



Project on Strengthening Technical Competency for Consumer Protection in ASEAN

Consumer Credit and Banking

Final Version 21 December 2015



The overall objective of the project is to "enhance AMS with effective capacities to adopt and implement consumer protection laws at the national level". The project should build/strengthen capacity of government agency personnel through the design, development and delivery of training programs, modular components and materials, focusing on technical requirements provisionally involving consumer concerns and demands in 6 core areas, as identified in the AADCP II Project Report on "Road-mapping Capacity Building Needs in Consumer Protection in ASEAN" (AADCP report) in 2011. These areas are: 1) Product safety and labelling; 2) Phone and internet services, and e-commerce; 3) Consumer credit and banking; 4) Environment; 5) Healthcare services; and 6) Professional services. For further information about the project, please contact the ASEAN Secretariat, Ms Yap Lai Peng (yap@asean.org) or Ms Sarah Firdaus (sarah.firdaus@asean.org), and Mr. Pierre Horna (pierre.horna@unctad.org), Manager of the Project on Strengthening Technical Competency for Consumer Protection in ASEAN.

The module was drafted by Professor Justin Malbon (Australia) under the overall substantive guidance and project backstopping of UNCTAD. Our special thanks to the ASEAN Secretariat for an excellent partnership and the AADCP II for the trust given to UNCTAD in executing the present project.



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EXECUTIVE SUMMARY

1. Consumer credit protection laws and their effective enforcement play a critical role in protecting a number of fundamental consumer interests, including protecting consumers from—
 - entering into financially unsustainable loans,
 - being misled about the nature and purpose of the loan,
 - the imposition of harsh and unfair loan terms,
 - harassment and personal danger when a lender seeks to enforce loan repayment obligations,
 - misleading or inaccurate reporting of their credit status and history, and
 - having their private financial information wrongly passed on to 3rd parties.
2. Strong consumer credit protection laws and practices not only protect consumers from these kinds of practices and outcomes they can also build consumer confidence in the consumer credit marketplace thereby leading to greater consumer participation in the marketplace. This in turn can strengthen and stabilise economic growth.
3. ASEAN is expected to remain one of the fastest growing regions in the world. Its 2014 combined GDP, for instance, was larger than India's. It is also expected that ASEAN's middle class will continue to rapidly grow. As consequence, strong consumer credit protection laws are likely to play a key role in enabling a greater range of trusted and fair consumer credit products to be offered to an increasing number of people.
4. This module outlines the types of consumer credit products and services that are typically available in most ASEAN countries.
5. The module also describes the operation of laws designed to ensure that lenders engage in responsible practices, including ensuring they properly assess a potential borrower's capacity to repay the loan on offer.
6. Laws are also described that are aimed at –
 - Ensuring the operation of a well-informed and competitive consumer credit marketplace.
 - Ensuring that consumers are not subjected to poor market practices. These may include imposing excessive interest rates for loans, misleading consumers about the nature of the loan, and engaging in uncompetitive practices such as requiring as a condition of the loan that the consumer also purchase insurance products required by the lender.
 - Prohibiting lenders engaging in harsh and unfair credit collection processes.
 - Prohibiting lenders from misusing a borrower's private borrowing and credit information.



7. The module also deals with requirements that lenders maintain confidentiality in relation to financial and other information that they obtain and hold regarding their customers.
8. Laws dealing with criminal practices such as card fraud and ATM fraud are also outlined.
9. The module also deals with the agency enforcement practices and procedures, and the ways in which consumers can obtain cheap and speedy remedies.

ASEAN Member States





How to Use this Module

Who is this module for?

The module is designed for those who have a role in enhancing the operation of the consumer credit and banking marketplace, including by protecting consumers' interests

Purpose of this Module

1. The purpose of this Module is to provide a resource for instructors seeking to train participants in how to deal with systemic problems that arise in the consumer credit and banking marketplace within the ASEAN region.
2. The Module is set out in two parts. Part 1 outlines the ways in which an instructor may design a training program. Usually a systemic problem in the marketplace has complex origins and involves a range of key players including consumers, industry participants, government agencies and others. In order to deal with the systemic problem it is often necessary to break the problem down and take a strategic approach to dealing with it.
3. Part 1 attempts to provide some essential tools in designing the training program.
4. Part 2 sets out content information about laws and regulations within the AMS, along with relevant world's best practice, regarding consumer credit and banking.
5. The training module may assist with developing training programs for –
 - policy offices in consumer and other government agencies who seek to better understand the operation of their own laws and regulatory practices, and to seek further knowledge about laws and practices in other AMSs and world's best practice
 - regulatory and enforcement officers who seek to better understand existing laws and how to best implement and enforce those laws
 - other bodies and agencies that seek to better understand how to advise and assist consumers, how to improve their business practices, and how to advise, assist and respond to government moves to improve the law and industry and regulatory practices.



1. INTRODUCTION

1. Consumer credit and banking covers a wide range of consumer products including housing loans, credit cards, personal loans, hire purchase agreements, retail store credit arrangements and payday loans. With the predicted massive growth of the middle class in the ASEAN region, the demand for these financial products is likely to dramatically increase. This will place increased pressure on ASEAN governments to ensure adequate and appropriate laws and regulatory systems are in place to enable orderly growth of the market. If bad lending practices are allowed to flourish, it could undermine consumer confidence and retard the growth of the consumer credit market.
2. Consumer credit laws and regulatory practices aim to –
 - promote consumer rights by protecting them (or helping them protect themselves) from financial (and sometimes physical) abuse and exploitation; and
 - enhance consumer confidence and engagement with the consumer credit marketplace.
3. Generally, the more consumers feel confident that they can get meaningful protection if things go wrong, the more confident they will be in participating in the marketplace. Put simply, the more they feel the consumer credit marketplace is a safe place, the more they are likely to purchase quality consumer credit products. This in turn leads to growth of the market, leading to increased economic activity, which benefits consumers, businesses and the country's economy overall.
4. A poorly regulated consumer credit market can allow a wide range of exploitative, inefficient, corrupt and in some cases dangerous, practices. The bad practices can include –
 - Lenders charging low income consumers extremely high interest rates, along with excessive penalty rates for late payment of loans. If this practice is widespread it can trap large numbers of low income members of society in permanent states of poverty.
 - Lenders misleading consumers about the terms of the loan or guarantee arrangements.
 - Debt collectors using threats and the use of violence to compel loan repayments. In some cases the debt collectors may unlawfully take a person's property claiming it is for repayment of a debt.
 - Lenders having inappropriate access to the credit histories and information of borrowers.
 - Agents acting for lenders by completing loan application forms for borrowers which misrepresent the borrower's income and assets. This might lead to lenders providing credit to a borrower who has no realistic capacity to repay the loan. This in turn can lead to the borrower's bankruptcy or the taking of the borrower's property in satisfaction of the loan. Systemic and widespread bad practices of this kind can have serious economic consequences. For instance, these kinds of



practices in the United States sub-prime house lending market during the 1990s and early 2000s triggered the Global Financial Crisis.

- Lenders requiring the borrower to enter into unnecessary or expensive insurance contracts as a condition of having the loan.

1.1 Potential Growth of the ASEAN consumer credit market

5. There is enormous potential for the growth of a robust and profitable consumer credit marketplace within ASEAN countries. The growing middle class offers considerable scope for market growth, particularly if there are strong and effective consumer protection systems in place.
6. ASEAN is expected to remain among the fastest growing regions in the world in the medium to long term. The combined ASEAN GDP was more than US\$2 trillion in 2014, which was larger than India's GDP. Indonesia, Malaysia, Thailand and the Philippines are projected to grow by at least 4% per annum on average over the next five years.
7. According to the Managing Director of the Monetary Authority of Singapore, Mr Ravi Menon:

Rising incomes and the agglomeration effects of urbanisation will significantly expand the ranks of the middle class in ASEAN.

- In 2010, ASEAN had a population of 600 million, with around a quarter making up the middle class.
 - In 2030, ASEAN will have a population of 700 million, with about two-thirds attaining middle class status.
 - In other words, the size of the middle class will swell by as much as three times over two decades.
8. This rapid expansion of the middle class in ASEAN will spur demand for a wide range of goods and services.
 - Services such as telecommunications, education, healthcare, and banking and finance, have a high income elasticity of demand.
 - This means that as incomes rise and wealth accumulates, the demand for financial services — be it consumer credit, wealth management, or insurance — will rise more than proportionately.¹

¹ Ravi Menon, speech given at the ASEAN Banking Council Meeting, June 2015, www.mas.gov.sg/news-and-publications/speeches-and-monetary-policy-statements/speeches/2015/asean-financial-integration-where-are-we-where-next.aspx



9. This compares with approximately 500 million middle class consumers within the Asia region more broadly. It is estimated that within 20 years there will be a sixfold increase in the middle class within the region.²
10. The Managing Director, Monetary Authority of Singapore, Ravi Menon, believes that ASEAN economic growth could be as high as 6% if the region becomes more integrated, and structural reforms to raise productivity and competitiveness are successfully implemented.³
11. The *ASEAN Economic Community Blueprint* commits ASEAN nations to establishing a single market and production base, making ASEAN more dynamic and competitive. The Blueprint states that, as part of building an integrated economic region, 'consumers cannot be precluded in all measures taken to achieve this integration'. As part of its commitment to strengthening consumer protection, ASEAN needs to remain cognisant of the particular consumer protection issues that can arise in the consumer credit market.⁴
12. In giving effect to the ASEAN Blue-print aims for greater financial integration, Mr Menon said:

Financial integration is a strong complement to trade integration and a critical component of the overall AEC project. Deeper financial integration will yield substantial benefits for ASEAN economies.

- It will support economic growth by helping to mobilise surplus savings more efficiently and channelling them to productive investment opportunities in the region.
- It will strengthen resilience to external shocks by helping to deepen and broaden capital markets.
- It will promote financial inclusion by helping to expand the reach of financial services to a wider community that is currently under-banked and under-insured.⁵

² Homi Kharas and Geoffrey Gertz, (2010) 'The New Global Middle Class: A Cross-Over from West to East' Chapter 2 in *China's Emerging Middle Class: Beyond Economic Transformation* (Cheng Li, editor), Washington, DC: Brookings Institution Press, p.5.

³ Ravi Menon, speech given at the ASEAN Banking Council Meeting, June 2015, www.mas.gov.sg/news-and-publications/speeches-and-monetary-policy-statements/speeches/2015/asean-financial-integration-where-are-we-where-next.aspx

⁴ www.asean.org/communities/asean-economic-community

⁵ Ravi Menon, speech given at the ASEAN Banking Council Meeting, June 2015, www.mas.gov.sg/news-and-publications/speeches-and-monetary-policy-statements/speeches/2015/asean-financial-integration-where-are-we-where-next.aspx

1.2 AMS Context

13. One example of the growth of consumer credit within an ASEAN member nation is Thailand's consumer credit, which grew from less than 3,000 million THB in early 2013 to nearly 3,500 million THB in 2015.⁶
14. However by the end of 2013 household debt in Thailand was 82% of GDP (87% in Malaysia), which illustrates the constant challenges for central banks, monetary policies, and consumer regulators in ensuring that consumer credit growth occurs in an orderly and financially sustainable way.⁷
15. Ensuring the orderly operation of the consumer credit market requires effective and properly regulated consumer protection laws in combination with effective central bank regulation of the marketplace.



Member focus – the Philippines

16. Many ASEAN member States are undergoing substantial changes and reforms in their banking industries.⁸ For instance, in the Philippines multiple laws have been enacted in recent times regulating the financial industry and protecting consumers.⁹ In 2000, the *General Banking Law* was enacted establishing the Philippine policy on

⁶ www.tradingeconomics.com/thailand/consumer-credit

⁷ www.cariasean.org/Captures/CARI_Captures196_02november2014.pdf

⁸ This section is drawn from a submission by Consumers International entitled *Roadmapping Capacity Building Needs in Consumer Protection in ASEAN A Country Report* dated 15 June 2011.

⁹ Center for Financial Inclusion



banking to make it globally competitive, dynamic and responsive to the demands of a developing economy. The Philippines has a comprehensive banking system encompassing various types of banks, including –

- 17 universal banks
- 23 commercial banks
- 84 thrift banks
- 711 rural banks
- 44 credit unions, and
- 12 non-banks with quasi-banking functions.

17. All these institutions are licensed with the *Bangko Sentral ng Pilipinas (BSP)* under Republic Act No. 8791, also known as the *General Banking Act of 2000*.¹⁰
18. Banking in the Philippines is highly concentrated, with the largest six commercial banks controlling around 60% of all financial assets and 90% of all banking assets. Commercial banks are often part of a family-owned business conglomerate and tend to operate as in-house banks for their nonbank business operations.¹¹
19. Consumer lending in the Philippines is at a relatively early stage of development. The provision of consumer credit in low population density areas with little physical infrastructure tends to be done on an informal basis by small businesses. Lending often takes the form of microcredit, known as 5-6. The loans are usually provided for up to 6 months at rates ranging between 10-30% per month. Agreements are made on a word of mouth basis.
20. The Philippine authorities have tightened the rules on credit card lending while pushing for the establishment of a credit bureau due to concern about a general lack of familiarity with consumer credit and the absence of a credit culture.
21. Data on consumer or household indebtedness are available only in reports on credit cards and real estate and auto loans extended by banks that are monitored regularly by the BSP. All other data are either not easily accessible or not available in organised formats.¹²

¹⁰ Wikipedia.org. http://en.wikipedia.org/wiki/List_of_banks_in_the_Philippines

¹¹ Consultative Group to Assist the Poor. 'Philippines Financial Sector Assessment'. <http://www.microfinancegateway.org/p/site/m//template.rc/1.9.42308> [Retrieved on 2011-01-25]

¹² Consumer Credit in the Philippines. <http://otomanual.com/consumer-credit-in-the-philippines.html>



22. According to the Ibon Foundation,¹³ the following issues hinder consumer access to credit and banking:

- Tight credit policies of banks, particularly with respect to the requirements for accepting and assessing credit application
- Weak information system on available credit facilities
- Poor information dissemination on credit facilities
- Weak institutional and operational structures and systems for the efficient delivery of microfinance services by cooperatives, cooperative rural banks, NGOs, pawnshops and lending investors to the poor in a sustainable manner.

1.3 Gaps in the Laws

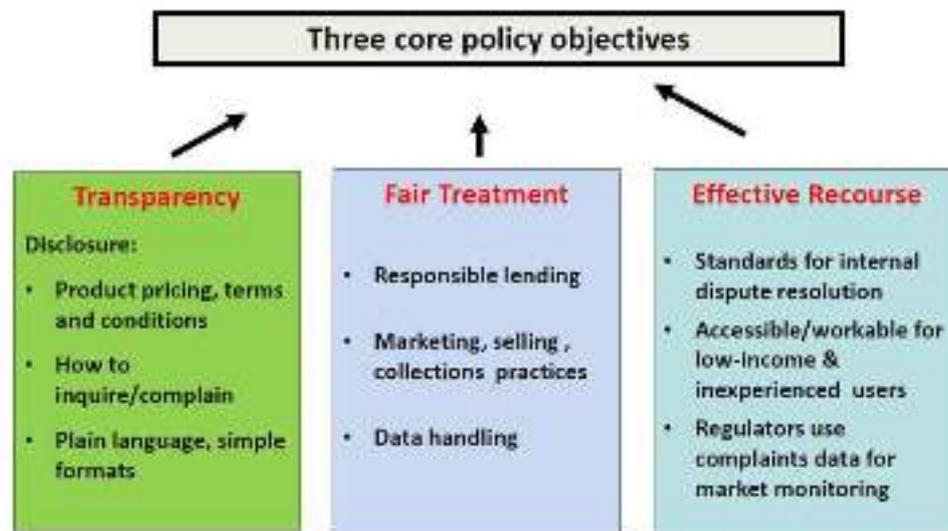
23. There are many examples of progressive and well formulated laws in ASEAN, some of which are set out in this module. However, the laws and regulatory practices in many ASEAN countries and throughout the world often have gaps in the laws and have areas in which their laws can be improved. These gaps or deficiencies include having either no or insufficient protection against the following.

- Lenders imposing excessive interest rates for loans, which particularly impact upon vulnerable consumers.
- Lenders not adequately disclosing or misinforming borrowers about the loan interest rate, and any penalty interest rates for late loan repayments.
- Lenders engaging in harsh or unreasonable enforcement practices against borrowers who default in their loan repayments.
- Lenders refusing to suspend to reduce loan repayment amounts while the borrower is suffering temporary hardship because of sickness, unemployment or some other reason.
- Lenders increasing credit card limits when the borrower has not sought it, leading to the borrower taking on too much credit.
- Lenders making no, or insufficient, assessments of a borrower's capacity to repay the loan, leading to borrowers having loan commitments they cannot meet.
- Lenders unfairly and inaccurately reporting on consumers' credit histories (eg a credit reporting agency informing a potential lender that a consumer has a bad credit history – when in fact that is not true).
- Lenders including one-sided and unfair terms in loan contracts.

¹³ Ibon is a research organisation and an affiliate member of Consumers International.

- Lenders requiring borrowers to enter into insurance contracts chosen by the lender – which are either provided on uncompetitive terms, or are completely unnecessary to protect the borrower's interests.

24. Laws and practices regarding consumer credit should generally aim to protect the interests of consumers against harsh and unfair practices, which in turn can promote consumer confidence and engagement in the consumer credit marketplace. The core policy objectives include providing for greater transparency regarding the nature of the consumer credit products and services a consumer may wish to purchase, and their rights if they have not been treated properly or fairly. The policy objectives should also seek to ensure that consumers are treated fairly. This includes ensuring that consumers are not provided credit in circumstances where they are very unlikely to be able to meet their credit repayment obligations. Marketing practices should not deceive or mislead consumers about credit products and their personal data and financial records should be treated confidentially. Consumers should also have a capacity to seek redress that is low-cost and quick.



From International Finance Corporation: World Bank Group *Responsible Finance in Vietnam* pp.14 www.ifc.org



PART 1:

STRATEGIC APPROACHES TO PROBLEM SOLVING



PART 1:

STRATEGIC APPROACHES TO PROBLEM SOLVING

What this Part covers:

- *It offer a rationale for why a training program for participants within the ASEAN region should instruct participants on how to adopt a strategic problem-solving approach to dealing with problems within the consumer credit and banking marketplace*
- *It sets out a four stepped method for developing a training program that involves: assessing the training need, determining the detailed content, designing the instruction and evaluating, then modifying the training as necessary*

1.4 Training for strategic problem solving approaches

25. ASEAN member government agencies responsible for consumer-related consumer credit and banking matters will often be seeking to deal with problems in the consumer marketplace. These may include issues such as:

- Banks and finance companies lending money to consumers who buy a motorbike. Those companies might on-sell any consumer debts for those motorbikes to a third party debt collecting agency. The agency might use unfair, and possibly illegal, means to obtain repayment of the consumer debt. There have been problems in member countries where the debt collector re-possesses the motorbike if the consumer has missed a few repayments (possibly because of illness or loss of job). The way in which the repossession takes place might be unlawful, yet the practice is widespread.
- Low income farmers receiving loans who then struggle to make repayments. The lenders may use unfair and unlawful means to recover the debt, including by repossessing the farmer's land.
- High interest lenders, such as payday lenders, may set up their businesses near factories where low paid workers work. The workers might borrow money to repay other debts or to engage in gambling, or for some other purpose. The loans might come at extremely high interest rates and on unfair terms. This may place them in a debt spiral that further entrenches their poverty.

26. In each of these examples the bad lending and debt collecting practices may be widespread, causing serious economic harm to many consumers, and retard economic growth. This can lock many consumers into debt traps. This in turn can slow down and reduce economic growth within the member country.
27. Usually the problems the government agency responsible for dealing with consumer-related issues are difficult to deal with. The agency often has limited resources for dealing with the problem.
28. The agency will often need to enlist the support and assistance of other agencies and groups to deal with the problem. A strategic approach is usually the best approach to identifying the threats and opportunities that face the agency in dealing with the problem, and with helping to resolve the problem.
29. This module adopts an approach to training policy makers, key stakeholders and enforcement officers that places an emphasis on adopting a strategic problem-solving approach. When designing a training program it is necessary to:
- identify and understand the needs of your trainees;
 - identify the key skills you want your trainees to obtain, and the essential knowledge your program will provide them;
 - develop the materials and information for the trainees;
 - deliver the training in an appropriate way given the available resources;
 - evaluate what has worked and what has not worked regarding the delivery of your programme.
30. This Module sets out four key steps for enhancing the chances of providing a successful program. These steps are:



Step 1:

ASSESSING THE TRAINING NEED

31. In assessing the training need, it is necessary to broadly identify the skills and knowledge your trainees presently lack, and are required to have to adequately undertake their work. In other words, you will be seeking to build and strengthen their technical competencies and capacities.
32. In designing the training program you will need to gain a broad sense of participants' existing knowledge and skills, and in some cases gain a broad sense of their cultural and other backgrounds.
33. The trainees will be adults who often can bring some existing knowledge and skills to their tasks and to the training sessions.
34. Depending on your needs to build technical competencies in capacities, the training program may be a one-off program for a relatively small group (e.g. policy offices within one or more government departments), or be a larger scale program (e.g. training enforcement officers throughout the country). In the latter case it is advisable to run a small pilot training program to test what elements work and what elements require further development before you proceed with the larger training project.
35. The need to build technical competencies and capacities will often be required to deal with a pressing systemic problem. For example, if there is a common practice of debt collecting agencies using threatening or unlawful practices to recover consumer loans, there may be a need to train officials in key agencies regarding their powers, ways the law can be reformed and enforced and how related disputes can be resolved.
36. When designing the training program the problem (or challenge) the training program is being designed to address needs to be clearly identified. The groups who are affected by the problematic industry behaviour also need to be identified. Such identification allows for a better design of the informational content that would be covered in the program.
37. It then becomes necessary to identify which officials and other key players require training to enhance their knowledge and skills to deal with the problematic behaviours. The questions to be asked when designing the program are:
 - what precisely is the knowledge and skills the program seeks to enhance; and
 - what information is necessary for them to perform their roles in order to deal with the problematic behaviour.

