Funds or Credit, 1979 (Dishonored Checks Act)	Imposes penalties for the drawing of dishonored checks. See also MORB X203	BSP

TRUTH IN LENDING		
Truth in Lending Act 1963 RA 3765 (Truth in Lending Act)		BSP
Circular 730 of 2011 (Circular 730)	Updated Rules implementing the Truth in Lending Act to Enhanced Loan Transaction Transparency Rules for Banks.	
Circular 754 of 2012 ((Circular 754)	Loan Transaction Transparency for NBFIs and Penal Provisions	BSP
Circular 755 (Circular 755)	Registration with the BSP of lending / financing facilities granted by entities registered with the SEC and the DTI. As part of the registration process the relevant entities undertake to comply with all relevant laws and may have their registration revoked if they fail to do so.	BSP
Memorandum No. 18 of 2012 (EIR Circular for NBFIs)	Effective interest Rate Calculations for NBFIs.	BSP
Memorandum No. 20 of 2012 (EIR Circular for Loans not covered by Truth in Lending Act)	Effective interest Rate Calculations for Loans not covered by the Truth in Lending Act.	BSP
Memorandum No. 30 of 2012 (Poster Requirements Circular)	Poster requirements for Truth in Lending Act requirements under Circulars 730 and 754.	BSP
ELECTRONIC COMMERCE		
Electronic Commerce Act 2000 RA 8792 (E Commerce Act)	Provides for the legal recognition of electronic data messages and documents, electronic contracts and electronic transactions with government agencies.	BSP, DTI and Department of Budget and Management
Circular No. 542 of 2006 (E Banking Consumer Protection Circular)	Consumer Protection for Electronic Banking	BSP
Circular No. 649 of 2009 (Issuance of E-Money Circular)	Guidelines for the issuance of E-Money	BSP
Circular No. 704 of 2010 (Outsourcing by E-Money Issuers Circular)	Guidelines on the Outsourcing by E-Money Issuers to E-Money Network Service Providers	BSP
DEPOSIT INSURANCE		
PDIC Charter, RA 3591 (PDIC Charter)	Provides for the establishment and operations of the Philippine Deposit Insurance Corporation	Board of Philippine Deposit insurance Corporation (the Secretary of the Ministry of Finance is the Chairman of the Board and the Governor of the BSP is a member).

DATA PRIVACY		
Secrecy of Bank Deposits Act of 1955 RA 1405 (Secrecy of Bank Deposits Act)	Provides for the “ <i>absolute confidentiality</i> ” of bank deposits	BSP
Data Privacy Act of 2012 RA 10173 (Data Privacy Act)	Provides for the protection of individual personal information and the creation of the National Privacy Commission.	National Privacy Commissioner
COMPETITION		
Executive Order No. 45 of 2011 (DoJ Competition Order)	Designates the Department of Justice as the Competition Authority	Department of Justice
Department of Justice Circular No. 11 of 2013 (DoJ Competition Guidelines)	Implementation Guidelines for Executive Order No. 45 of 2011	Department of Justice
INSOLVENCY		
The Rehabilitation and Liquidation of Financially Distressed Individuals and Enterprises Act of 2010 RA 10142 (Insolvency Act)	Provides for the rehabilitation or liquidation of insolvent natural persons and corporations.	Courts of the Philippines
MICROFINANCE		
Circular No. 272 of 2001 (MF Loans Circular)	Sets limits on loans, interest rates and deals with amortization of “ <i>microfinance loans</i> ” as defined. This Circular also provides an exemption for microfinance facilities from BSP requirements for evidence of income and assets and liabilities etc.	BSP
Circular No. 746 of 2012 (MF Credit Exemption Circular)	Extends the exemption from documentary requirements applicable on grant of credit to micro and small enterprises.	BSP
Circular No. 683 of 2010 (Micro Insurance Circular)	Regulates Marketing, Sales and Servicing of Micro Insurance Products (including in banks).	BSP
Senior Citizens Priority Lane in BSP Supervised Institutions Circular No. 805 Series of 2013 (Senior Citizens Circular)	Requires senior citizens to be given express lanes in all banking establishments.	BSP

