



MARKET CONDUCT GUIDELINES ON FINANCIAL CONSUMER PROTECTION FOR SADC IN LINE WITH INTERNATIONAL BEST PRACTICE

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List of acronyms and abbreviations

ACPHR	African Commission on Human and Peoples' Rights
AFI	Alliance for Financial Inclusion
AI	Artificial Intelligence
APEC	Asia Pacific Economic Cooperation
ASBA	Association of Supervisors of Banks of the Americas
AU	African Union
BCBS	Basel Committee on Banking Supervision
BDM	<i>Banco de Mocambique</i>
BIS	Bank for International Settlements
BoT	Bank of Tanzania
BoZ	Bank of Zambia
CBDC	Central Bank Digital Currency
CBE	Central Bank of Eswatini
CBL	Central Bank of Lesotho
CBPR	Cross Border Privacy Rules
CBS	Central Bank of Seychelles
CCBG	SADC Committee of Central Bank Governors
CEMCWG	Consumer Empowerment and Market Conduct Working Group
CERTs	Computer Emergency Response Teams
CFI	Center for Financial Inclusion
CGAP	Consultative Group to Assist the Poor
CIRTs	Computer Incidence Response Teams
CISNA	SADC Committee of Insurance, Securities and Non- Banking Authorities
CoSSE	Committee of SADC Stock Exchanges
COVID-19	Severe Acute Respiratory Syndrome Coronavirus 2
CP	Consumer Protection
CPEA	Cross Border Privacy Enforcement Arrangement
CPMI	Committee on Payments and Market Infrastructures
DFS	Digital Financial Services
DRC	Democratic Republic of Congo



ECB	European Central Bank
EU	European Union
FCA	Financial Sector Conduct Authority
FCP	Financial Consumer Protection
FFIEC	Federal Financial Institutions Examination Council
FI	Financial Inclusion
FIC	Finance Investment and Customs
FIP	Finance and Investment Protocol
FMT	FinMark Trust
FSCA	Financial Sector Conduct Authority (South Africa)
FSPs	Financial Service Providers
FTC	Federal Trade Commission
GDPR	General Data Protection Regulation
IAIS	International Association of Insurance Supervisors
ICT	Information Communication Technology
IOPS	International Organisation of Pension Supervisors
IOSCO	International Organisation for Securities Commissions
IPEC	Insurance and Pensions Commission (Zimbabwe)
ISP	Internet Service Provider
ISSM	<i>Instituto de Supervisao de Seguros de Mocambique</i>
IT	Information Technology
ITU	International Telecommunication Union
KII	Key informant interview
MFSP	Mobile Financial Service Provider
MEF	Ministry of Economy and Finance (Madagascar)
MoF	Ministry of Finance
MOFED	Ministry of Finance and Economic Development
NAMFISA	Namibia Financial Institutions Supervisory Authority
NBFIRA	Non-Bank Financial Institutions Regulatory Authority (Botswana)
NIST	National Institute of Standards and Technology
NT	National Treasury (South Africa)
OECD	Organisation for Economic Cooperation and Development



SUPPORT TO IMPROVING THE INVESTMENT AND BUSINESS ENVIRONMENT (SIBE) IN SADC



RBM	Reserve Bank of Malawi
RBZ	Reserve Bank of Zimbabwe
RISDP	Regional Indicative Strategic Development Plan
SADC	Southern African Development Community
SME	Small and Medium Enterprises
SMS	Short Message Service
STE	Short Term Expert
TCF	Treating Customers Fairly
TCIB	Transactions Cleared on an Immediate Basis
TIRA	Tanzania Insurance Regulatory Authority
UK	United Kingdom
UNCTAD	United Nations Conference on Trade and Development
WB	World Bank



Executive Summary

Project background and objectives

Problem statement. Financial inclusion and innovation are growing in the SADC region. New financial products and technologies are helping to reduce costs and extend the reach of financial services, but they also bring new risks, including the risk of cybercrime, misuse of sensitive customer information or unfair exclusion. Thus, there is a need to ensure that the public is fully protected against unscrupulous and predatory practices and is empowered through adequate disclosure, financial education and recourse to know and act on their rights and responsibilities as consumers. Balancing the need for inclusive financial services with responsible market conduct and sound practices that build confidence and trust in the financial system requires a common set of principles or guidelines to set the tone for market conduct and to orient regulatory and institutional structures for financial consumer protection.

Objectives. This document develops guidelines for financial consumer protection in the SADC region, in line with international best practice. The aim of the guidelines is to contribute to increased trust in the formal financial services sector, increased accountability through transparency, fairer and more competitive financial markets and the promotion of financial literacy through provision of information that enables consumers to make informed decisions on available financial services. Moreover, harmonising principles and approaches for financial consumer protection across the region creates greater certainty and efficiency for financial institutions operating cross-border. This promotes investment and supports the conditions for regional financial integration to support the achievement of the objectives of the SADC Vision 2050, the SADC Regional Indicative Strategic Development Plan (RISDP) 2020-2030 and the SADC Industrialisation Strategy and Roadmap (2015-2063).

Programme linkages. The guidelines are developed as part of a broader collaboration between SADC and the European Union (EU) on a Programme on Support to Improving the Investment and Business Environment (SIBE) in the SADC region. SIBE is a five-year programme aimed at driving sustainable economic growth and job creation throughout the region and promoting intra-regional investment between SADC Member States. The programme is focused on three “Results Areas”: (1) an enabling investment policy framework across SADC Member States is supported; (2) enhanced integration of financial markets in the SADC region is promoted; and (3) Enhanced financial inclusion is supported. This project contributes to the 3rd results area which looks at ensuring that financial sector developments are inclusive and support socio economic development objectives.



This report links to two ongoing financial inclusion assignments under SIBE results area 3: the review of the implementation of the Financial Inclusion and SME access to finance Strategy (2016-2021), as well as the consultancy to identify priorities and develop timelines for harmonisation of financial inclusion policy frameworks and build the capacity of Member States in identified areas of financial inclusion. Consumer protection is one of the core areas around which harmonisation will be needed to implement the financial inclusion strategy in a way that will serve the ultimate regional integration objectives of SADC.

Methodology and approach

Methodology. The main data collection methodologies to inform the development of the guidelines were: a) a literature review of global and SADC best-practices and status, and b) key informant interviews with SADC bodies and member states. A broad literature of international best-practice on financial consumer protection was covered, including the seminal framework published by the G20 on financial consumer protection principles, good practices published by the World Bank, relevant CGAP frameworks on financial consumer protection and consumer outcomes, as well as various publications on relevant topics in consumer protection and digital consumer protection by the Alliance for Financial Inclusion (AFI). In addition, 28 interviews were conducted across SADC bodies, member state financial regulatory authorities and policymakers, as well as select regional financial service providers and development organisations.

Guiding framework. Based on the desktop review and member consultations, the core financial consumer protection elements found across the various global frameworks were synthesised into a guiding framework of eleven principles for SADC:

Table 1. Financial consumer protection principles for SADC

	<i>Principle</i>
11. Overarching: Fair Customer Outcomes	1. Recognition of the importance of consumer protection in the legal and regulatory framework
	2. Effective oversight of consumer protection, including market monitoring by regulators
	3. Responsible conduct by service providers
	4. Access to information by consumers (disclosure)
	5. Financial education to build financial literacy
	6. Accessible dispute resolution and redress



7. Protection of consumers' assets through effective prudential regulation

8. Privacy and personal data protection

9. Cybersecurity

10. A competitive financial sector

Sources: derived from (AFI, 2010; AFI, 2021a; CFI, 2019; CGAP, 2010; FMT, 2016; Gibson, 2011; OECD, 2011; UNCTAD, 2016; World Bank, 2017)

The first ten principles are encompassed in an additional umbrella principle that provides an overall framework within which to evolve the approach for each country across the other principles, namely: Fair customer outcomes

For each principle, this document develops guidelines based on global best-practice and tailored to the SADC context, as informed through the desktop analysis and member consultations.

Findings: SADC financial consumer protection landscape

Financial sector trends. Digital financial services are changing the way financial services are provided and accessed. In the SADC region, digital financial services offered by mobile network operators has been a key driver of financial inclusion, as acknowledged by the development of the SADC Mobile Money Guidelines (SADC, 2016). Another driver has been the implementation of a regional payment system to facilitate cross-border payments. Efficiency of cross-border transactions is expected to be improved further with the implementation of the SADC Transactions Cleared on an Immediate Basis (TCIB) Payment Scheme Project. While Member States differ in terms of the state and reach of financial inclusion, there is some level of innovation in all countries, reaching beyond payments/transaction accounts into insurance, savings and credit. South Africa, in particular, has seen substantial fintech innovation, but such innovation is also spreading in other Member States.

Consumer perspectives. Consumer perspectives were gauged through the analysis of FinScope survey data. The analysis confirmed a high level of financial hardship amongst SADC citizens. However, the consumer responses also revealed some positive findings in terms of financial sector development. Consumers expressed relatively high levels of trust in financial services, indicative of sound prudential management of the financial sector. A lack of access to information did not appear to be a key driver of financial exclusion, with most consumers showing a level of awareness of financial institutions. However, the Member State consultations



emphasised the vulnerability of customers to exploitative practices, fraud and cybercrime. Thus, the need for consumer financial education was emphasised consistently, even though most countries do not yet have a national strategy in this regard.

Consumers themselves still have a limited voice in financial consumer protection. Though regulation goes out for public consultation, it is generally only financial institutions that comment, and in-house and alternative consumer recourse channels reach a limited base of upper-end consumers.

Resulting financial consumer protection imperatives. The rise of digital financial services brings with it significant potential benefits to consumers, but also risks, especially for vulnerable and less financially literate consumers. Member States emphasised the need to update financial consumer protection frameworks to adequately respond to such risks, and for principles- and outcomes-based frameworks that can evolve with evolving market practices. Furthermore, informal provision of financial services, such as credit and insurance, is present in most Member States. Users of informal financial services are not afforded any financial consumer protection. This creates an additional formalisation and enforcement imperative as part of the design and implementation of the financial consumer protection framework. Finally, there is a need for more work to draw on direct consumer insights to inform financial consumer protection regulation and practices.

Status of financial consumer protection regulatory frameworks. The review of legal frameworks and regulations across the SADC Member States shows that financial consumer protection in SADC is not starting off a blank slate. Most countries have a general consumer protection law, and the majority have dedicated consumer protection provisions in financial sector laws. However, there is quite some variation in terms of where financial consumer protection provisions are housed. There is a trend towards the development of dedicated financial consumer protection legislation, as well as towards explicit inclusion of treating customers fairly principles, but Member States are at different levels of development and implementation of such frameworks.

Expressed Member State needs. In the consultations, Member States expressed a need to consolidate and update practices, especially in light of new risks arising from digital innovation, as well as to move towards the harmonisation of frameworks across different financial regulatory authorities. Global principles are well noted, and the main question for Member States now is how to tailor implementation for the local context. This requires dedicated oversight structures for market conduct and a principles-based approach that centres on consumer outcomes, and that moves towards

progressive measurement of consumer outcomes and incorporation of the consumer voice over time.

Some Member States have separated market conduct units from prudential divisions, but mainly the focus is still relatively new, with such departments still becoming operational. Member States also expressed a cross-cutting need for guidance on market conduct risk-based supervision.

SADC Market conduct and financial consumer protection guidelines

The main guidelines, which are explained and unpacked in detail in the report, are summarised in Table 2 below. The table includes the baseline guidelines for SADC Member States to adopt as immediate priorities (for member states where this baseline is not yet in place), as well as a list of longer-term objectives for Member States to and move towards in line with their market context, regulatory capacity and broader policy priorities.

Table 2: Summary of Proposed Financial Consumer Protection (FCP) Guidelines for SADC

Guideline	Basic requirements	Longer-term objectives
<p>Legal recognition</p> <p><i>Financial consumer protection must be grounded in legislation and regulation in a manner that effectively addresses consumers' risks.</i></p>	<ul style="list-style-type: none"> • Implement general consumer protection legislation and apply such legislation in the financial sector. • Leverage available regulatory tools and subordinate instruments for financial consumer protection. • Update requirements to meet market realities, such as digital provision and distribution. 	<p>Implement a dedicated financial consumer protection framework.</p>
<p>Oversight and Monitoring</p> <p><i>Oversight bodies should be created and empowered to enforce and monitor financial consumer protection, with explicit reference to the need for inter-governmental coordination.</i></p>	<ul style="list-style-type: none"> • Allocate an explicit consumer protection and market conduct mandate. • Recognise FCP as a cross-cutting mandate for various regulatory authorities. • Entrench monitoring of complaints as first-line FCP indicator. 	<ul style="list-style-type: none"> • Establish separate units within existing regulatory authorities with a mandate for market conduct and FCP. • Use the coordination mechanism to ensure a consistent, principles-based approach to FCP across regulatory authorities. • Evolve the monitoring framework for market conduct. • Implement mechanisms to incorporate the consumer perspective more directly in FCP oversight and monitoring.

Guideline	Basic requirements	Longer-term objectives
<p>Responsible conduct</p> <p><i>Responsible conduct by service providers and their agents should be integrated in FSPs' internal proceedings and in their engagement with customers.</i></p>	<p>Ensure that the FCP regulatory framework explicitly incorporates all basic elements of responsible conduct.</p>	<ul style="list-style-type: none"> • Build in specific conduct elements for fintechs and digital financial service provision. • Require FSPs to remain informed and updated on financial sector trends and the risks that they pose to consumers. • Develop and implement a risk-based market conduct supervision system.
<p>Access to information</p> <p><i>Regulation should entrench the need for customers to be provided with all relevant information, in an appropriate format, to allow for appropriate customer choice and usage behaviour.</i></p>	<ul style="list-style-type: none"> • Entrench disclosure requirements in regulation. • Account for the realities of digital financial services, including digital disclosure formats. • Include reporting requirements on disclosure. • Hold FSPs accountable for the disclosure provided by their agents. 	<ul style="list-style-type: none"> • Standardise disclosure requirements across key information elements. • As part of the move to an outcomes-based framework (Principle #11), require FSPs to be accountable for reasonable access to information outcomes. • Adopt a range of supervisory tools over and above regulation.
<p>Financial education</p> <p>Dedicated financial education programs and strategies should be set up to increase consumers' knowledge of and skills in navigating financial services.</p>	<ul style="list-style-type: none"> • Expand the regulatory mandate for financial consumer protection to include financial education. • Under this mandate, require FSPs to embed the principle of consumer empowerment in their corporate culture. • Monitor financial education initiatives and periodically measure their impact. 	<ul style="list-style-type: none"> • Hold FSPs accountable for consumer understanding, not just delivery of financial education. • Implement a coordination structure for financial education that involves relevant regulatory authorities, industry associations and consumer representative bodies. • Develop a national financial education strategy.
<p>Accessible dispute resolution and redress</p> <p><i>Consumers should have access to and knowledge of adequate complaints-handling mechanisms both within businesses as well as through independent or alternative dispute resolution structures.</i></p>	<ul style="list-style-type: none"> • Require financial service providers as part of their licensing conditions to implement a complaints-handling procedure and redress mechanism. • Establish mechanisms so that complaints that are not resolved at the FSP or MFSP level may be escalated to another party. • Monitor the nature and incidence of complaints and the effectiveness of the complaints handling and dispute resolution mechanisms. 	<ul style="list-style-type: none"> • Where third party redress mechanisms such as an ombudsman do not yet exist, consider the best third-party structure to implement in the local context. • Publish statistics on consumer complaints for public consumption.
<p>Prudential protection</p> <p><i>Regulation should entrench the need for consumers' assets to be protected and for FSPs to remain financially sound. Such regulation should be enforced through risk-based prudential supervision.</i></p>	<ul style="list-style-type: none"> • Require prudential supervision and oversight for all licensed financial institutions. • Design the prudential regulatory framework and enforcement strategy to promote formalisation. 	<ul style="list-style-type: none"> • Consider the development of a proportionate prudential framework in line with risk. • Implement a risk-based capital framework. • Implement a risk-based supervision framework.



Guideline	Basic requirements	Longer-term objectives
<p>Privacy and data protection</p> <p><i>Consumers’ financial and personal information should be adequately protected through appropriate control and protection mechanisms.</i></p>	<ul style="list-style-type: none"> • Where national-level legislation on data privacy and protection exists, issue guidance to interpret the application and implications thereof for financial service providers. • Where national-level data privacy and protection legislation does not exist, issue regulation or guidance under the authority’s market conduct mandate. • Develop specific regulation, where it does not yet exist, to regulate information sharing and storage among participants in credit reporting systems. 	<ul style="list-style-type: none"> • In countries where a data privacy and protection legislative framework is not yet in place, proactively contribute to the broader national government agenda to develop such a framework. • Develop a stance on open finance and the use cases for sharing of customer data among financial service providers and fintechs.
<p>Cybersecurity</p> <p><i>Financial service providers (FSPs) should have the relevant controls in place to evaluate, monitor, test and respond to cyber-security risks. Regulatory authorities should ensure that they have the scope and relationships with other authorities and jurisdictions to adequately manage and address cyber-risks.</i></p>	<ul style="list-style-type: none"> • Develop and implement cybersecurity laws and regulations in all member states. • Issue specific guidance for application of controls in the financial sector. 	<ul style="list-style-type: none"> • Set up an independent regulatory authority in each member state. • Develop mechanisms at the SADC level.
<p>Competitive financial sector</p> <p><i>A competition regulatory framework should be in place in order to ensure a competitive and inclusive financial sector.</i></p>	<ul style="list-style-type: none"> • Ensure that a competition regulatory framework is in place. • Within financial sector regulation, set regulatory entry requirements, supervisory process requirements and market engagement strategies that promote competition. 	<p>Conduct an inquiry into financial sector fee levels and structures.</p>
<p>Fair consumer outcomes</p> <p><i>Consumers should be treated equitably, honestly and fairly at all stages of their relationship with FSPs, to lead to fair outcomes from the consumer’s perspective.</i></p>	<ul style="list-style-type: none"> • Entrench the need for fair treatment of customers in a principles-based fair customer outcomes framework. • Hold financial institutions accountable to the principles. • Build in a proactive plan for dialogue and consultation. • Initiate capacity building on fair consumer outcomes framework development and implementation. 	<ul style="list-style-type: none"> • Establish a coordination mechanism on outcomes-driven FCP. • Consider what regulatory harmonisation or consolidation and institutional restructuring is needed to align with an outcomes-based approach. • Move towards activity-based, principles-based legislation.

Implementation considerations. It is important that the implementation of the guidelines is adapted for each Member State in line with the specific country context and given the existing regulatory and market structures and level of capacity. In doing



so, consideration is also needed of the potential unintended consequences of implementation within the particular context, such as the financial inclusion implications, should requirements create a compliance burden that disincentivises outreach into lower-income market segments, to ensure that a proportionate approach is implemented. It is noted that the full FCP implementation journey may take several years and requires ongoing efforts by financial regulatory authorities, as well as a concerted and coordinated approach across relevant authorities and ministries. Long-term capacity building by multilateral and regional development partners plays an important role to accompany Member States in this journey.

Regional harmonisation recommendations. Although the guidelines developed in this report will be implemented at the individual Member State level, they also form the basis for harmonisation of approaches across the SADC region. As such, it is recommended that a dedicated FCP sub-committee be formed in the SADC Structures to facilitate peer exchange on market conduct implementation learning and coordinate topic-specific work streams on market conduct across the CCBG and CISNA in line with the SADC Market Conduct and Financial Consumer Protection Guidelines.



1 Introduction: Background, objectives, and approach

The Southern African Development Community (SADC) is in the process of updating its strategy on Financial Inclusion and SME Access to Finance to build the conditions for regional financial integration to support the achievement of the objectives of the SADC Vision 2050, the SADC Regional Indicative Strategic Development Plan (RISDP) 2020-2030 and the SADC Industrialisation Strategy and Roadmap (2015-2063).

Financial consumer protection is foundational to the development of an inclusive financial sector, and a common set of FCP principles can form the basis for the harmonisation of frameworks across the region to support regional financial service provision.

