

FINANCIAL CONSUMER PROTECTION BILL, 2020

(Bill No. 2020)

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FINANCIAL CONSUMER PROTECTION BILL, 2020.

(Bill No. 2020)



A BILL OF

AN ACT to protect the interests of the financial consumers; to fairly, reasonably and effectively handle financial consumer disputes and to promote the development of financial sector and for matters connected therewith or incidental thereto.

ENACTED by the President and the National Assembly.

PART I PRELIMINARY

- 1.** This Act may be cited as the Financial Consumer Protection Act, 2020 and shall come into operation on such date as the Minister may by notice in the *Gazette*, appoint. Short title and commencement
- 2.(1)** Notwithstanding anything contained in the Consumer Protection Act (*Cap. 257*), this Act shall apply to all the financial services providers specified in the Schedule. Application

(2) The Consumer Protection Act (*Cap. 257*) shall not be applicable for the disputes covered under this Act.

Interpretation

3. In this Act, unless the context otherwise requires—

“advertisement” means every form of advertising, whether in a publication, or by the display of notices, signs, labels or show cards by means of circulars or other documents, by an exhibition of pictures or photographic or cinematographic films, by way of sound broadcasting or television, by the distribution of recordings, by internet or other computer or digital means, or in any other manner and the term “advertising” shall be construed accordingly;

“Authorised officer” means an officer authorised by the Competent Authority under subsection (1) of section 10;

“bundling of services or products” means selling two or more services or products in a package though each of such services or products are also available for sale separately in the market;

“Central Bank” means the Central Bank of Seychelles established under section 3 of the Central Bank of Seychelles Act (*Cap.26*);

“Credit information system” (CIS) means the Credit Information System owned and operated by the Central Bank;

“Competent Authority”—

- (a) in respect of entities specified in Part A of the Schedule, shall be the Central Bank;
- (b) in respect of entities specified in Part B of the Schedule, shall be the Financial Services Authority;

“corrective action” means an action taken to correct violation of any of the provisions of this Act, regulations made under this

Act, codes, directives, standards, guidelines or orders issued under this Act;

“distance contract” means a contract concerning financial services or products concluded between a financial services provider and a financial consumer under a scheme operated by the financial services provider, which, for the purposes of the contract, makes exclusive use of one or more means of distance communication up to and including the point at which the contract is concluded;

“disclosure form” means the form specified by the Competent Authority under subsection (6) of section 18;

“Fair Trading Commission” means the Commission established under section 3(1) of the Fair Trading Commission Act (*Cap. 267*);

“Financial Services Authority” means the Financial Services Authority established under section 3 of the Financial Services Authority Act, 2013 (*Act 19 of 2013*);

“financial services provider” means the entities specified in the Schedule and their agents or third parties acting on behalf of those entities and includes their agents and any other third party to which the financial services provider has transferred one or more of its services, or parts thereof;

“financial consumer” means a party who acquires or intends to acquire financial services or products from a financial services provider but does not include instances where the financial consumer is acting in a professional capacity;

“financial services or products” means the financial services or financial products developed, offered or marketed by a financial services provider or for and on behalf of another person by a financial services provider;

“financial consumer dispute” means a civil dispute between a financial consumer and a financial services provider arising over a service or a product;

“Key Facts Statement” means a discrete, highly conspicuous section of a disclosure document highlighting the important information in pursuance of the provisions of this Act and the regulations made thereunder;

“means of distance communication” includes any means by which a financial contract or the provisioning of services or products could be concluded, without the physical presence of the financial services provider and the financial consumer;

“non-public consumer data” means the data provided by the financial consumer to the financial services provider, which shall not be made available to the public at large;

“professional capacity” means a person with key skills, knowledge, experience and involvement in financial services or products and working for the said services;

“standard term” means a term in a contract that has not been negotiated individually by the financial consumer and whose substance the financial consumer was not able to influence;

“tying” means sale of two or more products in a package and one of such products is not sold separately;

PART II- REGULATION BY THE COMPETENT AUTHORITIES

Regulation
by
Competent
Authorities

4.(1) The Competent Authorities shall oversee and regulate the respective financial services providers listed in the Schedule.