SECURITIES AND EXCHANGE COMMISSION		
Securities and Exchange Commission Lending Companies Act RA 9474 (SEC Lending Companies Act)	Regulates the operations of “Lending Companies” which are defined to mean (in summary) organizations making loans from their own capital funds or from funds sourced from not more than 19 persons.	SEC
Circular No. 7 of 2011 (SEC Truth in Lending Circular)	Applies BSP Circular 730 to lending companies.	SEC
INSURANCE		
Circular No. 31 of 2011 (IC Truth in Lending Circular)	Updates rules for implementing the Truth in Lending Act, following BSP Circular 730.	Insurance Commission (IC)
COOPERATIVES		
Cooperative Development Authority Act of 1990 RA 6939 (CDA Act)	Provides for the establishment, functions, powers and responsibilities of the Cooperative Development Authority (CDA).	CDA
Cooperative Code of the Philippines of 1990 RA 6938 (Cooperatives Act)	Deals with the organization, registration and operations of cooperatives.	CDA
Circular No. 5 of 2012 (CDA Truth in Lending Circular)	Applies BSP Circular 730 to cooperatives	Cooperative Development Authority (CDA)
ANTI-MONEY LAUNDERING		
Anti- Money Laundering Act of 2001, RA 9160 (AML Act)	Designed to preserve the integrity and confidentiality of bank accounts and to ensure that the Philippines shall not be used as a money laundering site for the proceeds of any unlawful activity	BSP, IC and SEC (depending on the institution covered by the Act)

ANNEXURE II. COMPARISON BETWEEN CONSUMER LAW OF THE PHILIPPINES AND BSP LAWS

NOTE: The purpose of the table below is to highlight the extent to which key provisions of the Consumer Act deal with issues apparently applicable to credit providers which issues are also, to a least a limited extent, covered by covered by laws, regulations, circulars etc. applicable to entities regulated by the Bangko Sentral ng Pilpinas (BSP Laws).

CONSUMER ACT	BSP LAWS
DEFINITIONS	
<p>The relevant Art. 4 definitions in the Consumer Act are as follows:</p> <p>“Services” are defined to include any that are the subject of a “consumer transaction” and the latter term is defined to include “(ii) grant or provision of credit to a consumer” and “Consumer” is defined to mean “a natural person who is a purchaser, lease, recipient or prospective purchase, lease or recipient of consumer products, services or credit”.</p>	No equivalent.
TITLE III, CHAPTER 1, PROTECTION AGAINST DECEPTIVE, UNFAIR, AAND UNCONSCIONABLE SALES ACTS OR PRACTICES	
<p>Article 49: Implementing Agency. The Department of Trade and industry is the implementing agency for Chapter I of Title III. Relevant provisions in the Chapter apply to “consumer transactions” which are defined to include the grant or provision of credit to a consumer.</p>	No equivalent, although it is clear that the BSP administers its own Laws.
<p>Article 50: Prohibition against Deceptive Sales Acts or Practices. Such practices are defined to include “whenever the ... supplier or seller, through concealment, false representation of fraudulent manipulation induces a consumer to enter into a sales or lease transaction of any product or service”.</p>	<p>The mission team was not able to find an equivalent provision for credit or debit products. However there is a general provision in MORB X104 (c) relating to depositors that would appear to have a similar effect (emphasis added). It provides that:</p> <p><i>‘c. No bank shall place or cause to be placed any advertisement tending to mislead a depositor into believing that he will get more in benefits than what the bank is legally authorized to give. No bank advertisement shall contain any false claim or exaggerated representation as to its liquidity, solvency, resources, deposits and banking services.’</i></p>
<p>Article 52: Unfair or Unconscionable Sales Act or Practice. Such practices are defined to include “whenever the ... supplier or seller, by taking advantage of the consumer’s ... ignorance, illiteracy, lack of time or the general conditions of the environment or surroundings, induces the consumer to enter into a sales or lease transaction grossly inimical to the interests of the consumer or grossly one-sided in favor of the ... supplier or seller”.</p>	No equivalent.