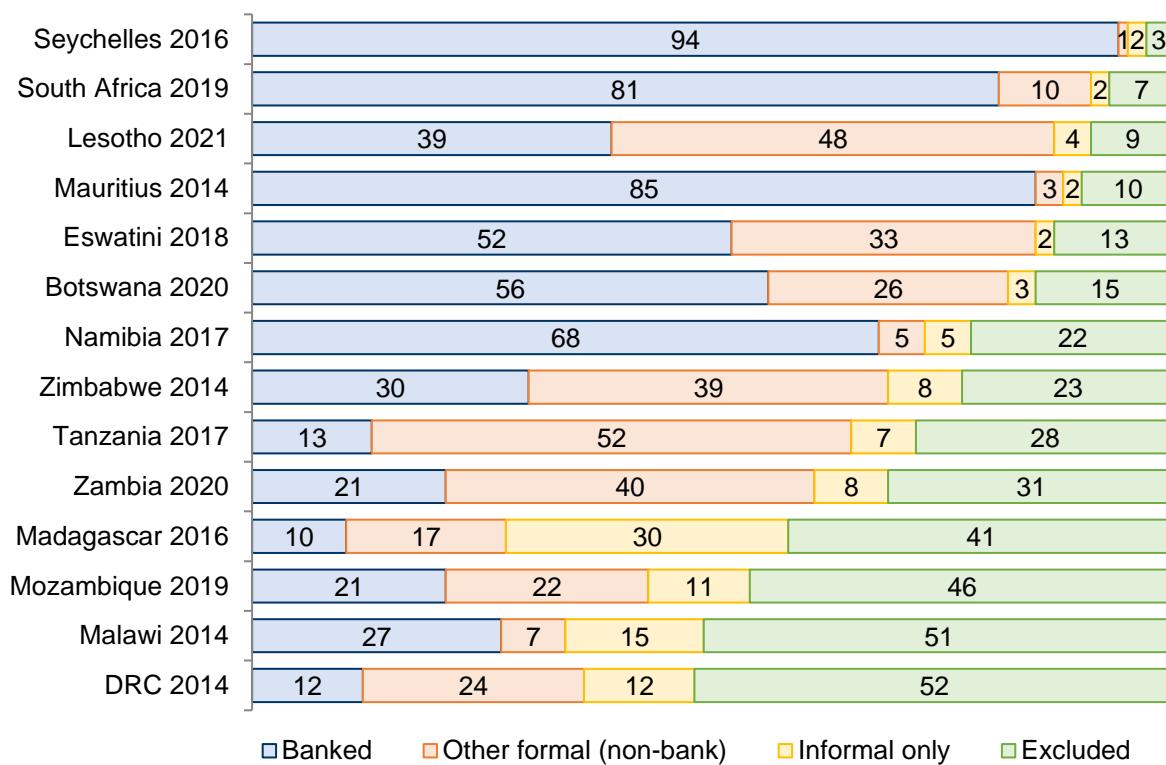
This report develops such a framework for SADC in line with international best practice and formulates detailed implementation guidelines for each principle in the SADC context.

1.1 Financial inclusion context

Substantial financial inclusion gains, but more needed. Financial inclusion across the SADC region increased from 57% in 2011 to an estimated 70% in 2021 (FinMark Trust, 2021)¹. Almost a third (30%) of SADC adults use mobile money, 51% save formally or informally, 40% use credit/ borrow formally or informally and 29% have insurance. This progress is testimony to the concerted efforts of financial sector policymakers, regulatory authorities and market players to promote financial inclusion, spearheaded by the adoption of national financial inclusion strategies by ten of the sixteen Member States. However, as seen in Figure 1, there is still substantial variation in financial inclusion across Member States. Thus, even as the success of the first cycle of the SADC financial inclusion strategy for 2016-2021 is celebrated, there is a continued need for a concerted effort under the next cycle to further expand and deepen financial inclusion to serve the financial needs of SADC citizens and support regional industrialization and integration.

¹ Based on data sourced from the SADC Secretariat and various FinScope surveys.

Figure 1: Financial inclusion (% of adults) across SADC Member States where data was available



Source: (FinScope, 2021)

1.2 Digital innovation trends and risks

Digital financial services are changing the way financial services are provided and accessed. Globally the financial sector has seen significant development and innovations in recent years characterised by a shift towards digital financial services (DFS). This phenomenon has been accelerated by the recent COVID-19 pandemic and is resulting in demand for contactless interactions, reshaping and transforming areas including payments, lending, insurance, and wealth management (Feyen, et al., 2021). In the SADC region, digital financial services offered by mobile network operators has been a key driver of financial inclusion. A second important achievement has been the implementation of a regional cross-border payments system, which has seen the cost of digital remittance payments reduce significantly (FinMark Trust, 2021). Efficiency of cross-border transactions is expected to be improved further with the implementation of the SADC Transactions Cleared on an Immediate Basis (TCIB) Payment Scheme Project (Bankserv Africa, 2022).

Growing fintech innovation. Rapid developments in fintech² are disrupting and transforming financial landscapes across the globe, leading to new partnerships including with traditional financial service providers. This has also been evident in Africa where over the past decade there has been a boom in fintech start-ups ranging from business payments, wealth management and microinsurance to embedded financial tools in critical sectors such as energy and agriculture. Investment into fintech in Africa has grown steadily from \$193 million in 2017 to \$1.35 billion in 2020³ (Briter Bridges and Catalyst Fund, 2021)⁴. In this way, fintech is expanding financial innovation in Africa – and SADC specifically – beyond that implemented by traditional financial institutions⁵.

With financial innovation also comes risk. The rise of DFS brings with it significant potential benefits to consumers. For example, in South Africa DFS have been shown to have resulted in increased access to financial inclusion, more efficient personalised offerings, lower costs of production and distribution, enhanced convenience and a more frictionless experience, as well as greater ease in scaling up products and services (Mothibi & Lazarides, 2021). However, DFS also entail a number of risks that need to be accounted for. Table 3 provides an overview of the key risks associated with DFS as noted in the international literature and illustrates the relevance thereof in the SADC context⁶.

Table 3: Risks associated with Digital Financial Services (DFS)

Consumer Risks	Interpretation and relevance for SADC
Sharing or misuse of sensitive information.	DFS require and involve the collection of personal information on the consumer and therefore present a risk of sharing or misuse of personal information. In SADC, low financial literacy levels may require additional education initiatives to ensure that consumers are comfortable sharing their data and know how to act responsibly.

2 **Fintech** refers to digital technology innovation that has the potential to transform the provision of financial services as well as the ongoing wave of new digital financial services (Feyen, et al., 2021)

3 \$1.1 billion of this was marked by three acquisitions by Wave, DPO Group and Paystack which provide mobile money or payment services in 11 SADC countries

4 The growth has been largely driven by fintech developments in the more developed countries of South Africa, Nigeria and Kenya, however increasingly other countries are developing rapidly and looking to follow countries like Ghana, Rwanda and Ethiopia who are now establishing themselves as fintech hubs in the region (Africa Fintech Summit, 2020)

5 Outside of South Africa, which has an established 107 fintechs, the most fintechs in SADC have been established Zimbabwe and Mauritius, with eight and six respectively (Findexable, 2022).

6 For a comprehensive overview and typology of DFS risks, see (CGAP, 2022)

Consumer Risks	Interpretation and relevance for SADC
Increasing opportunities for and sophistication of cyber risks	Cyber protection needs to be robust enough to handle not just risks emanating from within the country, but also externally. This places significant capacity requirements on financial institutions.
Financial exclusion	Where financial institutions are not trusted (e.g., due to a legacy of hyperinflation) or people do not have the digital financial literacy to navigate DFS, it may entrench exclusion. Moreover, the way artificial intelligence algorithms are written can potentially discriminate against and exclude certain groups or individuals. Algorithms adopted from other countries may also not be tailored to the context realities in SADC Member States.
Difficult to regulate across borders	As DFS grows cross-border, a country is subject to international money laundering or terrorist financing risk. Responding to these risks requires coordination between regulatory authorities and a governance framework that facilitates cross-border transactions with the right level of protection.
Regulatory grey areas, arbitrage or loopholes	The rapid evolution and addition of DFS products and services means that recent developments may fall beyond the scope of licensing regimes. Furthermore, the complexity and interconnectedness of DFS creates risks related to regulatory arbitrage and regulatory loopholes when different bodies have the legal mandate for DFS products. Conversely, there is a risk of <i>over-regulation</i> if coordination is not sufficient.
Enhanced consumer vulnerability	Low levels of financial education and consumer experience with DFS present the risk of consumers making wrong choices due to not fully understanding terms and conditions and the outcomes which the decision will lead to. The low levels of financial education in SADC member countries also present the risk that DFS providers could take advantage of client inexperience and lack of understanding for their own gain. Moreover, consumers are less likely to realise that they are subject to bias or unfair treatment when dealing with an electronic channel, thereby making consumer redress channels less effective.
Unanticipated consequences	The recent nature of DFS in SADC Member States means that the impacts and developments of DFS further down the road can often not be fully anticipated.
Anti-competitive practices	Market concentration may lead to anti-competitive practices which cause sub-optimal customer outcomes and further exclusion of marginalised groups.

Source: Compiled based on AFI (2021a), Mothibi & Lazarides (2021) and Lünsche (forthcoming)

1.3 Objectives and approach

Why regional FCP guidelines? As is clear from the discussion above, new products and technologies are helping to reduce costs and extend the reach of financial services, but also bring new risks. Thus, there is a need to ensure that the public is fully protected against unscrupulous and predatory practices and is empowered



through adequate disclosure, financial education and recourse to know and act on their rights and responsibilities as consumers.

Balancing the need for inclusive financial services with responsible market conduct and sound practices that build confidence and trust in the financial system requires a common set of principles or guidelines to set the tone for market conduct and to orient regulatory and institutional structures for financial consumer protection.

Several SADC policies and strategies already directly or indirectly reference consumer protection (unpacked in more detail in Appendix A):

- SADC Vision 2050
- SADC Regional Indicative Strategic Development Plan (RISDP) 2020-2030
- SADC Finance and Investment Protocol
- SADC Industrialisation Strategy and Roadmap (2015-2063)
- SADC Financial Inclusion Strategy (2016-2021)
- SADC Mobile Money guidelines
- SADC Declaration on Regional Co-operation in Competition and Consumer Policies

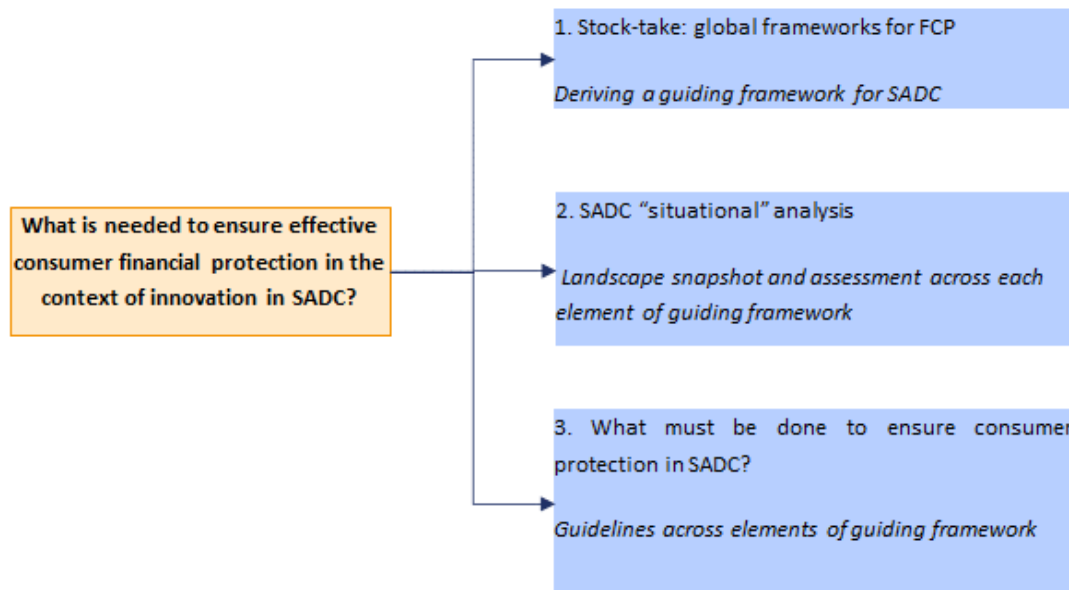
However, there is a need for an integrated view of financial protection to guide the development of a more holistic approach to consumer protection within and across Member States.

Objectives. This document develops guidelines for financial consumer protection in the SADC region, in line with international best practice. By doing so, it is envisaged to contribute to increased trust in formal financial services, increased accountability through transparency, fairer and more competitive financial markets and the promotion of financial literacy through accessible disclosure.

Note on scope. Consumer protection is a very broad subject area that touches on all aspects of regulation. Prudential regulation serves to ensure sound financial institutions, ultimately to protect consumers' deposits or premiums. Likewise, a competitive financial system is core to ensuring good consumer protection outcomes, and data protection is core to consumer protection outcomes. The guidelines developed in this report cover all elements of FCP, but emphasis is placed on the core elements related to market conduct.

Approach and methodology. To arrive at fit-for-context guidelines for SADC, a guiding framework of key principles that encompasses all elements of FCP in modern financial systems was identified for SADC, based on a review of international literature on financial consumer protection. For each element of the framework, the SADC reality was then reviewed against international best-practice recommendations to conclude on a set of guidelines for that principle. Figure 2 outlines the analytical approach:

Figure 2: Analytical approach



Source: Own compilation

The proposed guidelines derive from a combination of desktop research and key stakeholder interviews with financial sector policymakers, regulators, service providers and other key stakeholders in the region. See *Appendix B – Stakeholder consultation list* for the full consultation list. The guidelines were presented to and tested with Member States during a Validation and Capacity Building Workshop hosted as part of the SADC Financial Inclusion Sub-Committee meetings in May 2022.

Target audience. The proposed guidelines are framed for Member State action. Thus, the primary target audience for the implementation of the guidelines will be Member State policymakers and financial regulatory authorities. In some instances, implementing the guidelines will also require proactive collaboration and coordination with authorities from other fields, such as the data or competition regulator. Moreover, market participants and, in some instances, development organisations will be core partners in ensuring the success of the implemented measures.



1.4 Structure

The rest of this report is structured as followed:

- Section 2 outlines the landscape of financial consumer protection (FCP) in SADC from both a market and consumer perspective.
- Section 3 synthesises international best practice to identify a guiding framework of eleven FCP principles for SADC. For each principle, it then sets out international best practice and the context across SADC member states, as basis for concluding on a set of guidelines for the application of that principle by member states.
- Section 4 concludes by considering implementation considerations at the regional level, at the hand of global examples of regional FCP harmonisation.

2 SADC Financial Consumer Protection Landscape

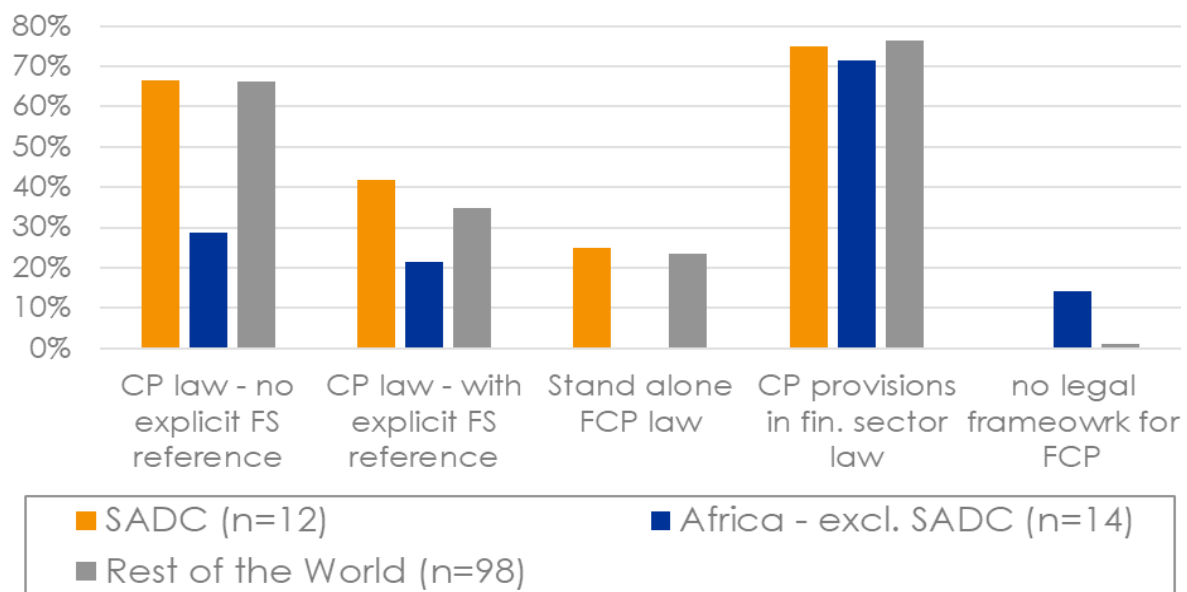
This section provides an overview of the current financial consumer protection landscape from the regulatory and consumer perspective, respectively, to paint the backdrop for the more detailed analysis and guideline derivation to follow in Section 3.

2.1 Financial Consumer Protection framework status and developments

An existing foundation. As noted in the 2016 assessment of financial consumer protection in SADC published by FinMark Trust, the minimum legislative and institutional requirements for consumer protection are already in place in most SADC Member States. Of the fifteen countries who were part of SADC at the time, all fifteen had enacted some form of legislation to protect consumers in the financial services sector, ten countries had a stand-alone consumer protection law and nine had established some form of consumer protection agency (FMT, 2016).

This picture is confirmed by the 2017 global World Bank Financial Inclusion and Consumer Protection (FICP) survey (World Bank, 2017), as indicated Figure 3:

Figure 3: Status of FCP legal/regulatory frameworks in SADC Member States compared to the rest of Sub-Saharan Africa and the rest of the world



Source: Compiled using World Bank (2017)

Most countries have a dedicated consumer protection law, and the majority have dedicated consumer protection provisions in financial sector legislation. In this regard, the status in SADC is more aligned with the rest of the world than with other Sub-Saharan African countries, indicating that there is already notable progress among SADC Member States. There are also no substantial product market gaps in FCP frameworks.

Ongoing development. In the subsequent five years, Member States have further developed their financial consumer protection frameworks. There is ongoing work at the country-level to harmonise and coordinate FCP approaches across regulatory authorities. A full overview of the current status of FCP legislation across Member States is provided in Section 3.1. Sections 3.2 to 3.11 then consider the current state of FCP on each element of consumer protection in more detail, to derive guidelines on what is needed for the implementation of a holistic and feasible approach in each Member State, as well as to form the basis for harmonisation over time.

2.2 Consumer perspectives

While the overview in Section 2.1 gives an indication of the *de jure* status of FCP in SADC, the ultimate measure of financial consumer protection – *de facto* – is at the consumer level. Do consumers perceive to have the necessary information, recourse mechanisms and built-in protections so that they are able to exercise informed choices

and use financial services in a way that serves their financial needs, and do they trust that they are being treated fairly?

No comprehensive stock-take has been done of the consumer perspective on financial consumer protection in the SADC region. The closest proxy is to consider indicators from the FinScope Consumer Surveys across SADC Member States that speak to elements of FCP. Considering the latest available datasets⁷, the following indicators have been identified as relevant to FCP:

- Whether survey respondents indicate that they trust financial institutions (indicative of fair treatment)
- Not knowing where or how to open an account stated as reason for not having a bank account (as proxy indicator for access to information)
- Whether people budget their household expenses (as proxy indicator for financial education)
- Whether people sometimes have to make do without certain things (as a proxy indicator for whether their financial needs are met⁸)

The FinScope cross-country analysis on these indicators is contained in Appendix C. The main findings are:

- **Relatively high levels of trust.** Bar one outlier country, the majority of adults in all the surveyed countries indicate that they trust banks and financial institutions to manage their money. This is indicative of sound prudential management of the financial sector.
- **High perceived access to information.** In three quarters of the surveyed countries, less than 15% of those who do not have a bank account indicate that this is because they do not know where or how to open an account. For the remaining two countries it is 19% and 45%, respectively. In all the FinScope surveys analysed, this indicator would therefore suggest that access to information is not the main driver of financial exclusion.
- **Proactive household budgeting.** Despite the generally very low incomes, households do indicate that they budget. Across the eleven countries for which this

7 Note that, due to data access restrictions and the fact that not all FinScope surveys ask the same questions, the analysis was only possible for eleven SADC countries and for one indicator this reduced to eight countries. Therefore, the analysis should be considered as indicative, rather than fully representative of SADC.

8 Noting that financial services cannot solve all deprivation and that most of this indicator is likely to be explained by socio-economic circumstances rather than financial service usage.

indicator is tracked, the majority of respondents indicate that they do budget. This does not necessarily suggest a sufficient level of financial education to navigate the formal financial services sector, but does suggest at least a basic level of financial savviness on the part of SADC citizens.

- **High levels of financial hardship.** The final indicator reflects the socio-economic challenges of the region. In most of the surveyed countries, the majority of adults indicate that they sometimes run out of money. While this is not in the first instance a reflection on financial consumer protection, it does suggest that more can be done to ensure that financial services help people to meet their financial needs.
- **Need for more granular data.** Overall, the dearth of financial consumer protection-specific indicators in existing consumer surveys in the region suggests a need for dedicated research to obtain a more granular picture of the perspectives of consumers themselves on key FCP concerns, to ensure that the consumer voice is heard in FCP. As a starting point, it would be important to more consistently and systematically track levels of financial literacy across the region, as low financial literacy makes consumers vulnerable to abuses, and challenges consumers' understanding of disclosure and recourse options.

3 Financial Consumer Protection Guidelines for SADC

Against the backdrop of the problem statement as set out in Section 1 and the SADC FCP landscape as highlighted in Section 2, this section develops guidelines for FCP in SADC. It does so by establishing a guiding framework, based on established international principles, and then analysing each element of the framework, in turn, from the SADC perspective to conclude on guidelines for SADC application.