Key preliminary questions to be answered when designing a training program



Identifying the challenge

Identifying the challenge

When identifying the challenge (or problematic behaviour) to the marketplace consider –

1. the nature and extent of the most critical problems
2. the benefits or the consequences of not acting for consumers, providers, and the market as a whole;
3. the costs to providers of new rules or stronger enforcement; and
4. the supervisory capacity and political will to implement and enforce regulations

See Brix and McKee (2010) Consumer Protection Regulation in Low-Access Environments: Opportunities to Promote Responsible Finance 60 *Focus Note CGAP 1*



38. The 'challenge' is a problem which is facing the consumer marketplace. This might be, for example, financial institutions using harsh and unfair debt collecting practices, or a lender charging excessive interest rates for loans, or misleading a group of consumers about the nature of their loan.
39. When identifying the challenge (including any problematic behaviours by industry or consumers), assistance may be gained by examining any existing strategic documents within your agency, or within other government agencies or more generally. These documents may include the government's training policies, and strategic plans.
40. The training program may seek to enhance knowledge about existing laws and regulations, and laws and regulations in other jurisdictions which could be adopted through law reform in your own jurisdiction.
41. Part 2 of this Module provides information about relevant laws and regulations which can be used in the designing of your training program.

Identifying the target group

42. Often there will be a group within the population that are the victims of the harmful market practices. These groups may be vulnerable because of their low incomes, their age, ethnic group, geographical location, or for some other reason. It will be useful to understand the characteristics of these groups in order to design the training program to deal with the harm being done to them.

Who requires training?

Adult training

43. The participants, or trainees, will most likely all be adults. Sometimes they may have had many years' experience in government agencies or other organisations. They therefore will bring a considerable amount of practical experience, skills and knowledge to the training program. A good program will make use of this valuable experience. Often the best learning process is one that assists them understand the problem in practical terms and offers practical ways of dealing with the problems.
44. Key elements in training programs for adults can include:
 - Adopting a problem-based and collaborative training approach which places emphasis on identifying practical issues that require resolution, and practical steps to attaining that resolution.



- Emphasising that the trainer and trainee are equal in status. The trainer can learn from the trainee, just as the trainee can learn from the trainer.
- Engaging trainees in critical thinking, problem-solving and decision-making contexts that are personally relevant to them.
- Allowing opportunities for participants to debrief and consolidate any ideas and skills that have been learnt. This can be done through allowing sessions for feedback and reflection on what has been learnt.
- Allowing for the application of the ideas and skills to new situations.

Backgrounds and needs of participants

Become aware of your participants' backgrounds and needs. For example into account:

- the job descriptions of individual staff - by organisational unit and occupation
- timeliness – how will the training program affect their normal work demands
- relevance – will the program be directed to what they need to know given their present (or possible future) job roles
- sequencing of training – if there is to be a series of training sessions, does the sequencing of sessions make sense
- what are available financial resources for training – and for the agency to be engaged with the training program

Identifying who is your target audience of your program?

45. In designing your training program it is necessary to have an understanding of who the participants are? This better enables you to tailor your program to fit the needs of participants.
46. In many cases they may be officials from agencies responsible for consumer protection who are selected for training will not necessarily be at the same level in terms resources, institutional framework and technical competencies.



47. The application of adult learning principles allows for each person to enter and engage with the program where their particular point of need is determined. The program needs to be designed for multiple exit and entry points depending on individual needs.
48. As adults, the participants are likely to be–
- internally motivated and self-directed
 - able to bring life experiences and knowledge to the learning experience
 - goal oriented
 - relevancy oriented
 - practical
 - learners who like to be respected.
49. In being relevant, useful and respectful to the participants, you should–
- use clear simple use of language in training materials
 - use non-sexist language
 - provide brief and concise instructions
 - make use of colour and spacing as well as graphics to enhance understanding
 - respect for people’s values, beliefs and behaviours
 - not make judgements or generalisations about cultural practices
 - encourage participants to share their own experiences and perceptions.
50. The purpose of the training program should be made clear to participants at the outset. You may wish to ask participants at the outset what their expectations are, and what they hope to learn from the program. These expectations might be written down. At the end of the program participants might be asked what they learnt from the program. These might also be written down and compared with the expectations written down at the outset.
51. The training program may have aims such as enhancing participants’ policy making capacities to enable them to –
- better identify problem areas and advise and direct reform measures
 - better give effect to the government’s reform agenda
 - enhance knowledge and skills of participants engaged in enforcement
 - enhance the skills and abilities of those engaged in resolving consumer disputes.

Step 2:

DETERMINING THE DETAILED CONTENT

Introduction

52. This section deals with designing the content for a training program on consumer credit and banking. The focus is on adopting a strategic problem-solving approach to the challenges, or harmful market practices, identified in section 1.

53. A training program focusing around a strategic problem-solving approach aims to provide the knowledge and skills to participants to enable them to –

- identify a systemic problem
- collect evidence so as to gain a better sense of the nature and dimensions of the problem
- gain an understanding of the group or groups that are affected by the problem
- identify who is causing the problem
- identify ways to address the problem, including any available laws and processes
- in addressing the ways to deal with the problem – consider the strengths, weaknesses opportunities and threats in adopting various problem resolving processes
- identify agencies and agents who can assist, and who will obstruct, the proposed process
- establish a review mechanism.

Identifying the systemic problem

Avoiding a common trap

We often come up with a solution without fully understanding the problem

Properly identifying the problem is hard work - but it is an important first step to take to a solution

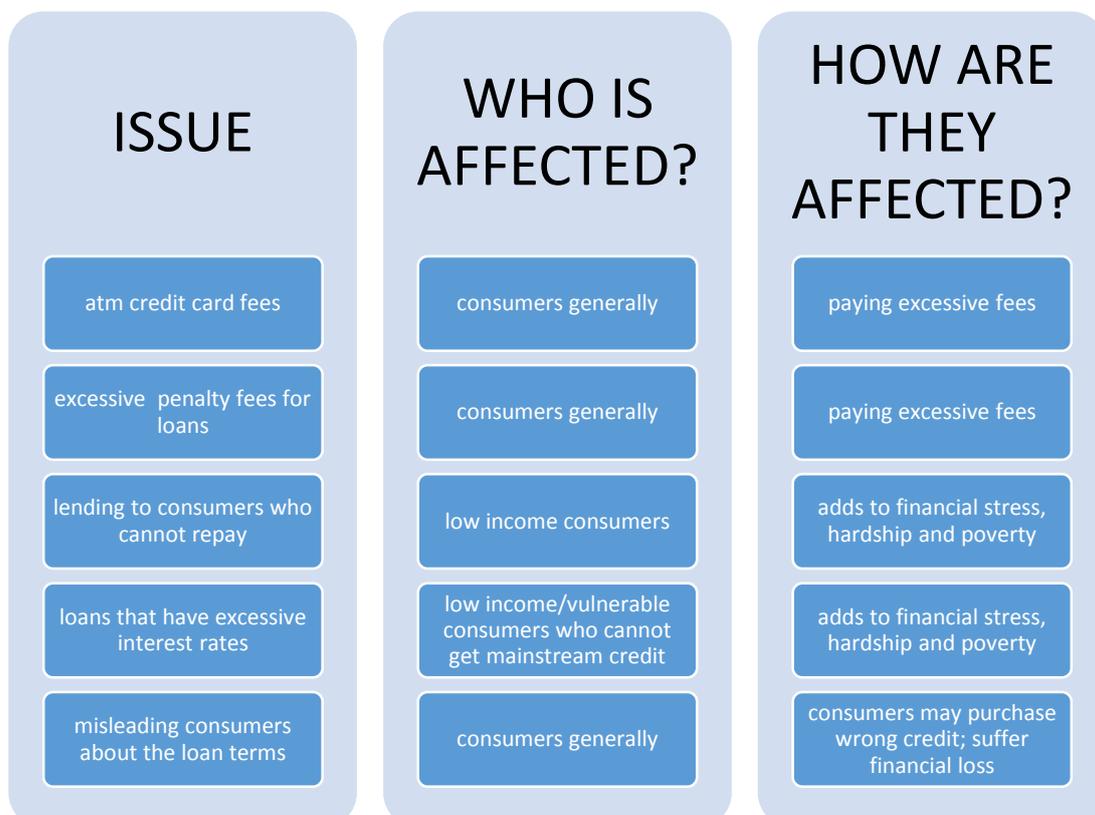
54. There are many ways of identifying a systemic problem within the consumer credit and banking marketplace. Problems may be identified in a number of ways including from regular consumer complaints on a particular issue, media stories, and the industry itself complaining about bad practices and rogue operators.

Common issues

55. Systemic problems that commonly arise include issues relating to:

- *Transparency* – where consumers are not easily able to understand the nature of their loan or loan related undertaking (e.g. acting as guarantor)
- *Overcharging* – financial institutions engaged in improperly charging of fees and penalty interest
- *Bad sales practices* – financial institutions or debt collection agencies using aggressive or misleading practices to recover debts
- *Privacy* – financial institutions wrongful passing of information to 3rd parties
- *Recourse* – consumers are unable to get cheap, fast, fair and effective remedies

56. Further examples include the following:



Key questions for identifying who is affected

57. In identifying who is affected by bad market practices the following questions may be asked:

- which consumers particularly inexperienced or vulnerable to abuse
- what are the age groups, genders, geographical locations, ethnic groupings of the affected groups.

58. As an example of ways of mapping the characteristics of targeted groups, the Indonesian National Strategy for Financial Inclusion Working Group mapped out those in Indonesia who were financially excluded. This is illustrated in the box below.

Financial capacity /Target	Low income poor	Working poor	Near poor
Ability to Save	No ability to save at all or just very small amounts but with no access to any saving services	Have ability to save part of the income generated through their activities. Saving mostly informally	Some ability to save with access to formal banks
Access to credit	Not able to repay	Access to informal credit. Able to repay with non-traditional collateral	Some access to both formal and informal sources. Able to repay with collateral
Need for insurance	Highly exposed to personal and community-level shocks	Have some buffers but still might be heavily affected by shocks	Have wider range of instruments to cope with risk
Money transfer needs	Receiving remittances from MW family members	Need for remittances as well as possibility of transfer money through mobile devices	May need to operate bank transfers, bill payments etc.
Financial literacy	None	Moderate	Moderate
Financial identity	None	Limited	Limited

Indonesian *National Strategy for Financial Inclusion Fostering Economic Growth and Accelerating Poverty Reduction*, National Strategy for Financial Inclusion Working Group, June 2012

59. The Indonesian Working Group also mapped out the financial products vulnerable groups did and did not have access to, as illustrated below.

Key questions for identifying how particular groups are affected

60. In identifying how particular groups are affected, the following questions may be asked:

- What are the gaps in the law/enforcement practices/enabling redress
- What laws/regulations/practices are already available – better use could be made of them
- What agencies/consumer organisations/industry organisations could assist.

Collecting the evidence and determining legal and practical agency capacities

61. Once the problem is identified, evidence should then be collected to assist in finding out more precisely the dimensions and nature of the problem, who is affected, who is causing the harm and how widespread the problem is.
62. The sources of the information may include:
 - representations made by consumer groups, agency complaints records, media reports, police reports, central bank data, dispute resolution scheme data
 - Key standard form contracts that are used in the problematic transactions.
63. Research may also need to be undertaken into whether any laws or regulations have been breached by the problematic conduct, whether the agency has jurisdiction to deal with the matter, the ways in which offices in the agency can undertake these tasks to deal with the matter. Any legal and practical barriers to undertaking enforcement and other measures also requires investigation.

Example of Identifying the Challenge and the Groups Most Affected

National Strategy for Financial Inclusion Fostering Economic Growth and Accelerating Poverty Reduction (2012) National Strategy for Financial Inclusion Working Group

Vision and mission

A well-functioning financial system is a fundamental prerequisite for the economic and social development of every community and individual.

Rationale

- There is a substantial number of empirical studies showing a strong causal relationship linking the development of the financial system (and therefore the banking system and capital markets) with economic growth and individual's welfare.
- To date, a sizeable majority of the population, especially the poor and vulnerable, have no access to financial services.
- Therefore, designing and promoting an inclusive financial system means contributing to remove the causes of inequality, directly influencing the processes and mechanisms that prevent segments of the population from fully participating in the economy.
- Financial inclusion makes people, especially the poor, connected with economic opportunities.
- The single most important financial service identified by households is a bank savings account.

Mapping the desired outcomes

64. Once the problem is identified and the evidence is collected, the next requirement is to identify the program goals and priorities for dealing with the problem. In so doing, it is useful to ask what would be different if steps were taken to deal with the problem in the ways proposed. For example, would there be lesser incidents of excessive interest rates being imposed for specified consumer credit products; would there be a lowering of illegal practices in debt recovery for specified loans. In other words, the question to be asked is if the reform program was successful, how would behaviours and outcomes be different.
65. By mapping the desired outcomes it is possible to develop the principles and approach for the reform program. As an example, the Indonesian National strategy for financial inclusion proposes principles and approaches for financial inclusion is set out in the box below.

	Low-Income Poor	Working Poor/MSME	Special Needs		Non-poor
			MWs	Remote Areas	
Savings	Tabungas account (Tabungas)		TD savings (limited)		
	GP				
Credit	Bank/Bank Accounts		KUR/TKI		
	Cluster program				
	- PPM				
	- GR				
	Linkage program				
	Credit rating and promotion of credit				
	- tourism				
Savings + Credit	Establishing local credit guarantee companies (PKPD)				
	Value Chain Financing				
	Business Development Support				
	Replication of innovative schemes based on CSR (e.g. SOE FBL)				
	Agent banking				
Insurance	Solving KYC requirements for small scale customers				
	Jamkesmas		TKI insurance		
Savings + Credit + Insurance	Microinsurance				
	Bundled insurance program (Credit/savings + insurance)				
Transfer facilities	Promoting expansion of ICT based distribution methods & possible implementation				
	Mobile money				Mobile banking
Financial Education	Agent Bank & 3P				
	Financial education by local government		Financial education training for MWs & families		
Financial Identity	Financial Identity number				
Regulation	Enabling regulatory environment				

	On going
	Will be implemented

Indonesian National Strategy for Financial Inclusion Fostering Economic Growth and Accelerating Poverty Reduction, National Strategy for Financial Inclusion Working Group, June 2012



66. By establishing principles and approaches, it is possible to set program goals and priorities. The Indonesian National Strategy for Financial Inclusion, for instance, includes the following objectives:

Objective 1: Make financial inclusion part of the grand strategy of economic development and poverty reduction.

Objective 2: Provide financial services and products tailored to the needs of the community.

Objective 3: Improve people's knowledge of financial services.

Objective 4: Improve people's access to financial services.

Indonesian National Strategy for Financial Inclusion Fostering Economic Growth and Accelerating Poverty Reduction, National Strategy for Financial Inclusion Working Group, June 2012

Principles and approach to financial inclusion

The right of every individual to have access to a range of quality financial services in a timely, convenient, informed manner and at an affordable cost in full respect of his/her personal dignity. Financial services are provided to all segments of the society, with a particular attention to low income poor, productive poor, migrant workers and people living in remote areas.

The definition and the strategy more generally represents a mutually reinforcing link between three key concepts: poverty reduction, financial stability and economic growth.

The strategy is designed as a people-centred strategy, aimed at broadening access to financial services for all segments of the population and unlocking financial and small business opportunities.

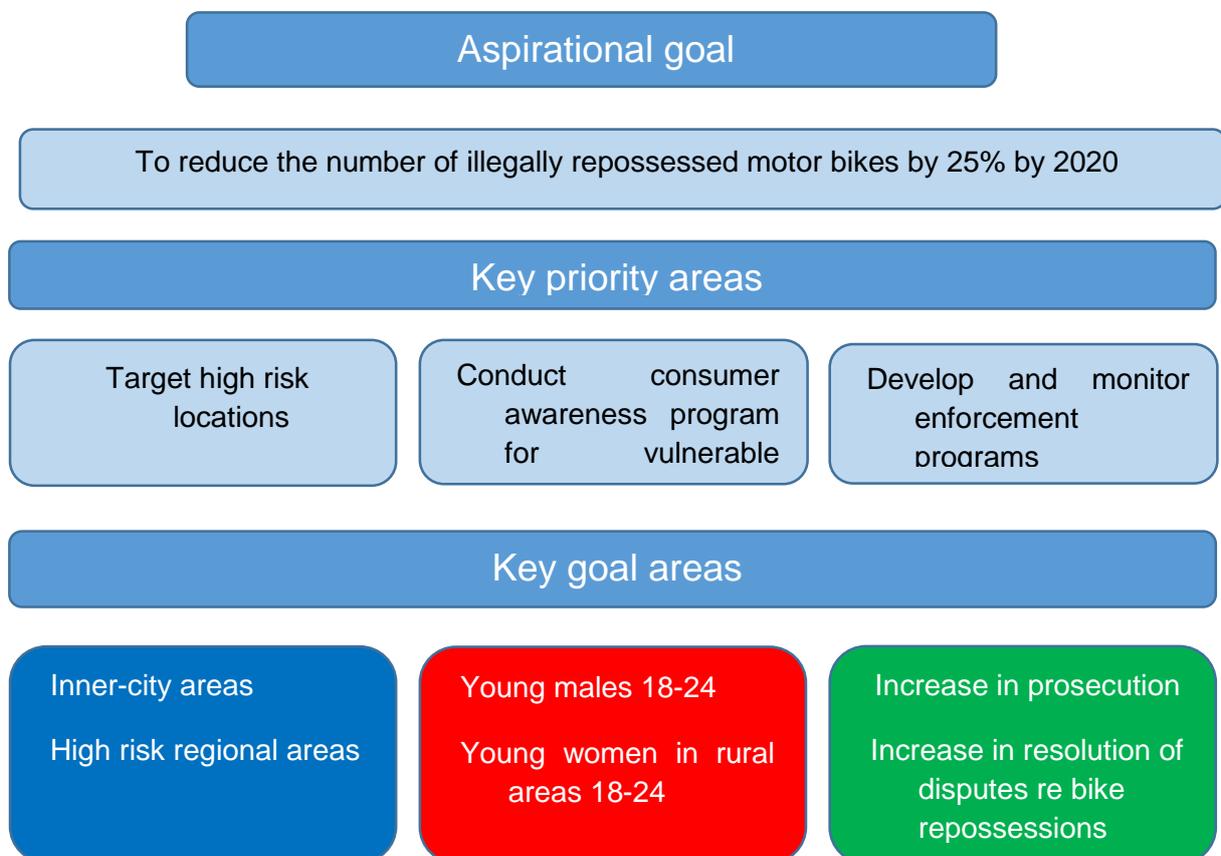
A people-centred financial inclusion strategy needs to bring together a wide range of national interest and agencies.

67. There are many ways of setting out program goals and priorities for a reform program. One form in which it can be presented is as set out in the example below, which responds to a hypothetical example which appears in Appendix 1 to this Module. In

the hypothetical example, the identified problem is one in which financial institutions are lending money to consumers, typically young males, for the purpose of purchasing a motorbike. Oftentimes the financial institution will on-sell their debts to another institution, often a debt collecting agency. A consumer may miss a number of repayments because of sickness, loss of job or for some other reason. As a result the consumer is temporarily unable to meet their repayment commitments. It is at this point they are visited by a person claiming to be from the debt collecting agency who, without following any proper legal process, advises the consumer that the debt collector is entitled to take their motorbike, and requests the keys to the bike. In some ASEAN member countries this debt collecting practice is widespread.

68. Taking that as an example, the agency responsible for consumer affairs may identify this as a systemic problem, collect evidence about the nature and dimensions of the problem, identify the parties most affected, and devise a strategy for dealing with the problem. At a high level, the goals, key priority areas and key goal areas for dealing with the problem can be mapped out in the way illustrated below.

Example of setting program goals and priorities for dealing with harsh and unlawful motor-bike repossessions



Designing the course of action

69. Once the goals and priorities are identified, the next step is for the agency to determine the steps to be taken to achieve them. In designing the course of action to be taken it is useful to assess what would be the most effective mechanisms for achieving the goals or objectives. It is useful to identify, for instance, the factors that would operate as barriers to implementing the reform program, and the factors that would assist in the implementation process. For these purposes it may be worth considering using a SWOT analysis:



70. Taking the hypothetical example of the repossession of motorbikes, the SWOT analysis might identify the following factors.

Strengths: The agency responsible for consumer protection may be able to use its strong linkages with regional enforcement agencies and train their officers up to deal with the issue.

The central bank may be willing to assist the operation by engaging in consultations and providing warnings to financial institutions it regulates informing them that they may be held responsible for facilitating improper and unlawful practices by the companies to whom they on sell their debts.

Weaknesses: The relevant agencies may lack adequate resources, and be required to deal with a wide array of other more pressing issues, making it difficult to prioritise this particular issue.



Opportunities: Financial institutions may be concerned about the risk to their reputation, and the risk of more forceful oversight by the central bank.

There may be opportunities to develop closer and more productive relationships with financial institutions in dealing with this and other consumer credit issues.

Threats: There is a risk that if the project proves to be ineffective, it will signal to financial institutions and debt collecting agencies that the government is not prepared or able to take a strong stance against bad market practices.

71. The SWOT analysis may enable the identification of other key players who can usefully engage in the strategies for dealing with the problem. It also enables better planning of the strategy as it allows for the identification and planning for any anticipated threats and obstacles to attaining the desired outcome.