Articles 54 - 58: Home Solicitation Sales. These Articles prohibits home solicitation sales of any “ <i>consumer product or service</i> ” without a permit from DTI and contain other restrictions on when and how such sales may be concluded.	No equivalent.
TITLE III, CHAPTER VI ADVERTISING AND SALES PROMOTION	
Article 109: Implementing Agency. The Department of Trade and industry (DTI) is the implementing agency for Chapter VI of Title III, which applies to consumer services (and products).	No equivalent.
Article 110: False, Deceptive or Misleading Advertisement. This Article contains a general prohibition on false, deceptive and misleading advertising.	See comments on Article 50.
Article 111: Price Comparisons. This Article imposes restrictions on comparative advertising.	See comments on Article 50.
Article 113: Credit Advertising. This Article in effect prohibits advertisements making claims about amounts of credit payments or installments or down payments unless the credit provider customarily arranges the relevant payment, installment or amount.	No equivalent.
Article 114: Advertising of Open-end Credit Plan. Advertisements about open-ended credit plans (e.g. for credit cards or checks) must disclose “ <i>the rate of interest and other material features of the plan...</i> ”	No equivalent.
TITLE IV CONSUMER CREDIT TRANSACTION NOTE: The Consumer Act does NOT say who the implementing agency is for this Title.	
Article 131: Declaration of Policy. This Article declares the policy of the State in relation to these credit provisions to be as follows (emphasis added): <i>The State shall simplify, clarify and modernize the laws governing credit transactions and encourage the development of fair and economically sound consumer credit practices. To protect the consumer from lack of awareness of the true cost to the user, the State shall assure the full disclosure of the true cost of credit.</i>	No equivalent.
Article 132: Determination of Finance Charges. This Article in summary provides that “ <i>finance charges in connection with any consumer credit transaction shall be determined as the sum of all charges, payable directly or indirectly by the person to whom the credit is extended and imposed directly or indirectly by the creditor as an accident to the extension of credit, including {various specified charges}</i> ”. The specified charges include (in summary) interest, collection fees, credit investigation fees, notarial fees and fees for any guarantee or insurance protecting against default.	MORB s. 307.1(g) (as provided for by BSP Circular 730) has a definition of “ <i>finance charges</i> ” which is comprehensive, but apparently more limited, than that in the Consumer Act (for example, it does not refer to insurance charges). It provides as follows (emphasis added): <i>‘Finance charge includes interest, fees, service charges, discounts, and such other charges incident to the extension of credit.’</i>

<p>Article 133: Determination of Simple Annual Rate. This rate is required to be determined in accordance with prescribed rules and regulations. The mission team was unable to ascertain whether any such regulations have been made.</p>	<p>MORB X307.1(h) (as provided for by BSP Circular 730) provides the following definition of a <i>simple annual rate</i>:</p> <p><i>'Simple annual rate is the uniform percentage which represents the ratio between the finance charge and the amount to be financed under the assumption that the loan is payable in one year with single payment upon maturity and there are no upfront deductions to principal.'</i></p>
<p>Article 134: Delinquency Charges. This Article allows for a delinquency charge, subject to a 10 day grace period.</p>	<p>MORB X320.4 (g) and (h) requires disclosure of the method of determining delinquency charges in a credit card contract as follows:</p> <p><i>'g. the method of determining the balance upon which interest and/or delinquency charges may be imposed;</i></p> <p><i>h. the method of determining the amount of interest and/or delinquency charges, including any minimum or fixed amount imposed as interest and/or delinquency charge;'</i></p> <p>The MORB X320.8 also makes it clear that a late payment fee cannot be charged unless it is disclosed in a credit card contract, and requires such a fee to be based on the unpaid minimum amount or a prescribed minimum amount. However there is provision for the total amount to be payable if there is an acceleration fee in the contract.</p> <p>The above provisions only apply to credit cards. Further, there is no requirement for a grace period (as contemplated in the Consumer Act).</p>
<p>Article 135: Deferral Charge. Such charges are allowed for provided they have been previously disclosed.</p>	<p>MORB X320.7 contains a similar provision for credit cards:</p> <p><i>Deferral charges. The bank and the cardholder may, prior to the consummation of the transaction, agree in writing to a deferral of all or part of one (1) or more unpaid installments and the bank may collect a deferral charge which shall not exceed the rate previously disclosed pursuant to the provisions on disclosure.</i></p> <p>The above provisions only apply to credit cards. There is no equivalent, for example, for loan products.</p>
<p>Article 136: Finance Charge on Refinancing. Such charges are permitted for an open – ended credit contract based on the refinanced amount to an extent allowed for by DTI rules. The mission team was unable to ascertain whether any such rules have been made.</p>	<p>No equivalent.</p>

