

FINANCIAL CONSUMER PROTECTION IN TANZANIA

**(INSTITUTIONAL, LEGAL
AND REGULATORY FRAMEWORK)**

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1. Background Information:

Financial Consumer Protection

1. FCP Basics

- Financial Consumer Protection (FCP) largely refers to the concerted efforts by financial sector regulators to protect financial consumers.
- It aims at protecting the consumers from unfair, deceptive or abusive practices and at the same time regulating the market conducts of the service providers.
- It also seeks to develop and increase financial literacy and awareness of financial services and products.

2. Three Key Objectives of FCP

Transparency

- Disclosure:
 - pricing
 - terms and conditions,
 - plain language,
 - simple and standardized formats

Fair Treatment

- Acceptable marketing and selling practices,
- fair collection,
- staff ethics, and
- data privacy

Effective Recourse

- Internal dispute resolution,
- accessibility,
- costs,
- literacy,
- complaints/resolution data available for market monitoring

3. FCP Global Perspective

- The UN General Assembly on 22 December 2015, passed a resolution on consumer protection which recognized that:

“...consumer confidence and trust in a well-functioning the market for financial services promotes financial stability, growth, efficiency and innovation over the long term and the recent financial crisis places a renewed focus on consumer protection, calling for effective regulatory, supervisory and enforcement frameworks in the financial sector to contribute to the welfare of consumers...”

2. FCP Conceptual Framework in Tanzania

1. BOT and FCP Mandate

- BOT, as a regulator for the financial sector, has a statutory responsibility of promoting the integrity and safety of the financial systems in the country.
- BOT has effectively discharged this functionality by ensuring that stakeholders adhere to the existing industry standards to mitigate various risks.
- Recently, the Bank has extended this mandate to oversee the protection of financial consumers to complement the soundness of the financial system.

2. Existed Gaps in FCP Initiatives in TZ

The Gap that existed:

1990s financial sector reforms and technological advancement transformed the financial landscape in the country resulting to:

- an increase in financial products and services with a wider range of delivery channels.
- limited understanding of financial concepts
- lack of awareness of financial products and services
- increased risk of consumer rights abuse
- no comprehensive guideline/code of conduct to ensure that financial service providers treat consumers fairly, equitably and responsibly.

3. Regional FCP Initiatives

- **EAC Regional Initiatives:**

- In 2012, MAC issued a directive to the Partner States Central Banks that they should set up financial consumer protection frameworks in their respective jurisdictions.
- The directive was a part of a wider regional initiative geared towards harmonization of the national payment systems.
- For flexibility, partner states were free to determine the nature of their frameworks that reflect their individual needs.
- Since then, the Bank took initiatives to implement financial consumer protection to safeguard the customers.

4. FCP National Initiatives

- **National Approach:**

- A fragmented approach to consumer protection, generally through consultative councils:
 - Tanzania Insurance Regulatory Authority (TIRA) Consumers Consultative Council
 - Capital Markets and Securities Authority (CMSA) Consumers Consultative Council
 - Surface and Marine Transport Regulatory Authority (SUMATRA) Consumers Consultative Council
 - Energy and Water Utilities Regulatory Authority (EWURA) Consumers Consultative Council
 - Tanzania Civil Aviation Authority (TCCA) Consumers Consultative Council
 - Tanzania Communications Regulatory Authority (TCRA) Consumers Consultative Council

5. FCP Initiatives From the Bank

Pre-2019:

- Establishment of the Complaints Resolution Desk in 2015
- Requirements in the applicable laws (BAFIA & NPS Act) for the FSP to have internal consumer protection frameworks as part of the conditions for licensing.
- The MOU between the Bank and Fair Commission (FCC) for joint Cooperation in the protection of financial consumers.
- The MOU between the Bank and the Tanzania Communication Regulatory Authority (TCRA) on undertaking supervision of MFS.

6. FCP Initiatives From the Bank

Post-2019:

- Practical challenges encountered in implementing financial consumer protection initiatives in the country.
- The Bank sought to address the challenges by consolidating all efforts and putting in place a single comprehensive instrument to cater for financial consumer protection in the country.
- Thus, through the powers vested in the Bank of Tanzania Act, the Bank issued the Bank of Tanzania (Financial Consumer Protection) Regulations, 2019.
- Since then, the instrument has become an effective tool in management of financial consumer protection issues in the country.