The table below outlines the framework of FCP principles that is adopted as the basis for the SADC Market Conduct and FCP guidelines. This framework has been synthesised across global best-practice FCP frameworks, with minor adjustments and additions to suit the SADC context. See Appendix D for a detailed explanation of the mapping of global frameworks to arrive at the SADC guiding framework:

Table 4: Guiding framework: Principles for FCP in SADC

	<i>Principle</i>	<i>What it entails</i>
11. Overarching: Fair Customer Outcomes	1. Recognition of the importance of consumer protection in the legal and regulatory framework	The inclusion of consumer protection in all relevant forms of law and regulation to set out a framework for addressing consumers' risks.
	2. Effective oversight of consumer protection, including market monitoring by regulators	The creation and empowerment of oversight bodies to monitor consumer protection.
	3. Responsible conduct by service providers	Ensuring that financial service providers (FSPs) "work in the best interest of their customers" and that customers are "treated equitably, honestly and fairly at all stages of their relationship with financial service providers" (OECD, 2011).
	4. Access to information by consumers (disclosure)	Customers are provided with sufficient information in an appropriate manner so that they can understand the product or services as much as is reasonable, and make informed choices.
	5. Financial education to build financial literacy	Providing consumers with "the knowledge and skills necessary to understand risks, including financial risks, to [make] informed decisions and to access competent and professional advice and assistance" (UNCTAD, 2016).
	6. Accessible dispute resolution and redress	The provision of mechanisms for consumers to raise complaints against financial service providers, both within the entity and with an independent body.
	7. Protection of consumers' assets through effective prudential regulation	The protection of the prudential soundness of consumers' assets from misuses, such as fraud and deception, and improper management.
	8. Privacy and personal data protection	The protection of consumers' financial and personal data from improper use, management and storage by FSPs or other relevant parties.
	9. Cybersecurity	The protection of consumers from cyber-attacks, including "cyber fraudsters, criminals, hackers and other malicious actors who use digital media technologies to commit heinous crimes" (MISA-Zimbabwe, 2021).

10. A competitive financial sector

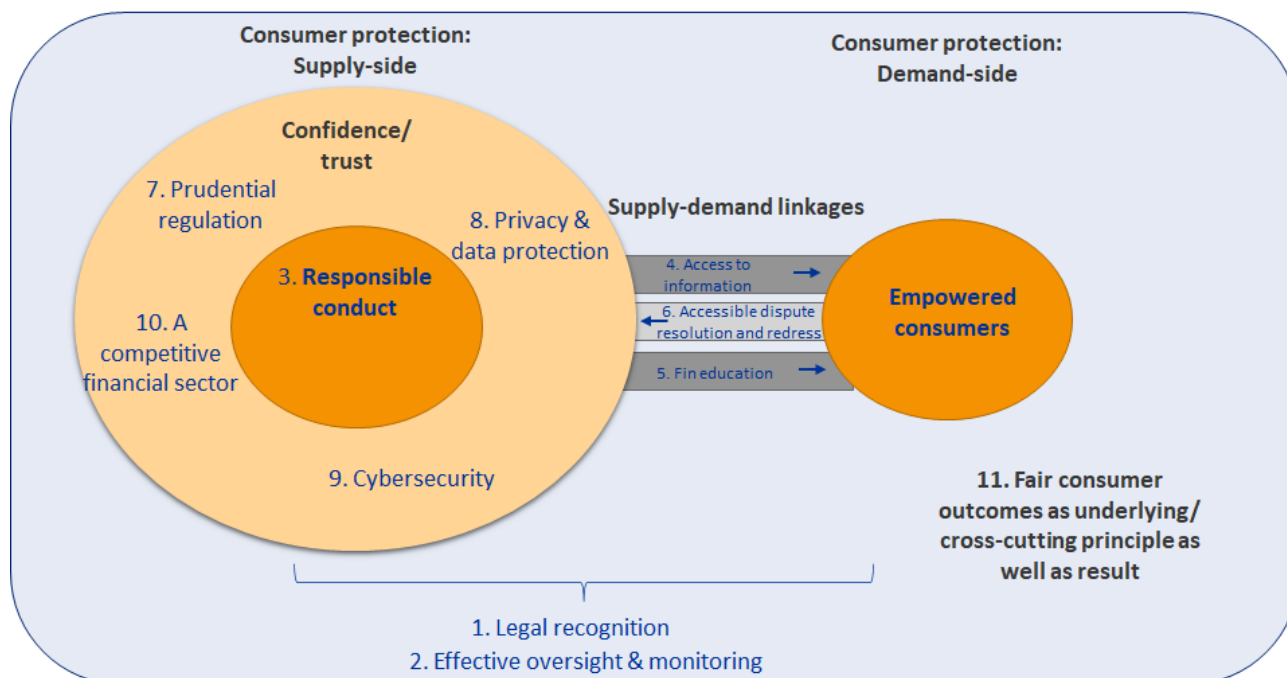
Promoting competition in the financial sector so that customers have more choices of financial services and put pressure on FSPs to offer competitive products (OECD, 2011).

Sources: (AFI, 2010; AFI, 2021a; CFI, 2019; CGAP, 2010; FMT, 2016; Gibson, 2011; OECD, 2011; UNCTAD, 2016; World Bank, 2017)

Relationship between the principles in the FCP “ecosystem”. The diagram in Figure 4 maps the principles in the guiding framework to show how they combine and interrelate as part of the overall FCP landscape or ecosystem:

- *Supply-side.* The left of the diagram shows the supply-side perspective on consumer protection. At the core of the supply-side perspective on FCP is the need for responsible market conduct by financial service providers. This is positioned within an “outer layer” of broader financial sector elements needed to ensure confidence and trust in the financial sector and, hence, to achieve FCP, namely prudential soundness, privacy and data protection, cybersecurity and a competitive financial sector.
- *Demand-side.* The right of the diagram represents the demand-side perspective on consumer protection, namely the need to ensure that consumers are empowered to live their financial lives safely. Empowered consumers have access to information, can exercise recourse and are financially literate.
- *Connectors.* Ensuring the consumers are empowered requires appropriate and accessible disclosure, accessible dispute resolution and redress and effective financial education from the financial sector. These three elements thus form the connectors between the supply-side and demand-side of the FCP conceptual framework.
- *Legal framework and supervisory oversight as foundational, cross-cutting elements.* The existence of a coherent regulatory framework that provides legal recognition to FCP and an effective oversight and monitoring system for FCP supervision are cross-cutting, foundational elements to the full framework.
- *Consumer outcomes as end-goal and measure of success.* Finally, fair outcomes for empowered customers represent a cross-cutting principle that is both an input into consumer protection, via fair treatment of consumers, and the result or ultimate outcome measure of an effective and comprehensive FCP framework.

Figure 4: Conceptual model for Financial Consumer Protection



Source: Own compilation

The sub-sections to follow cover each of the principles of the SADC FCP guiding framework in turn, noting, where relevant, how the content of one principle is also relevant to another. The analysis for each principle covers three components:

- **International best-practice.** It starts by outlining the definition and best-practice recommendations for that principle in the international literature.
- **SADC situational analysis.** It then outlines the SADC context and realities as expressed by Member States for that principle.
- **Guidelines.** On that basis, a set of guideline recommendations is formulated for implementation of the principle in the SADC context. Noting the capacity and socio-economic context constraints facing the Member States, the guidelines are structured into a core set of *baseline recommendations* that should form the starting point for application of the global best-practice recommendations in SADC, complemented by a set of *longer-term objectives* to work towards depending on the needs and realities of the specific member state⁹.

⁹ In formulating the guidelines, the previous recommendations for SADC contained in FMT (2016) were taken as point of departure, adapted and extended based on the findings of the current analysis.

3.1 Legal recognition

Definition and international best-practice. International best-practice holds that, as a first step, financial consumer protection must be included in all relevant forms of law and regulation. This should be based on a comprehensive framework that identifies and addresses all relevant consumer risks. Without this legal recognition, financial consumer protection cannot be defined, implemented or monitored adequately at both the industry and regulatory level.

Key aspects found across international guidelines:

There should be a clear and specific legal and regulatory framework on financial consumer protection (AFI, 2021a):

- Clear consumer protection rules and guidelines for financial services should be put forward in legislation, notices, guidelines, policy papers and regulations (World Bank, 2017; OECD, 2011).
- Specific codes of conduct should be developed at the sector level (World Bank, 2017).
- A licensing (or registration) regime should be developed for all financial service providers (World Bank, 2017).
- The development of financial consumer protection policies should involve consultative processes involving relevant non-government organisations including consumer organisations (OECD, 2011).

The legal and regulatory framework must be set out to sufficiently address existing and potential risks to consumers and meet the realities of the financial sector (AFI, 2021a):

- Regulation should reflect the diversity within the country as well as global market and regulatory developments within the financial sector (OECD, 2011).
- Market conduct regulations should be consistent throughout the financial sector (AFI, 2010).
- Consumer protection rules should be extended to as many providers as possible (AFI, 2010).
- While some financial service providers (FSPs) might be exempted, serious thought should be given before completely exempting informal providers as they should be required to comply with basic conduct rules (CGAP, 2010).
- Registration should be triggered by activity rather than institutional type (CGAP, 2010).



Summary. Financial consumer protection must be grounded in legislation and regulation in a manner that effectively addresses consumers' risks.

3.1.1 SADC situational analysis

Differing levels and positioning of financial consumer protection.

Table 5 outlines the status of financial consumer protection legislation across SADC Member States where information was available. The ticks indicate the presence of legal recognition, while dots indicate that draft legislation is in place or being developed. The green ticks indicate new legislation passed since the previous review of financial consumer protection legislation in SADC in 2016, showing the progress in the region over the past five years¹⁰. The final two columns indicate a movement toward financial sector-specific consumer protection laws and an emerging trend to include Treating Customers Fairly (TCF) principles, respectively. The cross-country comparison shows that consumer protection legislation is already prevalent in the region, but that there are still some gaps in financial sector-specific regulatory frameworks and in terms of the incorporation of specific references to fair consumer treatment and outcomes.

¹⁰ The latest development was the commencement of the Seychelles Financial Consumer Protection Act, Act 6 of 2022, on 1 May 2022 (Central Bank of Seychelles, 2022).

Table 5: Legal recognition across the SADC region

Country	Income level	Stand-alone consumer protection law	Competition law	Financial sector law contains consumer protection	Financial sector consumer protection law	Reference to treating customers fairly in regulations
Angola	Lower middle income	✓	✓	✓		
Botswana	Upper middle income	✓	✓	✓		●
Comoros	Lower middle income	✓	✓	✓		
DR Congo	Lower middle income	✓	✓	✓		
Eswatini	Lower middle income		✓	✓		
Lesotho	Lower middle income	●		✓	●	
Madagascar	Low income		✓	✓	●	
Malawi	Low income	✓	✓	✓	●	✓
Mauritius	Upper middle income	✓	✓	✓		●
Mozambique	Low income	✓	✓	✓		
Namibia	Upper middle income		✓	✓		●
Seychelles	High Income	✓	✓	✓	✓	●
South Africa	Upper middle income	✓	✓	✓	●	✓
Tanzania	Lower middle income	✓	✓	✓	✓	✓
Zambia	Lower middle income	✓	✓	✓		●
Zimbabwe	Lower middle income	✓	✓	✓		●

● in progress ✓ in place

Sources: Member state consultations (2021) and review of member states' financial regulatory websites (2022); *altadvisory.africa* (2020); *FTC* (2022); *World Bank* (2022)

Member States differ in terms of the extent and nature of implementation. The consultations with Member States echo the findings of the cross-country comparison in

Table 5. Stakeholders confirmed strengthening their FCP frameworks, however key differences emerged in terms of both the stages of implementation and the strategies adopted. Sometimes FCP is spread across different acts and authorities rather than a consolidated FCP framework; other times FCP is positioned within more general or economy-wide consumer protection legislation. Some countries are developing dedicated FCP legislation and moving towards activity and principles-based regulation, in recognition of the benefits of harmonisation and consolidation on FCP in an umbrella framework. Some pursue FCP within their broader financial inclusion strategies¹¹, while others as part of a growing emphasis on market conduct

¹¹ The validation workshop confirmed that the national financial inclusion strategy plays an important role as anchor for FCP in various Member States – it is important not to lose sight of the financial inclusion angle so that the right balance is struck between inclusion, promotion of innovation and protection.

supervision. Overall, there was an acknowledged need for specific FCP guidance, as well as the need to adapt FCP frameworks in light of the consumer vulnerabilities associated with digital financial services.

3.1.2 Proposed guidelines

International best-practice principle. Financial consumer protection must be grounded in legislation and regulation in a manner that effectively addresses consumers' risks.

SADC Guidelines: baseline requirements. As a minimum or first step, SADC member steps should implement the following:

1. **Implement general consumer protection legislation and apply such legislation in the financial sector.** General consumer protection legislation with application to the financial sector should be in place, setting out principles and requirements regarding practices, policies and procedures for fair consumer outcomes.
2. **Leverage available regulatory tools and subordinate instruments for financial consumer protection.** The financial sector regulatory authorities should have at their disposal, and make use of, a broad suite of regulatory tools including subordinate instruments and moral suasion, to promote FCP.
3. **Update requirements to meet market realities.** Where already in place, subordinate instruments should be updated to account for the realities and risks arising from digital financial services.

Longer-term objectives for SADC Member States. Over the longer-term, and depending on what is feasible within the domestic context:

4. **Implement a dedicated financial consumer protection framework.** Where general consumer protection legislation is not sufficiently tailored to the realities and risks of the financial sector, consideration is needed for the development of a dedicated financial consumer protection framework that translates the general principles for the financial sector, including aspects such as marketing and sales practices, information and disclosure, prohibited practices and complaints handling.

Key features to incorporate in a dedicated FCP framework¹²

- FCP regulation should be **principles-based**, entrenching the need to build and ensure the fair treatment of customers in the corporate culture in line with international model laws and best practice frameworks, but following a **proportionate and incremental** approach, reflective of the level of market development, the size of the transaction and the sophistication of the FSP or mobile financial service provider (MFSP)¹³.
- The move towards a dedicated FCP framework can either be institution-based (that is, entrenched in sector-specific financial regulation) or, ideally, or **product or activity-based** (where the regulatory framework is applicable across different types of financial service providers, to ensure a consistent approach and to avoid fragmentation).
- To this end, **coordination** is needed across financial sector regulatory authorities, coordinated via the financial sector policymaker¹⁴.

3.2 Oversight and monitoring

Definition and international best-practice. The international FCP literature consistently emphasises the need for the creation of an oversight body to enforce FCP regulation and monitor industry compliance. This body should be sufficiently empowered to protect consumers effectively and coordinate and cooperate with other relevant authorities on matters related to consumer protection.

12 The formulation of these recommendations draws on FMT (2016).

13 The move towards a principles-based, outcomes-orientated framework is considered in more detail in Principle 11, Fair Consumer Outcomes.

14 The need for coordination is considered in more detail in Principle 2, Oversight and Monitoring.

Key aspects found across international guidelines:

Relevant bodies should be established and empowered to protect consumers effectively:

- Oversight bodies should have a well-defined legal mandate to provide clarity on governance. This should include definitions of the roles, responsibilities and scope of oversight (AFI, 2021a).
- Oversight bodies should be given the necessary authority, and be sufficiently capacitated to fulfil their mandates (OECD, 2011).
- Regulators should understand the consumer perspective to establish effective regulation and supervision regimes (AFI, 2010).
- Mechanisms should reflect global market and regulatory developments in the financial sector as well as address new technology, distribution and delivery channels (OECD, 2011; CGAP, 2010).

Where more than one oversight body exists with an FCP mandate, coordination is required:

- There should be an inter-agency approach to ensure harmonization and cooperation between different oversight authorities (AFI, 2021a).

Various mechanisms should be in place to monitor and enforce consumer protection:

- Market conduct should be carefully monitored and regulated (World Bank, 2017).
- Monitoring of dispute resolutions should filter through to the oversight body (World Bank, 2017).
- The regulator should in the first instance monitor complaints data and the media, to be followed by surveys, mystery shopping and focus groups (CGAP, 2010).

A move to a more customer-centric market monitoring framework is encouraged and several tools and case studies on indicators, data sources and methods are provided in the [CGAP Market Monitoring For Financial Consumer Protection Toolkit](#) (CGAP, 2022). Further useful indicators and implementation guidance in the case of insurance are provided in the Access to Insurance Initiative [Supervisory KPIs Lexicon, Market Conduct Handbook](#) (A2ii, 2022).

Summary. Oversight bodies should be created and empowered to enforce and monitor financial consumer protection, with explicit reference to the need for inter-governmental coordination.

3.2.1 SADC situational analysis

Various oversight body manifestations. The desktop research and consultations showed that oversight bodies are mandated and established in different ways across SADC Member States. Some have combined consumer protection and competition oversight bodies, some have established a dedicated market conduct or consumer protection unit within a regulatory authority or government department, and most separate out oversight of bank and non-bank financial consumer protection¹⁵.

A range of oversight roles. Figure 5 below outlines the different roles assumed by FCP/market conduct oversight units in SADC Member States, the rest of Africa and the rest of the world, respectively. It highlights that regulation and complaints handling are universal mandates in all SADC countries included in the database. Financial education is much less prominent as an area to oversee and monitor.

Setting up an oversight body as initial priority. The Member State interviews highlighted the importance of setting up a separate market conduct or FCP unit within the relevant authority¹⁶. Where such units exist, they are often still new, in the process of becoming operational and lacking the supervisory tools (manuals and systems) for effective market conduct supervision. The establishment of such a unit requires a regulatory framework that gives it mandate and powers. However, sometimes a unit is established in anticipation of new legislation and then delays in legislation result in the unit taking time to become operational. Furthermore, it takes time to establish a consumer-centric orientation as the central focus for such a unit.

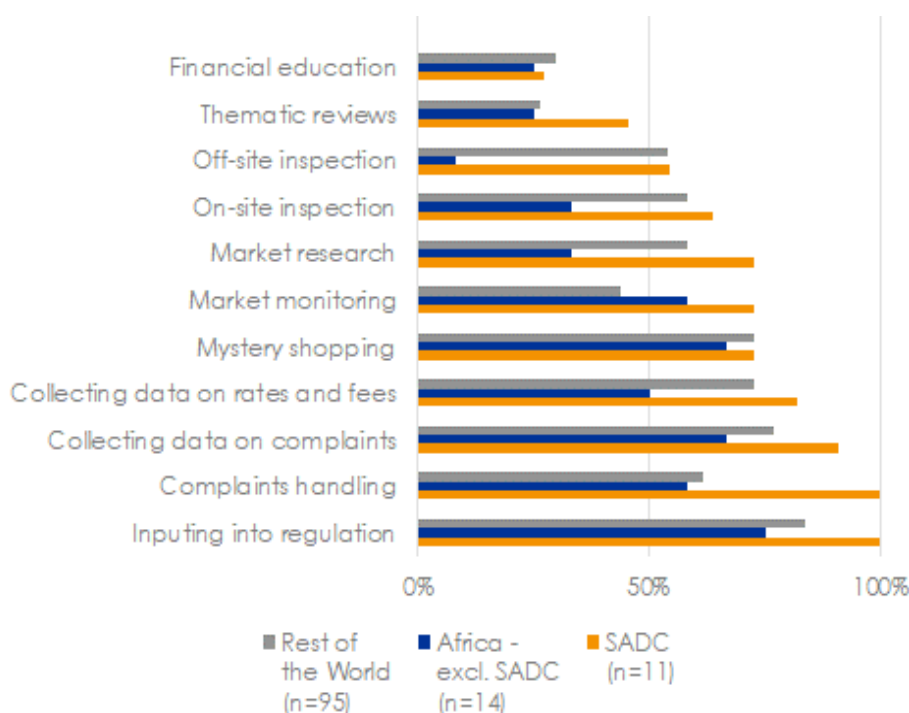
Recognition of the need for coordination. During the validation workshop, the question was raised of whether to establish a separate and cross-cutting financial consumer protection oversight body. This is unlikely to be feasible in the short to medium term, given capacity constraints and the far-reaching implications of such a move. More feasible is the incorporation of FCP principles within the mandate and

¹⁵ Based on review of policy and strategies including (Bank of Botswana, 2022; National Bank of Angola, n.d.; Expansao, 2020; Central Bank of Eswatini, n.d.; Federal Trade Commission, n.d.; Government of Mauritius, 2020; Namfisa, n.d.; Financial Trade Commission Seychelles, 2020; Financial Sector Conduct Authority, n.d.; DLA Piper, 2020)

¹⁶ For example, according to the Member State consultations, Namibia has set up a separate market conduct unit in NAMFISA. Such a unit is also being implemented in the Bank of Namibia. In Zimbabwe, the Insurance and Pensions Commission has recently split its prudential and market conduct divisions. The Reserve Bank of Zimbabwe has a financial inclusion unit that deals with consumer protection, but of yet no dedicated market conduct unit. In Lesotho a financial consumer protection unit has been established in the central bank to deal with consumer protection and market conduct, but there is no dedicated market conduct supervision unit. In Eswatini, the central bank is in the process of establishing a market conduct and consumer protection unit.

agenda of existing regulatory authorities, with coordination across steered by the policymaker. There is variation in the extent to which coordination mechanisms are institutionalised across SADC Member States¹⁷. However, there is a general recognition of the need for coordination across financial sector regulatory authorities, policymakers, and general consumer protection institutions where they exist.

Figure 5: The different roles of the financial consumer protection unit



Source: Compiled using World Bank (2017)

Narrow monitoring focus. For most Member states consulted, FCP or market conduct monitoring is equated to complaints monitoring and there are very few, if any, other explicit market conduct indicators tracked. As part of a move towards risk-based market conduct supervision, stakeholders expressed a need for guidance on the evolution of the market conduct monitoring system.