72. In designing the course of action it may be necessary to have regard to the laws and regulations within your country, and also relevant best practice in other ASEAN countries and throughout the world. Reference may be made to Part 2 of this module.

73. During the course of implementing the strategy, and at the completion of its implementation, it will usually be of value to review the successful and less successful aspects of the implementation of the strategy.

Reviewing result

74. A process needs to be established to review what worked and what did not work so well with the reform process. The review might involve interviewing participants, collecting evidence and comparing that with the evidence collected at the outset, including any central bank data.

75. Discussions then need to take place within the agency to review what lessons were learned, and what changes would be made if similar programs were undertaken in the future.

Step 3:

DESIGNING THE INSTRUCTION

Designing the instruction



76. Once the detailed content of the training program has been mapped out, the next step is to design the way in which instruction will be provided. In designing the instruction to the questions arise:

- What is the content knowledge and skills abilities that you wish to enhance?
- How does that fit with your identified training needs?

Design and Methodology:

77. The major increase in training provided by international donor organisations post-1996 has meant that conventional class-room-type training formats are increasingly supplemented by more progressive methodologies that include workshops, on-the-job training, and case studies.

78. Practical and interactive training methods will be used to strengthen the capacity and furthermore, on-line learning opportunities will be explored, as they represent a cost-effective and accessible learning format.

79. This includes virtual on-site and classroom learning, as well as self-paced programs.

- a. **Target Groups:** This will take into account the job descriptions of individual staff (by organisational unit/occupation) in the Consumer Protection agency, as well as timeliness, relevance, sequencing of training, and the available financial resources.
- b. **Quality Assurance:** If quality of training and training materials is to be ensured in the long run, there is a need for standardisation. An assessment and certification process can be used which recognises quality training programs and training providers is envisaged. This will ensure the value for time and resources spent that will also introduce a uniform standard of training quality across the board.

The training session

80. There are many ways in which a training session may be structured. The structure will be designed within the framework of available resources, the nature of the information which is to be imparted, and the abilities, preferences and personality of the instructors.

81. A suggested guide to the format of a training session is as follows:

- the instructor introduces himself/herself along with any other instructors
- the instructor outlines the topics that will be covered and the way in which they will be presented (e.g. the delivery of content information followed by breakout group sessions, et cetera)

- the instructor outlines his or her background and invites participants to introduce themselves and briefly outline their background and experience
- the instructor invites participants to outline what they hope to learn - this might be written down in summary form so that it can be compared with an outline of what participants felt they learnt at the end of the training session
- the instructor delivers the content information. The information in Part 2 of this module may be of assistance in developing the content information
- participants are invited to problem solve a hypothetical problem (as an example of a hypothetical problem see Appendix 1 of this module)
- the participants might be invited to role-play the key players in the hypothetical problem. For example, each participant may play the role of consumer, financial institution, consumer agency, regulatory agency, enforcement officers and dispute resolution body.
- the outcomes of the responses to the hypothetical problem can be recorded and discussed by the participants.
- the outcomes, and what has been learnt, is then summarised by the instructor.

Examples of group exercise questions

Question 1

What are the 3 most important challenges your agency faces regarding the consumer credit and banking market?

Question 2

Who is most affected/most vulnerable?

Question 3

What are the gaps in the law/enforcement practices/enabling redress

Question 4

Are there any present laws/ practices/agencies that can be used?

Question 5

Taking the priority issue for training – what is the key content information you wish to communicate?



Step 4:

EVALUATING, THEN MODIFYING THE TRAINING AS NECESSARY

Evaluation

82. It is important to evaluate what has worked, and what has not worked so well in a training program so that it may be further refined and improved upon. The type of evaluation adopted should be scaled to the size of the project. If the training program for a small number of participants, it only needs a short low cost evaluation. If, on the other hand, the project will be for large number of participants, more data should be collected.

83. The kinds of questions that might be asked of participants include:

- What did you find useful in the training program?
- What did you find less useful?
- What would you like to know more about?
- Was there anything in the training sessions that was unnecessary or repetitive?
- Were you invited to contribute or apply your knowledge and skills to the sessions?
- Overall would you recommend this training to others – and if so (or if not) why?

Using the evaluation information

84. It is easy to become defensive about information you receive from the evaluations. You may feel that you have been unfairly criticised by the participants, or that they are to be criticised for not properly engaging with or understanding your training program. However, it is important not to become defensive. Also, it is not uncommon to receive contradictory responses from participants. For example, some participants may say that too much information was provided, whilst others say too little was provided. A trainer should not be unduly concerned about receiving contradictory, or even critical feedback. Rather, it is important to look for comments and responses that can enable refinements you believe would be useful for improving the program in the future. Look for positive ways of making changes and learning from what appeared to work and what did not.

85. In summary, do not be a slave to the evaluations. Be prepared to innovate and take calculated risks to improve your program. Look for ways in which you can better engage participants so that they gain the most value from your program. Be prepared to trust your own instincts and judgements on how to improve your programs.

Why evaluate

- If you do not measure results, you cannot tell success from failure
- If you cannot see success, you cannot reward it
- If you cannot reward success, you are probably rewarding failure
- If you cannot see success, you cannot learn from it
- If you cannot recognize failure, you cannot correct it.
- If you can demonstrate results, you can win [continuing] support

Aboriginal Mental Health Worker Training Program NSW
www.health.nsw.gov.au/mhdao/workforcedev/Documents/prac-guide/chap1.pdf

Certificates for completion

86. Consider providing participants certificates of completion at the end of the training program. This can be useful for participants is evidence of their participation, and to also act as a recognition of their engagement in the training program.

Summary

87. An effective training program will have the following features
- An understanding of the problem to be addressed by the training program
 - An understanding of the key content material to be provided
 - An understanding of the audience – including their existing needs, knowledge and experience
 - Engaging the participants
 - Reflecting on the outcomes
 - Evaluating what works and what needs improvements
88. A training module may seek to use a case study or role-play to illustrate present consumer complaints and industry and regulatory practices, and how these complaints can be best resolved.

Further guidance on designing training programs

For guidance on developing training programs see UNESCO's multimedia teacher education program (www.unesco.org/education/tlsf/mods/theme_d/mod20.html)

Objectives of UNESCO's online program

- To appreciate the value of student-centred experiential learning;
- To analyse the elements of experiential learning;
- To develop guidelines for teaching through experiential approaches; and
- To relate experiential learning to education for sustainable futures.



PART 2:

SUBSTANTIVE CONSUMER PROTECTION ISSUES

2. SUBSTANTIVE CONSUMER PROTECTION ISSUES

2.1 Consumer credit

What this Part covers:

- The various **types of consumer credit**, including secured and unsecured lending and payday loans
 - The requirements of '**responsible lending**' that credit providers must comply with when providing loans, including the need to properly inform consumers about the terms of a consumer credit contract
 - The **prohibitions against lenders misleading consumers** regarding matters like the interest rate at which the credit is provided and the terms of the loan
 - The **prohibition against uncompetitive practices** by credit providers, like requiring a borrower to take out multiple financial products from the credit provider or another party in exchange for the loan being provided
-

2.1.1 Types of consumer credit

89. There is a wide range of consumer credit products including housing loans, personal loans (including car loans), credit cards, hire purchase arrangements and payday loans.
90. A payday loan typically involves the borrower signing an agreement allowing the lender to receive loan repayments directly from the borrower's paycheque. Often these loans are provided at very high interest rates. Payday lenders usually make obtaining the loan very easy.
91. Payday loans are banned or heavily regulated in some countries. With the growing ASEAN middle class there is a risk that payday lenders will rapidly increase their presence in a member nation, causing financial stress for many consumers, particularly financially vulnerable consumers.

Country focus: Credit card uptake in Vietnam

Excerpt from *Duxton Asset Management: Vietnam Banking Industry Report* 23 January 2015 pp.24-25 by B Tran Tran, B Ong and S Weldon

The economic growth in Vietnam has also resulted in a shift of cash payment to card payment. From 2009 to 2013, the amount of card transactions had increased tremendously by almost 200%. In the same period, the number of cards circulated increased from 21.7 million to 67.8 million. It is estimated that card transaction value will continue to rise by more than 50% till 2018. One of the key factors for the increase in card payments is the rising popularity of e-commerce in the country. Banks could also look forward to tap on this opportunity to grow transaction values by cards through the use of technology.

The rising popularity of e-commerce in Vietnam is largely attributed to the growing number of internet users in the country. Currently, at least 43.9% of the population use the internet, higher than the average 35% in Southeast Asia as reported by the World Bank. It is also predicted by Vietnam's e-Commerce and Information Technology Agency (VECITA) predicts that almost 50 % of the population in Vietnam will be online compared to the current 39 % by 2015. As a result, it is important for banks to reach out to their customers through internet and online payment channels.

2.1.2 Responsible lending practices

92. Good lending practices require a lender to check whether the potential borrower will be able to repay the loan, and if they default whether they have sufficient of security (such as a house, car, bike or other property) which the lender can acquire and sell to recover any outstanding debt. Not all consumer loans, however, will typically involve the lender requiring security from the borrower. Credit cards, for instance, are usually unsecured loans.
93. In assessing a potential borrower's credit risk the lender may check a number of things including whether the potential borrower has –
 - had a bad credit history (or if possible, whether they have had a good credit history),
 - a regular income, and if so how much they are earning, and
 - any forms of security.
94. Curiously, in some cases lenders do not make proper credit checks. This would appear to be against the lender's self-interest. However, in some cases lenders calculate they will make more money from providing easy credit – despite it placing enormous financial stress on some borrowers – than acting more prudently when providing loans.
95. The US sub-prime lending crisis, which was a catalyst to the 2008 global financial crisis, involved many lenders engaging in extremely poor lending practices. Often

little or no assessment was made of the borrower's capacity to repay the loan. In some cases mortgage brokers and other intermediaries falsified loan application forms (in some cases lenders were aware of these practices and knew that the information in the forms were probably false).

96. Both the mortgage brokers and the lenders wanted to lock borrowers into loans, and assumed that if there was a default they could repossess the borrower's house and recover any outstanding debts. However, as the bad lending practices became widespread and whole suburbs were subject to foreclosures, housing prices in those suburbs slumped. The lenders found they were unable to recover the debts outstanding by selling the houses that were to provide security for the loan. This exposed financial institutions to enormous losses, which threatened the existence of some of those institutions and the collapse of others.
97. Some ASEAN members have introduced measures to curtail irresponsible lending practices and reduce the chances of consumers becoming over-indebted.
98. Bank Negara, the central bank of Malaysia, implemented regulations in July 2013 that –
- limit the length of new personal loans to 10 years;
 - limit the length of new housing loans to 35 years; and
 - ban pre-approved personal financing products such as unsolicited loans.
99. The first two measures are designed to dissuade consumers from taking on excessive principal loan obligations by forcing them to pay a higher monthly repayment amount.

Singapore Rules under the Banking (Credit Card and Charge Card) Regulations 2004

- a. The Rules apply to credit cards and other forms of unsecured credit.
- b. The Rules require a lender to make a holistic credit assessment of a potential borrower before making a loan.
- c. The lender is required to review the borrower's outstanding debts and the amount of any credit limits available to the potential borrower.
- d. The lender must also conduct credit bureau and income checks before increasing any credit limits, and must conduct credit searches to determine the potential borrower's credit worthiness.
- e. The Rules also prohibit a lender from granting further unsecured credit to a borrower if –
 - after counting all the borrower's outstanding unsecured debts from all their lenders the amounts owing exceeds his or her annual income for a period of three consecutive months or more;
 - the borrower is 60 days or more behind in repaying any credit card or other unsecured debt.

100. In Malaysia, consumer credit is largely regulated by Bank Negara, the country's central bank. The Bank's consumer credit guidelines provide that the minimum monthly repayment on a credit card must be no more than 5% of the value of the total credit used. In 2011 the Bank announced new Credit Card Guidelines which amongst other things require that –

- principal cardholders earning RM36,000 per annum are only allowed to hold cards from a maximum of two credit card issuers, and
- a maximum credit limit of two times the cardholder's monthly income per credit card issuer be permitted.¹⁴

101. The Monetary Authority of Singapore enforces rules aimed at helping individuals make better borrowing decisions.¹⁵ It has introduced rules that will come into full effect in 2019 that require financial institutions to –

- obtain a consumer's consent before increasing his or her credit card limit,
- not increase a consumer's debt if they have an existing unsecured debt that is more than 60 days in arrears, and
- not roll over a consumer's existing debt without informing the consumer of the cost of doing so.¹⁶

Singapore Rules under the Banking (Credit Card and Charge Card) Regulations 2004

- The Rules apply to credit cards and other forms of unsecured credit.
- The Rules require lenders to disclose to potential borrowers the total amount of the loan and the time the borrower would take to fully repay the loan if he or she made the minimum monthly repayments.
- A lender is also required to disclose the amount of the debt that the borrower would accumulate at the end of six months if the borrower made no payments for a period of six months.

102. A further problem, which has been identified by Brunei Darussalam, is that there are also problems with merchants adding a surcharge for the use of credit cards, often in the vicinity of an additional 3%.

103. In addition, the Monetary Authority requires financial institutions to freeze all loans or credit if a consumer's debt exceeds 60% of his or her annual income (total debt servicing ratio). The total credit limit given to a consumer by all banks should not exceed 60% of annual income.

104. The Credit Bureau Singapore (CBS) is established to keep records of consumer credit borrowing and payments. Banks are required to use the CBS information to

¹⁴ <https://www.citibank.com.my/english/credit-cards/bnm-guidelines.htm>

¹⁵ www.mas.gov.sg/news-and-publications/media-releases/2013/credit-card-and-unsecured-credit-rules.aspx

¹⁶ www.mas.gov.sg/news-and-publications/media-releases/2013/credit-card-and-unsecured-credit-rules.aspx

determine whether consumer is eligible for loans. By 2019, it will not be permissible to enable consumers to have credit exceeding 12 times their income.

105. The Singapore Moneylenders Act regulates the moneylending industry. The Act requires all moneylending businesses to hold a licence. Additionally, the Act requires a moneylender to:

- inform the borrower in writing of the terms and conditions of the loan before providing the loans.
- provide the loan contract to the borrower, and
- supply to the borrower with statements of account, loan documents and receipts.

Singapore Moneylenders Act

'moneylender' is a person, either as principal or agent, who carries on or holds them-self out to be carrying on the business of moneylending. The term 'moneylending' is not defined. A moneylender must be licensed. The Act–

- regulates the way that loans are advertised and marketed;
- prohibits a moneylender making unsolicited loans;
- requires a moneylender to inform a borrower of the terms of a proposed loan;
- regulates the fees and charges that may be imposed by the moneylender; and
- prohibits false statements and representations to induce someone to obtain a loan, and
- deals with harassment

106. Some countries, including Australia, recently introduced laws requiring lenders to make proper credit checks of the potential borrower's capacity to repay a loan, before they can make the loan. These, 'responsible lending' laws require a lender to-

- take reasonable steps to find out the potential borrower's income;
- take reasonable steps to check potential borrower's existing and past loans;
- make a reasonable assessments of whether the potential borrower will have the financial capacity to repay the loan.

2.1.3 Enabling consumers to make informed choices

107. Rational choice theory holds that consumers benefit from a well-functioning marketplace in which consumers can make informed choices. Assume, for example, you are shopping for oranges in a town market. If stall X is selling oranges at \$1 a kilo and stall Y is selling exactly the same kind of oranges for \$2 a kilo, then it is rational to buy the \$1 oranges and not the \$2 oranges.

108. A consumer might, however, buy the \$2 oranges because they were unaware that in another part of the market square there was a stall selling the oranges for \$1. Here, there is market failure because the consumer was not able to make a fully



informed rational choice because he or she did not have full knowledge of all the market prices.

109. Rational choice theory has a considerable influence over consumer credit laws. In the early 1960s the US introduced 'truth in lending' laws requiring lenders to disclose certain basic information about a loan before the consumer borrower entered into the loan. Generally, that information included the interest rate, the monthly repayments, and the term of the loan agreement. These laws were later adopted in many countries, including in Europe, Canada and Australia.
110. There were some problems with the laws. For one thing, even the most minor technical breach by lender could lead to very large penalties, because the incorrect loan disclosure information usually related to thousands, if not hundreds of thousands, of loans. The laws have since been modified to deal with these issues of technical breach.
111. A further problem is that it is often difficult and time-consuming for consumers to compare loans. The pre-loan disclosure information is often detailed and complex, and is provided to the consumer after they have decided to take out the loan, but before they have signed the loan documents. Usually, by that time the consumer is not prepared to back out of the loan.
112. A number of countries are trying to simplify the mandated loan disclosure information requirements by mandating that lenders advertise their interest rates in clear, visible and comparable formats. Regulations can require that key information be provided in a font size that is larger than 12 point, be in a language which is understandable and appropriate for potential borrowers, be provided insufficient time before the borrower enters the loan contract so that they have sufficient time to make decisions about the loan, and require that the information documents be short in length and non-jargonistic. The Philippines *Truth in Lending Act* 1963 requires a creditor to provide the borrower information about the transaction prior to granting the loan. The information is required to be provided as a clear statement in writing.
113. Surveys suggest that even if consumers do not rely on the loan disclosure information before they enter into the loan, they find that having clear information about the loan provides them a clear understanding of the repayment obligations, and any penalty rates for late loan re-payment.
114. Malaysia's Central Bank, Bank Negara, has issued guidelines on Product Transparency and Disclosure so as to—
 - promote consumer awareness and understanding of financial products and services,
 - facilitate consistency in disclosure,
 - minimize mis-selling of financial products and services, and
 - promote informed decision making by consumers.

115. The guidelines provide that a financial services provider pay due regard to the information needs of consumers by adopting the following disclosure principles, namely that disclosure be:
- timely,
 - clear and concise,
 - accurate and relevant,
 - highlight important information, and be consistent and comparable.
116. The principles aim to improve the quality of disclosure and enable comparison and informed decision-making by consumers.

2.1.4 Prohibitions on misleading consumers

117. In addition to mandating that lenders provide potential borrowers specified pre-loan information borrowers may also need to be protected from receiving misleading or deceptive information about loans.
118. The misleading information may include wrong or misleading information about –
- **Interest rates** The interest rates may be calculated in a way that is misleading. For example, an interest rate may be described as 10% flat rate, whilst another interest rate might be described as 16% effective rate. The flat rate might average the interest rate over the period of the loan calculated on the basis of the declining principle outstanding. This means that the 10% flat rate is equal to an effective rate of 20%. Therefore the 10% flat rate is more expensive than the 16% effective rate.
119. Borrowers may also be misled into thinking that a low advertised interest rate applies for the whole period of the loan, when it may only apply for the first year or two. For example, a housing loan might be advertised as having an interest rate of 5%. However, that rate may double after the first two years and remained at that higher rate for the remainder of the loan.
- **Terms of the loan** Borrowers may be misled, or not be made sufficiently aware, that harsh penalty rates apply. In some cases a loan may be advertised as being interest-free for five years. However, in the small print it may say that if the borrower is late in making any repayment the loan defaults to a high interest rate which is calculated from the commencement of the loan.
120. There are many ways in which borrowers can be given a misleading impression about the terms of the loan. It often requires constant vigilance by regulators and governments to keep track of misleading lending practices, often requiring new laws and regulatory practices to crack down on these practices.

Singapore Consumer Protection (Fair Trading) Act

- a. The Act applies to all “financial products” and “financial services” regulated by the Monetary Authority of Singapore. For instance, it covers loans, mortgages and guarantees.
- b. The Act is designed to protect consumers against “unfair practices” by a “supplier” in any consumer transaction. An unfair practice includes –
 - doing anything that might reasonably deceive or mislead a consumer;
 - making a false claim; and
 - taking unfair advantage of a consumer, including taking advantage of the consumer not understanding the nature of the transaction.
- c. It also includes: “Taking advantage of a consumer by including in an agreement terms and conditions that are harsh, oppressive or excessively one-sided so as to be unconscionable”.
- d. Engaging in an unfair practice does not lead to a criminal offence, however, the consumer can bring a civil action to recover any losses up to \$Sing30,000.

2.1.5 Anti-competitive practices

121. Anti-competitive practices include –

- requiring the borrower also take out insurance from an insurance company specified by the lender;
- requiring the borrower to take out other financial products that the borrower may not necessarily want.

122. These practices can reduce market competition by preventing consumers from shopping around for better products, such as better insurance products.

123. As an example of laws prohibiting anti-competitive conduct, the Malaysian *Financial Services Act 2013* and the *Islamic Financial Services Act* prohibits lenders, that is to say Financial Service Providers, from engaging in conduct that the legislation deems to be inherently unfair to financial consumers. The types of prohibited misconduct are set out in schedule 7 of the two Acts. The types of conduct that are prohibited include –

- restricting the freedom of borrowers to choose between financial services or products available to them; and
- engaging in collusive business practices

Schedule 7 Malaysian Financial Services Act and Islamic Financial Services Act

Prohibited business conduct includes:

5. Exerting undue pressure on, or coercing, a financial consumer to acquire any financial service or product as a condition for acquiring another financial service or product.

124. The Malaysian Central Bank, Bank Negara, in 2014 issued Prohibited Business Conduct rules under Schedule 7 of the Financial Services Act and Islamic Financial Services Act. Clause 11 of the rules specifies the types of conduct the Bank does and does not regard as pressuring a consumer into acquiring another financial service or product. The conduct includes the following.