3. FCP Legal Framework in Tanzania

1. Basis for FCP Protection in Tanzania

- The Constitution of the United Republic of Tanzania of 1977:
 - Article 13 (1) and (3):
 - (1) All persons are equal before the law and are entitled, without any discrimination, to protection and equality before the law.
 - (2) The civic rights, duties and interests of every person and community shall be protected and determined by the courts of law or other state agencies established by or under the law.

2. Other FCP Relevant Legislation

- The Bank of Tanzania Act, 2006
 - Section 7 (2) – Bank is responsible for:
 - the integrity of the financial system; and
 - the protection of the interests of individuals in relation to financial matters.
- The National Payment Systems Act, 2015
 - Section 51 - Bank has powers to prescribe consumer protection requirements for the FSPs.

3. Other FCP Relevant Legislation

- The Banking and Financial Institutions Act, 2006
 - Section 5 – a requirement for the Bank to:
 - maintain stability, safety and soundness of the financial system
 - to reduce the risk of loss to depositors.
 - Section 48 – provisions for the confidentiality of consumer information
 - Section 49 – provision for fair lending and debt collection practices

4. Other FCP Relevant Legislation

- The Electronic Transactions Act, 2015
 - Part VI: Consumer Protection
 - Section 28 – duty for the Supplier to provide information
 - Section 29 – a timeline for execution of the received order
 - Section 30 – rights for cancellation of the agreement within seven days
 - Section 31 – duty to provide particulars in e-communication
 - Section 32 – the prohibition against unsolicited goods or communication

4. Synopsis of FCP Regulations, 2019

1. Preliminary Provisions

- Regulation 1 – citation
- Regulation 2 – application
- Regulation 3 - interpretation

2. Governance by FSP

- Reg. 4 – the FSP to have a structure of governance to ensure effective implementation of financial consumer protection
- Reg. 5 – the Board of Directors' responsibility for overseeing consumer protection policies and other issues
- Reg. 6 – the senior management for establishing functional consumer protection and coordination
- Reg. 7 – the FSP to put in place internal control systems for consumer protection
- Reg. 8 – the FSP to have appropriate financial consumer protection policies
- Reg. 9 – the FSP to report financial consumer protection matters to the Bank

3. Fair and Equitable Treatment of Consumers

- Reg. 10 – FSP prohibition against discrimination of consumers
- Reg. 11 – a prohibition against employing unfair business practices
- Reg. 12 – the FSP to have acceptable sales practice (no miss-sell)
- Reg. 13 – the FSP should deploy suitable financial services and products
- Reg. 14 – freedom for a customer to transfer a financial product (mobility)
- Reg. 15 – contract language to be free from technical terminologies and be in Swahili or English (customer preference)
- Reg. 16 – the FSP to provide fair contract terms
- Reg. 17 – the FSP to enter into a formal agreement with a respective agent

4. Financial Education and Awareness

- Reg. 18 – FSP consumer strategy that defines & segments the market
- Reg. 19 – FSP to develop financial education programs
- Reg. 20 – FSP to develop a communication strategy
- Reg. 21 – FSP to establish a mechanism for monitoring and evaluation

5. Disclosure and Transparency

- Reg. 22 – FSP to provide information on financial products and services
- Reg. 23 – FSP to commit to the disclosure of terms and conditions
- Reg. 24 – FSP disclose information for account functionality
- Reg. 25 – the Bank to issue guidelines for the charges and fees imposed on products
- Reg. 26 – FSP to provide information for credit facilities and instruments
- Reg. 27 – FSP to produce key facts statements
- Reg. 28 – FSP to provide accounts statements
- Reg. 29 – FSP to provide a declaration on the consumer's settlement of obligations
- Reg. 30 – FSP to provide a notification on changes in terms and conditions.