Limited avenues for incorporating the consumer voice. Consumers themselves still have a limited voice to help inform FCP oversight in SADC and monitoring of the

¹⁷ During the validation workshop valuable learning was shared by member states on how they approach coordination. For example, in Zambia, there is coordination via a multisector MOU between the Competition and Consumer Protection Commission and all financial sector regulatory authorities, while in Tanzania the ten year financial sector development master plan, launched in 2020, provides for a technical committee that cuts across government, industry and civil society.



consumer perspective is limited. Though regulation goes out for public consultation, it is generally only financial institutions that comment. Thus, there is a need for more work to draw on direct consumer insights to inform financial consumer protection regulation.

3.2.2 Proposed guidelines

International best-practice principle. Oversight bodies should be created and empowered to enforce and monitor financial consumer protection, with explicit reference to the need for inter-governmental coordination.

SADC Guidelines: baseline requirements. As a minimum or first step, SADC Member States should implement the following:

- 1. Allocate an explicit consumer protection and market conduct mandate.** The financial sector regulatory authorities should have an explicit consumer protection and market conduct mandate. Where this is not the case, foundational legislation needs to be amended.
- 2. Recognise FCP as a cross-cutting mandate for various regulatory authorities** and build in a central coordination mechanism.
- 3. Entrench monitoring of complaints as first-line FCP indicator**, publish results and consult industry on the observed trends.

Longer-term objectives for SADC Member States. Over the longer-term, as relevant to the domestic context, the following guidelines apply:

- 4. Establish separate units within regulatory authorities with a mandate for market conduct and FCP.** While for some countries the reconsideration of institutional structure might prompt the consideration of a Twin Peaks regulatory structure whereby market conduct is integrated in a single regulatory authority and prudential regulation in another authority, going this route may not be feasible or desirable in all country contexts. In such cases, a dedicated market conduct unit should be designated in each existing financial regulatory authority. The exact structure adopted should be driven by the particular country context and regulatory capacity.

5. **Use the coordination mechanism to ensure a consistent, principles-based approach to FCP across regulatory authorities¹⁸.** Also build in explicit consultation mechanisms with industry to establish FSPs as partners in the FCP oversight process.
6. **Evolve the monitoring framework for market conduct** included in offsite and onsite supervision beyond complaints as single indicator.

What should the evolution of a market conduct monitoring framework entail?

- Adopt a specific focus on customer outcomes and create common language with industry around that, even if monitoring of outcomes will take time to entrench (as further elaborated on under Principle #11 Fair Consumer Outcomes).
- Take stock of what data is already collected that could be analysed for insights on market conduct. In addition, set up a system to analyse existing data for market conduct insights.
- Consider frontline or initial indicators to add on consumer outcomes. This would include what is possible through tweaks to reporting requirements initially, what requires more long-term planning to add or, eventually, to develop a separate conduct of business return.
- Note that a dedicated conduct of business return takes time to design, consult the market on and implement, and should not be pursued as a short-term strategy, especially where capacity is constrained.
- More broadly, start to hold FSPs accountable to demonstrate that they meet outcomes principles (as part of Principle #11 Fair Customer Outcomes) and use the licensing, product approval, onsite and offsite supervision systems to do so¹⁹.

18 This guideline is further expanded under Principle #11 Fair Consumer Outcomes.

19 Through the consultative process of moving towards a more outcomes-driven approach (Principles #11), start to define core measurable outcomes for each principle; consult industry on that so that there's buy-in and to ensure that indicators are implementable. Also incorporate qualitative elements to ask FSPs to explain how they achieve consumer outcomes. Consult the CGAP Financial Consumer Protection Market Monitoring toolkit for a more detail (CGAP, 2022).

7. Implement mechanisms to incorporate the consumer perspective more directly in FCP oversight and monitoring.

How to make the consumer voice heard?²⁰

- Consider alternative data sources to tap insights on consumer outcomes, such as demand-side survey data, mystery shopping and focus group research, and strengthen regulatory authority capacity for such consumer research and monitoring, or crowd in the support of development organisations in this regard.
 - Work with development partners and national statistics agencies to update or adjust existing demand-side surveys to incorporate explicit FCP indicators, including on financial literacy, FCP risks experienced and perceptions/trust of financial institutions.
- Over time, build in more formal structures for consulting consumers on market conduct regulation and oversight, like a panel on which consumer bodies are represented.

3.3 Responsible conduct

Definition and international best-practice. At the industry-level, FSPs must incorporate working in the best interest of their customers as an objective and integrate consumer protection across their internal proceedings and in their engagement with customers. The FSPs' business activities include the actions of their authorised agents, which FSPs must be responsible and accountable for (OECD, 2011).

Key aspects found across international guidelines:

Responsible conduct should be required as part of the internal proceedings of FSPs:

- Even when activities are outsourced, FSPs should remain accountable and should ensure that outsourced agents perform their functions in a reliable and professional manner (AFI, 2010).
- Responsible conduct should be an integral part of the good governance and corporate culture of all FSPs and authorised agents (OECD, 2011).

20 For more detail on ways in which to incorporate the consumer voice, see (CGAP, 2021).

- FSPs should aim to work in the best interest of their customers and avoid conflict of interests. When conflict of interest cannot be avoided, FSPs should disclose it to the customer (OECD, 2011).
- Staff should be properly trained and qualified, especially those who interact directly with customers (OECD, 2011).
- FSPs should have appropriate incentive structures and ensure appropriate sales practices (CFI, 2019).
- FSPs should protect consumers' financial assets, including against fraud, misappropriation or other misuses (OECD, 2011).
- Product, service and delivery channels should be designed appropriately with cooling off periods and alternatives, especially for high-risk products (CFI, 2019; FMT, 2016).

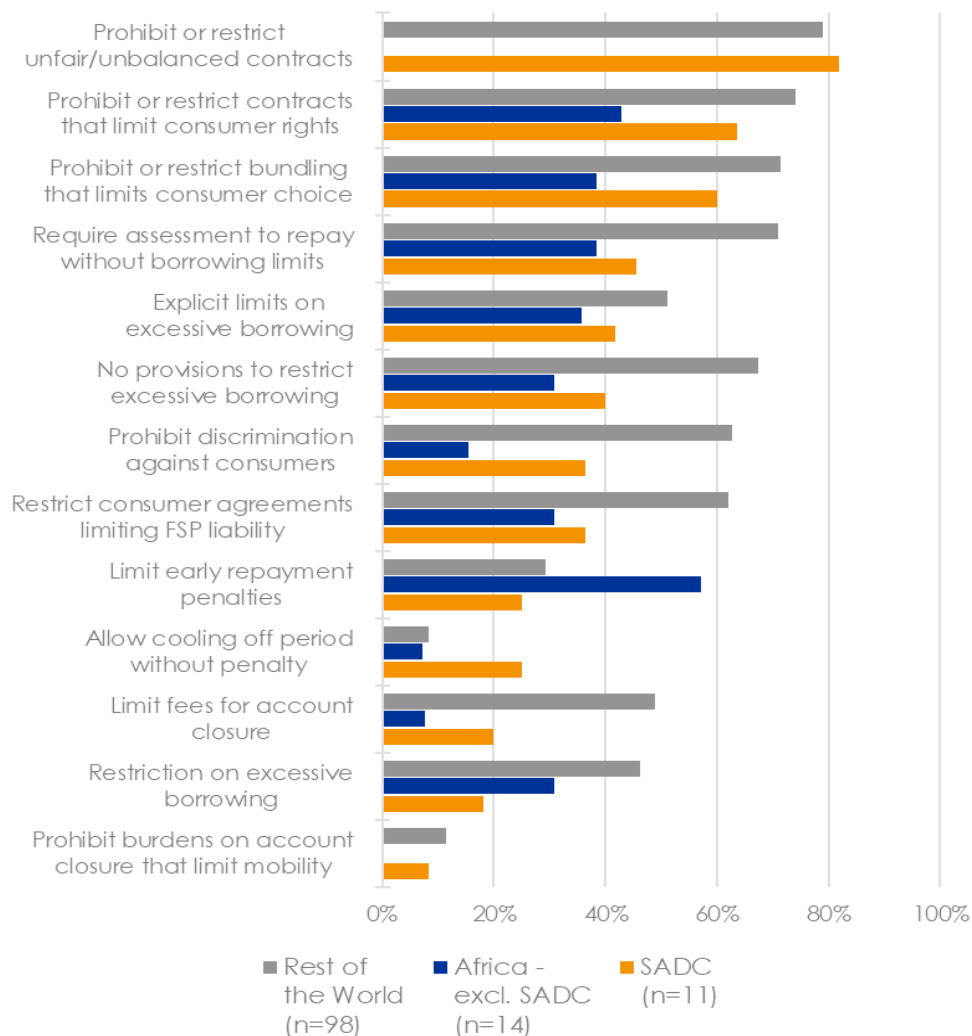
Summary. Responsible conduct by service providers and their agents should be integrated in FSPs' internal proceedings and in their engagement with customers.

3.3.1 SADC situational analysis

Different levels of progress. All SADC Member States have elements of market conduct entrenched in their frameworks. However, these are at different levels of detail and, while ahead of the rest of the African continent, lag the rest of the world (see Figure 6). Particular conduct elements where SADC frameworks are not yet complete include account closure specifications as well as allowance for a cooling off period without a penalty.

Member State consultations highlight need for transparency, responsible market practices in the face of consumer vulnerability. Key market conduct concerns that were noted in the consultations include disclosure, which is considered separately in Principle #4, reckless lending to consumers, a lack of pricing and fees transparency, and heightened consumer vulnerability due to low financial literacy (considered separately in Principle #5), which creates an added imperative for fair treatment and responsible conduct.

Figure 6: Legally required responsible conduct elements: SADC status in African and global perspective



Source: (World Bank, 2017)

Shift in emphasis to market conduct supervision. As outlined in the Principle #1 Legal Recognition (Section 3.1), several member states are already in the process of closing market conduct regulatory gaps via updates to their FCP regulatory frameworks. Rather than guidelines on the *content* of regulation, Member State consultations therefore emphasised the need for guidance on risk-based *supervision* for market conduct, to entrench market conduct not only in the regulatory framework, but also in supervisory systems.

The validation workshop confirmed that Member states recognise the need to move to risk-based market conduct supervision, but are not there yet in terms of implementation. Doing so requires alignment of institutional structure and supervisory

systems and templates. Where countries have started to move towards such a system, financial and human resources have been noted as a key constraint, as well as the capacity of staff to implement such an approach. Further technical assistance and capacity building is needed.

Box 1: International precedence and frameworks on risk-based market conduct supervision

As a relatively new concept, there is limited international guidance on risk-based market conduct supervision compared to risk-based prudential supervision, for which there are established frameworks.

The move towards risk-based market conduct supervision is a forward-looking approach borne out of the growing complexity supervisors face in an increasingly interconnected marketplace. At its core it looks to focus supervisory efforts on areas which pose the greatest market conduct risk for FSPs. The approach has become popular in the developed world and is seeing increasing application in developing countries (AFI, 2016). Some key points to come out of the available international guidance include:

- The sources of conduct risks differ to prudential risks and include factors relating to inherent characteristics of financial products and services, FSP governance models and the external economic and environmental context (IAIS, 2015).
- Risk management frameworks to adequately identify, monitor and mitigate conduct risk should consider both current and foreseeable risks, manage risks holistically over all stages of a product life cycle and classify risks correctly (IAIS, 2015).
- Risks should be categorized according to the main risk drivers, namely economic, demographic, political, business and innovation (OECD, 2018).
- Supervisors should review broader external risk sources beyond regulated entities and communicate with industry on supervisory expectations for conduct. Supervision of FSPs' conduct risks can be enhanced through strengthening the linkage and coordination between conduct and prudential oversight (IAIS, 2015).
- Regulatory reports and onsite inspections are insufficient to identify conduct risks and a broader range of information should be collected such as examinations of the industry environment, product approval requirements, monitoring of financial innovation developments, press releases, contracts, mystery shopping and analysis of customer complaint data. Sources of information may even be institutions themselves (National Treasury, 2014).
- Risks and impacts can be assessed across three pillars (AFI (2016): (1) a risk assessment process where inherent risks and internal controls are assessed at

the activity level; (2) the development of impact assessment indicators; and (3) the development of a supervisory strategy to respond to the indicators.

3.3.2 Proposed guidelines

International best-practice principle. Financial service providers and authorized agents should have as an objective to work in the best interest of their customers and be responsible for upholding responsible market conduct (OECD, 2011).

SADC Guidelines: baseline. As a minimum or first step, SADC Member States should implement the following:

1. Ensure that the FCP regulatory framework explicitly incorporates all basic elements of responsible conduct

What are the basic elements of responsible conduct to cover?

- Legislation or regulations should be in place and applicable to all financial products, FSPs and intermediaries to prohibit false and deceptive statements, misleading advertising, unfair contract terms, and fraud.
- Legislation should set out specific provisions relating to FSPs, MFSPs and intermediaries or agents, setting out standards of conduct for selling and marketing practices and to ensure that salespeople and agents are fit and proper.
- Regulators should ensure that FSPs and MFSPs are responsible for the conduct of their agents.
- Leverage industry associations to develop sector-specific codes of conduct that all members should adhere to.



Longer-term objectives for SADC Member States. Over the longer-term, and depending on what is feasible within the domestic context, the following guidelines apply:

2. Build in specific conduct elements for fintechs and digital financial service provision

***Conduct elements for digital financial service provision:*²¹**

- Local registered digital platforms might need to determine the safety and effectiveness of the financial products they intermediate for by consumers, as well as determine what steps can be taken to limit the cross-border risks.
- To address conflict of interest, the digital platforms can consider a publicly available conflict of interest management policy.
- Digital platforms might need to have a liability and ethics framework governing their data and consumer protection practices.
- Digital platforms can consider responsibility to regularly educate and fully disclose to consumers how financial products and services they intermediate work.

3. Require FSPs to remain informed and updated on financial sector trends and the risks that they pose to consumers, and to report on how their conduct policies and procedures account for such risks.

21 Compiled drawing on (Mothibi & Lazarides, 2021)

4. Develop and implement a risk-based market conduct supervision system

Building blocks for a risk-based market conduct supervision system

- Identify and categorise a set of key market conduct risks through a consultative process among regulatory authorities and with industry.
- Set and track core indicators for market conduct in line with the guidelines for gradually extending the monitoring framework in Principle #2 Oversight and Monitoring
 - Evaluate and adjust onsite and offsite supervisory templates to account for the key risks identified at the individual regulated financial institution level
 - Also consider alternative data sources such as examinations of the industry environment, product approval requirements, monitoring of financial innovation developments, press releases, contracts, mystery shopping and analysis of customer complaint data, alongside qualitative engagements with market participants themselves
- Develop a supervisory strategy to tailor supervisory responses to the risk profile of the market and individual regulated financial institutions.
 - Consider lower-tiered, proportionate requirements corresponding to low identified risk, and not just heightened requirements for higher risk institutions or categories of actions.

3.4 Access to information

Definition and international best-practice. The literature on access to information focuses on the disclosure duty of FSPs to ensure that consumers have access to sufficient information, put forward in an appropriate manner, so that they can understand the product or services that they engage with as much as is reasonable and are empowered to make informed choices.

Key aspects found across international guidelines:

Clear information on consumer protection, rights and responsibilities should be easily accessible to consumers (OECD, 2011).

Disclosure of information should be addressed within regulation:

- Regulation should establish the timing of disclosures in the product journey (World Bank, 2017).
- Regulation should set standards on common indicators which need to be disclosed (World Bank, 2017; UNCTAD, 2016; CFI, 2019).
- Regulation should be adapted to allow for innovation (such as electronic disclosure) while still mitigating risks to consumers (World Bank, 2017).

All relevant information should be provided to consumers:

- All relevant information should be included in written agreements, including benefits, risk, terms of a product and a schedule of other allowable fees and charges (CGAP, 2010; OECD, 2011; AFI, 2010).
- Customers should be notified if prices or other conditions change (CGAP, 2010).
- Key product features should be highlighted to customers (World Bank, 2017; CFI, 2019).
- Key documents should be provided in written form that consumers can keep (World Bank, 2017).
- Communication should include the regulatory status of the provider, contact details for internal complaints handling mechanisms, and relevant dispute mechanisms (World Bank, 2017; Gibson, 2011).
- Common indicators should be disclosed so that customers can compare products properly (World Bank, 2017; UNCTAD, 2016; CFI, 2019).

Information should be disclosed in a manner that will ensure that consumers are able to understand it:

- Standardised pre-contractual disclosure practices (e.g., forms) should be adopted where applicable and possible to allow comparisons between products and services of the same nature (OECD, 2011).
- All information, including advertisements, should be in plain and understandable language (World Bank, 2017; CGAP, 2010; AFI, 2010).
- Information should be in a language found in the area (World Bank, 2017).

- Information should be presented in a manner which can be digested and understood irrelevant of literacy levels and physical disability (CFI, 2019).
- Written communication should be designed to be legible and well-placed so that customers can easily view it (CGAP, 2010).

Summary. Regulation should entrench the need for customers to be provided with all relevant information, in an appropriate format, to allow for appropriate customer choice and usage behaviour.

3.4.1 SADC situational analysis

Differing disclosure requirements. A scoping exercise of consumer protection laws amongst SADC Member States found eight instances where disclosure is explicitly prioritised²². The exact disclosure requirements differ. Taking the disclosure requirements on commercial banks as an example, Figure 7 below outlines for which countries information disclosure is required to be in a standard format, in plain language, in local language, accompanied by forms and explicit about explaining recourse rights. Information disclosure is required to be in local languages in the fewest number of countries (2), while plain language and recourse rights (both 8) are required by most countries. The lack of consistency in requirements across member states was highlighted as a constraint in consultations with banks with a regional presence, who indicated that they need to adhere to the regulations of the most stringent country, even when operating in countries where local banks did not face the same requirements.

22 These countries are Botswana (Parliament of Botswana, 2018), Seychelles (Government of Seychelles, 2010), Malawi (Government of Malawi, 2003), Zimbabwe, South Africa (Government of South Africa, 2008), Zambia (Government of Zambia, 2010), Angola (Government of Angola, 2003) and Eswatini (Compco (2018)).

Figure 7: Information disclosure requirements for commercial banks

Information disclosure requirements for commercial banks					
	Std. Format	Plain lang.	Local lang.	Forms	Recourse rights
Angola	✓	✓	✓	✓	✓
Botswana	✓	✓	✗	✓	✓
Eswatini	✓	✓	✗	✓	✓
Lesotho	✗	✗	✗	✗	✓
Madagascar	✗	✗	✗	✗	✗
Malawi	✓	✓	✓	✓	✓
Mauritius	✓	✓	✗	✗	✓
Namibia	✗	✗	✗	✗	✗
Seychelles	✗	✓	✗	✗	✗
South Africa	✗	✓	✗	✓	✓
Zambia	✓	✗	✗	✗	✗
Zimbabwe	✓	✓	✗	✗	✓
Total (/12)	7	8	2	5	8

Source: (World Bank, 2017)

Four key challenges noted in relation to information disclosure. Proper disclosure on terms and conditions was highlighted as a key ongoing challenge in the member state consultations. The key challenges noted are:

- *Pricing transparency:* The exact charges are not always clear, especially for DFS.
- *Communication:* There is a need for improved customer communication, for example on terms and conditions or on assessment processes prior to extending credit and advice.
- *Language:* Vernacular disclosure is not yet widespread and, where implemented, vernacular and English wording often misalign.
- *Digitalisation:* There is a need for disclosure practices to be updated to reflect real-time occurrence of charges and other features specific to DFS

Member state consultations highlighted the need for a consultative approach with industry to set disclosure requirements that are implementable and feasible in the local market context²³. Orienting the requirements on principles can help to ensure that it is flexible to adopt to market realities.

3.4.2 Proposed guidelines

International best-practice principle. Financial service providers and their authorised agents should be required to provide consumers with key information to inform the consumer of the fundamental benefits, risks and terms of the product, as well as their rights and responsibilities as consumers. Appropriate information should be provided at all stages of the relationship with the customer (OECD, 2011).

SADC Guidelines: baseline requirements. As a minimum or first step, SADC Member States should implement the following:

1. **Entrench disclosure requirements in regulation** – both general consumer protection legislation and sector-specific legislation.

Minimum disclosure elements to incorporate:

- Disclosure requirements should include the need for clear and correct information on products and services to ensure informed decision-making, as well as clear disclosure of terms and conditions and recourse options.
- Requirements should be consistent across different types of FSPs, adapted for the realities of the products provided as relevant.
- Consumers should be granted the right to request a breakdown of charges and costs (a quote) prior to signing up for a financial service.

²³ For example: local language disclosure requirements, while important in principle, are not always feasible to implement in practice, and will require additional monitoring and supervision capacity from regulators. Another example noted in the validation workshop is appropriate disclosure on the topic of early loan repayment penalties.

2. **Account for the realities of digital financial services, including digital disclosure formats.** Set guidelines for electronic disclosure or delegate the development of best-practice guidance in this regard to industry
3. **Include reporting requirements on disclosure** as part of the onsite and offsite monitoring system.
4. **Hold FSPs accountable for the disclosure provided by their agents.**

Longer-term objectives for SADC Member States. Over the longer-term, and depending on the domestic context, the following guidelines apply:

1. **Standardise disclosure requirements across key information elements** to ensure that consumers are provided with simple, understandable information.