- For greater clarity, an FSP is **not** regarded as engaging in prohibited business conduct under paragraph 5 of Schedule 7 when it:
 - Offers a combination of financial services or products where:
 - the financial consumer has an option to purchase them separately;
 - or
 - the financial consumer recognises the utility of purchasing the combined product, for example due to better terms or pricing that is conditional upon the financial consumer purchasing a combined product. However, such preferential terms or pricing should not have the effect of creating a barrier to the purchase of unbundled products, for example by pricing the unbundled products at a level that is prohibitively expensive in comparison to the bundled product;
 - Requires financial consumers to purchase fire insurance/takaful or mortgage reducing term assurance/takaful in the case of home financing;
 - Requires financial consumers to acquire another financial service or product to mitigate credit risks to the FSP if it is specifically permitted under standards issued by the Bank; or
 - Requires financial consumers to purchase a basic insurance or takaful plan before purchasing a rider that expands the policy's benefits and cannot be sold on a standalone basis.
- The Bank will consider, among others, the following factors in assessing whether the FSP's pricing of financial services and products have the effect of indirectly coercing financial consumers to purchase a bundled product:
 - The price of individual unbundled financial services or products;
 - Whether consumers consistently choose the bundle over the individual financial services or products, even for consumers who only indicate interest in an individual financial service or product which can be separately purchased;
 - The price of comparable individual financial services or products sold by other FSPs; or
 - The cost structure or components of the individual financial services or products.

Questions on Part 2.1 (Consumer Credit):

- **What is consumer credit?** What are three of the different types of consumer credit?
 - What credit providers **responsible lending requirements**? Why do these requirements exist?
 - Malaysia's Central Bank (Bank Negara) has issued guidelines requiring that financial services providers adopt a number of **disclosure principles**. What are these principles and why is providing adequate information about a loan product important when offering consumer credit?
 - Credit providers are prohibited from engaging in **anti-competitive conduct** when providing consumer credit. What is an example of anti-competitive conduct and why is it prohibited?
-

2.2 Terms of the Credit arrangements

What this Part covers:

- The **terms on which consumer credit can be provided**, including the prohibition of excessive interest rates and harsh and unfair credit terms
 - The role of **third party guarantors** of obligations under consumer credit contracts
-



2.2.1 *Prohibiting excessive interest rates*

125. There is constant controversy about whether governments should impose interest rate caps, and if so on what financial products, and at what interest rate.
126. Interest rate caps have been imposed by rulers and governments for many centuries. The ancient Roman and Chinese governments imposed interest rate caps over 2000 years ago. Many countries retain interest rate caps.
127. The argument for interest rate caps is that they protect borrowers from exploitation because it prohibits lenders from imposing high or excessive interest rates.
128. The argument against interest rate caps is that they interfere with a competitive marketplace. The argument here relies on the consumer credit marketplace being competitive and well-regulated. Consumers must have choice, be able to freely and easily choose between financial products, and to be able to easily and cheaply obtain information about the interest rates and other information about loans so that they can make comparisons before they enter into a loan.
129. Some countries do a bit of both. That is, they attempt to ensure a competitive and well-informed marketplace whilst at the same time imposing interest rate caps at really high interest rates (e.g. 48%) to prevent highly exploitative loans. In this hybrid situation the aim is to allow competition to drive down interest rates, whilst at the same time setting a cap to deal with situations where the market does not prevent exploitation in some cases.

Indonesia Regulation of Credit Card

- a. Indonesia's central bank, Bank Indonesia, has introduced maximum loan-to-value ratios for many forms of consumer loans.
- b. The minimum down payment for home and car loans is 30%. Banks are not permitted to provide loans to finance a loan deposit.
- c. In January 2012 the Bank introduced a regulation in relation to credit cards that:
 - prohibits issuing credit cards to people below a set minimum age;
 - sets maximum interest rates for credit cards;
 - prohibits card issuers allowing their cards to be used to pay off other installment credit obligations;
 - sets procedures for writing and sending bills to customers and collecting debts; and
 - prohibits late payment fines and interest or fines on unpaid interest.



2.2.2 Harsh and unfair consumer credit contract terms

130. Consumer credit contracts (loans) may include all kinds of harsh and unfair terms. These may include-

- allowance for the lender to repossess property without sufficient warning or time to remedy a default;
- large early termination fees if a loan is repaid early or the borrower is late in paying the loan instalments; or
- placing security over property with greater value than the borrower's liability under the consumer credit contract.

131. Laws in some countries allow a borrower to apply to a court or tribunal to ask them to strike out the harsh and unfair contract terms.

132. The Malaysian *Financial Services Act* and the *Islamic Financial Services Act* prohibit lenders (ie Financial Service Providers) from engaging in conduct that is deemed to be inherently unfair to financial consumers. The types of prohibited business conduct are set out in Schedule 7 of the two Acts. The types of conduct that are prohibited include-

- providing borrowers with misleading or deceptive information;
- intimidating or exploiting borrowers;
- restricting the freedom of borrowers to choose between financial services or products available to them;
- engaging in collusive business practices

Schedule 7 Malaysian Financial Services Act and Islamic Financial Services Act

Prohibited business conduct includes:

1. Engaging in conduct that is misleading or deceptive, or is likely to mislead or deceive in relation to the nature, features, terms or price of any financial service or product.
2. Inducing or attempting to induce a financial consumer to do an act or omit to do an act in relation to any financial service or product by—
 - making a statement, illustration, promise, forecast or comparison which is misleading, false or deceptive;
 - dishonestly concealing, omitting or providing material facts in a manner which is ambiguous; or
 - recklessly making any statement, illustration, promise, forecast or comparison which is misleading, false or deceptive.

Singapore Moneylenders Act

- The Act allows a court to reopen a loan transaction if a moneylender seeks to recover money owing under a loan or seeks to enforce the loan contract or any guarantee or security for the loan if the court believes the interest rate or the late loan repayment fees are excessive and the transaction is unconscionable or substantially unfair.
- The court can change the terms of the loan agreement and order the moneylender to repay any excess amounts charged (section 23 Moneylenders Act).
- The Act defines a 'moneylender' as a person, either as principal or agent, who carries on or holds them-self out to be carrying on the business of moneylending. The term 'moneylending' is not defined.

133. In Australia, a court can reopen a contract that is 'unjust'. 'Unjust' conduct means conduct that is 'unconscionable, harsh or oppressive'. This includes circumstances in which the terms of the document are unjust, or the lender's conduct is unjust.

134. In determining whether the contract was unjust, the court may take into account:

- whether the lender or any other person used unfair pressure;
- whether, at the time the contract was entered into, the lender knew or should have known that the borrower would be unable to pay; or
- the annual percentage interest rates charged in comparable cases.

135. If the court decides that the contract is unjust, then it can make order a number of remedies, including:

- reopening an account already taken between the parties;
- relieving the borrower and any guarantor from payment of any amount that the court considers to be excessive;
- setting aside either wholly or in part or revise or alter an agreement made or mortgage given in connection with the transaction; or
- ordering that the mortgagee takes such steps as are necessary to discharge the mortgage.

2.2.3 Guarantors for consumer loans

136. A lender in some cases may only be prepared to make the loan to the borrower if there is a guarantor for the loan. The guarantor will often be a family member or friend of the borrower. The guarantor enters an agreement with the lender in which he or she agrees to repay the outstanding amounts of the loan if the borrower is in default.

137. The guarantor therefore takes on the risk of having to repay the outstanding amounts of the loan if the borrower defaults. The guarantor usually gets no benefit

- from these arrangements, other than feeling good about enabling a family member to get a loan.
138. In some cases the guarantor may enter a guarantee arrangement without realising the risks they are taking. They may also not be aware that in signing the documents presented to them that they have also offered their house or other property as security for the loan. In a worst case scenario, if the loan is for a large amount and the guarantor has signed documents offering their house as security for the guarantee, and the borrower defaults and the guarantor cannot make repayment for the outstanding amounts, they might lose their house.
 139. Laws will often require that guarantors receive independent legal advice to warn them of the risks of entering into a guarantee.

Questions on Part 2.2 (Terms of the Credit Contracts):

1. *What is an interest rate cap? What are the arguments in favour and against imposing interest rate caps?*
 2. *Laws in many countries prevent lenders from imposing harsh and unfair terms when providing consumer credit. What are some examples of unfair terms that lenders may impose?*
 3. *What is a guarantor arrangement in relation to a consumer credit contract? How can the law ensure that guarantors are protected when entering into guarantee arrangements?*
-

2.3 Debt collecting practices

What this Part covers:

- *The **obligations of credit providers when collecting overdue debts**, including the prevention of unreasonable and unfair debt collecting practices*
 - ***Laws against harassment and coercion** when collecting an overdue debt*
 - ***Laws for temporary hardship**, which apply when a borrower is temporarily unable to repay a loan due to a change in circumstances (such as loss of job or illness)*
-

140. The law generally attempts to tread the fine line between enabling lenders to take action to recover outstanding debts from a borrower, and ensuring that borrowers are treated reasonably and fairly.
141. Broadly speaking, borrowers should meet their contractual obligations to repay loans. On the other hand, lenders should not be permitted to use unfair, aggressive and unreasonable methods to recover outstanding loans.
142. The kinds of unreasonable and unfair practices include –
- harassing the borrower by phoning them at all hours of the day
 - threatening physical violence
 - taking property owned by the borrower in satisfaction of the debt without providing proper notice so as to give the borrower a chance to make the repayment
 - taking the property without first going through proper court processes
 - selling off a house owned by the borrower (which is security for the loan in the form of a mortgage) – known as a foreclosure – when the amount outstanding on the loan is relatively low
 - shaming the borrowers by writing their names and amount owed in the vicinity of their borrowers' homes
 - splashing paint on the doors of borrowers to get them to pay up.
143. There have been problems identified in Cambodia with micro-investment schemes. These are targeted at farmers who are offered small amount loans with very high interest rates. If a farmer fails to meet their repayment obligations threats are made to take the farmers land from them. The farmers are often unaware of their legal rights and either lose their land or suffer considerable hardship in trying to meet repayment obligations.

Singapore Debtors' Repayment Scheme

- Borrowers who are struggling to meet their loan repayment obligations can use the Scheme as an alternative to becoming bankrupt.
- Under the Scheme a borrower may be able to clear their debt within a few years at a lower interest rate than they had previously been charged.

Singapore Debt Collectors-Harassment Act

- The Act enables consumers to take action against debt collectors and others harassing them for the purposes of collecting their debts.
- The Act provides a broad definition of 'harassment'.
- There is presently no requirement for a special license to operate a debt collection business. Consumer groups are proposing to government that a license system be established. Some debt collectors, however, have proposed a code of practice and conduct under which the industry self regulates.

2.3.1 Giving borrower notice of default

144. The laws in many countries require a lender to take a number of steps before they can take any of the borrower's property which may be security for the loan. Just because the borrower is late in making loan repayments, or even if he or she is refusing to make repayments, this does not give the lender the immediate right to take the borrower's property in satisfaction of the debt.
145. The laws generally require that the lender must first gain a court order setting out the amount payable by the borrower. Even after receiving this order, the lender is usually required to provide a period of notice (usually 30 days) that the lender will be taking enforcement procedures against the borrower. The aim is to provide the borrower further opportunity to pay the amounts outstanding, along with any court and other enforcement costs.
146. In some countries the lender is required to provide a default notice to borrower before it takes court proceedings for an order specifying the amount of debt payable by the borrower. The lender may be required to specify certain things in the notice including - the right of the borrower to seek a variation of the loan repayment terms if they are suffering temporary hardship; and the right to negotiate the postponement of enforcement proceedings. The lender must also be required to give the borrower information about any external dispute resolution scheme to which the lender belongs.
147. If the default is remedied within the time stated in the notice of default, the terms of the loan contract is reinstated.
148. A default notice is not required in certain circumstances, including where:
- The lender believes it was induced into the contract by the fraud of the borrower;
 - The borrower cannot be located; or
 - The borrower has removed or disposed of mortgaged goods.

2.3.2 Fair enforcement practices

149. Consumers should have a number of legal protections against unfair debt collection practices. These protections should apply where a creditor collects a debt themselves, or where an independent collection agency or other third party collects the debt on behalf of the lender.
150. A number of protections should apply to the process of collecting a debt from a borrower. A debt collector should be prevented from using physical force or



coercion in collecting a debt, harassing a borrower to an unreasonable extent, misleading or deceiving a borrower, or taking unfair advantage of any vulnerability or disability of the consumer.

151. In addition, restrictions should be placed on the circumstances in which a debt collector can contact a borrower. Generally, a debt collector should only be able to contact a borrower for a reasonable purpose, which may include:

- making a demand for payment;
- making arrangements for repayment;
- finding out why an agreed repayment plan has not been met;
- reviewing a repayment plan after an agreed period of time; and
- inspecting or recovering mortgaged goods (if they have a right to do so).

152. There should also be requirements to prevent a debt collector from contacting a borrower more than is necessary. Some examples of these rules may include:

- a maximum of three phone calls or letters per week (or 10 per month);
- phone contact only between the hours of 7:30am–9:00pm on weekdays and 9:00am–9:00pm on weekends; and
- face-to-face contact only between the hours of 9:00am–9:00pm on weekdays and weekends.

153. Visits to a borrower's home or place of work should be limited to circumstances in which there is no other reasonable way of contacting the borrower.

154. The Philippines introduced the *Credit Information System Act 2010* which created the Credit Information Corporation. Its primary purpose is to serve as a central repository of credit information and to provide access to standardised information about consumer credit histories and the financial standing of potential borrowers.

2.3.3 Preventing harassment and coercion

155. Beyond the requirements of fair enforcement practices, it is important that consumers are protected against harassment and coercion by debt collectors. In particular, consumer education efforts should ensure that consumers understand that where debt collectors do not follow the rules, they are able to report such behaviour to consumer authorities or the police.

Schedule 7 Malaysian Financial Services Act and Islamic Financial Services Act

Prohibited business conduct includes:

3. Exerting undue pressure, influence or using or threatening to use harassment, coercion, or physical force in relation to the provision of any financial service or product to a financial consumer, or the payment for any financial service or product by a financial consumer.

156. The Malaysian Central Bank, Bank Negara, in 2014 issued Prohibited Business Conduct rules under Schedule 7 of the Financial Services Act and Islamic Financial Services Act. Clause 9 of the rules specifies the types of conduct the Bank regards as exerting undue pressure. The conduct includes the following.

- A Financial Services Provider is regarded to be exerting undue pressure or influence on a financial consumer if it is involved in the following:
 - (a) Exploiting a position of power or control over a financial consumer to exert pressure that unreasonably limits the financial consumer's ability to make an informed choice;
 - (b) Harassing a financial consumer by making unnecessary or excessive contact to the point where the financial consumer feels intimidated, tired, confused or demoralised; or
 - (c) Using, or threatening to use any physical or forceful actions that restrict the financial consumers' choice or freedom to act.
- 9.4 The Bank will consider among others, the following factors in determining whether an FSP is exerting undue pressure or influence on a financial consumer:
 - (a) The timing, location, nature or persistence of the conduct;
 - (b) Any use of threatening/abusive language or behaviour;
 - (c) Whether the FSP exploited a specific misfortune or circumstance of the financial consumer that may impair the financial consumer's judgment to the FSP's advantage; or
 - (d) Any threat made to take actions that legally cannot be taken.
- 9.5 The following are **non-exhaustive examples** of exerting undue pressure or influence:
 - (a) Making repeated solicitations to promote financial services or products to financial consumers who have communicated his or her disinterest in the financial service or product;
 - (b) Creating impediments to deter or prevent the financial consumer from leaving the FSP's premises until a contract is signed;
 - (c) Conducting personal visits to the financial consumer's home or workplace and ignoring the financial consumer's request to leave or not to return;



- (d) Exploiting a consumer's obvious emotional state, for example a grieving consumer, to sell financial services or products which are unnecessary or unsuitable to the needs and circumstances of the consumer; and
 - (e) In relation to debt collection, examples of exerting undue pressure or influence, harassment or coercion are provided in the document on Fair Debt Collection Practices.
- 10.1 For the purpose of paragraph 4 of Schedule 7, financial services or products are deemed unsolicited if such services or products are provided to a financial consumer without any request made by the financial consumer.
 - 10.2 The prohibition covers various ways of demanding payments for unsolicited financial services or products, which may include the following practices:
 - (a) Charging the cost of unsolicited financial service or product to the financial consumers' account or credit card;
 - (b) Threatening to bring any legal proceedings with a view to obtaining payment for the unsolicited financial service or product;
 - (c) Placing or causing the name of the financial consumer to be placed on a list of defaulters or debtors, or threatening to do so; or
 - (d) Sending any document that states the amount of the payment or the price of the unsolicited financial service or product which appears to establish an obligation on the part of the financial consumer to pay.

Schedule 7 Malaysian Financial Services Act and Islamic Financial Services Act

Prohibited business conduct includes:

- 4. Demanding payments from a financial consumer in any manner for unsolicited financial services or products including threatening to bring legal proceedings unless the financial consumer has communicated his acceptance of the offer for such financial services or products either orally or in writing.

2.3.4 *Temporary hardship*

157. A typical consumer loan arrangement involves a lender providing a sum of money to a borrower who is then required to repay the loan, together with any interest, in fortnightly or monthly instalments. If the borrower falls behind in making the repayments, he or she may be contacted by the lender with requests that the borrower make the repayments that are outstanding, along with any penalty interest rates fees that are applicable under the loan.
158. If the borrower fails to do so, the lender may take court proceedings against the borrower to recover the amount owed. The lender may use any court order it obtains for loan to take enforcement procedures against the borrower. The enforcement proceedings may include –
- taking and selling of any goods or real property owned by the borrower which forms security for the loan; or
 - taking bankruptcy proceedings against the borrower.
159. The lender may also require any guarantor for the loan to pay the amounts outstanding.
160. There may, however, be circumstances where the borrower is temporarily unable to make repayments because he or she lost his or her job, or is suffering from an illness, or for some other reason. Many borrowers who face temporary hardship may well have continued repayments had they not had the temporary setbacks.
161. Borrowers facing temporary hardship might decide to contact the lender, inform it of the temporary hardship he or she is facing, and negotiate a suspension or reduction of loan repayments until the borrower is able to return to work and make the repayments.
162. However, if the borrower is not interested in making these re-arrangements, it may decide to take enforcement action regardless of the temporary hardship. This could well make matters even more difficult for the borrower.
163. In some countries there are laws for temporary hardship. These laws require the borrower to notify the lender of their temporary hardship and seek to request that the lender either suspend loan repayments, or reduce the amount of the repayments, for an agreed period of time. Under these negotiated arrangements, the borrower will still be required to eventually make full repayment of the loan and along with any interest payable. Under these laws, if the lender refuses to renegotiate, the borrower is entitled to take the matter to a court or tribunal to have it vary the terms of the loan and order a temporary suspension or reduction of loan repayments.

164. There are two limbs to the entitlement to ask the lender for a modification. First, the borrower must be temporarily unable to make the loan repayments. Second, the borrower must reasonably expect to be able to repay the loan under the changed arrangements.
165. A number of types of loan variation may be offered by the lender or ordered by the court:
- a reduction of regular payments to a more affordable level and a consequent extension to the term of the loan;
 - a short term stop on payments, and a consequent extension to the term of the loan; or
 - a short term stop on payments, after which the borrower will catch up the missed payments.
166. The benefits of a temporary hardship application for a consumer may include:
- a borrower's payments becoming more affordable over the short term;
 - stopping any force procedures, or prohibiting any letters of demand and phone calls from creditors or debt collectors requesting repayment during the suspension period; and
 - preventing any bankruptcy proceedings being taken against the borrower during the suspension period.
167. The Credit Counselling Singapore (CCS) has since its establishment in 2004 helped consumers with an unsecured debt problem through education and debt repayment plans. The CCS has a debt management programme in which they work out a monthly instalment plan that allows borrowers to gradually repay their unsecured debts (such as credit cards and overdraft), including the principal amount and moderated interest charges to all his creditors over a reasonable period of time.
168. The monthly instalment payment amount will be within the person's servicing capacity and he or she is expected to make prompt, full and regular payment during the repayment term.¹⁷

2.3.5 Retail Investors

169. As the middle class rapidly grows as predicted in the ASEAN region, increasingly elaborate financial products and investment opportunities will likely be offered to consumers. Consumers may be encouraged to invest their savings in a wide range of investment products. It is likely that a financial advisors industry will developed aiming at advising ordinary investors to invest in those products. This

¹⁷ See www.ccs.org.sg/

- exposes the investors to the risks of paying excessive fees to advisers, being unaware that the advisor has a personal interest or stake in the products being recommended, and being unaware of the underlying risks of investing in certain products.
170. Singapore has amended its *Financial Advisors Act* to disallow financial advisors to engage in other economic activities, such as being a real estate agent or a moneylender. It is likely that this and other measures will be required to regulate the financial advisory industry and to build investor confidence in the industry and in making financial investments.
 171. Other risks are that consumers may be duped into ‘investing’ in pyramid schemes which have the potential of causing substantial financial losses to ordinary individuals.
 172. Even in countries without a substantial middle class, consumers face the risk of being misled by the promise of get rich schemes. One bad practice is known as land banking in which promoter buys a large area of undeveloped land and divides the land into plots and offers the individual plots for sale to consumers. Usually the scheme is promoted with the claim that there will be large returns if planning permission is obtained for housing or other developments. Sometimes these schemes are legitimate. However, on other occasions the promoter takes the money from the investors and disappears. The investors will usually not have any title to the land and lose all their money.

Questions on Part 2.3 (Debt collecting practices):

1. *What are some examples of unreasonable and unfair debt collecting practices that lenders are prohibited from engaging in when enforcing a consumer credit contract?*
 2. *What is a notice of default? Why are notices of default typically required before a debt can be enforced?*
 3. *What is ‘temporary hardship’? Under what circumstances can a borrower apply for the terms of a consumer credit contract to be modified on the basis of temporary hardship? What are some of the benefits of this for the consumer?*
-

2.4 Other consumer protection measures

What this Part covers:

- *The obligations of credit providers to **maintain the confidentiality of their customers' information** and records*
 - *The **protection of consumer data** held by credit reporting agencies and lenders*
-

173. Lenders often rely on credit reporting databases to provide information that helps them assess the creditworthiness of a potential borrower, and their likelihood of default. The information in consumer credit databases is used to create models which assign a credit score to a borrower. The information in a credit reporting database should only be dealt with in accordance with a consumer's right to privacy, and the data should be properly protected to ensure that it does not fall into the wrong hands.