<p>Article 137: Right to Prepay. This Article makes clear the right to prepay any credit in whole or in part, without penalty</p>	<p>S. 45 of the General Banking Act contains a similar provision:</p> <p><i>‘SECTION 45. Prepayment of Loans and Other Credit Accommodations. — A borrower may at any time prior to the agreed maturity date prepay, in whole or in part, the unpaid balance of any bank loan and other credit accommodation, subject to such reasonable terms and conditions as may be agreed upon between the bank and its borrower.’</i></p>
<p>Article 138: Rebate on Prepayment. On prepayment of a consumer credit transaction, the unearned part of the finance charge must be rebated in accordance with this clause.</p>	<p>No equivalent.</p>
<p>Article 139: General Requirement on Credit Cost Disclosure. This Article is to the effect that the disclosures required by the Act must be made by a credit provider <i>in accordance with the regulations of the implementing agency</i>. The mission team was unable to ascertain whether any such regulations have been made.</p>	<p>No equivalent.</p>
<p>Article 140: Credit Sales, Required Disclosures: this Article contains detailed disclosure requirements for credit sale contracts (other than pursuant to an open – ended credit plan).</p>	<p>There is no equivalent specifically for credit sales contracts. However some aspects of the Consumer Act requirements are covered by Circular 730. However this does not include the requirements under Article 140 to disclose, for example, the cash price of the relevant goods or the amount of any down payment.</p>
<p>Article 141: Required Disclosure on Open-end Credit Plan. This Article contains disclosure requirements for open-ended credit plans (such as credit cards, overdrafts and lines of credit).</p>	<p>There are disclosure requirements for credit card contracts but not, for example, specific to overdrafts and other lines of credit which also have revolving balances.</p> <p>The credit card contract disclosure requirements are contained in MORB 320.4 and to some extent are more extensive than those in the Consumer Act (for example, there are no requirements in the Consumer Act for the disclosure of the fees and charges).</p>
<p>Article 142: Required Disclosures on Consumer Loans Not Under Open-End Credit Plan. This Article contains detailed disclosure requirements for other consumer loans.</p>	<p>MORB X307.2 (as set out in Circular 730) provides that:</p> <p><i>‘As a general rule, loan terms shall be disclosed to all types of borrower. For small business/retail/consumer credit the following are the minimum information to be disclosed (sample form in Appendix 19):</i></p> <ul style="list-style-type: none"> <i>a. The total amount to be financed;</i> <i>b. The finance charges expressed in terms of pesos and centavos;</i> <i>c. The net proceeds of the loan; and</i> <i>d. The percentage that the finance charge bears to the total amount to be financed expressed as a simple annual rate or an effective annual interest rate (EIR) as described in item h of</i>

	<p><i>Subsection x307.1. EIR may also be quoted as a monthly rate in parallel with the quotation of the contractual rate.</i></p> <p><i>Banks are required to furnish each borrower a copy of the disclosure statement, prior to the consummation of the transaction.”</i></p> <p>The principal difference between the above requirements and those of the Consumer Act appears to be that Circular 730 does not require disclosure of details of security interests.</p>
Article 143: Form and Timing of Disclosures. All disclosures required by the Act must be “ <i>made clearly and conspicuously in writing before the transaction is consummated</i> ”.	There is not a general requirement to this effect although, as noted above, Circular 730 requires the mandated disclosures for loans to be provided “ <i>prior to the consummation of the transaction</i> ”. Further, X320.4 requires credit card information about fees and charges and interest rates (and other matters) to be disclosed “ <i>prior to the imposition of the charges and to the extent applicable</i> ”
Article 144: Periodic Statement of Charges. This Article contains disclosure requirements for periodic statements of account (but does not require credit providers to provide them)	Periodic statements of account are only required in relation to check accounts (MORB X185.2(c)).
Article 145: Exempted Transaction. This Article makes clear that the above requirements do not apply to business or commercial purpose transactions or to consumer credit transactions “ <i>where the debtor is the one setting the definite set of terms such as bank deposits, insurance contracts, sale of bonds or analogous transactions</i> ”.	The Circular 730 requirements are stated to apply only to “ <i>small business/retail/consumer credit</i> ” (see MORB X307.2).
Article 146: Sale of Consumer Products on Installment Payment. This Article contains detailed disclosure requirements for installment sales.	No equivalent.
Article 147: Penalties. The penalties for non-compliance with the above provisions are minimal (the greater of 1,000 pesos and an amount equal to twice the finance charge, up to a maximum of 3,000 pesos).	See Sections 35, 36 and 37 of R. A. No. 7653.