Elements of standardisation to consider:

- Specify disclosure format/font
- Specify key summary information to be reflected in all written disclosures
- Publish a model script or guidelines for verbal disclosures
- Adopt plain language requirements
- Encourage industry to integrate disclosure in local languages as far as possible
- Encourage the use of artificial intelligence (AI) for more efficient language conversion, cognizant of the potential associated risks.

2. **As part of the move to an outcomes-based framework (Principle #11), require FSPs to be accountable for reasonable access to information outcomes**, namely the ability to exercise choice and make informed usage decisions.
3. **Adopt a range of supervisory tools over and above regulation**, including proactive industry communication and moral suasion, to entrench disclosure practices.

3.5 Financial education

Definition and international best-practice. The international literature on financial education emphasises that consumers must have a sufficient knowledge of and skills in financial services to be able to navigate different financial products and engagements with FSPs. Financial education involves consumers having “the

knowledge and skills necessary to understand risks, including financial risks, to [make] informed decisions and to access competent and professional advice and assistance” (UNCTAD, 2016, p. 9). Appropriate disclosure (Principle #4) on product features, pricing, consumer recourse, rights and responsibilities, disclosed in a manner that consumers can understand, is one avenue of consumer financial education. Furthermore, there is a need for dedicated and targeted financial education programs by public bodies as well as industry players.

Key aspects found across international guidelines:

Stakeholders should create financial education strategies and programs:

- Stakeholders should, as appropriate, develop programs and mechanisms to assist consumers to develop the knowledge and skills necessary to understand financial risks, to take informed decisions and to access competent and professional advice and assistance, preferably from an independent third party (UNCTAD, 2016; OECD, 2011; AFI, 2021a).
- Financial education strategies should consider national circumstances, be delivered through diverse and appropriate channels, and should begin at an early age and be accessible for all life stages (OECD, 2011).
- Specific programs and approaches related to financial education should be targeted for vulnerable groups of financial consumers (OECD, 2011).

Further, more detailed, guidance on specific areas of financial education can be found in the Alliance for Financial Inclusion Consumer Empowerment and Market Conduct Working Group (CEMCWG) knowledge products (AFI, 2021d), including:

- Digital Financial Literacy Guideline Note (AFI, 2021e) and Toolkit (AFI, 2021f).
- Guideline Note on integrating vulnerable groups in national financial literacy programmes and strategies (AFI, 2021g).
- Financial Competency Matrix for Children and Youth (AFI, 2021h).
- National financial education strategies toolkit (AFI, 2021i).

Summary. Dedicated financial education programs and strategies should be set up to increase consumers’ knowledge of and skills in navigating financial services.

3.5.1 SADC situational analysis

Low financial literacy, especially for vulnerable groups. The most recent assessment of financial literacy at the regional level estimates an adult financial literacy rate of 36% in SADC (Fanta, et al., 2016)²⁴. Though this average aligns well with the global average of 33%, it means that two out of every three adults are not financially literate and, hence, may be particularly vulnerable to consumer protection risks (Klapper, et al., 2016). Financial literacy is lowest in the most vulnerable categories: women, youth, the poor, retired, less educated and those living in rural areas (Fanta, et al., 2016). In the Member State consultations, a particular concern was furthermore noted regarding the relationship between financial illiteracy and incidences of fraud and exploitation. This creates a public policy imperative for financial education that targets vulnerable groups, in particular, as well as digital consumer financial literacy²⁵.

Broad acknowledgement of the need for financial education, but national financial education strategies not yet widespread. The need for financial education was consistently emphasised in stakeholder engagements as core to FCP and financial inclusion. Despite the emphasis placed on financial education, there is no consistent framework across the region on what financial education should entail and what the outcomes are to measure success. To date, six SADC Member States have developed a National Financial Education or Financial Literacy Strategy²⁶.

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- 24 The headline indicator quoted here stems from The Standard and Poor's Global Financial Literature Survey, the world's largest and most comprehensive global measurement of financial literacy, as quoted in Fanta et al. The survey is implemented by Gallup and the latest survey was published in 2015. Fanta et al integrated insights from FinScope surveys to unpack the headline indicator mentioned here. The most relevant indicators tracked in FinScope are the percentage of the unbanked who indicate that they don't have a bank account, because they do not know where or how to obtain one, and the percentage of adults who indicate that they budget their personal finances (as a proxy for financial education). For both these sub-indicators, FinScope suggests at least a basic level of financial literacy across most member states. Detailed analysis in this regard is contained in Section 2.2 and Appendix C.
- 25 An example of where this is being done which was highlighted in the stakeholder engagement is in Madagascar, where targeted initiatives have been rolled out to improve financial literacy levels in rural areas.
- 26 Namely South Africa (National Treasury, 2013), Lesotho (FMT, 2014), Malawi (Reserve Bank of Malawi, 2016), Zambia (Zambia Ministry of Finance, 2019), Seychelles (Jacquin, 2017) and Tanzania (Tanzania National Council for Financial Inclusion, n.d.).

3.5.2 Proposed guidelines

International best-practice principle. Appropriate financial education mechanisms should be developed and promoted by all relevant stakeholders to help existing and future consumers develop the knowledge, skills and confidence to appropriately understand risks, including financial risks and opportunities, make informed choices, know where to go for assistance and take effective action to improve their own financial well-being.

SADC Guidelines: baseline requirements. As a minimum or first step, SADC Member States should implement the following:

1. **Expand the regulatory mandate for financial consumer protection to include financial education.** This includes a responsibility for making consumers aware of their rights and redress options and for conducting and coordinating broader financial literacy initiatives.
2. **Under this mandate, require FSPs to embed the principle of consumer empowerment in their corporate culture:** to educate their clients about product features, risks, potential for fraud and misuse of confidential information and to provide clients with information about recourse and redress mechanisms. In this regard, policies and procedures should be developed and checked as part of onsite and offsite supervision.
3. **Monitor financial education initiatives and periodically measure their impact.**

Longer-term objectives for SADC Member States. Over the longer-term, and depending on what is feasible within the domestic context, the following guidelines apply:

4. **Hold FSPs accountable for consumer understanding, not just delivery of financial education.** Financial education initiatives should be linked to achieving a particular educational outcome, not just for publicity or to check boxes. FSPs should be able to demonstrate that they made reasonable effort to help a consumer to understand the product or service they are consuming and should submit evidence of consumer understanding outcomes to the regulatory authority.
5. **Implement a coordination structure for financial education that involves relevant regulatory authorities, industry associations and consumer representative bodies.**

Design considerations for a financial education coordination structure

- Where a financial inclusion or national financial education strategy exists, coordination can happen via the inter-governmental and public-private structures set up under the strategy.
- Where no coordinating strategy exists, a decision is needed on what the appropriate coordinating body or mechanism would be, as well as which memoranda of understanding should be drafted between regulatory authorities, industry associations and other relevant parties to institutionalise the coordination mechanism.

6. **Develop a national financial education strategy.** Where a national financial education strategy does not already exist, take steps to design a strategy, with clear roles, responsibilities, and targets, focused on generating (digital) financially capable consumers who are aware of their rights and obligations, and are able to exercise choice, access recourse and express their voice vis-à-vis financial service providers.

3.6 Accessible dispute resolution and redress

Definition and international best-practice. The international literature on dispute resolution and redress covers four elements: (1) the need for access to fair and expeditious complaints-handling mechanisms within FSPs; (2) access to independent via the regulator or alternative dispute resolution structures, such as an ombud; (3) clear and reasonable communication to consumers on the existence of both the internal and independent channels; as well as (4) frequent review by the regulator of internal FSP mechanisms and of complaints submitted, to pick up on trends that need a systematic response elsewhere in the FCP framework.

Key aspects found across international guidelines:

There must be adequate dispute mechanisms for consumers within FSPs:

- FSPs should make complaints-handling mechanisms available that provide consumers with expeditious, fair, transparent, and accessible dispute resolution without unnecessary cost or burden (UNCTAD, 2016; CGAP, 2010; OECD, 2011; CFI, 2019; AFI, 2010; AFI, 2021a)

- Regulation should ensure that FSPs receive, resolve and report complaints, allow consumers to assert their rights to register complaints, and ensure that negative trends are detected and mitigated against (AFI, 2021a).
- Regulators should monitor complaints data and ensure that dispute procedures are followed (CGAP, 2010; OECD, 2011).
- Communication about dispute resolution mechanisms should include the contact details for internal complaints handling mechanisms as well as relevant external dispute mechanisms (World Bank, 2017; Gibson, 2011).

An oversight body must be available as an independent dispute mechanism and source of redress:

- To ensure adequate consumer redress, there must also be recourse to another body, over and above FSPs themselves, that is accessible by all consumers, such as the regulator.
- Dispute resolutions should be accessible and affordable and should filter through to the oversight body (World Bank, 2017).
- “Third party oversight through an independent Ombudsman or another agency improves impartiality and enhances trust in the system” (AFI, 2010).
- Separate recourse bodies may be needed for different types of services, or they may be centrally coordinated (AFI, 2010).
- Third party bodies for consumer redress should have clear responsibilities, operational independence, and adequate resources to fulfil their mandates (OECD, 2011).

For further information, see: [Fundamentals for Financial Ombudsmen](#) (Thomas & Frizon, 2012).

Summary. Consumers should have access to and knowledge of adequate complaints-handling mechanisms both within businesses as well as through independent or alternative dispute resolution structures.

3.6.1 SADC situational analysis

Dispute resolution is a priority. All the Member States consulted regard complaints handling and monitoring as a core part of the FCP regulatory framework. Usually, complaints are handled directly by FSPs, with escalations being handled by the financial regulator. A three-pronged approach was suggested consisting of redress, market conduct requirements and financial education, and it was noted that special consideration should be given to new trends emerging with DFS, for example to allow



for innovative electronic complaint mechanisms, or to pay special attention to complaints arising due to use of digital financial services. Concerns were raised that it may not be clear to consumers who to complain to, which can result in consumers directly turning to regulators for complaints, thereby taxing the capacity of regulatory authorities. Education (Principle #5) can thus help to provide clarity on the recourse channels available and empower individuals as consumers.

Financial ombudsmen on the rise in SADC. There are several countries in the SADC region that have independent dispute resolution mechanisms in the form of financial ombudsman²⁷. Others are considering or developing such structures²⁸. In most cases, there is either a banking or insurance ombudsman or adjudicator and not an ombudsman that focuses on the financial sector in its entirety. South Africa has a council to coordinate between ombudsman and is in the process of reviewing its ombud system with a view to consolidate the various ombudsman. The regulators, policymakers and FSPs interviewed reported challenges with the set-up and operation of ombudsman in practice. Such structures are expensive to establish (INFO Network, 2018). Moreover, due to a lack of consumer awareness and limited capacity, such structures often only serve a small and high-end consumer group. In the rest of the Member States, the regulatory authority handles complaints that are not internally resolved by FSPs²⁹. In such instances, likewise, the extent and effectiveness of redress is shaped by consumer awareness of the channels at their disposal, as well as the complaints handling capacity of the regulatory authority. Regardless of the consumer recourse channel or structure, consumers often lack confidence and skills in lodging formal complaints. Moreover, less educated or rural customers may face substantial barriers to accessing such structures, including the need for written complaints, as well as access to physical outlets for lodging complaints.

27 Angola, Botswana, Eswatini, Mauritius, South Africa, Tanzania and Zimbabwe, of which Botswana, Eswatini and South Africa form part of the International Network of Financial Services Ombudsman Schemes.

28 For example, the Seychelles is in the process of creating a tribunal which will speed up the process of allowing consumers and businesses to get redress or remedies, and as part of their financial inclusion strategy 2018-22 Madagascar aims to establish a mediator (FTC, 2022).

29 DRC, Namibia, Lesotho, Zambia, Malawi, Comoros and Mozambique

3.6.2 Proposed guidelines

International best-practice principle. Consumers should have access to and knowledge of adequate complaints-handling mechanisms both within businesses as well as through independent or alternative dispute resolution structures.

SADC Guidelines: baseline requirements. As a minimum or first step, SADC Member States should:

- **Require financial service providers as part of their licensing conditions to implement a complaints-handling procedure and redress mechanism** that meets the principle of effective consumer redress. At a minimum, require financial services providers to designate a person/ organisational function to receive and respond to consumer complaints, to publicly communicate the contact details for consumers to lodge queries or complaints, and to keep a record of complaints. As part of a proportionate approach, exemptions or tiered requirements can be considered for specific types of FSPs. Incorporate due consideration of the literacy profile and location of low-income and rural target market segments to ensure that the complaints handling systems are accessible also to such segments, for example by considering the scope for verbal/telephonic or SMS complaints lodging, rather than just written complaints.
- **Establish mechanisms so that complaints that are not resolved at the FSP or MFSP level may be escalated to another party**, notably the appropriate regulatory authority. Incorporate due consideration of the literacy profile and location of low-income and rural target market segments to ensure that such consumers are not unduly excluded from recourse channels. This could, for example, be done by considering the scope for verbal/telephonic or SMS complaints lodging, rather than just written complaints, and by doing periodic roadshows in rural areas to raise awareness of consumer recourse rights, options and procedures.
- **Monitor the nature and incidence of complaints and the effectiveness of the complaints handling and dispute resolution mechanisms³⁰.**

30 See Principle #2 Oversight and Monitoring for detailed guidance regarding the indicators and systems for monitoring.

Longer-term objectives for SADC Member States. Over the longer-term, and depending on what is feasible within the domestic context, the following guidelines apply:

- **Where third party redress mechanisms such as an ombudsman do not yet exist, consider the best third-party structure to implement in the local context.** Ensure that any third party/alternative dispute resolution mechanisms/institutions set up are independent, sufficiently resourced and accessible, including to low-income consumers and those in more remote locations.
- **Publish statistics on consumer complaints for public consumption,** including those related to breaches of codes of conduct. This can be done by the regulatory authority or be a requirement placed on an industry association and/or ombudsman.

3.7 Prudential protection

Definition and international best-practice. Prudential protection principles form the cornerstone of financial regulatory frameworks, globally. The various global financial sector standard-setting bodies have developed broadly accepted principles and standards on prudential protection that are well entrenched in developed and developing countries alike. Prudential risk assessments focus on institutional safety-and-soundness and the stability of the financial sector, so monitoring relies on indicators such as capital adequacy, liquidity coverage, asset quality, and profitability (OECD, 2018).

Key aspects found across international guidelines:

Appropriate prudential oversight should be in place to protect consumers and prevent them from being taken advantage of or losing a significant portion of their assets (OECD, 2018):

- Consumers' financial assets should be protected against misuses such as fraud and deception through protection and control mechanisms (OECD, 2011).
- Deceptive and fraudulent practices should be prohibited in regulation (CGAP, 2010).
- Key risks which should be monitored closely include the risk of fraud or misuse, particularly with regards to new risks emerging with digitalization, and risks of FSPs becoming insolvent or needing to wind up their business.

For in depth prudential principles, standards and guidance on risk-based prudential supervision frameworks across types of financial institutions, see the [Base Framework](#) publications of the Basel Committee on Banking Supervision (BCBS), the publications further to [Insurance Core Principle 17, Capital Adequacy](#), by the International Association of Insurance Supervisors, as well as various publications by the International Organisation for Securities Commissions ([IOSCO](#)), the Committee on Payments and Market Infrastructures ([CPMI](#)) and the International Organisation of Pension Supervisors ([IOPS](#)).

Previous recommendations for SADC as outlined in FMT (2016):

- Regulators should provide prudential oversight over financial services, such as insurance, pension funds, investment schemes and payment providers (FMT, 2016).
- FSPs and MFSPs should be required to meet capital adequacy and liquidity requirements, meet governance standards (including a fit and proper test) and have risk management processes in place that are appropriate for the types of products that they provide (FMT, 2016).

Summary. Regulation should entrench the need for consumers' assets to be protected and for FSPs to remain financially sound. Such regulation should be enforced through risk-based prudential supervision.

3.7.1 SADC situational analysis

Prudential protection key to building trust in the financial system. Prudential regulation that aims to regulate and supervise financial institutions to maintain the adequate prudential protection of consumer assets is foundational to the financial sector regulatory frameworks across SADC member states. The aim of these regulations is to protect financial customers against the risk that financial institutions may fail to meet their obligations. This is done, amongst others, through capital and liquidity requirements, requirements around the need to maintain reserve accounts and limitations on equity investments. All SADC member States have enforced regulations explicitly dealing with prudential protection³¹ and the stakeholders interviewed echoed the importance of prudential regulations in building trust in the

31 See the following reference list for some examples of this - (Government of South Africa, 2017), (National Assembly Angola, 2005), (Government of Lesotho, 2012), (Government of Zambia, n.d.), (Bank of Namibia, n.d.), (Parliament of South Africa, 2006), (Government of Eswatini, 2005), (Government of Eswatini, 2010), (Government of Botswana, n.d.)

financial system and highlighted the need for more enforcement of compliance with prudential regulations.

Gradual move towards risk-based capital and risk-based supervision. A recent shift noted through stakeholder engagements was the move towards a risk-based prudential supervision system. Of fourteen countries for which information was available, all were doing some level of risk-based supervision. However, progress has been slow, and the level of implementation varies across the different member states³².

3.7.2 Proposed guidelines

International best-practice principle. Regulation should entrench the need for consumers' assets to be protected and for FSPs to remain financially sound. Such regulation should be enforced through risk-based prudential supervision.

SADC Guidelines: baseline requirements. As a minimum or first step, SADC Member States should implement the following:

- **Require prudential supervision and oversight for all licensed financial institutions.** This includes setting capital adequacy and liquidity requirements, governance standards (including a fit and proper test) and requirements for FSPs to have risk management processes in place that are appropriate for the types of products that they provide.

The importance of enforcement

The prudential protection offered in practice depends on the proper enforcement or oversight of the prudential regulatory requirements set. Regulatory authorities regularly collect industry data on prudential indicators such as solvency or liquidity. As part of the oversight and monitoring function (Principle #2), it is

32 Information compiled across member states, based on desktop review. Notable sources include: (CMC, 2014; NBFIRA, 2019; CBL, 2021; CITI, 2021; BFM, n.d.; FSC, 2016; Deloitte, n.d.; ESAAMLG, 2021; BON, 2021; Central Bank of Seychelles, 2019) (Bank of Tanzania, 2021; Reserve Bank of Zimbabwe, n.d.; Bank of Zambia, 2008)

therefore important to flag where compliance is lacking, or institutions are at risk, and respond accordingly.

1. **Design the prudential regulatory framework and enforcement strategy to promote formalisation.**

Extending the reach of prudential protection

Informal financial service provision is not subject to any prudential protection measures and, hence, create substantial consumer protection risks. In countries or financial product areas where informal financial service provision is widespread, the regulatory and supervision framework should therefore be designed to license as many FSPs as possible.

If informality is pervasive, achieving the formalisation objective may call for a pragmatic approach, such as:

- Initial registration with minimal requirements, followed by gradual phase-in of the full set of prudential requirements.
- Proportionate treatment or exemptions for low-value, low-risk transactions

It also creates a corresponding need for compliance and business development support.

Longer-term objectives for SADC Member States. Over the longer-term, in line with the realities of the domestic context, the following guidelines apply:

- **Consider the development of a proportionate prudential framework in line with risk** that would ensure prudential protection while promoting financial inclusion. This includes the development of tiered license categories whereby lower-risk entities face lower entry barriers.
- **Implement a risk-based capital framework**, drawing on international best-practice.
- **Implement a risk-based supervision framework**, drawing on international frameworks, but tailored to the local market and regulatory capacity realities.

3.8 Privacy and data protection

Definition and international best-practice. The right to data privacy and protection has become an entrenched consumer right, globally, that extends beyond the financial sector. The most well-known implementation thereof is the General Data Protection Regulation (GDPR) adopted in the EU, which has formed the framework around which a number of developing countries have started to model the development of their own data protection frameworks. International guidance holds that personal data must be protected from improper use, management and storage by any data holder. Adequate data privacy frameworks should be grounded in legislation and the relevant regulator must ensure that FSPs and other relevant parties have appropriate controls and protection mechanisms in place (OECD, 2011). Even in the absence of a national data protection framework, there are established guidelines for how financial regulators should ensure data protection and privacy within their jurisdiction, with an emphasis on understanding and responding to the specific risks arising in the financial sector.

Key aspects found across international guidelines:

Consumers' financial and personal information should be protected through appropriate control and protection mechanisms (OECD, 2011).

Financial sector legislation should:

- Provide rules for the use, maintenance and disclosure of personal information (World Bank, 2017).
- Prohibit the misuse of personal information (CGAP, 2010).
- Govern and exercise oversight over credit bureaus (World Bank, 2017).

Financial service providers should:

- Safeguard the confidentiality of their customer data (World Bank, 2017).
- Inform their customers of their data policies and data-sharing practices (World Bank, 2017).

The role of financial sector regulators (Gray, et al., 2018):

- Financial regulatory authorities must understand how data protection is set out in legislation and regulation as well as the relevant social norms around data protection for their jurisdiction, such as views on individual versus group rights.