2.4.1 Privacy

174. Under the general law of most countries, banks have a general contractual and banking obligation of confidentiality towards their customers. With the rise of the ubiquitous use of the Internet and the increasing variety of financial services providers the risks to consumer privacy have increased. As a result, many countries have introduced additional measures to protect the privacy of consumer's finances.

175. Consumers also face potential risks of credit reporting agencies if they release financial information about a consumer that is inaccurate, thereby causing harm to the consumer through negative credit appraisals. There are also risks to consumers if their personal financial information is passed on to third parties who may wrongly or inappropriately use that information.

176. The information held by a credit reporting agency should only be disclosed to third parties who have a permissible purpose for accessing the credit report. Examples of permissible purposes might include: disclosure required by court orders, where the consumer has clearly and knowingly consented to the disclosure (i.e. not simply 'consenting' via a clause buried in a standard contract - e.g. to a potential employer or lender).

177. A credit reporting agency must also ensure that the information in a credit report is accurate, current and complete, and does not mislead. However, they ought not to be required to verify the information; they may merely take reasonable steps to ensure its accuracy, currency and completeness. A consumer should have the right to readily check at low cost or no cost their credit history and to correct any errors.

178. A credit reporting agency should also only retain certain information about a consumer. This ought to include:
- Information reasonably necessary to identify the individual, including full name, aliases, date of birth, sex, address and employer;
 - Past credit applications and the amount of credit sought;
 - That a lender is the individual's current lender;
 - About the credit where the individual's payments are at least 60 days overdue and the lender has taken steps to recover the outstanding credit;
 - That a cheque for a minimum threshold has been dishonoured twice or more; and
 - That a bankruptcy order has been made against the individual.
179. A credit reporting agency ought not to retain information about an individual's political or religious beliefs, criminal record, medical history, race, sexual preferences, lifestyle, character or reputation.
180. Ensuring that credit reporting agencies retain and disseminate only the data that is required and appropriate for assessing the credit worthiness of a potential borrower is essential to ensuring consumer privacy is appropriately protected.
181. Laws regulating credit reports should define the purposes for which credit reporting agencies are permitted to furnish credit reports to third parties, including any due diligence tasks the credit reporting agencies should undertake to ensure that the third parties who obtain the credit reports are using it for a permissible purpose. In addition, credit reporting laws should provide consumers with a right of notice when an adverse action is taken against them based on their credit report. Finally, the credit report laws should provide consumers with the ability to freeze or otherwise put a notice on their credit report if they are a victim of identity theft.
182. Malaysia's *Credit Reporting Act* 2010 requires the licensing of credit bureaus and places restrictions on the disclosure of credit information. The Act sets out the responsibilities of credit bureaus under the terms of their license. It prohibits the provision of credit information beyond that allowed by the Act. It also provides for ensuring the confidentiality of the information. The Act also enables an individual to correct incorrect information. It also provides for an Appeal Tribunal.
183. Division 4 of the Malaysian *Financial Services Act* provides for dealing with consumers' financial information and a financial institution's secrecy obligations. Section 133(1), for instance, provides as follows:
- No person who has access to any document or information relating to the affairs or account of any customer of a financial institution, including—
 - (a) the financial institution; or
 - (b) any person who is or has been a director, officer or agent of the financial institution, shall disclose to another person any document or information relating to the affairs or account of any customer of the financial institution.



2.4.2 Data protection

184. In addition to the importance of only using consumer data for appropriate purposes, the integrity of data stored by credit reporting agencies and lenders must be protected.
185. In Thailand there is an implied constitutional right to privacy. Under Indonesian law, personal data may only be passed on to third parties using electronic media with the consent of the person concerned.
186. The collection and retention of consumers' data is regulated by the *Personal Data Protection Act*. The Singapore Monetary Authority is primarily responsible, amongst other things, for ensuring the proper collection and retention of consumers' financial data.
187. Consumers interests regarding privacy are also protected to some extent by the voluntary Code of Banking adhered to by a number of Singaporean banks.
188. The Singapore Personal Data Protection Act lists 9 obligations a businesses must comply with:

1. Consent Obligation

- Only collect, use or disclose personal data for purposes for which an individual has given his or her consent.
- Allows individuals to withdraw consent, with reasonable notice, and inform them of the likely consequences of withdrawal. Upon withdrawal of consent to the collection, use or disclosure for any purpose, your organisation must cease such collection, use or disclosure of the personal data.

2. Purpose Limitation Obligation

- An organisation may collect, use or disclose personal data about an individual for the purposes that a reasonable person would consider appropriate in the circumstances and for which the individual has given consent.
- An organisation may not, as a condition of providing a product or service, require the individual to consent to the collection, use or disclosure of his or her personal data beyond what is reasonable to provide that product or service.

3. Notification Obligation

- Notify individuals of the purposes for which your organisation is intending to collect, use or disclose their personal data on or before such collection, use or disclosure of personal data.



4. Access and Correction Obligation

- Upon request, the personal data of an individual and information about the ways in which his or her personal data has been or may have been used or disclosed within a year before the request should be provided. However, organisations are prohibited from providing an individual access if the provision of the personal data or other information could reasonably be expected to:
 - cause immediate or grave harm to the individual's safety or physical or mental health;
 - threaten the safety or physical or mental health of another individual;
 - reveal personal data about another individual;
 - reveal the identity of another individual who has provided the personal data, and the individual has not consented to the disclosure of his or her identity;or
 - be contrary to national interest.
- Organisations are also required to correct any error or omission in an individual's personal data upon his or her request. Unless your organisation is satisfied on reasonable grounds that the correction should not be made, your organisation should correct the personal data as soon as practicable and send the corrected data to other organisations to which the personal data was disclosed within a year before the correction is made (or, with the individual's consent, only to selected organisations).

5. Accuracy Obligation

- Make reasonable effort to ensure that personal data collected by or on behalf of your organisation is accurate and complete, if it is likely to be used to make a decision that affects the individual, or if it is likely to be disclosed to another organisation.

6. Protection Obligation

- Make reasonable security arrangements to protect the personal data that your organisation possesses or controls to prevent unauthorised access, collection, use, disclosure or similar risks.

7. Retention Limitation Obligation

- Cease retention of personal data or remove the means by which the personal data can be associated with particular individuals when it is no longer necessary for any business or legal purpose.

8. Transfer Limitation Obligation

- Transfer personal data to another country only according to the requirements prescribed under the regulations, to ensure that the standard of protection



provided to the personal data so transferred will be comparable to the protection under the PDPA, unless exempted by the PDPC.

9. Openness Obligation

- Make information about your data protection policies, practices and complaints process available on request.
- Designate one or more individuals as a Data Protection Officer to ensure that your organisation complies with the PDPA, including the implementation of personal data protection policies within your organisation. The business contact information of at least one of such individuals should also be made available to the public. Please note that compliance with the PDPA remains the responsibility of the organisation.

189. There are, however, exceptions to these rules and they are generally purpose-based. For example, some of these exceptions relate to emergency situations, investigations, publicly available data or where the personal data is used for evaluative purposes.¹⁸

Questions on Part 2.4 (Other consumer protection measures):

1. *Why is it important that consumers personal data is kept private and only disclosed for proper purposes?*
 2. *What are the types of information that consumer protection agencies should retain about a borrower? What types of information should not be retained?*
 3. *Singapore's Code of Banking requires that businesses comply with a number of data protection obligations. What are three of these obligations and why do they exist?*
-

FURTHER READING ON PART 2 (CONSUMER CREDIT):

- I Ramsay, 'Consumer Law in the Global Economy: National and international dimensions', 1997
- J Malbon, L Nottage and K Lindgren, 'Consumer Law and Policy in Australia and New Zealand', 2013, Ch 9 (Responsible lending, unjust terms and hardship)
- R Gage, 'A Remedy Foreclosed? Mortgage Foreclosure and the Fair Debt Collection Practices Act', Fordham Law Review, Oct 2012, Vol 81(1)
- Office of the Australian Information Commissioner, 'Credit Reporting', 2015, <<http://www.oaic.gov.au/privacy-law/privacy-act/credit-reporting>>
- A Savin and J Trzaskowski, 'Research Handbook on EU Internet Law', 2014, Pt IV (Internal Market and electronic commerce)

¹⁸ www.pdpc.gov.sg/home

3. CRIMINAL PRACTICES

What this Part covers:

- *The various **types of ATM and card fraud***
 - *The **laws against the different types of fraud** in several ASEAN member states*
 - *The **potential warning signs of ATM and card fraud** that consumers should be aware of*
-

3.1 ATM/Card fraud

190. As ASEAN economies further develop, it is highly likely that there will be increased penetration of electronic banking solutions such as payment cards and ATMs. Although these innovations significantly increase the ease with which consumers can interact with the banking and payments systems, they present significant challenges for consumer protection.
191. Brunei Darussalam is one of a number of AMSs that have raised concerns about ATM frauds, and the failure of ATM machines to dispense cash. It has also expressed concerns about the prevalence of ATM card cloning.

3.1.1 Card fraud

192. 'Card fraud' has been defined as the fraudulent acquisition and/or use of debit, credit and store value cards or card details for financial gain.¹⁹ There are three main types of payment cards, all of which can be vulnerable to card fraud:
- Stored value cards, purchased before transactions take place e.g. store gift cards or pre-paid phone cards;
 - Debit cards, bank accounts automatically debited when transactions are conducted; and
 - Credit cards, which provide a line of credit which can be used to make purchases on the understanding that the amount will be repaid in the future.
193. Card fraud can take a number of forms. The main types of card fraud are:
- **Card not present fraud:** Making purchases over the phone or internet using stolen card details, without the card being physically presented;

¹⁹ <https://www.crimecommission.gov.au/publications/intelligence-products/crime-profile-fact-sheets/card-fraud>

- **Counterfeit card fraud:** Use of fake credit cards, including the production of counterfeit cards from data skimmed from legitimate credit cards; and
 - **Application fraud:** Using a fake identity for a credit card application.
194. There are a number of potential ways that card fraud can be committed. The most common methods include:
- **Card skimming:** Copying information from a card's magnetic strip at a point of sale terminal, and using the data to make counterfeit copies of the credit card or using the details to commit card not present fraud.
 - **Buying card details:** The details from a stolen credit card can be bought and sold and then used to commit fraud.
 - **Hacking:** Criminals can hack into databases of account details held by businesses, or intercept account details travelling in unencrypted form, and use the stolen details to commit fraud.
 - **Card theft:** Stealing a credit card and making purchases by forging the card holder's signature or committing card not present fraud.
 - **Stored value card fraud:** Card readers can be programmed to deduct greater value from the card than authorised by the user.
195. Card fraud has significant effects on both consumers and business. Beyond the obvious financial impact, card fraud can result in loss of reputation and security for legitimate businesses, higher credit card fees and interest rates, higher prices for retail goods to cover credit card losses, and increased psychological stress for victims.
196. Although card fraud is illegal in all ASEAN nations, it is essential to ensure that consumers understand the potential for card fraud to occur, and the channels that they can use to report and address credit card fraud when it does occur.
197. One of the main means by which consumers gain credit in the Philippines is through credit cards. A number of regulations have been introduced in the Philippines that aim to protect consumers, including the following:
- *Access Devices Regulation Act of 1998* requires credit card providers to provide information in writing or orally (annual percentage rate; computation method, fees, and toll-free numbers);
 - *BSP Circular No. 398* dated 21 August 2003 requires the development of consumer credit through innovative products under conditions of fair and sound consumer credit practices; and
 - *BSP Circular No. 454* dated 24 September 2004 regulates credit card operations of banks and subsidiary credit card companies.
 - *BSP Circular no. 702* series of 2010 amending regulations to enhance consumer protection in the credit card operations of banks and their subsidiary or affiliate credit card companies.

3.1.2 ATM fraud

198. ATM's are already widely used in many ASEAN nations. However, as ATM penetration increases further and criminal enterprises become more technologically sophisticated, there is potential for ATM fraud to increase.
199. There are a number of potential types of ATM fraud that consumers need to be aware of:
- **Card skimming:** A criminal places a counterfeit magnetic reader over the card slot on an ATM machine, which reads and copies card numbers on the card without being detected by the customer. A camera may also be installed above the ATM keyboard to capture the customer's pin. This information can then be used to create a counterfeit card that can be used just like a normal card.
 - **False ATM façade:** A false façade can be placed over the front of an ATM machine, which will retain the card and display an error message. The retained cards can later be collected and used to commit fraud.
 - **Data theft:** Freestanding ATMs, which can be less secure than bank-linked ATMs, can be subject to data theft. Criminals can capture account information by using WiFi scanners and cracking programs to download transaction data.
 - **False ATM:** In a small number of cases, freestanding ATMs have been installed whose only purpose is to steal information. The machines were not loaded with funds, but instead used to entice users to swipe their cards and enter their pins, after which an error message would appear.
200. Like card fraud, there are significant penalties under current ASEAN laws against ATM fraud. However, consumers may not know that their information has been stolen, and may not know what to do in the event of fraud.
201. There are a number of potential warning signs of ATM fraud that consumers should be aware of, including:
- Unusual additions, marks or changes to the ATM;
 - Signs that the ATM has been tampered with;
 - Swiping a card more than once at the ATM; or
 - Unusual or unauthorised transactions or charges on account or credit card statement.

Questions on Part 3.1 (ATM/Card Fraud):

1. *What are the three major types of ATM fraud?*
 2. *What are two ways in which ATM fraud can be committed?*
 3. *What are the potential impacts of fraud on consumers and businesses?*
 4. *The Philippines has introduced a number of laws intended to prevent card fraud. Name one of these and explain how its provisions could effectively prevent card fraud from occurring?*
-

3.2 Counterfeiting

What this Part covers:

- **The increased penetration of counterfeit goods in the global economy**
 - **Strategies that a consumer can use to recognise counterfeit goods**
 - **Remedies that are available to consumers if they have purchased a counterfeit product**
-

202. The increasing penetration of counterfeit goods has been driven, in part, by the rise of online shopping. Counterfeit goods make up over 2% of the world's economic output, with the total value of counterfeit goods globally exceeding \$1.7 trillion.²⁰ As the ASEAN consumer market continues to mature, and online shopping becomes more prevalent, it is likely that even more consumers in ASEAN fall victim to counterfeiting scams.
203. Counterfeiting is a particular issue in the context of consumer credit because many online transactions are paid for with credit or debit cards, meaning that a consumer may be taking on a debt to purchase a product that is not fit for purpose or does not match the description provided by the seller. To avoid this, consumers should be educated about how to avoid the purchase of counterfeit goods.
204. Knock off products are becoming more difficult to identify, as they are less likely to suffer from misspelled logos and shoddy workmanship. Counterfeiters have also become smarter in marketing their products, with search engine optimisation being used to direct people to counterfeiter's websites, and the use of images from brands advertising campaigns to boost credibility. Counterfeiters have become so skilled in introducing their products to the supply chain that a major Australian retailer recently faced court action for accidentally selling counterfeit makeup.
205. Counterfeiting can negatively impact consumers because they do not receive the goods that they believe that they are purchasing. In addition, high prevalence of counterfeit products being sold online can result in decreased confidence in shopping online, which can decrease international commerce within ASEAN. Also, consumers can face safety issues from counterfeit product. Counterfeit pharmaceuticals and cosmetics can contain substances that are not fit for humans, or be produced in unsanitary conditions. Similarly, counterfeit electronics have caused fires and electrocution in some cases, as they do not face the same testing requirements as the real version.

²⁰ <http://money.cnn.com/2012/09/27/news/economy/counterfeit-goods/>

206. ASEAN laws already prohibit the sale of counterfeit goods. Particularly, consumer laws in most ASEAN nations prohibit the sale of goods which do not fit the description provided by the seller. However, enforcement actions against counterfeiters have generally been limited, and therefore consumers need to understand how to avoid buying counterfeit.
207. Some particular strategies that consumers can use:²¹
- If buying a particular brand, find information about replicas and fakes online before buying, to know what to look out for;
 - Ask the seller questions about the products, and ask for extra, non-generic pictures;
 - If buying from auction sites like eBay, use payment methods that provide a refund such as PayPal; and
 - Check the reputation of the company through online searches and with the country's consumer advocacy organisations.
208. If a counterfeit product has been received, consumers can:
- Try to work out the issue with the retailer;
 - If the product was bought domestically, make a complaint to a relevant fair trading or consumer affairs office; or
 - If the product was bought internationally, make a complaint on econsumer.gov, the international site for reporting scams.

Questions on Part 3.2 (Counterfeiting):

- *Why is counterfeiting a particular issue in the context of consumer credit?*
 - *What are some strategies that consumers can use to avoid purchasing counterfeited goods?*
 - *What remedies are available to consumers if they have purchased a counterfeit product?*
-

FURTHER READING ON PART 3 (CRIMINAL PRACTICES):

- S Finlay, 'The Management of Consumer Credit: Theory and Practice', 2010
- J Youngblood, 'A comprehensive look at fraud identification and prevention', 2015, Chs 2.3.4 (Protecting the Credit Card Swipe Machine Master Code), 4.2.3 (Opening Unauthorised Credit Card Accounts)
- P Stokes, 'Consumer Liability for Credit Card Fraud', New Law Journal, Sept 2005, Vol 155 (7192)

²¹ <https://www.choice.com.au/shopping/online-shopping/buying-online/articles/counterfeit-goods>

4. CONSUMER REMEDIES AND REDRESS

4.1 Dispute resolution

What this Part covers:

- A description of the various ways that **consumers can resolve disputes** with their lenders
 - The pros and cons of **different dispute resolution options**
 - A description of **lenders' internal dispute resolution procedures**
 - The **external dispute resolution options**, including ombudsmen, mediation, class actions and small claims courts, available to consumers
-

209. There are a number of ways that consumers can resolve disputes with their lenders. Each has implications in terms of cost, timing and complexity. Consumers will typically seek internal resolution of the dispute by the lender, followed by submitting the dispute to an external dispute resolution body nominated by the lender. If this is not successful, the dispute can be resolved through 'alternative' dispute resolution e.g. mediation or arbitration, or through a court action. In addition, if a large number of consumers are impacted by the behaviour of a lender, the dispute may be settled via a class action.

4.1.1 Internal dispute resolution

210. Typically, a lender will be required to have a process for resolving disputes with consumers internally. A complaint can be defined in a number of ways, for example as 'an expression of dissatisfaction made to an organisation, related to its products or services, or that complaints handling process itself, where a response or resolution is explicitly or implicitly expected'.²²

211. Lenders should have a procedure for responding to and resolving complaints made by clients, and provide an internal contact who is responsible for the resolution of complaints. A lender should also document their dispute resolution procedure and provide this to consumers. Where an internal dispute resolution procedure is unable to resolve a complaint, there should be a procedure to refer the dispute to an external dispute resolution authority.

²² Australian Standard AS ISO 10002 on Complaints Handling (as in force on 5 April 2006).



4.1.2 External dispute resolution

212. All lenders should be members of a recognised external dispute resolution (EDR) service. This will typically take the form of an ombudsman or other independent person, who will adjudicate the dispute.
213. Typically, the EDR service will receive a complaint from a consumer, and seek a response from the consumer's financial institution. After the response is received, the EDR service will work with the lender and consumer to reach a fair outcome for the dispute. This may include negotiation, conciliation, or providing a view on the merits of the dispute to both parties. Negotiation is a process by which the EDR service discusses the dispute with both sides and helps them come to a resolution. If this fails, a conciliation conference will take place, in which both parties have the opportunity to put their case to the other and move the dispute toward resolution.
214. If a dispute is not resolved, it will be resolved by a decision as to the merits of the dispute. The decision will be made by a single or group of EDR professionals, which will be binding upon the parties.
215. If the parties do not accept the decision of the EDR provider, they may seek formal dispute resolution through 'alternative' dispute resolution or the court system.
216. In Indonesia consumers can seek to have their disputes resolved through the Consumer Dispute Settlement Body (BPSK), which was established under the Law on Consumer Protection (Law No. 8/1999). There are district level agencies established to assist consumers deal with their complaints through mediation. The bps provides mediation, conciliation and arbitration services. It can receive complaints and issue subpoenas. It also may ensure compliance with its orders. There are 120 district-based agencies out of a total of 500 districts in Indonesia.

Ombudsman services

217. A number of countries provide for the establishment of a banking or financial services ombudsman. In some cases the ombudsman service is established voluntarily by the banking and finance industry. In other cases, financial service providers are required by legislation to have consumer complaints dealt with by a government approved industry run ombudsman service.
218. Typically, the ombudsman service, although established and funded by industry, operates independently of industry. Under these schemes consumers can make a complaint to the ombudsman and have their complaint dealt with free of charge. The consumer complainant is not bound by any decision of the ombudsman, however the industry party is so bound.



219. Malaysia is presently transforming its Financial Mediation Bureau into a Financial Ombudsman Service. The establishment of the scheme is provided for under the Malaysian *Financial Services Act*. Section 126 of the Act provides:

- For the purposes of ensuring effective and fair handling of complaints and for the resolution of disputes in connection with financial services or products, regulations may be made under section 260 to require any class, category or description of financial service providers—
 - (a) to be a member of a financial ombudsman scheme approved under subsection (2); and
 - (b) at all times, to comply with terms of membership of such scheme.
- The Bank may approve any financial ombudsman scheme for the purposes of paragraph (1)(a).
- Regulations may be made under section 260 for the purposes of ensuring a financial ombudsman scheme is fair, accessible and effective, including regulations on the following:
 - (a) the matters that the Bank may have regard to in determining whether to approve a financial ombudsman scheme under subsection (2);...
- Where a dispute has been referred to a financial ombudsman scheme by an eligible complainant, the eligible complainant is not entitled to lodge a claim on such dispute with the Tribunal for Consumer Claims established under the Consumer Protection Act 1999.