6. Responsible Business Conduct

- Reg. 31 – FSP to timely respond to consumer’s request for information
- Reg. 32 – FSP duty to ethically conduct advertisement and sales promotion
- Reg. 33 – FSP duty to assess consumer’s creditworthiness and ability to fulfil terms and conditions before consumer signs
- Reg. 34 – FSP reasonably handling sales or transfer of debts, where applicable

7. Protection of Consumer's Assets and Information

- Reg. 35 – FSP duty to safeguard consumer's assets
- Reg. 36 – FSP duty to protect consumer information with appropriate security and control measures; prohibition against sharing such information
- Reg. 37 – FSP limits on the collection of consumer data
- Reg. 38 – FSP duty to have confidentiality and security policies and procedures relating to consumer information
- Reg. 39 – FSP prohibited from sharing consumer's information unless authorized by the law

8. Competitive Environment

- Reg. 40 – FSP duty to encourage free market
 - Consumer's access to a range of products and services
 - Restrict practices that inhibit competition
 - Prohibition against exclusive arrangements with the agents/merchants
 - Implement open and interoperable systems
 - Publish, and display key relevant information such as fees and charges
- Reg. 41 – FSP duty not to limit the consumer in switching barriers
 - Not putting restrictions on the termination of contracts
 - Provide necessary information should the consumer decides to switch to another FSP

9. Complaints Handling and Redress Mechanism

- Reg. 42 – consumer’s right to lodge a complaint against FSP
- Reg. 43 – FSP to establish a mechanism for handling consumer complaints
- Reg. 44 – FSP duty to provide a consumer with information on complaints handling mechanism
- Reg. 45 – FSP duty to provide a fair redress mechanism and a compensation policy
- Reg. 46 – FSP to observe timelines in resolving consumer’s complaints (the First Schedule)

9. Complaints Handling and Redress Mechanism

- Reg. 47 – FSP to avoid a conflict of interests in handling a complaint
- Reg. 48 – signing a Complaint Resolution Declaration Form upon solving a complaint
- Reg. 49 – FSP to notify the Bank upon extension of time in resolving a complaints
- Reg. 50 – Bank may issue guidelines on its determination of consumer complaints
- Reg. 51– procedures for a complainant filing a complaint with the Bank

9. Complaints Handling and Redress Mechanism

- Reg. 52 – conditions for the Bank to admit a consumer's complaint
- Reg. 53 – determination by the Bank
- Reg. 54 – Bank's powers to offer an award
- Reg. 55 – a right to seek a revision on a determination
- Reg. 56 – a right for a judicial review, if unsatisfied
- Reg. 57 – Bank may seek guidance from the Court for guidance/interpretation
- Reg. 58 – dealing with complaints involving multiple FSPs
- Reg. 59 – Bank's powers to deal with any consumer protection issue on its own

10. Enforcement and Sanctions

- Reg. 60 – powers of the Bank
 - Supervisory mandate on consumer protection
 - Powers to impose pre-emptive measures on non-compliance
 - Adequate range of enforcement powers and tools
 - Powers to obtain information
 - Powers to monitor and evaluate consumer protection initiatives
- Reg. 61 – Bank imposing sanctions in addition to the existing penalties
 - Suspending FSP from operations
 - Fines
 - Ordering withdrawal of a product
 - Suspending management staff
 - Imposing conditions, restrictions or cancellation of a license or registration

10. Enforcement and Sanction

- The Bank of Tanzania Act, 2006
- The National Payment Systems Act, 2015
- The Banking and Financial Institutions Act, 2006
- The Electronic Transactions Act, 2015
- The Cyber Crimes Act, 2015

5. FCP Recent Developments

1. FCP Institutional Framework

- **The Gap that Existed**

- Fragmented nature of internal functional units overseeing the FSPs
- DFSS – powers on banks and financial institutions
- DNPS – payment systems providers, electronic money issuers
- DLS – a legal perspective on financial consumer protection
- IS Department – Complaints Handling Desks (with limits in pecuniary and jurisdiction)
- Overlapping and overlooking mandate; risk for confusion within the Bank

2. FCP Institutional Framework

- **Current Development:**

- Through the EO Notification 17, the Bank established a dedicated functional unit to oversee and coordinate consumer protection issues within the Bank.
- Under the Directorate of Financial Deepening and Inclusion, there is a Financial Consumer Protection Department with two Divisions:
 - Financial Literacy and Market Conduct Division
 - Complaints Resolution Division

6. Final Thoughts

Striking Questions on FCP in Tanzania

- Can we establish the adequacy of the institutional, legal and regulatory framework for the FCP in Tanzania?
- With the mixed reaction to FCP regulatory framework, is there a need to worry?
- Are there justifiable issues? Is there a remedy?
- What should be done?
- Is it too soon to evaluate the progress made?