- On a global scale, there are three legislative approaches: omnibus, sectoral, or no legislation in place. The role of the financial sector regulator differs as follows across each:
 - Under the omnibus model, the data regulator helps protect consumers' information while the relevant financial supervisor oversees how data risks are dealt with by FSPs and assists with addressing gaps in the omnibus framework for their sector.
 - Under the sector legislative model (where numerous singular laws apply to specific industries or sectors) or where no legislation has been put in place, the financial supervisor has to implement the appropriate tools to ensure the protection of consumers' data. To achieve this, supervisors should both directly address negative consumer outcomes as well as address the drivers of the risks. Past their local contexts, supervisors should also consider how consistent local requirements are with the regulation from other, key jurisdictions such as the European Union.

For further information, see:

- AFI Consumer Empowerment and Market Conduct Working Group ([CEMCWG](#)) knowledge products, including the [Guideline Note](#) on Data Privacy for Digital Financial Services (2021).
- The [OECD Privacy Principles](#)³³

The “open” movement. An additional topic that is gaining prominence, globally, is that of *Open Banking* or *Open Finance*. Open finance is defined as the sharing of consumer data between FSPs and/or third-party providers on the basis of consumer consent. It balances the data *protection* topic with that of the need and use cases for data *sharing* within agreed/regulated parameters to support innovation, competition and more tailored customer offerings, including by fintechs. The implementation of an open finance regime requires a sound data protection framework to be in place, as a prerequisite, as well as informed customers. As such, it is not a short-term solution, but rather a longer-term consideration that needs careful deliberation before it is embarked on. The starting point is to consider which policy and market use cases such a framework would serve, and from there to consider how the regime should work to best suit the local context. It has been adopted or is under consideration in a number

33 Collection Limitation Principle; Data Quality Principle; Purpose Specification Principle; Use Limitation Principle; Security Safeguards Principle; Openness Principle Individual Participation Principle; Accountability Principle

of countries³⁴, globally, but in Africa, so far, only Nigeria has published a regulatory framework for open banking (Gray, 2022)³⁵.

Summary. “Consumers’ financial and personal information should be protected through appropriate control and protection mechanisms” (OECD, 2011).

3.8.1 SADC situational analysis

A front of mind topic. Data protection is given significant weight in SADC, with thirteen Member States having implemented national data protection frameworks that span beyond the financial sector³⁶. However, stakeholders highlighted significant gaps in data protection on the ground across SADC Member States and the need for greater coordination both within countries and across the different Member States. Due to the interlinkages between financial inclusion and data protection, it was further highlighted that data protection and financial inclusion need to be discussed in conjunction during regional engagements.

An AU convention addressing data protection. The AU Convention on Cyber Security and Personal Data protection provides a framework to promote data protection, however not all signatories have ratified the convention. This framework is also implemented at a broader government level, such as by the Ministry of ICT, and thus is not specifically tailored for the financial sector – implying a need for coordination.

3.8.2 Proposed guidelines

International best-practice principle. Consumers’ financial and personal information should be protected through appropriate control and protection mechanisms.

³⁴ Including the US, EU, UK, Singapore, Brazil

³⁵ For more on the models and considerations for fit-for-context implementation of open finance in Africa, see https://cenfri.org/wp-content/uploads/Open-Finance-Prerequisites-and-considerations-for-fit-for-context-implementation-in-Africa_April-2022.pdf.

³⁶ Namely Angola, Botswana, DRC, Eswatini, Lesotho, Madagascar, Malawi, Mauritius, South Africa, Seychelles, Tanzania, Zambia and Zimbabwe - based on own scoping and (CCAF, 2021).

SADC Guidelines: baseline requirements. As a minimum or first step, SADC financial regulatory authorities should implement the following regarding data privacy and protection:

- **Where national-level legislation on data privacy and protection exists, issue guidance to interpret the application and implications thereof for financial service providers.** Coordinate across financial sector regulatory authorities in this regard, and coordinate with broader government to input the financial sector perspective. Incorporate measurement of compliance with data privacy and protection requirements into the onsite and offsite monitoring framework.
- **Where national-level data privacy and protection legislation does not exist, issue regulation or guidance under the authority's market conduct mandate** to lay out expectations and principles on data sharing and protection and clarify the accountability in this regard of FSPs and their agents.

Considerations for financial sector regulators

- Follow a consultative process with industry and broader government stakeholders engaging on this topic.
- Coordinate across financial sector regulatory authorities to ensure a consistent set of principles and requirements for application across different types of financial service provision.

1. **Develop specific regulation, where it does not yet exist, to regulate information sharing and storage among participants in credit reporting systems.** There should also be procedures to put in place to give consumers access to their data and to amend incorrect or disputed entries.

Longer-term objectives for SADC Member States. Over the longer-term, and depending on what is feasible within the domestic context, the following guidelines apply:

- **In countries where a data privacy and protection legislative framework is not yet in place, proactively contribute to the broader national government agenda to develop such a framework** to ensure that it reflects the realities of the financial sector in general and financial inclusion in particular.
- **Develop a stance on open finance and the use cases for sharing of customer data among financial service providers and fintechs** on the basis of consumer

consent. Investigate context-appropriate models for implementing such a framework.

3.9 Cybersecurity

Definition and international best-practice. Cybercrime is a major risk for FSPs that is having a significant impact on consumers in various ways, including the safety of their data privacy (as per the Privacy and Data Protection principle covered in Section 3.8) and financial assets (relevant for the Prudential Protection principle covered in Section 3.7). As such, global financial sector regulators and financial standard-setting bodies have undertaken detailed work to unpack the specific risks and controls needed to manage cybersecurity. Notable cybersecurity standards and frameworks include the International Standards Organisation ISO27000 series, the joint Committee on Payments and Market Infrastructures (CPMI) and International Organization of Securities Commissions (IOSCO) guidance for cyber-resilience of financial market infrastructures (BIS, 2018), the G7 Fundamental Elements of Cybersecurity for the Financial Sector and the US National Institute of Standards and Technology (NIST) cyber-framework (NIST, 2018). Across these frameworks, a distinction is made between the imperatives for FSPs and regulators, respectively, in managing cybersecurity.

Key aspects found across international guidelines:

FSPs should have relevant controls in place to evaluate, monitor, test and respond to cyber-security risks:

- FSPs should establish and maintain a cybersecurity strategy and framework tailored to specific cyber risks, which is then used to map and actively manage their IT system architecture comprehensively (BIS, 2018; ECB, 2016).
- FSPs should establish systematic monitoring processes to rapidly detect cyber incidents and periodically evaluate the effectiveness of identified controls (ECB, 2016).
- FSP should define the role and responsibilities of the personnel implementing, managing, and overseeing the cybersecurity strategy (ECB, 2016).
- FSPs should minimise their cyber risk exposure through ensuring that systems are “secure-by-design” and that emphasis is placed on resilience in light of current and emerging threats rather than compliance to a standard (BIS, 2018).

- FSPs should have an incident response plan for material cyber-incidents as well as conduct protection, detection, incident response and recovery testing (BIS, 2018).
 - When responding, FSPs should timeously assess the nature, scope, and impact of a cyber incident; contain the incident; mitigate its impact; notify internal and external stakeholders (such as law enforcement, regulators, third-party service providers, and customers as appropriate); and coordinate joint response activities as needed (ECB, 2016).
 - When resuming operations, FSPs should eliminate harmful remnants of the incident; restore systems and data to normal and confirming normal state; identify and mitigate all vulnerabilities that were exploited; remediate vulnerabilities to prevent similar incidents; and communicate appropriately both internally and externally (ECB, 2016).
- FSPs should engage in the timely sharing of reliable, actionable cybersecurity information with internal and external stakeholders (ECB, 2016).

The relevant governing authority should have adequate resources, appropriate authority, and level of access (ECB, 2016).

- Effective governance should also play a mediation role and foster communication between conflicting objectives (ECB, 2016)
- The authority should cooperate with authorities from multiple jurisdictions as cyber-criminals can use computer systems or networks in other countries (MISA-Zimbabwe, 2021).

Summary. FSPs should have the relevant controls in place to evaluate, monitor, test and respond to cyber-security risks. Regulatory authorities should ensure that they have the scope and relationships with other authorities and jurisdictions to adequately manage and address cyber-risks.

3.9.1 SADC situational analysis

Stakeholder engagements emphasise risks emanating from consumer behaviour. Cybersecurity was noted as a concern across Member States. Particular mention was made of the link to consumer digital literacy, and the fact that consumers are vulnerable to phishing scams and fraud when not adequately educated about responsible use of digital financial services and associated security measures.

Existing regional frameworks. The AU convention on Cyber Security and Personal data protection passed in July 2014 (AU, 2014) aims to harmonise the laws of African States on electronic commerce, data protection, cyber security promotion and



cybercrime control. The convention imposes obligations on Member States to establish national legal, policy and institutional governance mechanisms on cyber security. At the regional level, the Committee of Central Bank Governors in SADC (CCBG) in 2020 developed a SADC Cybersecurity Framework, based on the FFIEC³⁷ Cyber Security Maturity Assessment Tool (2017), to be used by central banks as a guide³⁸. It follows on a 2017 Concept Paper on Cyber Security for SADC prepared by the ICT Steering Committee. Furthermore, the SADC model law on Computer Crime and Cybercrime (ITU, 2013) allows for the search of all devices connected to a network of devices, the interception of (device) content data and the use of keystroke logging software and hardware as forensic tools.

National cybersecurity regulatory measures in place. Some countries, including Mauritius, Botswana and Zambia had laws in place prior to the SADC model law, while others have subsequently introduced cybersecurity and cybercrime laws, drawing on the model law. This latter group includes Tanzania, Mozambique, Malawi and Eswatini. South Africa passed a Cybercrimes Act in June 2021, Zambia passed its Cyber Security and Cyber Crime Act in 2021, and on 3 December 2021, Zimbabwe enacted a Data Protection Act that also references cybersecurity (Government of South Africa, 2021; Government of Zambia, 2021; Kubanata, 2021). The Reserve Bank of Zimbabwe has also released the “National Payment Systems Risk Based Guideline on Cybersecurity” (Reserve Bank of Zimbabwe, 2021). Other countries are in the process with draft legislation, including Lesotho’s Computer Crime and Cybersecurity Bill of 2021³⁹. Member state consultations confirm that various countries are developing provisions to cater for cybersecurity, often housed in broader frameworks under other ministries.

³⁷ Based on the framework by the USA’s Federal Financial Institutions Examination Council 2017 Cybersecurity Assessment Tool

³⁸ For more on the work at SADC level on cybersecurity, see https://www.sadc.int/files/40thSummitPublication/40_SADC_Summit_Brochure_2020.html#p=64

³⁹ According to a stock-take and analysis of cybersecurity frameworks in SADC by Zimbabwean chapter of the Media Institute of Southern Africa (MISA, 2021), there is some risk that the provisions included in these frameworks may infringe on privacy and data protection, in that it creates the legal scope for surveillance of digital communications. For example, Article 25 of the Model Law, which relates to search and seizure of electronic equipment suspected to have been used to commit an offence or suspected to contain information proving the commission of an offence. Thus, there is a need for close coordination across a country’s privacy and data protection and cybersecurity frameworks.

Evidence of capacity building to manage cybersecurity risks across the region.

The SADC Regional Indicative Strategic Development Plan (RISDP) 2020–2030 notes that Computer Incident Response Teams (CIRTs) have been established in four countries (Mauritius, South Africa, Tanzania, and Zambia), while eight Member States including Angola, Botswana, DRC, Eswatini, Lesotho, Mozambique, Namibia, and Zimbabwe, completed the International Telecommunication Union (ITU) CIRT assessment and enacted legislation to operationalise their national Computer Emergency Response Teams (CERTs) (SADC, 2020a).

3.9.2 Proposed guidelines

International best-practice principle. Financial service providers (FSPs) should have the relevant controls in place to evaluate, monitor, test and respond to cyber-security risks. Regulatory authorities should ensure that they have the scope and relationships with other authorities and jurisdictions to adequately manage and address cyber-risks.

SADC Guidelines: baseline requirements. As a minimum or first step, SADC Member States should implement the following:

1. Develop and implement cybersecurity laws and regulations in all Member States:

- Address cybersecurity and data protection as separate topics to ensure that each attracts the specialized response needed.
- Align the approach and requirements with the SADC model law and African Union Convention on Cyber Security and Personal Data Protection but adapted to the specific context and inherent risks prevalent in that member state.

2. Issue specific guidance for application of controls in the financial sector:

- **Hold FSPs accountable:** require FSPs to demonstrate implementation of adequate cybersecurity measures.
- **Encourage industry associations to develop internal codes and guidance** for members on cybersecurity best-practices⁴⁰ and for exchange of learning in this regard.

40 Drawing on the work done by global multinationals, such as Microsoft, through its Digital Defense report (Microsoft , 2021).

Longer-term objectives for SADC Member States. Over the longer-term, the following guidelines apply:

- **Set up an independent regulatory authority in each Member State** bestowed with the necessary resources, authority, and access to effectively monitor and act on cyber security risks.
- **Develop mechanisms at the SADC level** to help manage cross-border financial cybercrime risks through systematic exchange of information, for example by setting up a facility for aggregating and analysing information collected and disclosed on financial sector cybersecurity breaches and measures across member states.

Box 2: The interconnectedness of data protection, cybersecurity and other FCP elements

The validation workshop discussions highlighted the interconnectedness of cybersecurity with data protection, as well as with other topics in the FCP framework. Data protection and cybersecurity need to be incorporated in legal frameworks (Principle #1), oversight structures (Principles #2) and market conduct frameworks and systems (Principle #3 Responsible conduct). These topics also link to that of digital financial literacy (Principle #5 financial education), as consumers' behaviour can itself be a source of risk, plus to redress (Principle #6) as cybersecurity and data privacy breaches are key components on which consumer redress is needed in the digital age. Ultimately, the guidelines around cybersecurity and data protection need to translate into safety and security as customer outcome (Principle #11 Fair Consumer Outcomes). This interrelatedness between the FCP framework elements reconfirms the need for coordination as highlighted in Principle #2 Oversight and Monitoring, to ensure that financial regulatory authorities input the financial sector perspective into broader government frameworks as relevant.

3.10 Competitive financial sector

Definition and international best-practice. Consumers are negatively impacted when markets are concentrated and when FSPs engage in anti-competitive practices, as this may restrict user choice and inflate prices. Thus, in the financial sector fair competition should be promoted for consumers to benefit from lower prices, improved services and greater choice (UNCTAD, n.d.; OECD, 2011).

Key aspects found across international guidelines:

Consumer welfare should be a key consideration for competition authorities (World Bank, 2017):

- Fair and effective competition should be promoted in order to boost efficiency and provide consumers with the greatest range of choice among products and services at the lowest cost (AFI, 2014; UNCTAD, 2016; OECD, 2011).
- Competition regulators should make recommendations that optimize competition and consumer choice (World Bank, 2017).
- Regulators should consult with each other before making competition-related decisions (World Bank, 2017).
- Consumer protection policies should not be used to protect domestic businesses from competition or be applied unfairly (UNCTAD, 2016).

Previous recommendations formulated for SADC (FMT, 2016):

- Competition in markets should be ensured through regulatory entry requirements that facilitate entry of new and alternative service providers, particularly in sectors with high levels of market concentration
- Regulatory mechanisms such as deposit-insurance and the tiering of deposit requirements could be considered to promote greater competition between deposit-taking institutions
- Prohibitions against anti-competitive practices such as the abuse of market dominance and collusion should be in place, either in specific competition legislation or combined with consumer protection legislation
- Particular attention should be given to the levels of fees by competition regulators and they should prepare and publish periodic reports on competition in the financial sector and the impact on fees

Summary. A competition regulatory framework should be in place in order to ensure a competitive and inclusive financial sector.

3.10.1 SADC situational analysis

Established competition frameworks. A high level of bank concentration has been shown to constrain financial sector development in the SADC region (Bara, et al., 2017). The majority of SADC countries have competition laws in place that aim to limit abuse of dominance by promoting and maintaining competition within the respective

country⁴¹. A number of member states are also in the process of updating or consolidating their competition frameworks to make the link to consumer protection more explicit. For example, Seychelles finalized the consolidated Fair Trading Draft Bill which harmonises the Fair-Trading Act, Consumer Protection Act and Fair Competition Act. Tanzania is in the process of amending its Fair Competition Act and it will be renamed the Fair Competition and Consumer Act, aiming to incorporate consumer complaints and lay out sanctions for violations of the law. Zambia is also in the process of implementing a Competition and Consumer Protection Amendment Bill which will give the Competition and Consumer Protection Tribunal power to investigate consumer complaints (Bowmans, 2016).

Protection and risk-implications of opening the market to non-traditional providers. During the validation workshop, the matter of the trade-offs between competition and protection in the context of the entry of new, non-traditional service providers such as fintechs was noted. How are other aspects of the FCP framework, such as cybersecurity, affected if market participation is opened up? Opening the playing field to promote competition means that entry requirements should be set in such a way that potential consumer protection risks are balanced as part of a holistic approach to FCP. A proportionate and risk-based approach allows scope to set “lower” entry requirements to facilitate market entry and competition, but with still-sufficient requirements to meet FCP objectives.

3.10.2 Proposed guidelines

International best-practice principle. A competition regulatory framework should be in place to ensure a competitive and inclusive financial sector.

SADC Guidelines: baseline. As a minimum or first step, SADC Member States should implement the following:

1. **Ensure that a competition regulatory framework is in place**, with the corresponding institutional structures.
 - Prohibitions against anti-competitive practices such as the abuse of market dominance and collusion should be in place, either in specific competition legislation or combined with consumer protection legislation.

41 The countries for which this is true are Angola, Botswana, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Eswatini, Tanzania, Uganda, Zambia and Zimbabwe (based on desktop scoping).



2. **Within financial sector regulation, set regulatory entry requirements, supervisory process requirements and market engagement strategies that promote competition** by facilitating entry of new and alternative service providers, including, non-traditional FSPs and fintechs. This may be most important in low inclusion environments, and in sectors with high levels of market concentration, for example in the banking sector.

Longer-term objectives for SADC Member States. Over the longer-term, and depending on the realities of the domestic context:

3. **Conduct an inquiry into financial sector fee levels and structures** and prepare and publish periodic reports on competition in the financial sector and the impact on fees.

3.11 Fair consumer outcomes

Definition and international best-practice. Fair treatment of customers has both an input and an output component: the input is the various aspects of fair conduct that is expected of market players and for which they are held accountable, while the output is seen in fair consumer outcomes as result of fair conduct. Fair consumer outcomes can be regarded as the ultimate measure of success or impact of all FCP principles. In this way, fair consumer outcomes can be regarded as an overarching or umbrella principle that underlies all the other principles, as the whole body of FCP is intended, to ultimately, ensure that positive consumer outcomes arise

Key aspects found across international guidelines on fair treatment as “conduct input”:

Consumers should be treated equitably, honestly and fairly at all stages of their relationship with financial service providers (FSPs) (OECD, 2011).

What is wanted in the market?

Fair treatment when engaging with customers:

- FSPs must not create barriers of access to financial services and all customers must be treated with equal respect (AFI, 2010).
- FSPs should not exert undue pressure or influence on customers (AFI, 2010).

- When relevant, FSPs should assess the related financial capabilities, situation and needs of their customers before agreeing to provide them with a product, advice or service (OECD, 2011).
- Products should be appropriate for customers' needs, use simplified and standardised policy wording and should not take advantage of low financial literacy levels (Gibson, 2011).
- Special attention should be dedicated to the needs of vulnerable groups (OECD, 2011).

How this is achieved:

- Shift to a principle- or outcomes-based approach (FCA, 2021; CGAP, 2020).

The understanding of how fair treatment of customers is achieved has adapted and evolved in recent years. Apart from focussing on the conduct inputs of FSPs (in other words, how FSPs should act, which is covered under Responsible conduct Principle #3), there is a growing emphasis on considering the outcomes of FSPs' consumer protection measures and whether actions taken by FSPs have led to consumers being protected. There are two main outcome frameworks found globally, as outlined in the box below:

- The TCF framework was pioneered in 2006 in the UK by the Financial Services Authority⁴² and has since been adopted by several countries, globally⁴³. It comprises a set of six fair customer treatment outcomes. While the TCF framework has an outcome framing, it still has a conduct orientation.
- The CGAP consumer outcomes framework was published in 2020 and further develops the concept of consumer outcomes and how this can be measured. This framework expresses fair customer outcomes from the consumer point of view, as an ultimate outcome that should be achieved across all a financial institution's actions, rather than directly related to specific conduct topics.

42 Later adopted by the Financial Conduct Authority under the move to a twin peaks regulatory architecture

43 Authorities that have adopted TCF include the Australian Competition and Consumer Commission, the Financial Consumer Agency of Canada, the Reserve Bank of India, Bank Negara Malaysia, the Financial Markets Authority in New Zealand, the Monetary Authority of Singapore and the Financial Sector Conduct Authority in South Africa (World Bank, 2017; Fafoi, 2019; Izaguirre, 2020).

Overview of international customer outcome frameworks:

Treating Customers Fairly:

- **Outcome 1:** Consumers can be confident that they are dealing with firms where the fair treatment of customers is central to the corporate culture.
- **Outcome 2:** Products and services are designed to meet the needs of identified consumer groups and are targeted accordingly.
- **Outcome 3:** Consumers are provided with clear information and are kept appropriately informed before, during and after the point of sale.
- **Outcome 4:** Advice received is suitable and takes account of their circumstances.
- **Outcome 5:** Consumers are provided with products that perform as firms have led them to expect, and the associated service is both of an acceptable standard and as they have been led to expect.
- **Outcome 6:** Consumers do not face unreasonable post-sale barriers imposed by firms to change product, switch provider, submit a claim or make a complaint.