219. A worldwide network of financial services ombudsman has been established. Its website provides information on ways of setting up a financial services ombudsman.²³ The site sets out a number of fundamental principles which can guide an ombudsman service; namely—

Fundamental principles

220. After studying worldwide standards relevant to ombudsman schemes, the Network has agreed the following fundamental principles:

- independence, to secure impartiality
- clarity of scope and powers
- accessibility
- effectiveness
- fairness
- transparency and accountability.

²³ www.networkfso.org/

Effective approaches

221. Financial ombudsman schemes operate in many different countries and sectors. They need to take account of relevant cultural, legal and economic circumstances.
222. The approaches to implementing the fundamental principles described in the guide are ones that have worked in some countries, but there may possibly be other ways.²⁴
223. The Singapore Financial Industry Disputes Resolution Centre (FIDRec) was set up by the Monetary Authority of Singapore (MAS) as an independent and impartial institution to deal with the resolution of disputes between financial institutions and consumers. It is a self-regulating regime with full support from MAS.
224. FIDRec provides an affordable and accessible one-stop avenue for consumers to resolve their disputes with financial institutions. It also streamlines the dispute resolution processes across the entire financial sector in Singapore.
225. The jurisdiction of FIDReC in adjudicating disputes between consumers and financial institutions is as follows:
- For claims between insureds and insurance companies: up to S\$100,000
 - For disputes between banks and consumers, capital market disputes and all other disputes (including third party claims and market conduct claims): up to S\$50,000
226. The dispute resolution process of FIDReC comprises:
- **1st Stage: Mediation**

When a complaint is first received, it is case managed by FIDReC's Case Manager. The consumer and the financial institution are encouraged to resolve the dispute in an amicable and fair manner. In appropriate cases, the Case Manager mediates the dispute between the parties.
 - **2nd Stage: Adjudication**

Where the dispute is not settled by mediation, the case is heard and adjudicated by a FIDReC Adjudicator or a Panel of Adjudicators. The decision of the Adjudicator is final and binding on the financial institution, but not on the consumer. The consumer is free to reject it and pursue through other avenues.²⁵

²⁴ <http://www.networkfso.org/principles.html>

²⁵ www.fidrec.com.sg/website/index.html



4.1.3 *Alternate dispute resolution*

227. The EU has introduced a Mediation Directive that applies to cross-border civil disputes and promotes alternative dispute resolution.²⁶ The EU is also committed to putting in place an online platform for resolving cross-border disputes by 2014.²⁷ The United Nations Commission on International Trade Law is also working towards developing processes for online dispute resolution.

228. The Organisation for Economic Co-operation and Development (OECD) Council adopted recommendations in 2007 which set out principles for an effective and comprehensive dispute resolution and redress system.²⁸ The principles propose that member countries ensure they establish frameworks for providing consumers' access to fair, easy to use, timely and effective dispute resolution and redress without unnecessary cost or burden. It also recommends measures be taken to improve consumer awareness of and access to dispute resolution mechanisms.

229. The United Nations Commission on International Trade Law (UNCITRAL) Working Group III on Online Dispute Resolution (ODR) mechanisms has developed Draft Procedural Rules for Online Dispute Resolution for Cross-border Electronic Commerce Transaction.²⁹ The preamble to the draft rules states that they are designed:

- for an easy, fast, cost-effective procedure for dispute resolution in low-value, high-volume electronic commerce transactions
- to create a safe, predictable legal environment for transactions, to ensure traders' confidence in the online market
- to facilitate micro-, small- and medium-sized enterprises' access to international markets through electronic commerce and mobile electronic commerce.

230. The rules require that parties first attempt to resolve their dispute through negotiations, and if this fails, a process for adjudication through binding arbitration is set out. Parties would need to agree by contract or other form of assent to have their dispute resolved in this way.

²⁶ Consumer Protection PE487.749 European Parliament legislative resolution of 12 March 2013 on the proposal for a directive of the European Parliament and of the Council on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC

²⁷ http://ec.europa.eu/consumers/redress_cons/docs/com_2013_401_en.pdf

²⁸ OECD *Recommendation on Consumer Dispute Resolution and Redress* (2007) Preface [www.oecd.org/general/oecludgesgovernmentandindustrytooverhaulconsumerprotectionforinternetand othershoppers.htm](http://www.oecd.org/general/oecludgesgovernmentandindustrytooverhaulconsumerprotectionforinternetandothershoppers.htm)

²⁹ A/CN.9/WG.III/WP.133; UN General Assembly; 29 November 2014; <http://daccess-ods.un.org/TMP/3420516.2525177.html>

Alternative dispute resolution – country examples

Indonesia

Every financial services provider in Indonesia has an internal unit that handles consumer complaints. If internal dispute resolution fails, 7 separate financial services authorities exist to resolve disputes externally in industries including banking, insurance, pawn shops and capital markets. These bodies exist to facilitate effective, accessible, fair and independent resolution of disputes between consumers and financial institutions. Services provided include mediation, arbitration and adjudication. Decisions of dispute resolution authorities are binding on both parties.

Philippines

In 2006, the Philippines Government established the Financial Consumer Protection Department (FCPD). The aim of the FCPD is to protect and educate depositors and investors who use financial products. The Consumer Assistance Division of the FCPD handles consumer complaints. If a consumer has a complaint about a financial services provider, the consumer can apply to the FCPD, which will facilitate communication and mediate between the two parties. For example, a consumer who complains of credit card fraud to a bank, which does not reverse the transactions, can apply to the FCPD for a hearing and the FCPD can order the bank to execute the reversal of charges.

4.1.4 *Class actions and group actions*

231. The laws and court procedures of some countries allow a group, or class, of plaintiffs to bring a legal action in court against one or more defendants. As a typical example, if the behaviour of the defendant (which might be a financial institution) caused financial loss to a large number of consumers, class action procedures enable the injured consumers to collect together (or form a class) to sue the defendant financial institution in a single legal action. By combining together in this way, each individual plaintiff can reduce the share of the legal costs in mounting the legal action.
232. The advantage of a class action is that it provides access to justice to consumers who would otherwise not have the financial resources to mount an action against the defendant. The Supreme Court of Canada in *Western Canadian Shopping Centres Inc v Dutton* observed that without class actions, ‘the doors of justice remain closed to some plaintiffs, however strong their legal claims.’³⁰

³⁰ *Western Canadian Shopping Centres Inc v Dutton* [2001] 2 Supreme Court Reports 534 at para. 28.

233. In some jurisdictions litigation funding organisations are allowed to enter into agreements with the class action plaintiffs in which the funder agrees to pay all the legal costs of the plaintiff consumers in return for receiving a percentage (typically 25%-30%) of any compensation that the court may order in favour of the plaintiffs if they win the legal action. The litigation funders operate as a profit-making business. They therefore tend to only agree to fund legal actions where they believe there is a strong chance of the plaintiffs winning, and that the amounts that are likely to be awarded by the court will be substantial.
234. In allowing class actions, laws should be put in place to ensure that the litigation funders or plaintive lawyers do not compel the plaintiff to pay them an excessive share of any winnings.
235. To improve access to justice, civil procedure laws in many countries have tried to facilitate the efficient aggregation of (smaller) claims by allowing for:
- “**consolidation**” of claims (but usually only by and within the same court, which is less efficient where defective goods cause harm across multiple jurisdictions) and
 - “**joinder**” of claims (but usually only where relief is sought arising out of the same transaction or series of transactions, and with each joint plaintiff’s claim typically still being considered individually).
236. The main difficulty with these procedures is that consumers have to “opt-in” by becoming parties to the court proceedings, which requires knowledge that they are underway as well as generating costs. Further, in countries that follow the “English rule” whereby a losing party must pay the (reasonable) lawyers’ costs incurred by the winning party, such as Singapore or Malaysia, there is a further disincentive to becoming party to proceedings.
237. These problems have traditionally been reduced by providing for a “**representative action**”.

Malaysian example regarding representative actions

In Malaysia“... the plaintiff is the self-elected representative of himself and others. He or she does not have to obtain the consent of the other persons whom he or she purports to represent, and they are not liable for costs, though they will be bound by the result of the case”. *EH Riyid v Eh Tek* [1976] 1 Malayan LJ 262.

238. However, there usually must be a claim where numerous persons have clearly the same interest, there is no requirement to notify (potential) class members or

capacity for the court to assist in notifications, the court has discretion to order the proceedings to be discontinued, and enforcement of the judgment against any non-party requires leave of the court.

239. The Singaporean Court of Appeal recently indicated that it will take a more flexible approach towards determining whether the plaintiffs have the “same interest”, and then allowing the claim to proceed (to promote access to justice), but that involved a claim concerning renegotiated club membership contracts rather than a consumer credit issue.³¹

Thailand Law on Class Actions

In Thailand, the Securities and Exchange Commission drafted in 2001 a “Bill on Class Actions for Securities Proceedings”, which was referred by the Council of State to the Civil Procedure Code Revision Committee to consider applying such a scheme more widely to enhance consumer access to justice. A new draft Bill was developed with input also from US organisations.

Ratanachaichan, Chukiert (2006), 'A Primer on the Thai Draft Law on Class Actions', Paper presented at the 9th General Assembly of the ASEAN Law Association, <http://www.aseanlawassociation.org/9GAdocs/Thailand.pdf>.

240. Differences from the Australian class action system included the possibility of a pure contingency fee (paid to lawyers, as opposed to third-party litigation funders) but capped at 30% of damages awarded. However, the Thai Bill mentioned in the box above encountered business sector opposition and did not progress through the National Legislative Assembly until early 2015. (As of July 2015, Court Rules were still being finalised so the new class action regime was not yet in effect.) Meanwhile, the Consumer Act Procedure Act BE 2551 (2008) allowed for government-certified consumer organisations to bring product liability and other consumer law claims.
241. Vietnam’s Consumer Protection Act 2010 allows representative actions to be brought by certified social organisations registered for consumer protection. However, such organisations currently lack resources and expertise to file such actions.

³¹ *Chong Chiah & Ors v Treasure Resort Pte Ltd* [2013] SGCA 52. Compare also eg the Philippines (limiting claims for damages), *Re Request of the Heirs of the Passengers of Dona Paz*, AM No 88-1-646-0 (3 March 1988), discussed in Corona, Renato (2006), 'Class Action, Public Interest Litigation and the Enforcement of Shared Legal Rights and Common Interests in the Environment and Ancestral Lands in the Philippines', Paper presented at the 9th General Assembly of the ASEAN Law Association, <http://www.aseanlawassociation.org/9GAdocs/Philippines.pdf>.

4.1.5 Small Claims Courts or Tribunals

242. Particularly since the 1970s, many countries – including several AMS, such as Singapore and Malaysia – have set up specialist disputes courts or (administrative) tribunals to resolve claims by consumers. Important features to consider for them to function effectively, in general, include:

- **Types of claim and jurisdiction:** Which consumer disputes and amounts can be brought before the court or tribunal? (Often, these include at least contractual disputes involving general consumer protection law, motor vehicles, residential leases or home building disputes, with different maximum limits for each type plus some possibility of higher maximums if both parties agree.)
- **Filing:** Is the filing fee simply one low flat-rate amount? (Some countries allow an even lower amount for certain types of consumers, such as students or those with low income.) Should firms be able to file claims against consumers, for example for non-payment? (This is unusual, as comparative experience shows that it risks swamping the process and over-formalising it.) Can filing be completed with court assistance and/or online? (Some countries allow for the former, but very few allow for the latter.)
- **Representation:** Should consumers be allowed to have lawyers represent them? (Mostly this is disallowed, as it again risks over-formalisation.)
- **Cost recovery for successful claims:** Should this be permitted, including costs of the successful party's lawyers if representation is permitted? (Mostly, cost recovery is not permitted, even for the low initial filing fee paid by the consumer claimant.)
- **Settlement:** How can the parties be encouraged to settle their disputes, bearing in mind the typical imbalance (in finances and expertise) between consumers and commercial suppliers? (Often the court or tribunal is required or strongly encouraged to mediate disputes, which can help redress the balance but perhaps leaving the consumer feeling disappointed that their concerns have not been fully heard.)
- **Procedure and evidence:** Should the usual court requirements be relaxed, given the typical imbalance between the parties? (Often the court or tribunal has to complete hearings within one day, and can reduce the evidentiary burden, but for example in motor vehicle disputes the supplier may still have an advantage by producing expert witness evidence.)
- **Decisions:** Do these have to be based solely on underlying substantive law, and how can decisions be enforced? (Often the small-claims court or tribunal is allowed to refer also to general considerations of fairness, beyond the strict letter of the law, but their orders may need extra procedures and enforcement via regular courts if the supplier does not comply with the original decision.) Should appeals be allowed and decisions publicized? (Most countries provide



for appeals, although grounds can be more limited than in regular court proceedings, but few countries regularly make public even important decisions of the small-claims court or tribunal – Singapore being a prominent exception in AMS.)

243. Recently, the European Union has pressed strongly for its member states to promote pure mediation of small-scale consumer disputes, rather than adjudication binding on the parties. However, some commentators have argued strongly that this will lead to under-enforcement of substantive consumer rights. On efficiency and justice grounds, they urge instead the strengthening of small claims court or tribunal procedures, involving:³²

- a low-entry initiation mode (online, very short complaint form, but with the capacity to upload key documents related to the claim);
- a simple but rights-based dispute resolution procedure (requiring a prompt online response from the defendant business, highlighting areas of agreement as well as disagreement, perhaps with a facility to escalate the dispute to a more elaborate court process in the more unusual event of evidentiary issues being contested);
- quick enforcement of the outcome, ultimately through the regular court process (including execution against the losing party's assets, and publication of the results to guide future behaviour of other suppliers and other dispute resolvers both in and out of court).

Questions on Part 4.1 (Dispute resolution):

1. *Why are lenders required to offer internal dispute resolution procedures?*
 2. *What is alternate dispute resolution? What are some of the advantages of alternate dispute resolution for consumers?*
 3. *What are some of the difficulties with class actions? How have these problems been reduced?*
-

³² Eidenmueller, Horst and Engel, Martin, Against False Settlement: Designing Efficient Consumer Rights Enforcement Systems in Europe (July 7, 2013). Available at SSRN: <http://ssrn.com/abstract=2290654>.

4.2. Compensation

What this Part covers:

- The process for a consumer **obtaining monetary compensation** for a breach of consumer laws

-
244. In some cases, consumers may seek compensation for breaches of consumer credit laws. If a consumer is successful, they will receive monetary compensation to place them in the position that they would have been if the breach had not occurred. In addition to this, consumer remedies provide an important incentive to comply with the consumer credit laws, allowing consumers to enforce their rights without intervention from the regulator.
245. In addition, the regulator may bring an application for compensation on a consumer's behalf, with the consumer's consent.
246. A lender should, by law, be required to maintain adequate arrangements for compensating clients for loss or damage suffered as a result of contravention of consumer credit laws. This requires that the lender either has their compensation arrangements agreed to by the regulator, or holds insurance that is adequate having regard to the maximum liability having potential to arise under the licensee's EDR scheme.

Questions on Part 4.2 (Compensation):

1. On what basis is monetary compensation determined in cases of breach of consumer laws?
 2. Why do lenders require insurance against adverse claims for compensation?
-

4.3. Enforcement of decisions and judgments

What this Part covers:

- The **enforcement of judgements** within a consumer's home country
 - The different **requirements for enforcing a judgement** outside the consumer's home country
-

4.3.1 *Within the consumer's nation*

247. A consumer who succeeds in winning a case in a court or tribunal against a business may obtain an order or ruling from court or tribunal requiring the business to pay a specified amount of compensation to the consumer. In normal circumstances the business will comply with the order and pay the amount ordered, plus any legal costs. If, however, the business refuses to pay the amount ordered, it may be necessary for the consumer to take enforcement proceedings against business to recover the amount outstanding.
248. Each country will have slightly different mechanisms for enabling enforcement proceedings. Generally, further court proceedings are required to enable the consumer to seek to have the business bankrupted or wound up, or to gain ownership of some of the property of the business to have it sold off in order to recover the amount outstanding.

4.3.2 *Within other nations*

249. Enforcement proceedings can become more complex if the assets of the business are in a different jurisdiction to the one in which the consumer brought the legal action. Many countries have bilateral agreements or treaties allowing an order or judgement made in one country to be recognised and registered in the courts of the other country. Usually there will be legislation enabling the recognition of the foreign judgement. At the moment, there are no consistent sets of treaties dealing with the recognition of foreign judgements.³³
250. There is the Reciprocal Enforcement of Commonwealth Judgments Act in Singapore enabling judgments of Commonwealth nations to be enforced.

Questions on Part 4.3 (*Enforcement of decisions and judgements*):

1. *Why might enforcement proceedings be required after the award of compensation?*
 2. *What additional requirements are there when enforcing a judgement overseas?*
-

³³ OECD, *Consumer Dispute Resolution and Redress in the Global Marketplace*, 2006, 42

4.4 Consumer awareness programs

What this Part covers:

- The **objectives** of consumer education and awareness programs
 - An introduction to **methods for delivering** consumer education
-

251. A key part of ensuring that consumers are protected from breaches of the consumer credit laws is educating them as to their rights and obligations. Consumers tend to face a significant imbalance in power when dealing with many financial services providers. This imbalance can be particularly pronounced when consumers are applying for and accessing credit due to the relative sophistication of many consumer lenders, and the complexity of many consumer credit arrangements.
252. Effective consumer education is therefore considered essential 'equip consumers with the information and skills to meet these challenges and improve their engagement with the marketplace, thereby increasing their welfare'.³⁴
253. Many adults are –
- badly equipped to participate effectively in the market place and,
 - unaware about how their individual consumer habits can effective the economy, the environment and society in general.³⁵
254. Effective consumer education is especially vital in developing economies, where people may have less experience with a consumer-driven economy.
255. The range of potential consumer education initiatives is basically endless. Initiatives focussed on consumer credit may be directed to children, focusing on basic financial literacy and good consumer practice, through to particular groups of adults, such as first home buyers. Consumer education initiatives can be organised and conducted by governments, not-for-profits, private organisations or consumer advocacy groups. Initiatives may be centralised, with a single body taking responsibility for an initiative, or widely disparate, with a large number of unaffiliated groups.

³⁴ OECD (2009), Promoting Consumer Education: Trends, Policies and Good Practices, 7.

³⁵ Wells J and Atherton M (1998), Consumer education: Learning for life, Consumer, 21, Autumn, 127.

256. There are also a wide range of methods of delivering consumer education. Face-to-face training delivered both to consumers directly and also to consumer education providers is a popular method used in a number of programs. Many consumer education providers are also leveraging new technologies, including the internet, mobile phones and tablet PCs to reach a wider range of consumers at lower cost. This approach is seen in developing and developed countries alike. A number of innovative platforms, including storytelling, movies and 'Apps', are also being used to deliver education to consumers.

Aims of Consumer Education Programs

Consumer education aims to –

- Increase consumer confidence in making what they believe to be the right product choices. Making the right choice includes selecting consumer credit products that are appropriate for the consumer's circumstances
- As consumers become more confident and better informed, they are better able to allocate their scarce resources (their money) in ways which improve their own welfare, which in turn leads to an overall economic benefit. This arises from consumers avoiding wasteful and harmful choices. These more efficient choices will tend to drive out illicit practices in offering consumer credit.
- Better informed consumers are more likely to decide to switch between products, including financial products, encouraging competition and innovation in the marketplace.

Wells J and Atherton M (1998), Consumer education: Learning for life, Consumer, 21, Autumn, 127

Questions on Part 4.4 (Consumer awareness programs):

1. *What are the aims of consumer awareness programs?*
 2. *What are three of the methods for delivering consumer education?*
-

4.5 Consumer Complaint Handling

What this Part covers:

- *The **handling of consumer complaints***
 - ***IT-based systems** to handle consumer complaints*
 - *The conversion of consumer complaints to consumer policy*
-

257. Complaints are a window to consumer problems in the marketplace, but depend on effective consumer education and awareness strategies. Complaints are early indicators of what is going wrong and this is critical especially when financial products and practices are hazardous and cause harm not just to individual consumers but have the potential to cause harm to a larger group of consumers.
258. Complaints handling services are now commonplace and are being offered by both the public and private sector to get into closer contact with the people they serve and to resolve grievances. If compiled and handled systematically, they are a valuable resource to carry out consumer protection efficiently and effectively.
259. Information technology has expanded the scope of complaints handling services by enabling the services to reach a wider audience unconstrained by geographical location and providing a more efficient and systematic approach to responding to complaints, data compilation, storage and retrieval.

4.5.1 Handling Consumer Complaints

260. An effective consumer complaints system will typically involve the following steps:
- a) Receive complaints in person at the office or during special events/visits, telephone hotline, letters, emails, website
 - b) Take down relevant information about the problem such as contact information of complainant, date when the problem arose, nature of the problem, person/business complained against and their contact details, what recourse is preferred.



- c) Collect documents/samples (evidence) from the complainant if in person, and if not ask complainant to send copies of the relevant documents/samples.
- d) Follow up action – contact the other party, investigate with site visit where necessary, gather information, decide course of action, advise consumer/other party, try to mediate and suggest a resolution where possible, if cannot be resolved amicably refer complainant to the consumer tribunal or other available avenues for redress, record outcome of action taken, write up case study for website if it is a case that will be of educational value.
- e) If this is not merely an individual complaint but could lead to or is already affecting a larger class of consumers, urgent action may be required by the consumer protection agency before the problem escalates into a crisis. In such cases, the complaint should be immediately brought to the attention of a senior officer to make a decision on what action is needed.

4.5.2 IT-based Consumer Complaints Registration System

- 261. Using information technology (IT) to receive, record, store and retrieve consumer complaints is an efficient and effective means of handling consumer complaints. Even a basic IT system is advantageous as it will save a lot of time and resources in handling common consumer complaints.
- 262. Staff will have an easily available point of reference at their fingertips as much of the information they need can be easily stored in the system and retrieved just as easily. It will also be a good source of historical experience that is not lost when a staff member leaves the department. A good IT system for consumer complaints should at the very least have basic information on common consumer complaint areas for easy retrieval, categorised consumer complaints according to the areas covered under the complaints service.

4.5.3 Components of a Consumer Complaints Website to receive consumer complaints

- 263. Most consumer protection agencies now have a website to reach out to the public. The website can also be used as a convenient avenue for the public to access the agency's consumer complaints department. The minimum information that the website should have are: information about the consumer complaints department, categories of consumer complaints handled, how to send complaints through the website, what information consumers need to provide about the problem, what action the department will take on receipt of the complaint, time line for action to

be taken, and contact information such as a hotline to call personally for advice, an email address to send the complaint, and the street address in case the consumer wants to visit and speak to an officer. The website could also provide information on common consumer rights and matters.

4.5.4 Converting Consumer Complaints to Consumer Policy

264. Retrieve data from the registration system such as number of complaints according to categories of types of products and services, geographical location of complaints, how many were successfully resolved, what types of action were taken on complaints received, number of complaints received according to the various means such as telephone, letter, email, etc.
265. Analyse data and write report such as trends in number of complaints compared to previous years, which categories had most number of complaints, number of complaints by class/location of consumers, which businesses were complained about the most and why, etc.
266. Propose policy actions from data analysis such as need for new laws, close loopholes in existing laws, revise outdated laws, report on lack of law enforcement, and propose action on reforming the law, policies or procedures.



Source: Consumer Response Annual Report (January 1 – December 31, 2013)
Consumer Financial Protection Bureau, US.

Case study: Korea Consumer Counselling Network

The Consumer Counseling Center (www.ccn.go.kr) is a nationwide counseling system participated by 10 consumer organizations, 16 metropolitan city councils, local governments, and the Korea Consumer Agency. Consumers nationwide use the same telephone number – 1372, or the CCN website, to lodge complaints and seek advice from CCN.



Other sources: For good examples of informative annual reports on consumer complaints see:

- Consumer Protection Financial Bureau US:
<http://www.consumerfinance.gov/reports/2013-consumer-response-annual-report/>
- European Consumer Centres Network:
http://ec.europa.eu/consumers/ecc/infographic/02_14_infograph-eccnet_2013.pdf

Questions on Part 4.5 (Consumer Complaints Handling):

1. *What are the five steps of an effective consumer complaints program?*
 2. *What are the advantages of an IT or web based consumer complaints system?*
-

FURTHER READING ON PART 4 (CONSUMER REMEDIES AND REDRESS):

- D Round and K Sporer, 'Globalisation and Consumer Protection in East Asia: is it a zero sum game', 2003
- Australian Competition and Consumer Commission, 'The global enforcement challenge: enforcement of consumer protection laws in a global marketplace, 1997
- Consumer Financial Protection Bureau, 'Consumer Response' Annual Report, 2013, <<http://www.consumerfinance.gov/reports/2013-consumer-response-annual-report/>>
- European Commission, 'ECCs Infographic', 2013, <http://ec.europa.eu/consumers/ecc/infographic/02_14_infograph-eccnet_2013.pdf>

5. ENFORCEMENT

5.1 Investigations

What this Part covers:

- The **investigation of consumer complaints**, including the objectives of investigations and the power to investigate
 - The **gathering and management of evidence** in investigating consumer complaints, and the rules governing the use of evidence
 - The **conduct of investigations** of consumer complaints
-

267. Each ASEAN country is likely to have a particular body that is responsible for enforcing consumer credit laws and protecting consumers from unjust or harmful consumer credit practices. The agency should be granted the power to monitor the behaviour of consumer lenders, and investigate behaviour that it believes may contravene the law.
268. Whatever the argued shortcomings of currently enacted laws within each ASEAN member state, it seems certain that the quickest boost to consumer confidence in using telecommunications technologies to access products and services online will be more comprehensive and systematic enforcement of existing laws. And priority element of effective enforcement is effective and efficient investigations.
269. An investigation is ‘the action of investigating something or someone; formal or systematic examination or research’ ref: www.oxforddictionaries.com

The objectives of investigations

270. In the context of consumer protection the objectives of an investigation are to determine whether or not:
- Is it likely that an offence under the relevant consumer protection law has occurred?
 - Is it likely that the relevant consumer protection authority obtain sufficient evidence to prove the offence?
 - Is it likely that the relevant authority can achieve an effective outcome from its investigation?
 - Where does this problem/issue lie in respect of the authority’s enforcement priorities and currently available resources



The power to investigate

271. While all activities undertaken by consumer protection agencies should be based on appropriate authority and powers, this is even more important in respect of investigations because:

- They are often intrusive into the affairs of those being investigated and those providing evidence
- The fact that a person or company is being investigated is likely to adversely affect them even if the investigation does not prove or a contravention
- The result of the investigation may be very adverse to the parties involved. This may include direct and indirect financial and reputational harm.
- Courts and administrative reviewers of fact, process and outcome of the investigations will place great importance on the legal status of the agency and each of its actions
- The authority to investigate may be very general and listed in the under the 'functions' of the agency's enabling laws or regulations. Where the authority to investigate is limited to particular areas of the agency's functions, the authority to investigate may be provided for in one or more locations within the enabling laws or regulations.
- Enabling laws or regulation are sometimes be worded such that an agency is empowered to investigate consumer 'complaints' rather than suspected contraventions, however detected. Restrictive words may sometimes limit an agency's ability to undertake investigations on its own initiative.

272. Sometimes the expected or assumed authority to investigate is absent or unclear. While correction of these types of anomalies or omissions will be a priority for an agency prior to undertaking investigations, this may not always be practical. Sometimes a successful challenge of the agency's power to investigate will provide the proof that the enabling law or regulation do in fact need amending.

Key concepts: evidence and information

273. In our everyday lives we use information about traders, goods and services, other consumers' experiences to help us decide what to buy and from who. We know from common sense and past experience that the information we have is of variable quality. We put more weight on some information because we trust its source and/or because we have other corroborating or consistent information that leads us to a similar conclusion. How we evaluate particular information is likely to vary between people and over time as we learn from our experiences or study.

274. If courts and tribunals are to deliver consistent, predicable and well-reasoned justice, they cannot afford to accept and evaluate information in the same informal and variable way that we do as individual consumers. Courts and most administrative tribunals have developed rules and procedures to ensure that the information they consider is most likely to be reliable

Important note concerning the topic of evidence:

275. There are significant and important difference in the laws and procedures in respect of evidence every jurisdiction. The following are generalised comments and observations and may not reflect the rules and procedures of evidence in your country.

Types of evidence

276. There are many types of evidence: the detail of how evidence is classified and described varies between jurisdictions. Evidence most commonly relevant to consumer protection cases include:

- Testimony including: personal appearance, affidavits, statements
- Documentary including: reports, letters, invoices, receipts, advertisements, official records (such as record of incorporation, registration of business name), customs declaration, leases, certification of compliance with standards
- Physical including: products such as handsets
- Expert evidence is evidence provided by an expert on issues requiring detailed scientific or technical knowledge. Expert evidence is opinion evidence. An expert must have knowledge or expertise in a relevant subject area, as demonstrated by his/her qualifications, experience and peer recognition Expert evidence may include:
 - hearsay evidence of a specialist nature, e.g. as to the consensus of medical opinion on the causation of particular symptoms or conditions
 - Opinions based on facts adduced in the case.
 - Circumstantial evidence, i.e. evidence that relies on inferences to connect it to a conclusion of fact. Circumstantial evidence can be relevant as corroborating evidence or to challenge the probative value of other evidence

Managing evidence during an investigation

277. Managing the identification of required evidence, where and how to obtain it, its preservation and presentation are all basic to successful law enforcement. As noted earlier one of the objectives of an investigation is to obtain evidence to prove each element of the relevant offences. An 'Evidence Matrix' is a practical technique for setting out the evidence required in a systematic way.

278. Evidence may be obtained from any number of sources. In consumer protection investigations evidence is often sourced from:

- complainants
- traders complained about
- individual consumers and consumer organizations
- individual businesses including competitors of the trader complained about including traditional (bricks and mortar) and online traders (e-traders)
- business associations

- information providers including publishers, media
 - service facilitators including Internet Service providers (ISPs) and Mobile phone service providers
 - Retailers and manufacturers of mobile phones, modems/routers, computers
 - Regulatory agencies responsible for landline, mobile phone, and internet related services and standard setting
 - experts
 - investigators
 - foreign consumer protection authorities: they may be able to provide:
 - evidence relating to the trader, for example incorporation, registration, location, banking, assets, share ownership, previous convictions
 - evidence relating to the traders activities in or originating from their jurisdiction
 - advice on obtaining evidence, for example forensic examination
 -
279. A lot of evidence is obtained voluntarily. However most evidence provided voluntarily is not provided at the instigation of those with the evidence. Identifying sources and persuading them to voluntarily provide the evidence is the job of the investigator.
280. Often essential evidence is uniquely in the possession of those with a strong interest in not providing the evidence to investigators. In many jurisdictions around the world consumer protection authorities have been given powers to coerce individuals and companies to provide information and evidence. Sometimes these powers include the power to:
- require nominated people to attend the relevant authority to answer questions; and
 - enter nominated premises and seize evidence.
281. Where these powers exist there will also be procedures that the Authority must follow. Typically these procedures will set out:
- the prohibitions in respect of which the powers may be used
 - the trigger for the use of the powers, for example when the Authority 'believes' or 'suspects' that the person may have information relevant to a nominated offence.
 - the procedure for notifying the party, including the specification of the evidence required
 - the penalties for non-compliance.
 - Failure to comply with specified procedures may result in sanctions against the officers in contravention and the inadmissibility of evidence acquired invalidly.

282. Evidence is only really useful if it is admissible. One critical aspect of admissibility is being able to show the 'chain of evidence', that is the record of the seizure, custody, control, transfer, analysis and presentation of evidence from the time it was seized until it is presented in court. By securing the chain of evidence investigators maximize the likelihood that the relevant Authority, Tribunal or Court will admit (consider) the evidence, and be able to make an accurate assessment of its probative value.
283. Typically the integrity of the chain of evidence is proved by documentation created by investigators. Generally it will be important to secure evidence as quickly as possible. If this is not done then the evidence may be:
- deliberately tampered with or destroyed
 - accidentally lost or destroyed
 - diminished in evidential value by the effective of time or weather
284. The chain of evidence can be broken by:
- failing to record how and when the evidence was obtained
 - failing to attach a unique identifier to the evidence (or its container)
 - failing to maintain custody and a record of that custody, evidence during transport, storage or testing
 - failing to secure the evidence while in custody against theft, substitution, tampering or spoilage
285. Methods for maintaining the chain of evidence include the routine use of:
- case officers (investigator's) note book
 - transportable secure storage and identification tags
 - evidence custody records
 - appropriate secure storage
 - appropriate explanations to, agreements with and supervision of external parties handling evidence
286. Storage and transport facilities for evidence need not be expensive or extensive, for example:
- several lockable filing cabinets
 - a lockable storage room
 - zip lock plastic bags
 - adhesive tape that can be written over
 - a lockable plastic storage container that can be placed inside the boot of a car
 - a designated 'Evidence Officer' with responsibility for managing storage and transport facilities

Rules of evidence

287. As explained above, it is important to note that the rules of evidence vary between jurisdictions, although the basic intent of the rules is universal: to ensure the quality, integrity and relevance of evidence.
288. While case officers (investigators) are not generally not required to become experts in the rules of evidence, it is important that they develop a general understanding of the more important and commonly encountered rules.
289. The rules of evidence are complex and investigators will need to obtain (internal or external) legal advice before a matter goes for decision.
290. The rules of evidence that may often be relevant in consumer protection cases are that:
- Opinion evidence is generally not admissible
 - Hearsay evidence is generally not admissible
 - Secondary evidence is generally not admissible
291. However, there are often exceptions to these general rules, in particular circumstances:
260. Opinion evidence
- Opinion evidence refers to evidence of what the witness thinks, believes, or infers in regard to facts, as distinguished from personal knowledge of the facts themselves. Opinion evidence is generally not admissible. Two common exceptions to this rule are:
261. Common exceptions
- Particular matters of everyday life where a person may be expected to give opinions and which opinions may be safely acted upon by others, for example the time of day, or the weather conditions. The matters coming within this exemption may be determined by precedent or regulation. In many jurisdictions the following matters are ones which non-expert opinion has been admitted:
 - ✓ identification of handwriting
 - ✓ eye witness identification
 - ✓ identification of physical objects
 - ✓ the general condition of objects
 - ✓ the approximate value of objects
 - ✓ time
 - ✓ the ability to speak and understand a language

Hearsay evidence

292. Hearsay evidence is a statement made by a person about facts in respect of which they do not have first-hand or direct knowledge and is generally not admissible. In everyday life we often rely upon hearsay to form opinions and decide actions. The rules of evidence generally exclude hearsay evidence (with some important exceptions).
293. For example, if an investigator needed to prove who authorized a particular advertisement for a mobile phone or ISP service the following situation might occur:
- John provides a statement saying that ‘Tom told me that Susan authorised the advertisement’. In respect of proving that Susan authorised the advertisement, this is hearsay evidence and is generally inadmissible. It is direct evidence of what Tom told John. However, that fact is irrelevant to proving who authorised the advertisement
294. To avoid hearsay rule trap:
- Be alert and recognise hearsay
 - Identify and pursue original sources of evidence
 - When a potential witness tells you something always ask them ‘How do you know that?’ so as to establish if they know 1st hand or if not, to identify the source of that knowledge or believe
 - Draft statements in the ‘He said, I said’ form
 - Exceptions to the hearsay rule:
 - there are many, sometime complex exceptions to the hearsay rule
 - an important exception and one that is often relevant to consumer protection cases is Expert Evidence
295. Even if evidence is admitted as an exception to the hearsay rule, there is still the question of its probative value.
296. General secondary evidence, such as a copy, will be not admissible if an original document exists, and is not unavailable due to destruction or other circumstances indicating unavailability.

What is an effective investigation outcome?

297. Too often we leap to the seemly obvious conclusion that a successful investigation is one that proves a person or company guilty of contravention a provision of a relevant law. Proving someone or something guilty is one possible outcome of an investigation, but it is by no means either the only one or, perhaps surprisingly, always the best outcome.



- Stopping the conduct
- Empowering consumers to recognise, avoid and report similar conduct in the future
- Undoing the harm to affected consumers
- Compensating those who have been harmed
- Encouraging future compliance by the particular trader
- Encouraging future compliance by the traders generally
- Punishment or
- Showing that no contravention occurred

298. The critical point to understand is that achieving one of these outcomes should be the objective of each investigation.

299. The generalized life cycle of an investigation is:

- A trigger, such as a complaint or a market observation by the consumer protection agency
- A preliminary or initial investigation
- A substantive investigation
- The end game: NFA (no further action), administrative settlements, court proceedings

Most complaints are not investigated

300. Most complaints will not trigger investigations because:

- The available information suggests that no significant contravention has occurred
- It is apparent that investigation is unlikely achieve an outcome justifying the costs of the investigative process.

301. As an illustrative example the Australian Competition and Consumer Commission (ACCC) has recently reported that it receives about 200,000 enquiries and complaints a year, of which it investigates about 500; that's .25% of complaints. It takes between 30 to 40 cases to court each year; that's .02% of complaints and only 6% to 8 % of investigations.

Initial investigations

302. The objectives of an initial consumer protection investigation are to obtain sufficient information about alleged or suspected conduct to determine the:

- Likelihood that a contravention of [name of relevant law] has or is occurring
- Likelihood that sufficient evidence will be obtainable to prove a case
- Likely incidence of the conduct the likely amount of individual and collective harm caused or being caused by the conduct
- The likely options for responding to the conduct



303. An assessment of how likely it is that we will be able to achieve a timely, cost effective and useful outcome
304. An initial investigation is a quick investigation taking no more than a nominated number of days* that may include:
- Follow-up contacts with the complainant by phone, other electronic methods or personal interview, to obtain further information or evidence
 - Contact with the party complained about (the trader) by letter, phone or personal interview to obtain further information or evidence, including their response to the alleged contravention
 - Net research to obtain relevant information and evidence
 - Contact with obvious potential sources of further information and evidence, such as broadcasters, suppliers and consumer organizations
 - Obtaining and examining documents and physical objects by officers.
(* the number of days would be specified by the agency's management taking into account the complexity of the matter they typically investigate and the available resources)
305. Generally initial investigations would not include:
- Formal interviews
 - Analysis of evidence by third parties (for examples by expert or testing laboratories)
 - Obtaining external legal advice
 - Contacts with multiple potential witnesses
306. In all but the simplest of cases, an initial investigation will not obtain sufficient evidence to prove all of the elements on an offence. However, it will often obtain sufficient evidence and information to justify discontinuing the investigation.

Substantive investigations

307. The objectives of a substantive consumer protection investigation are to obtain sufficient evidence to:
- Prove:
 - a contravention
 - the incidence of the contraventions
 - the person harmed by the contraventions
 - the nature and level of harm suffered
 - the nature and quantity of ill-gotten gains

- Determine that:
 - information and evidence obtained is inconsistent, or at least not consistent, with a contravention having occurred, and
 - that it is unlikely that further investigation will obtain evidence sufficient to alter that conclusion
 - the information and evidence obtained is consistent with a contravention, but that the circumstance of the case are such that further action is unlikely to achieve a timely, cost effective and useful outcome.

308. Substantive investigations may include the whole range of evidence gathering techniques, including:

- Informal interviews multiple potential witnesses
- Formal interviews multiple potential witnesses
- Surveillance, photographs, recordings
- Obtaining physical evidence
- Obtaining documentary evidence
- Testing physical evidence by third parties
- Recording conversations
- Obtaining external legal advice.

Planning investigations

309. Developing and maintaining an investigation plan is critical to the management of an effective and efficient investigation:

- The elements of the offence(s): evidence will have to be obtained to prove each element
- Where and how are you likely to obtain the evidence:
- Sequencing of activities and events, and of obtaining evidence
- Authority requirements: powers of investigation, notices, conferences
- Other peoples/agencies requirements and agendas, other laws, regulations, processes that must be complied with
- Resourcing; people, money, vehicles, photocopies etc.
- Other agencies: some investigation include cooperation with other agencies such as Standards Authorities, Telecommunications regulators, police, Department of Public Prosecutions etc.
- Media relations

310. Periodic review of the plan and appropriate modification to it
- investigations should be reviewed at agreed points, for example after the evidence in respect of the most problematic elements has been obtained or a nominated number of complainants have been interviewed, or the response of a regulator has been received
 - periodically, for example after a nominated time such as every month
 - at the end of the investigation. Each investigation should inform future investigations so that mistakes will not be repeated and successful innovative strategies adopted and applied
311. Do not set unrealistic timetables.
- While it is imperative to develop timetables and set deadlines for particular actions, it is important to be realistic about how much time may be required for some activities. This is particular the case when progress is dependent on factors outside the authority's control. For example response from other agencies and regulators.
312. Document everything.
- It is easy to neglect documentation during the excitement of an investigation because interviewing, seizing goods etc. will often seem to be both more urgent and more important than 'paper work'. However, documentation brings order and systematic process to investigation, prevent duplication of effort and later challenges from aggrieved parties.
 - Case officers should maintain a casebook (physical or virtual) for each investigation in which they record important information. For example the names of witnesses interviewed, dates of interviews, goods bought etc.
 - all directions given by case managers should be in writing
 - evidence related documentation (see notes under 'Evidence')
313. It is inevitable that from time to time something will go wrong during an investigation. For example:
- obtained evidence may be lost or damaged
 - witnesses may change their story
 - complainants may seek to withdraw their complaint
 - an officer may act inappropriately. For example by acting outside his authority, threatening a person or by accepting a gift.
314. All problems should be reported upwards immediately to the appropriate senior officer. The senior officer can then take responsibility for managing the problems and take remediate action as appropriate. Delay in reporting invariably makes matters worse because:



- it may limit the remedial options available to the senior officer
- the problem may become more serious
- those that are responsible for the delay may be suspected of complicity in the original problem

5.1.1 Monitoring

315. The regulator requires significant powers and resources to monitor the behaviour of lenders in the market. This involves reviewing advertising, keeping watch on the behaviour of lenders and remaining informed about current and potential issues that may impact consumers of credit. The knowledge that the regulator is consistently monitoring activities in the consumer credit market also plays a significant role in deterring lenders from breaching consumer rights.
316. As part of its monitoring activities, the regulator requires the right to request information about the activities of a lender, and also to conduct an audit of the lender's books or practices.
317. The regulator will also receive complaints from consumers about the behaviour of lenders. This function requires the regulator to maintain a complaints handling capability to receive and follow up on consumer issues.

5.1.2 Investigation

318. The regulator also requires significant powers to investigate non-compliance with consumer credit laws.
319. Investigations must be completed within the bounds of the law. It should be a requirement that the regulator has 'reason to suspect' that there has been a breach of consumer credit laws before an investigation is permitted. 'Reason to suspect' means that the regulator has an honest view that a breach has occurred, and just cause to take that view – it cannot be a mere speculation.
320. One grounds for an investigation are established, the regulator must have certain powers to conduct the investigation, including the production of records and the power to examine witnesses.
321. Typically, the regulator will have the power to compel the production of records by the lender, and also others involved in the activity or who has records in relation to the lender. This may include the lender's representatives, bankers, lawyers or auditors. Where records are not produced by the lender, the regulator requires the power to compel production of records by execution of a search warrant.