CGAP Customer Outcomes Framework:

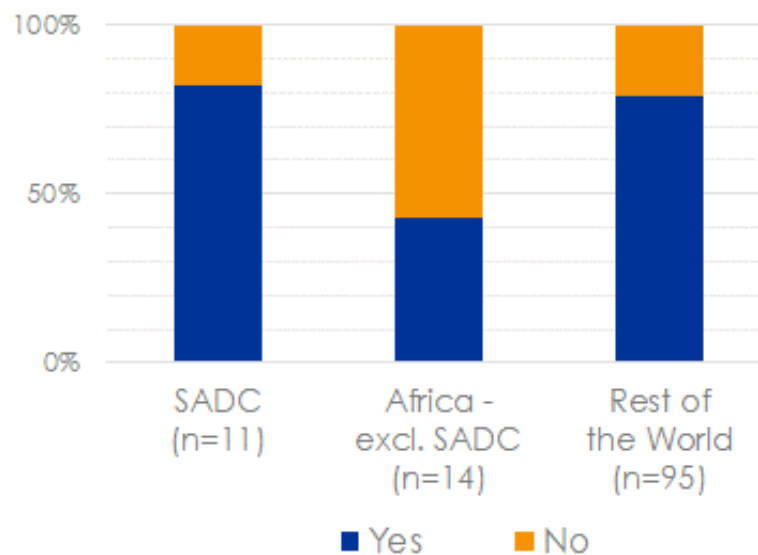
- **Suitability:** Has access to good quality, affordable and needs-appropriate services
- **Choice:** Able to make an informed choice among a range of products, services, and providers.
- **Safety and Security:** Money and information are kept safe, privacy respected, and control is given over my data.
- **Fairness and Respect:** Treated with respect throughout interactions, even when the situation changes, and due regard is given to customer interests.
- **Voice:** Can communicate with the provider through a channel of the customer's choice and get problems resolved quickly at minimal cost.
- **Meets purpose:** Using the financial services means that the customer is in a better position to increase control over their financial life, to manage a shock, or to attain other goals.

Summary. Consumers should be treated equitably, honestly and fairly at all stages of their relationship with FSPs, to lead to fair outcomes from the consumer's perspective.

3.11.1 SADC situational analysis

Legal entrenchment of prohibition of unfair practices. The graph in Figure 8 below depicts whether laws and regulations protect the consumer and restrict or prohibit the use of any term or condition in consumer agreements that is unfair, excessively unbalanced or abusive. It indicates that SADC is significantly ahead of the rest of Africa, and slightly ahead of the rest of the world, in this regard.

Figure 8: Do laws and regulations prohibit or restrict the use, in consumer agreements, of any term or condition that is unfair, excessively unbalanced or abusive?



Source: Compiled using (World Bank, 2017)

Nascent framework, but increasingly recognized as important. Despite the fact that most SADC countries prohibit unfair practices, only a few countries within the SADC region have formally adopted a treating customers fairly (TCF) outcomes principles framework⁴⁴. However, in the consultations most of the member states recognized the need to move to a principles-based framework and indicated that they are considering or actively moving toward its implementation⁴⁵. Regional financial

44 South Africa (National Treasury, 2014), Zimbabwe (IPEC, 2021) and Malawi (Malawi Government, 2018). In other instances, other principles frameworks have been adopted as relevant. For example, Eswatini based the development of its Consumer Credit Act 7 of 2016 on the [Smart Campaign](#) principles.

45 Including Botswana, Mauritius, Namibia, Seychelles, Zambia and Zimbabwe (based on stakeholder consultations).

service providers consulted likewise emphasised the need for a principles- or outcomes-based framework around which practices across member states can harmonise. Such a move would already be in line with the tendency to move towards TCF-type principles as part of the head office policy of many regional financial institutions.

Gradual progression. Across the literature and stakeholder consultations, it is recognised that the move towards a principles and outcomes-driven approach to regulation and market practices is a gradual process. Corporate culture needs to change to align with the principles and supervision and monitoring practices orientated to keep financial institutions accountable for outcomes, rather than tick-box compliance at an input level. Hence, the guidelines as set out below follow a step-wise progression. Each member state is advised to tailor the exact approach and timelines for implementation to its own market and supervisory context.

3.11.2 Proposed guidelines⁴⁶

International best-practice principle. Consumers should be treated equitably, honestly and fairly at all stages of their relationship with FSPs, to lead to fair outcomes from the consumer's perspective.

SADC Guidelines: baseline. As a minimum or first step:

1. **Entrench the need for fair treatment of customers in a principles-based fair customer outcomes framework** that follows a step-wise progression towards greater customer centricity.

What could a step-wise progression towards the implementation of a customer outcomes framework look like?

- *Start by orientating the mandate of the regulatory authority to customer outcomes.* This could take the form of an inclusion of this mandate in regulation, or even just a public statement by the policymaker to this effect,

46 The formulation of these guidelines for SADC draws strongly on the consultations with CGAP as well as the South African FSCA, based on its TCF journey over the past decade, to which nuance was added based on the insights and context arising from the consultations with the other member states.

for example stating that the “regulator will build a framework that supports good customer outcomes”.

- *Start an engagement process on consumer outcomes.* Define a customer outcomes vision for the market, that is widely communicated to staff of the regulatory authority to build an internal mindset within the regulatory authority on customer outcomes and entrench that with the market to create common language and sow the seeds for changes in corporate culture.
- *Initiate a regulatory initiative on customer outcomes.* Launch the fact that government is looking to develop outcomes-focused framework as a regulatory project and engage industry to create dialogue and further orientate corporate culture towards customer outcomes. This would form a pre-step to the development of an actual regulatory framework, noting that the groundwork in terms of engaging industry and establishing the appropriate framework and approach in the specific country context will take time⁴⁷.
- *Adopt context-relevant principles.* As the culmination of the above, formally adopt a set of principles on fair customer outcomes.
- *Launch a consumer awareness campaign* to gradually educate consumers that they the right to expect a certain standard of treatment, based on the principles.

2. **Hold financial institutions accountable to the principles.** Start with simple steps, such as issuing a directive (or using moral suasion) to require financial institutions to (a) dedicate a person at managerial level to market conduct and consumer outcomes, (b) adopt the customer outcome principles as corporate principles and (c) develop policies and procedures for how to embed the principles in corporate culture, with monitoring internal to the financial service provider. Then gradually consider how to incorporate this accountability into the risk-based supervision framework and how to monitor compliance via onsite and offsite inspections.
3. **Build in a proactive plan for dialogue and consultation.** Throughout the implementation journey, regard fair consumer outcomes as a partnership with the market. Also build in mechanisms for incorporating the consumer voice⁴⁸.

47 As part of this process, start to more proactively track the consumer perspective on FCP and consumer outcomes, as elaborated in Principle #2 Oversight and Monitoring.

48 As elaborated in Principle #2 Oversight and Monitoring.



4. **Initiate capacity building on fair consumer outcomes framework development and implementation.** As a bridge from the immediate to longer-term priorities, leverage the work of development partners in the region to support individual member states in their journey towards the implementation of a fair customer outcomes framework.

Longer-term objectives for SADC Member States. Over the longer-term, and depending on what is feasible within the domestic context, the following guidelines apply:

- **Consider institutional structure:** In line with Principle #2 Oversight and monitoring, consider how to structure divisions within individual regulatory authorities, or reconsider the structure or mandate across financial regulatory authorities, to generate effective consumer outcomes.
- **Establish a coordination mechanism on outcomes-driven FCP** between financial regulatory authorities as well as, where applicable, with broader consumer protection or data protection authorities. Such coordination is ideally facilitated by the Ministry of Finance as financial sector policymaker.
- **Consider what regulatory harmonisation or consolidation is needed** to make the institutional structure and implementation of the outcomes principles effective.
- **Move towards activity-based, principles-based legislation**, with conduct standards or guidelines incorporated in more flexible subordinate regulation, to give effect to a consolidated framework on market conduct and FCP within individual regulatory frameworks, as well as harmonisation across regulatory authorities around the central principles.

4 Implementation Considerations

This section concludes on cross-cutting considerations for Member States and the SADC region in moving towards the implementation of the guidelines as set out in this report, drawing on the insights from the stakeholder consultations as well as learning regarding FCP harmonisation from other regions.

Context will shape country-level implementation. The intention is for Member States to adopt and subscribe to the principles and guidelines set out in this document and work to implement it *within their individual country context and given their existing regulatory and market structures and level of capacity*. As such, the guidelines are intended as a guide, rather than a checklist of elements to be replicated in all jurisdictions.

Anticipating potential unintended consequences. As part of fit-for-context implementation, it is important to not only consider the protection imperative, but also the inclusion context and imperative. In low-inclusion environments, the implementation of an onerous FCP framework that is not proportionate to the risks posed, will lead to high compliance costs that could undermine the business case for including and effectively serving low-income, less profitable market segments, or could serve as an inhibitive entry barrier for innovative new players. In this way, consumer protection itself can create a risk of excluding the very market that it intends to protect, if not implemented with due consideration of compliance cost and likely impacts on market incentives.

The need for champions, perseverance, and capacity building. Principle # 2 Oversight and Monitoring emphasises the importance of mandate in shaping the FCP development and implementation journey. Experience across member states has shown the importance alongside mandate, and even preceding mandate, of one or more champions within a regulatory authority or at the policymaker level that have the energy and commitment to drive the development and effective implementation of an FCP framework. Even with a strong upfront champion, the reality across the member states is that the journey towards the development, harmonisation, implementation and evolution towards customer outcomes of the FCP framework can span several years, if not decades. Thus, there is a need for patience and perseverance, with clear milestones along the way. There is also a need for capacity building of a broader staff cadre to ensure that the momentum is not lost, should a particular champion leave – that is, for the champion role to be “institutionalised” in an institution, department or function, rather than just in a particular individual.

Box 3. Implementation responsibilities: The need for a collaborative approach

Proactive market engagement. As noted in Section 1.3, the proposed guidelines are framed for Member State action, thus the primary implementation responsibility lies with Member State policymakers and financial regulatory authorities. It is however clear that Member State policymakers and regulatory authorities, by themselves, cannot guarantee fair consumer outcomes: they can implement well-designed frameworks and measures, supervise the implementation thereof and monitor the outcomes. However, for the outcomes to realise, market participants, as implementers of the framework, need to come to the table and evolve their practices, policies and underlying corporate culture to centre on consumer outcomes – on the premise that doing so is in the ultimate best interest of the service provider as well, and not just a tick-box compliance exercise.

Thus, proactive engagement with the market is important to the success of all the principles, but especially so for the framework principle of fair consumer outcomes, as a paradigm change in that regard will filter through to all the other principles.

Joint industry representation. For some principles, such as Principle #5 Financial Education and Principles #3 Responsible Conduct and #11 Fair consumer outcomes, it will be important to engage and consult with financial service providers not only in their individual capacity, but through joint forums such as sector-specific industry associations, as the implementation of the framework will benefit from the development of industry-wide strategies or codes of conduct.

Broader regulatory coordination. For some of the proposed principles, the success will also depend on the cooperation and collaboration with other regulatory authorities. Notably:

- For Principle # 8 Privacy and Data Protection, collaboration with the ministry of telecommunications or ICT (or another authority, depending on the designation of the data regulator in the Member State), will be key.
- The same holes for Principle # 9 Cybersecurity. It is important, from the start, to identify the relevant broader cybersecurity authorities in each Member State, and to proactively coordinate with them in devising the framework for the financial sector, so as ensure alignment.
- For Principle #10 Competitive financial sector, coordination will be with the competition authority or department of commerce or economic development as holder of primary jurisdiction over competition matters in the economy.

Role for the development community. Throughout the journey to design, implement and evolve customer-centric FCP frameworks, there is a key role for bilateral and multilateral development organisations to provide support and technical assistance at a national and regional level. This is a role already fulfilled by the World Bank in Southern Africa and that can be further expanded and built upon. Support needs include the development of the relevant regulatory instruments to support the implementation of the various principles, as well as to support the central bank, non-bank financial regulator and/or ministries of finance through the design, implementation and change management process.

Towards regional harmonisation. Though implementation of the guidelines will be context-specific and, hence, differ across Member States, the guiding framework nevertheless forms the basis for harmonisation of FCP approaches and principles across the region. This will mean that financial institutions will face similar principles across Member States, thereby facilitating regional financial integration.

Lessons from FCP harmonisation in other regions. To inform the regional harmonisation journey, it is useful to consider examples of how regions elsewhere in the world have approached FCP harmonisation. *Appendix E - International regional harmonisation on FCP case studies* contains case studies on relevant examples of FCP harmonisation from Asia and Latin America⁴⁹. Though not much is documented on the process learnings in deriving and implementing a regional FCP framework, the case studies suggest three elements that are key in developing and implementing context-relevant, yet harmonised frameworks across countries:

1. **Evidence-based recommendations.** In each instance, a working or study group was formed to consult member states on their frameworks, approaches and challenges, on the basis of which the recommendations were derived. For SADC, this report and the consultation process on which it is based, serve the same purpose.
2. **Coordinated local implementation.** As highlighted throughout this report, coordination among local authorities to ensure a concerted FCP effort across relevant regulatory authorities and between government and industry is key. The international examples confirm the importance of a coordinated approach to the implementation of a holistic FCP framework in each country.

49 No document examples exist of FCP harmonization elsewhere in Africa.



- 3. Ongoing peer exchange to track implementation progress, approaches and challenges across countries.** The role of the working groups in the international examples extend beyond just the establishment of guidelines or recommendations. There is a need for on-going peer exchange and learning also during the implementation phase, as well as for feedback loops to inform future strategies.

Implications for SADC. The above learnings suggest that, apart from the ongoing Member State-specific implementation journeys that the guidelines in this document will inform, there is an imperative for SADC itself to continue its work and coordination on FCP for learning and harmonisation across Member States. The recently established Consumer Protection and Financial Education Task Team under the Financial Inclusion Sub-committee is a good starting point, and these guidelines provide the framework to inform the roadmap agenda for the task team. The creation of such a regional structure as a forum for peer exchange on FCP progress, challenges and learning, will help to activate and empower the national-level champions referred to above.

However, given the broad-ranging nature of the FCP topic and the fundamental role of FCP in financial regulation, it may be valuable to elevate FCP as a standalone topic within the SADC committee structures, rather than embedded as a sub-topic within the Financial Inclusion Sub-committee. This could take the form of a dedicated market conduct/FCP sub-committee across the CCBG and CISNA, to allow for the coordination on the topic which is needed between central banks and non-bank financial institution regulators at country level, to also manifest at the regional level. Such a sub-committee would then also proactively engage with the SADC Banking Association to build public-private dialogue on key market conduct elements.

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Appendices

Appendix A - SADC strategies and protocols addressing financial consumer protection

Title	Overview	Relevance for financial consumer protection
SADC Vision 2050.	The overarching development plan with the objective of a peaceful, inclusive, competitive, middle- to high-income industrialised region, where all citizens enjoy sustainable economic well-being, justice and freedom (SADC, 2020b).	The Vision is based on the foundation of good governance which includes the security and protection of consumers and consumer rights. Under Pillar 1 "Industrial Development and Market Integration", SADC aims to achieve "deepened financial market integration, monetary cooperation, and investment". The Vision also aims to uplift marginalised groups through empowering and promoting the participation of women and the youth. The need for financial consumer protection speaks directly to this vision.
SADC Regional Indicative Strategic Development Plan (RISDP) 2020-2030	A 10-year comprehensive development and implementation framework that serves to guide the integration of SADC towards SADC Vision 2050 (SADC, 2020a).	Under Pillar 1 "Industrial Development and Market Integration", SADC aims to achieve deepened financial integration, broadened financial inclusion, and increased monetary cooperation. Financial consumer protection supports the objective of broadened financial inclusion.
SADC Finance and Investment Protocol (FIP) of 2006, amended 2016	A legally binding protocol aimed at achieving increased cooperation, coordination and management of macroeconomic, monetary and fiscal policies (SADC, 2016a).	The Investment Protocol requires Member States to implement legislation that creates a favourable environment for investment. This requires coordination amongst central banks on several financial sector topics. Financial consumer protection is indirectly relevant to the FIP in that a healthy and integrated finance and investment sector would contribute to consumer protection.
SADC Industrialisation Strategy and Roadmap (2015-2063)	A long-term economic and transformation scheme envisioned for deepened regional integration. The strategy aims to raise living standards, intensify structural change and enhance the comparative and competitive advantage of the economies of the region (SADC, 2015).	The strategy aims to achieve technological and economic transformation within the SADC region through industrialisation, financial market strengthening and regional integration. The strategy document emphasises the need to strengthen the existing financial and monetary reforms with an enhanced focus on finance for industrial development. Financial consumer protection is an important element of building a strong financial sector.

Title	Overview	Relevance for financial consumer protection
SADC Financial Inclusion Strategy (2016-2021)	Created to support SADC member states in developing and implementing their own national financial inclusion strategies (SADC, 2016b).	Consumer protection together with financial education are foundational blocks informing the Financial Inclusion Strategy. Emphasis is placed on the need for consumer protection to ensure cross-border financial transactions. <i>Consumer protection is also noted in the revision of the Financial Inclusion strategy currently underway.</i>
SADC Mobile Money Guidelines (2016)	Seek to provide principles to inform mobile money initiatives in SADC Member States (SADC, 2016).	Guidelines are provided for Mobile Money Service schemes including a set of guidelines focused around the protection of customer funds and another set on consumer protection and education that will be reference for this assignment.
Declaration on Regional Co-operation in Competition and Consumer Policies	Expands on SADC's position toward economic competition throughout the region. Through the declaration, Member States agree to converge with the ultimate aim of regional policy harmonisation (SADC, 2009) .	The declaration sets out a cooperation framework on competition policy for the SADC region. It requires Member States to implement measures that foster competition and prohibit unfair business practices. A competitive and fair financial sector is core to financial consumer protection outcomes.

Appendix B – Stakeholder consultation list

Meeting #	Member state/entities		Date
1	SADC Secretariat	FIC finance team	4-Nov-21
2	SADC Secretariat	FIC Director	4-Nov-21
3	Sanlam Emerging Markets	Compliance and management team	5-Nov-21
4	SADC CCBG	Payment system and ICT sub-committees	8-Nov-21
5	Malawi - SADC FI Sub-committee	Reserve Bank of Malawi	8-Nov-21
6	Lesotho - SADC FI Sub-committee, CP task team	Ministry of Finance	10-Nov-21
7	Madagascar - SADC FI Sub-committee	Ministry of Economy and Finance	11-Nov-21
8	Chair (Mozambique) and deputy chair (Zambia)	SADC FI sub-committee	12-Nov-21
9	Mozambique - SADC FI Sub-committee, CP Task Team	Banco de Moçambique, Instituto de Supervisão de Seguros de Moçambique	12-Nov-21
10	Tanzania - SADC FI Sub-committee, CP task team	Bank of Tanzania (BOT), Tanzania Insurance Regulatory Authority	15-Nov-21
11	Seychelles - SADC FI Sub-committee	Ministry of Finance, Central Bank of Seychelles	15-Nov-21
12	Eswatini - SADC FI Sub-committee, CP task team	Ministry of Finance and the Central Bank of Eswatini	17-Nov-21
13	CGAP	Regulation and consumer outcomes team	17-Nov-21
14	SADC CISNA	Chair and Sub-committee chairs	18-Nov-21
15	Zimbabwe - SADC FI sub-co, CP task team	Reserve Bank of Zimbabwe, Insurance and Pensions Commission (IPEC)	18-Nov-21
16	Namibia - SADC FI sub-co, CP task team	Namibia Financial Institutions Supervisory Authority (NAMFISA)	18-Nov-21



Meeting #	Member state/entities		Date
17	South Africa - SADC FI Sub-committee, CP task team	SA National Treasury	19-Nov-21
18	Tanzania - SADC FI Sub-committee	Ministry of Finance	19-Nov-21
19	CoSSE ⁵⁰	Secretariat and chair	19-Nov-21
20	South Africa - Conduct Regulator	Financial Sector Conduct Authority	22-Nov
21	SADC Banking Association	Head of Secretariat	23-Nov-21
22	Stanbic	Zimbabwe office	24-Nov-21
23	Angola - SADC FI Sub-committee, CP task Team	Banco Nacional de Angola	30-Nov-21
24	Zimbabwe - SADC FI Sub-co	Reserve Bank of Zimbabwe, Insurance and Pensions Commission	30-Nov-21
25	Standard Chartered	Zimbabwe office	6-Dec-21
26	Zambia - SADC FI Sub-committee	Bank of Zambia	7-Dec-21
27	Mauritius - SADC FI Sub-committee, CP Task Team	FSC Mauritius	14-Dec-21
28	World Bank	Southern Africa work programme lead	27-Jan-22

50 Represented in meeting by Harmonisation STE

Appendix C – FinScope cross-country analysis⁵¹

Figure 9 below outlines the percentage of adults who indicated that they trust banks across the latest available FinScope country datasets. It suggests that most adults in SADC trust banks (financial institutions) to manage their money:

Figure 9: Percentage of adults who trust banks as proxy for being treated fairly

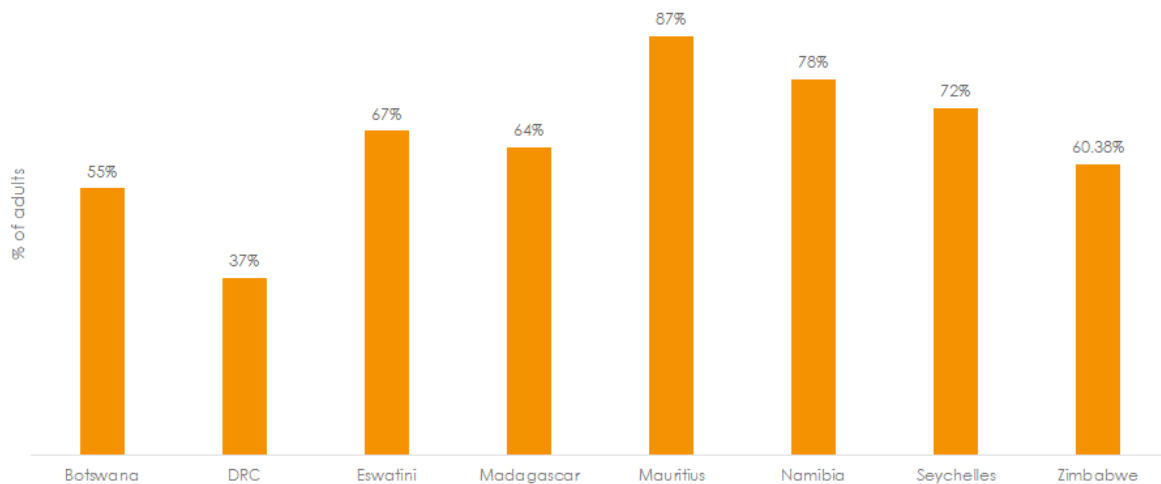


Figure 10 below indicates the percentage of adults across available FinScope surveys that indicate that they do not have a bank account because they either did not know how to open one, did not understand the bank’s language, did not know where to open, or did not understand the benefits of having a bank account:

51 All the graphs in this appendix draw on the latest available FinScope datasets, namely: FinScope Botswana, 2020; FinScope Eswatini, 2018; FinScope Lesotho, 2020; FinScope Madagascar, 2015; FinScope Malawi, 2013; FinScope Mauritius, 2014; FinScope Mozambique, 2019; FinScope Namibia, 2017; FinScope Seychelles, 2016; FinScope Tanzania, 2017; FinScope Zimbabwe, 2014

Figure 10: Percentage of adults without a bank account who state they don't have a bank account due to not knowing where or how to open as proxy for access to information

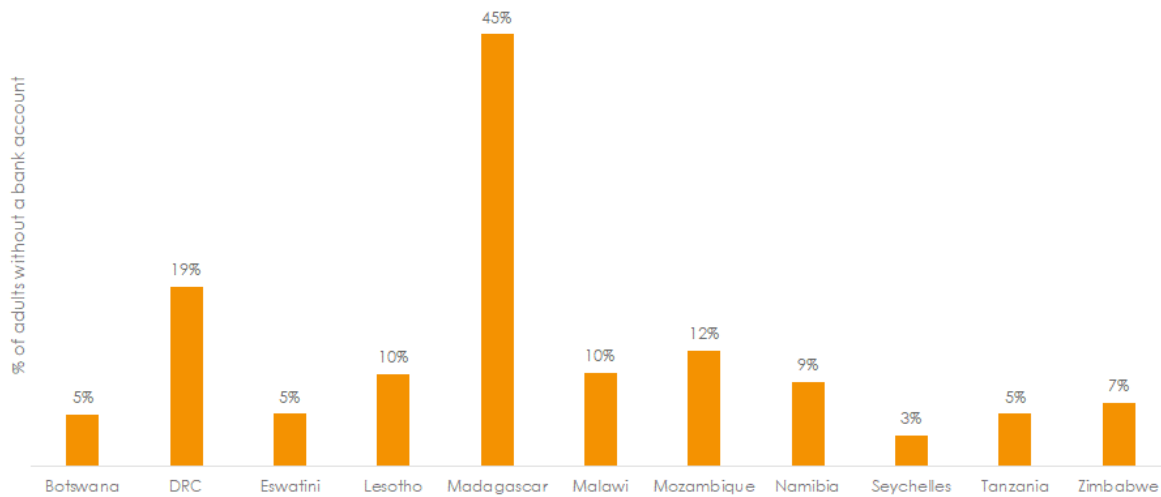
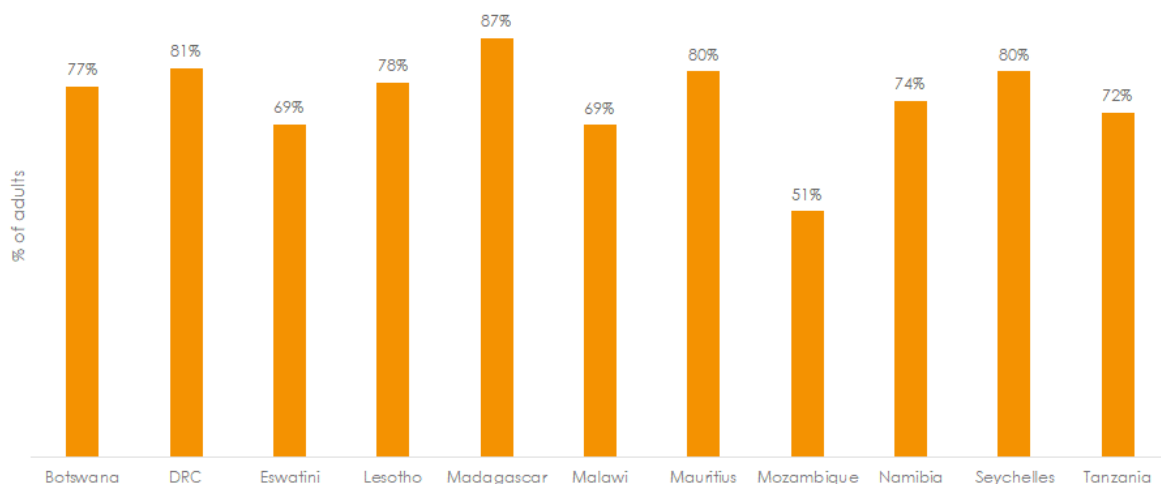


Figure 11 considers financial education across the SADC countries, using the share of adults that budget as a proxy. Most adults in SADC budget at least to some extent. However, many still do not budget at all:

Figure 11: Share of adults that budget as proxy for financial education



The share of adults who report running out of money for essential needs or having to make do without certain items is indicated below. A significant number of people still face shortages and run out of money for different reasons. While there are a range of factors impacting this, from a financial service provider perspective it means that many are still not meeting their financial needs.

Figure 12: Share of adults reporting running out of money or having make do without things as proxy for meeting needs

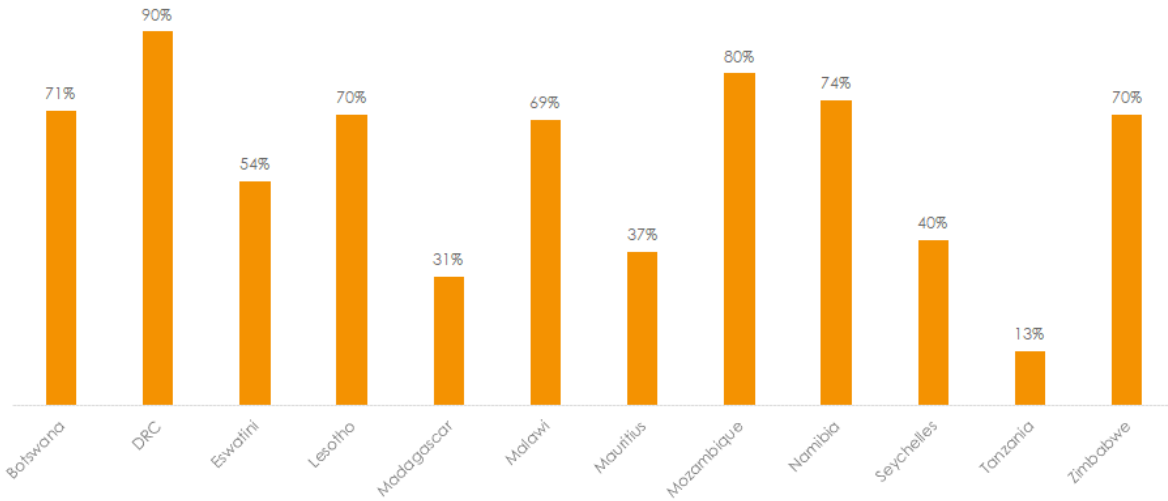
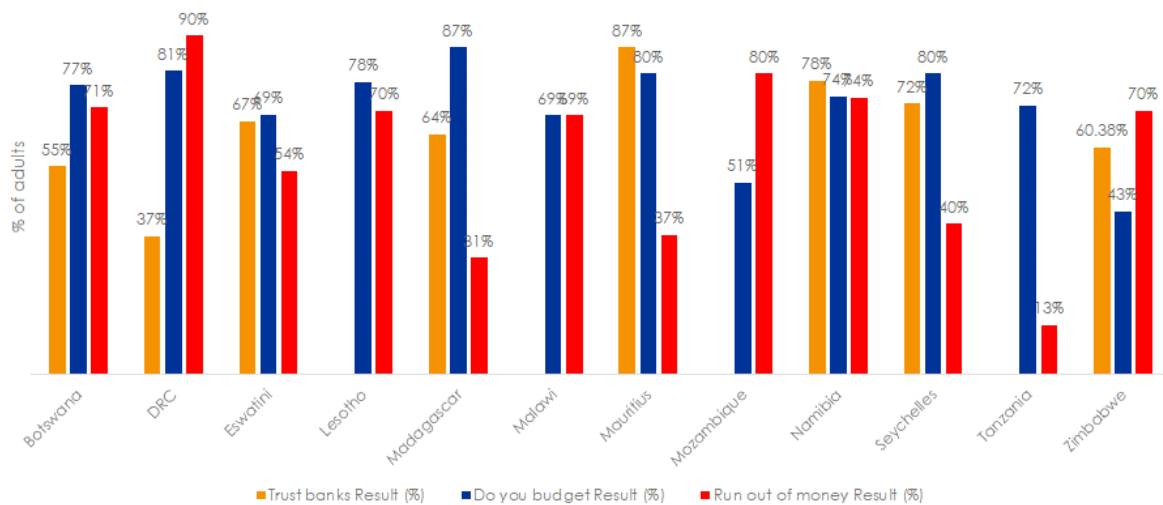


Figure 13 below presents a collated overview of the FinScope results across the SADC countries. It includes the % of adults who trust banks, the % of adults who budget, and the % of adults who run out of money. The low trust in certain regions suggests a need for greater consumer protection. Overall, the prevalence of people running out of money indicates a need for better financial management, which financial services could help facilitate. Very few FinScopes ask about the ease of raising complaints to or about financial service providers, which could be considered a gap in understanding consumer protection in the region.

Figure 13: Collated overview of SADC FinScope results





Appendix D – Deriving the Guiding Framework for SADC FCP principles

Drawing together international best practice. The framework that forms the basis for the SADC market conduct guidelines on FCP is founded on international good practice as laid out across a number of authoritative sources, notably:

- *AFI guideline resources.* The Alliance for Financial Inclusion (AFI) have published a number of guideline notes including key policy considerations for consumer protection (AFI, 2010), a survey report together with a policy model laying out consumer protection principles for digital financial services in a theoretical framework (AFI, 2021a), a guideline note on data privacy for digital financial services (AFI, 2021b) and a guideline note on digital financial literacy (AFI, 2021c).
- *The CFI's Handbook on Consumer Protection in Inclusive Finance.* The Centre for Financial Inclusion (CFI) at Accion have laid out current shifts towards strong legal frameworks for consumer protection in Digital Financial Services (CFI, 2019).
- *CGAP's Consumer Protection Regulation in Low-Access Environments.* The Consultative Group to Assist the Poor (CGAP) have put forward a targeted, incremental approach to addressing consumer protection in underserved markets, as well as further measures for more advanced economies (CGAP, 2010).
- *The G20 principles of financial consumer protection.* At the request of the G20 Finance Ministers and Central Bank Governors, the Organisation for Economic Co-operation and Development (OECD) developed a set of guiding principles for consumer protection in financial services (OECD, 2011).
- *The UN's Guidelines for Consumer Protection.* The United Nations Conference on Trade and Development (UNCTAD) have developed principles which outline what is needed for consumer protection in legislation, enforcement institutions and redress systems (UNCTAD, 2016)
- *The World Bank's Good Practices for Financial Consumer Protection.* Builds on the 2012 framework developed by the World Bank to provide a comprehensive assessment of the key characteristics of financial consumer protection. The updated framework contains thirty-nine general principles grouped into eight thematic areas, as well as a further set of more detailed sectoral sub-recommendations (World Bank, 2017) .

Mapping of International Good Practice.

As the process of developing the *G20 High-Level Principles of Financial Consumer Protection* involved inputs from a wide range of key stakeholders, it was used as the basis for the analysis. This was the same approach adopted by FinMark Trust in their

assessment of Consumer Protection in SADC (FMT, 2016). These principles were then mapped against the main international documents as laid out in Table 6 below. All the principles featured across some of the other guiding documents, with issues of complaints handling and redress featuring across all the guiding resources. Financial education and data protection also featured in almost all of the guiding resources. The equitable treatment of consumers, the role of oversight bodies and protection of consumer assets were less prominent, featuring in only one or two other documents

The table below maps the key elements of FCP as documented across these global frameworks, using the G20 principles on financial consumer protection as baseline. As the table indicates, consumer recourse is the most often-quoted financial consumer protection principles, followed by financial education. Overall, there is considerable alignment on FCP principles across the various global frameworks:

Table 6: Mapping of Key International Guiding Resources

G20 principles for FCP (OECD, 2011)	AFI (2010)	AFI (2021a)	CFI (2019)	CGAP (2010)	UNCTAD (2016)	Word Bank (2017)
Legal, regulatory and supervisory framework		✓		✓		✓
Role of oversight bodies		✓				✓
Equitable and fair treatment of consumers			✓			
Disclosure and transparency	✓		✓		✓	✓
Financial education and awareness	✓	✓		✓	✓	✓
Responsible business conduct of FSP and authorised agents	✓			✓		✓
Protection of consumer assets against fraud and misuse				✓	✓	
Protection of consumer data and privacy	✓		✓	✓	✓	✓
Complaints handling and redress	✓	✓	✓	✓	✓	✓
Competition						✓
Additional principles not included in G20 framework						
Market monitoring				✓		

Source: Own Compilation



The mapping exercise confirms the ongoing validity of the G20 Principles for FCP as the most comprehensive set of principles. Hence it is adopted as the guiding framework for SADC, with the following minor amendments:

- Given the importance of **market monitoring** to understand trends and adapt approaches, this indicator from the CGAP (2010) framework is integrated with the principle on oversight for the purpose of the SADC framework.
- The principle of fair and equitable treatment of consumers and, with that, positive consumer outcomes, is positioned as an umbrella principle that encompasses all the other principles. As such, the principle of **fair customer outcomes** is positioned as the final principle in the SADC guidelines, in which all the other principles culminate, and which should guide the overall approach to the development of the FCP framework for each member state.
- **Cybersecurity** was not noted as a separate element in any of the global FCP frameworks reviewed. Given the growing prominence of cybersecurity as a topic for financial regulators and global financial standard-setting bodies such as the BIS, as well as the risks related to cybercrimes emphasised in the consultations with member states, cybersecurity was separated out from data protection as a standalone FCP element of the SADC guiding framework, even if it has not been noted as such in the FCP literature, specifically. As such, this report adds to the FCP literature.

Appendix E - International regional harmonisation on FCP case studies

From the Asia Pacific region:

Digital Economy Steering Group of the Asia-Pacific Economic Cooperation (APEC) – work on data privacy (APEC, 2021)

- Aims to facilitate the development of the internet and digital economy, including e-commerce and digital trade
- The APEC Data Privacy Pathfinder initiative was established in 2007 to achieve accountable cross-border flow of personal information within the APEC region. This goal is to be achieved by developing and implementing the [Cross Border Privacy Rules \(CBPR\) system](#), (a voluntary, accountability-based system that facilitates privacy-respecting data flows among APEC economies) consistent with the APEC [Privacy Framework](#).
- APEC The Privacy Recognition for Processors System (designed to help personal information processors assist controllers in complying with relevant privacy obligations, and helps controllers identify qualified and accountable processors)
- Created a study group within the Data Privacy Sub-Group (DPS) to analyse and identify best practices and the role of trust-marks in promoting the cross-border flow of information.
- Notable progress in this area was made by the establishment of an APEC Cross-Border Privacy Enforcement Arrangement (CPEA) in July 2010.
- Guidance for domestic implementation of the Privacy Framework:
 - Maximizing benefits of privacy protections and information flows
 - Giving effect to the APEC privacy framework
 - Privacy management programmes
 - Promotion of technical measures to protect privacy
 - Public education and communication
 - Cooperation within and between the public and private sectors
 - Providing for appropriate remedies in situations where privacy protections are violated
 - Mechanism for reporting domestic implementation of the APEC privacy framework
- **Guidance for international implementation**
 - Information sharing among member economies
 - Cross-border cooperation in investigation and enforcement

- Cross-border privacy mechanisms
- Cross-border transfers
- Interoperability between privacy frameworks

From Latin America:

Association of Supervisors of Banks of the Americas (ASBA) Best Practices and Recommendations on Financial Consumer Protection (ASBA, 2012)

- The recommendations were compiled based on the experience of members of ASBA's Financial Consumer Protection Working Group, as well as banking supervisors in the region, who participated in a regional survey in which 26 ASBA member countries sent their responses.
- Main components:
 - Value chain of for financial consumer protection. Tracks the most important aspects of the relationship between customers and financial entities
 - Principles for the implementation of effective financial consumer protection systems (with examples of how this was done in select countries).
 - Regulatory framework for financial consumer protection. (Minimum characteristics of regulation as well as minimum regulatory content.)
 - Supervisory systems and practices (**clear mandate, consumer protection as mission, incorporation into the supervisory process, organizational structure, principal supervisory activities, principal components of the process**).
 - Institutional arrangement for financial consumer protection (**supervisor, regulator, consumer protection agency, judicial authorities, ombudsman**)
- Main conclusion:
 - Supervisory authorities recognize the importance of consumer protection, but this task must be reconciled with the mission and goals of the supervisor, especially those related to systemic stability.
 - Whenever the consumer protection agency is different from the supervisor, coordination between authorities is required.
 - There is a need to strengthen agile and effective dispute resolution mechanisms, especially when they relate to small claims.
 - There is a great interest on this topic [consumer protection].

Regional harmonisation in Latin America on the topic of consumer protection in financial innovation:

Consumer protection in the new environment of financial technological innovation (ASBA, 2020)

- Document stems from ASBA's review of marketing practices, information disclosure and transparency, inputs from other jurisdiction as well as advice from Working Group established to put forward minimum guidelines and regulatory recommendations for the incorporation of innovative technologies in the financial sector.
- Three fundamental aspects:
 - Regulation should be neutral towards technological change and business models: should neither encourage nor hinder them but rather, allow for fair competition between all market players.
 - Regulation should be based on principles: has been shown to provide room for innovation, as well as to recognize the accelerated changes in the provision of financial services.
 - Prevent the emergence of regulatory gaps or arbitrage caused by new providers who fall outside the regulatory perimeter
- Preconditions for digital financial consumer protection:
 - Ensure a regulatory and supervisory framework for the protection of financial consumers and the timely resolution of complaints
 - Types: twin peaks, integrated model, sectoral or institutional model, three-peaks model (*defined in source*)
 - The supervisory authorities must have powers to enforce existing laws and regulations (enforcement) for both traditional entities and fintech
 - Common powers available: voluntary compliance measures, deterrents or instructions, sanctioning measures, meta-regulation (*defined in source*)
 - To establish cooperation mechanisms between relevant authorities for the active protection of financial consumers
 - Specifically, for: Consumer protection authority; Relevant regulators in each jurisdiction; Other financial supervisors in each jurisdiction; Anti-money laundering authority; Data protection authority; Other supervisors outside the jurisdiction; Competition authority; Telecommunications regulator
 - Ability to adapt licensing and authorization regimes.



- Develop comprehensive financial education strategies related to financial consumer protection, aimed at increasing consumer awareness of the inherent risks of using financial products and services and contributing to the goal of mitigating risks to consumers.
- To have and/or train teams with digital expertise applied to consumers and technological outsourcing assessment.
- The same activities and services share the same risks against the consumer, so the same regulation should apply, regardless of the type of legal entity that supervises them.
- The supervisory approach should be risk-based but considering the proportionality of supervisory actions by looking at the business model, size, systemic importance, and complexity and cross-border activity of fintech.
- Adopt technological neutrality in regulation so as not to inhibit the use of certain technologies or generate biases in favour of others.
- Promote harmonization and remove regulatory duplication that could affect the protection of financial consumers.
- Financial supervisors should encourage coordination between overlapped supervisors, as appropriate, to make the supervision of fintech more effective.
- Supervisors must monitor fintech activity outside the regulatory perimeter, keeping an eye on financial technology trends and considering their potential impact on consumer protection.