322. If the regulator reasonable believes that a person has information or knowledge that will assist the regulator in making an investigation, they have the power to require that person to attend an oral examination. The person will be required to answer questions under oath, and may be required to give a written account of the information sought by the regulator.
323. In some cases, the regulator will also have the power to make a ‘freezing order’, by which a person is restrained from acquiring an interest or exercising a right under a consumer credit contract. A freezing order can be granted when information that the regulator needs about a consumer credit contract cannot be obtained due to a person refusing to comply with a require to produce records or attend an examination.
324. To ensure that the behaviour of the regulator remains transparent, it will typically be required to produce a report on the investigation at its conclusion. These reports may or may not be made public depending on confidentiality and privacy considerations, but must be retained for future reference.

Questions on Part 5.1 (Investigations):

- 1. What are three of the types of evidence that can be used during investigations?*
 - 2. What is included in the procedures for obtaining evidence?*
 - 3. What is hearsay evidence? How can the hearsay rule be avoided?*
 - 4. What are three of the steps in planning an investigation?*
-



5.2 Inter-agency co-operation and data sharing amongst *ASEAN member nations*

What this Part covers:

- *The **sharing of intelligence** around consumer protection issues between consumer agencies within ASEAN*
 - ***Shared training and resources** between ASEAN consumer agencies*
-

325. There is significant potential for consumer agencies to collaborate across borders within ASEAN on consumer credit issues, particularly as the consumer credit market becomes more regionally integrated and consumers continue to use credit to buy goods online.
326. There are three major areas in which agencies can benefit from sharing across borders: intelligence, resources and training.

Sharing intelligence

327. The operations of consumer lenders, and transactions that utilise consumer credit, are often conducted across borders.
328. There is great potential for consumer protection agencies in ASEAN to share information on the activities across borders. This can be useful for two reasons. Firstly, where a lender is undertaking an activity that is harmful to consumers in one country, there is significant potential that the same activity is occurring in other countries where the lender operates. However, the activity may not yet have been reported to all consumer protection agencies in the region. Sharing intelligence can ensure that agencies are proactive in addressing consumer protection issues that may be occurring in their jurisdiction.
329. Secondly, sharing intelligence can enable consumer protection agencies to begin building an understanding of the different types of consumer protection issues that existing in the region. This can help consumer agencies to target their investigative activities in their home country, and to be on the lookout for potential scams or organisations that harm consumer welfare commencing operations in their jurisdiction.



Sharing resources

330. Consumer agencies are likely to build a significant bank of resources that could be useful to organisations across ASEAN that are responsible for promoting consumer protection. For example, a consumer agency in one ASEAN nation may develop a set of consumer education materials on consumer credit fraud, which could be utilised for the benefit of consumers in other nations. Similarly, the expertise of particular staff within consumer protection agencies can be shared through international visits or secondments. It is essential that efforts are made to encourage interagency transfer of resources.

Sharing training

331. Many ASEAN nations are likely to face similar issues surrounding protection consumers of credit, as well as the particular issues that will arise in individual member states. As such, consumer agencies should share the training of staff to address the shared issues. As well as saving cost and resources, shared training is likely to facilitate informal exchanges of knowledge and sharing of different perspectives on consumer issues that would not otherwise occur.

Questions on Part 5.2 (Inter-agency cooperation):

- 1. Why is it useful for consumer agencies in ASEAN to share intelligence?*
 - 2. What are the benefits of sharing training between ASEAN consumer agencies?*
-

5.3 Penalties and other enforcement outcomes

What this Part covers:

- The **penalties** that a consumer agency can impose after an investigation
 - The circumstances under which various **types of penalties are likely to be imposed**
-

332. The regulator requires a wide variety of potential enforcement actions available to it. These include:
- Altering, suspending or cancelling the license to provide consumer credit;
 - Banning a person from providing consumer credit;
 - Issuing infringement notices for breach of consumer credit law;
 - Requiring enforceable undertakings; and
 - Taking enforcement action through the court.

5.3.1 ***Altering, suspending or cancelling consumer credit licence***

333. Typically, a consumer lender will need to be licenced to provide consumer credit. A regulator may impose any conditions that it believes to be appropriate on the licence to provide consumer credit, provided that the power is exercised for a proper purpose.
334. The types of conditions that may be imposed include preventing a consumer lender from lending to certain types of consumers, imposing higher training requirements on the staff of a business, requiring audits to be conducted by external parties, or increasing the reporting requirements that a consumer lender needs to make to the regulator.
335. The regulator may also suspend or cancel the licence to provide consumer credit under certain circumstances. These include the insolvency of the consumer lender, a breach of consumer lending law by the lender or where the lender no longer meets the requirements to hold a consumer credit licence.

5.3.2 ***Banning a consumer lender***

336. In certain circumstances, the regulator can issue a banning order, preventing a person from providing consumer credit.
337. A banning order can be made after licence suspension or cancellation, or if a lender becomes insolvent, is convicted of fraud, or breaches the consumer credit

laws. Generally, the regulator is required to grant a hearing to a lender or their representative before a banning order is made. In deciding whether to make a banning order, the regulator will take into account a number of factors, possibly including the harm caused by the conduct, the provider's previous history of conduct, and whether the misconduct involved dishonesty.

338. If a banning order is made, it may either be permanent or temporary.

5.3.3 Issuing infringement notices

339. In some circumstances, banning a lender from consumer credit activities may be too harsh a penalty, while changing licence conditions does not punish the lender from harmful conduct committed in the past. In such circumstances, the regulator can issue an infringement notice that requires the lender to pay a certain amount of money.

340. Infringement notices can typically be issued for relatively minor offences, and can be a quick response by the regulator which is received by the lender while the conduct is still fresh in their mind.

341. Typically, once an infringement notice has been paid, a person cannot be the subject of further enforcement action by the regulator for the same conduct, though this does not prevent another organisation from commencing civil proceedings.

5.3.4 Requiring enforceable undertakings

336. The regulator can require that a lender give an undertaking to the regulator to do, or not to do, any activity. If the lender fails to comply with the undertaking, then it can be enforced by the regulator by applying to the court.

337. If a person does not comply with an enforceable undertaking, the regulator may apply to the court to grant an order that the person comply with the undertaking, to pay to the government the amount of any financial benefit they receive from breaching the undertaking, and to compensate anyone who has suffered from the breach.

338. The advantages of enforceable undertakings include the ability to produce quick results that benefit consumers, to compel implementation of improved compliance arrangements and to restrict the activities of individuals or businesses



339. An enforceable undertaking will set out the conduct that is the subject of the undertaking, how the person making the undertaking will address the concerns, how harm will be rectified and how misleading conduct will be corrected.³⁶

5.3.5 Taking enforcement action

340. The regulator can take enforcement action against people whom it believes to have breached the consumer credit laws. Enforcement action will typically involve applying to the court for either:

- an injunction to prevent future breaches;
- an order to pay compensation;
- an adverse publicity order requiring the person to publicise the fact that they have breached consumer credit laws and the steps they will take to remedy the breach; or
- a prosecution to be brought against any person for a criminal offence that the regulator believes has been committed.

Questions on Part 5.3 (Penalties and other enforcement outcomes):

1. Describe one of the penalties outlined in this part, and the circumstances under which it can be imposed
 2. What is an infringement notice?
 3. A regulator can take enforcement action against people it believes have breached the consumer credit laws. What kind of remedies can the regulator apply to the court for?
-

5.4 Setting consumer agency priorities

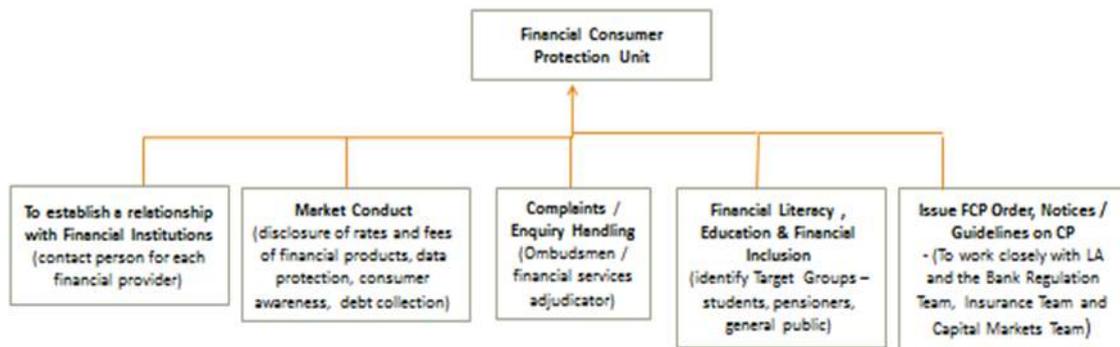
What this Part covers:

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- *The establishment, objectives and functions of a consumer protection agency*
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³⁶ 'Understanding Consumer Credit Law, A Practical Guide to the National Consumer Credit Reforms', 2010 (online edition)

341. Brunei Darussalam established the Financial Consumer Protection Unit in March 2015. It provides an example of a unit that aims to build consumer confidence and trust in a world functioning financial services market which helps to promote financial stability, growth, efficiency and innovation. The unit also aims to protect consumers and to promote financial literacy. The functions of the Unit are as follows:

Functions of FCP Unit



342. The organisational framework is illustrated as follows:

FCPU Framework



Questions on Part 5.4 (Setting consumer agency priorities):

1. *What are three of the functions of Brunei's Financial Consumer Protection Unit?*
2. *What are the Financial Consumer Protection Unit's objectives?*

FURTHER READING ON PART 5 (ENFORCEMENT):

- I Ramsay, 'Consumer law and policy: text and materials on regulating consumer markets', 2007, Ch 7 (Implementation and enforcement of unfair commercial practices law)
- W Vukowich, 'Consumer protection in the 21st Century: a global perspective', 2002, Ch 8 (Enforcement)
- G Pearson, 'Understanding Australian consumer credit law a practical guide to the national consumer credit reforms', 2010, Ch 8 (Enforcement)
- S Corones, 'The Australian Consumer Law', Ch 13 (Public enforcement)
- P Cortes, 'Online Dispute Resolution for Consumers in the European Union', 2010



APPENDIX. Example of an Interactive Workshop with Participants Engaged in Role-Plays

1. Set out below is a hypothetical case in which debt collectors are repossessing motorbikes from consumers who miss two or more loan repayments.
2. The hypothetical can be used as a model for developing role-plays for training programs dealing with other consumer credit and banking issues.

Problem:

In ASEAN countries, there is a problem where consumers have taken out loans for purchasing motorbikes, and many are complaining that the bikes are being repossessed by third party debt collectors. Loans are being sold from the banks to a third party debt collecting company. This has raised numerous media reports and the disputes settlement bodies show that these complaints are common. The Minister therefore instructs that these complaints be handled and resolved. How do we resolve this?

Relevant parties involved:

- 1) Consumer
- 2) Lender
- 3) Debt collector
- 4) Consumer Complaints Agency

1. Step one: Identifying the problem clearly

Participants should be invited to break into groups and to identify the nature of the problem set out in the scenario. Participants should identify which groups are affected (where they live, what their age groups, are there any other notable features or vulnerabilities of the affected group?); and who are the perpetrators of the problem (e.g. those engaged in intimidating and illegal enforcement practices).

a. Collecting evidence

- i. **Sources: e.g. consumer groups, complaints records, media reports**
- ii. **Quantify and qualify the problem**
- iii. **Collect key documents including contracts**
- iv. **Identifying access barriers to justice, e.g. cost, no jurisdiction, lack of awareness of options to seek redress**
- v. **Determining whether there is any breach of the law**
- vi.

The participants need to understand and identify the details of the heart of the problem. What is the root cause?

Question: what sort of information do we need?

1. Interest rates, time borrowed, amount borrowed
2. Request from consumer
3. **Who** are the people: names of consumer, companies
4. **When**: e.g. problem comes before or after the credit is taken out? When is the problem more prevalent? Chronology of the events.
5. **How**: how does this happen all the time? Why is it that e.g. young men always face these problems?
6. **Why**: is it happening because there are no consequences? A result of years of practice of the debt collectors? Is the interest rate too high?

2. Step two: Mapping the desired outcomes

- a. **Legality**
 - i. **whether outcome is in breach of the law**
 - ii. **to search the legislation for the right of the consumer to enhance the outcome**
- b. **Acceptability – for the parties involved**
- c. **Setting key performance indicators (KPIs)**
- d. **Considering win-win solutions**

Question: what result do we actually want? Only then can we find options. But these options must be matched to the situation/case accordingly. Solutions often require the cooperation and collaboration of other agencies (e.g. police), so they can be part of the solution as well.

- E.g. For the bike owner to continue riding regardless of not paying? Or for the rider to be protected from harsh debt collecting practices?
- E.g. Farmer to not repay their micro-loans? Or for the farmer to be protected before harvest, but after harvest they don't need protection?
- Other solutions: financial education? Talk to debt collectors about what is reasonable and fair, and what is not?
- Indonesia has an MOU with the police to help with cases if some parties refuse to meet for mediation.

3. Step three: Designing the course of action for achieving the desired outcomes

- a. **Effectiveness**
- b. **Cost-benefit analysis**
- c. **Setting priorities**

4. Step four: Implementing the course of action

- a. **Reviewing and/or changing the law**
- b. **Education programmes/campaigns**
- c. **Investigation and prosecution**
- d. **Doing nothing?**



5. Step five: Reviewing result

- a. **Reviewing the particular case – smooth investigation, information collected, parties happy with outcome**
- b. **Reviewing the complaints data and trends, comparing**
- c. **Are further reforms necessary as a result of this process? Suggestion for government to amend legal documents, if any.**

Each individual participant is invited to play one of the following roles:

- The Consumer – who is the complainant
- Speedy Bikes – a business that sold a motorbike to the Consumer
- Fast Loans - a financial institution which provided the loan to the consumer
- Big Debts - a company which purchased the rights to collect a range of debts owing to Fast Loans, which included the Consumer's loan
- Consumer group (NGO)
- Consumer agency (government)
- Police

Scenario:

1. The Consumer (complainant) purchased a motor bike from Speedy Bikes. At the time a salesperson for Speedy Bikes offered to sell the bike to the Consumer it said it could arrange finance for the Consumer to buy the bike. The Consumer agreed, and signed documents provided by Speedy Bikes. He did not read the documents, and has since lost them. The Consumer did not realise that he'd actually purchased the loan from Fast Loans, a finance company.
2. The Consumer regularly repaid his loans until 2 ½ years after he purchased the bike, when he had a road accident which caused injury to his right leg. He was unable to work for three months, which caused him to miss three loan repayments.
3. An employee of Big Debts arrived one night at the Consumer's house. The Consumer felt threatened by the employee. The employee said that the Consumer had failed to make three loan payments and therefore he was taking his bike. The Consumer tried to explain that he was unable to work because of his injuries but he would soon be able to start making the repayments. The employee was uninterested in what the Consumer had to say. The Consumer felt that he had no choice except to hand over the keys to the bike, and the employee and drove off with the bike.
4. The Consumer seeks advice from the Consumer Group (an NGO), and the government consumer agency. He also goes to the police to ask whether they are able to help him get his bike back.

Parties	Scenario	Participant Comments
<p>Consumer group</p>	<p>The consumer group advise the consumer to discuss the matter with his bank.</p>	<p>Because the bank is the trader and may be able to resolve the problem.</p> <p>However, the Consumer does not know much about the loan. He has lost the loan documents. All he knows is how much she has to repay each month and which bank account it is to be paid to.</p> <p>In Singapore, taking property is illegal. So would file a report to the police on the actions of Fast Loans. The Consumer group might write a letter for the Consumer with the details of the case, and allege that Fast Loans or Big Debts engaged in illegal activity. The group could arrange for discussion and negotiation with Fast Loans or Big Debts.</p> <p>Because the Consumer has lost the loan documents it will be necessary to go to Speedy Bikes to find out who the loan was taken out with. If Speedy Bikes does not cooperate, it might be necessary to send a mystery shopper who will pretend to take purchase a bike and make inquiries about taking a loan to find out who Speedy Bikes is linked with regarding providing consumer loans.</p> <p>The consumer group, and possibly the consumer agency, would need to collect as much information about the loan as is possible.</p>

Fast Loans	Fast Loans claims that if after two years a loan is in default, it usually on sells the outstanding loans to a company called Big Debts. Because Big Debts now owns the loan, the consumer must repay the loan to Big Debts. Fast loans is now no longer interested in the matter and says it is no longer involved in this matter.	
Complainant	Go back to consumer group	
Consumer group	Advises to meet the consumer agency.	
Consumer agency	<p>Negotiations with Fast Loans and Speedy Bikes have not been successful.</p> <p>It says that without evidence, we cannot help you.</p>	<p>Question; is the response of the consumer agency a satisfactory one? What other action could it take regarding this matter?</p> <p>It appears that this is not an isolated case. There are many complaints to the consumer agency about companies taking motorbikes where the consumer has missed two or more loan repayments.</p>
Consumer agency	It says that Fast Loans or Speedy Bikes have the right to repossess the bike, as per the loan contract terms. If the consumer can give the evidence and contract, we can mediate.	<p>Here is the view of the Consumer agency legally correct? What can the agency do if the consumer does not have a copy of the loan contract? Is this a systemic issue? If so what could the agency do?</p>
Consumer Agency manager	<p>We can only pursue and prioritize cases where there is serious harm.</p> <p>Win-win situations are great, but why should we pursue this case? The consumer is only one person.</p>	<p>How should the consumer agency assess whether this case is worth pursuing?</p> <p>When evaluating the complaints records, if we find that there is a trend, then worth investigating.</p>

<p>Disputes Settlement body</p>	<p>If document is missing, that is understandable. It agrees to will call Fast Loans to check if it has a copy of the loan contract.</p> <p>However, Fast Loan refuses to provide the agency with a copy of the loan contract as it claims it is bound by an obligation of confidentiality to the client. It also refuses to cooperate with any mediation process.</p>	<p>Government agency – does it have the power to help? What is the applicable law? If the customer did not pay off the loan, then what can the agency advise, or do for the Consumer?</p> <p>Could the Big Debts legally seize the bike? If not, what can be done about that?</p> <p>Law – What law may have been breached here? If the agency were to prosecute Big Debts, what are each of the evidential points it must prove in order to gain a successful prosecution?</p> <p>Evidence. How can the agency obtain the necessary evidence? Does it have any powers to compel Fast Loans or Big Debts to produce copies of any loan documents or other relevant documents? Can the agency check with the vehicle registration department to find out when the bike was purchased and from whom? Is there other evidence that could be obtained?</p> <p>Is it worth the Consumer agency treating this as a priority issue and undertake action to crack down on industry bad practices which are affecting many consumers?</p> <ul style="list-style-type: none"> • Quantifying the situation. Motorbike worth \$3000; the Consumer has paid \$1500. He has lost the motorbike, and also lost \$1500. • Incidence: is it typical/systemic or an isolated case? If the former, then this will be prioritized. <p>Evidence. Matrix: the laws applicable and the evidence to support. Separate</p>
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		<p>question: can we actually get the evidence? If cannot actually prove, then cannot proceed.</p> <p>Powers. Do you have powers to investigate? In Vietnam, yes. In Australia, needs special notice.</p> <p>Priority. How many complaints are there of a similar?</p>
Police	The police have many priorities and limited resources.	This may not be a high priority for the police. However, the police may or may not be aware that the taking of the bike by Big Debts without a court order permitting it, amounts to theft, and therefore a crime.
Mediator	Why did you not give flexibility to the customer? Why did you sell the bike immediately?	
Big Debts	It claims that it is normal business practice, and quite legal for it to repossess bikes when loans have not been repaid.	
Mediator	As the debt collector has the right to take the property, contractually, mediator cannot do much. Mediator may also not have the power.	<p>What can be retrieved from the debt collector easily? Are your activities legal? Are your processes documented? Can I get the notes from the debt collector who talked to the Consumer? Can I get the handbook/manual? Collect easy evidence from the debt collector and try to retrieve the hard evidence. e.g. review the documents provided by the debt collector and compare with what is actually done in the field.</p> <p>What kind of powers do the consumer agency have? Powers of investigation? Interrogation? You need to know what</p>

		<p>your powers are. Know your limitations on power and know your next steps.</p>
<p>Consumer Agency manager</p>	<p>Was this a successful case?</p> <p>Yes, because the Consumer was able to get back a small amount of his loan repayments.</p> <p>Measures of success:</p> <ul style="list-style-type: none"> • Amount given back to the customer. 	<p>Indonesia: can negotiate and suggest to the bank to give the consumer back a certain amount of how much Justin has already paid for the motorbike.</p> <p>Consumer group may lobby for temporary relief for difficult times for customers.</p> <p>Consumer awareness programme. How?</p> <ol style="list-style-type: none"> 1. Understand the issues. Determine whether this is a common issue or a one-off? If pervasive, then need to list down the issues and what the consumers need to look out for, where they can seek help if they are in those situations. 2. What kind of messages? Must be relevant subject matter, relevant time, actionable – can understand. Understand the contract's terms and conditions. 3. How do they get the message? 4. When do they get the message? 5. What should they do once they get the message? (actionable?) <p>Effectiveness of consumer awareness programmes? (Read Freakonomics). Education programmes should go hand-in-hand with other strategies (not in silo)</p> <p>Desired outcome: for the Consumer to understand the contract. What kind of methods may be useful?</p> <p>Obligation for the financial institution to explain the terms and conditions.</p>



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