(2) The Competent Authorities shall, where the need arise, work in collaboration with the Fair Trading Commission with a view to achieve the objectives of this Act.

(3) For the purposes of effective implementation of the provisions of this Act and for better cooperation and exchange of information, Competent Authorities may enter into a written memorandum of understanding amongst themselves and with other relevant entities.

Role of the
competent
Authorities.

5.(1) The Competent Authorities shall be responsible for the administration of this Act and shall carry out their responsibilities with the objective of promoting and advancing the welfare of financial consumers by—

- (a) maintaining a financial sector that is fair, accessible, efficient and sustainable;
- (b) mitigating any possible risk that financial consumers may encounter in accessing any financial services or products;
- (c) promoting fair financial business practices;
- (d) protecting the financial consumers from—
 - (i) unconscionable, unreasonable, unjust practices; and
 - (ii) misleading, unfair, deceptive or fraudulent conduct;
- (e) promoting financial consumer awareness and encouraging responsible and informed consumer choice and behavior;
- (f) promoting consumer confidence, empowerment and the development of a culture of financial consumer responsibility through education and advocacy; and
- (g) providing an accessible, efficient, harmonised and effective system of redress to the financial consumers.

(2) The Competent Authority shall perform its functions under this Act in addition to its other statutory functions and policies.

(3) In the event of any conflict between the functions under this Act and that of financial stability, financial stability shall prevail.

6. The Competent Authority may charge the fees as may be specified by regulations by the Competent Authority including the annual fees from the financial services providers for —

Fees

- (a) conducting educational training and awareness programs;
- (b) handling financial consumer disputes; and
- (c) such other matters pursuant to its functions and objectives under this Act.

Compliance with the provisions of the Act

7. The financial services provider shall ensure that its agents or a third party acting on its behalf complies with the provisions of this Act, and shall put in place adequate monitoring mechanisms to oversee the implementation of this Act by its agent or a third party acting on its behalf.

Reporting duties of the financial services provider.

8.(1) Every financial services provider shall submit a bi-annual report to the Competent Authority on the policies adopted with respect to financial consumer protection, including—

- (a) the measures taken to monitor the compliance with policies;
- (b) the financial education activities;
- (c) the information on the number, type and conclusion of disputes of the financial consumers handled internally;
- (d) the activities of agents or third parties acting on behalf of the financial services provider; and
- (e) any monitoring activity undertaken over such entities.

(2) The report for the first half of the year shall be submitted by 15th July of each year and the second half of the year shall be submitted by 15th January of the succeeding year.

(3) Where a financial services provider contravenes provisions of subsection (1) or subsection (2), the financial services provider shall be liable to an administrative penalty not exceeding SCR10,000 and an additional penalty of SCR1,000 for each day or part thereof during which the contravention continues.

(4) Where a financial services provider submits a report under subsection (1) giving information known to be false, or recklessly makes a false or misleading statement, the financial services provider shall be deemed to have committed an offence and is liable on conviction to a fine not exceeding SCR400,000.

Information to
the Competent
Authority

9.(1) The Competent Authority, may in carrying out its functions under this Act, request a financial services provider to submit any information including any books, records, video footage or other documents within such period and in such manner as may be required by the Competent Authority.

(2) Where a financial services provider contravenes subsection (1), the financial services provider shall be liable to an administrative penalty not exceeding SCR10,000 and an additional penalty of SCR 1,000 for each day or part thereof during which the contravention continues.

10.(1) The Competent Authority may authorise any of its officers to exercise any of the powers pursuant to subsection (2) and subsection (3).

Examination

(2) An Authorised Officer may examine the premises of a financial services provider, its agents or third parties acting on its behalf.

(3) An Authorised Officer may during an examination under subsection (2) and subject to section 37, require a director or employee of a financial services provider or agent or a third party acting on its behalf—

- (a) to produce for examination, any books, records or other documents in his or her possession containing or likely to contain such information as the Authorised Officer may reasonably consider necessary; or
- (b) to give information in his or her possession pertaining to the matter under examination.

(4) An Authorised Officer shall, if so requested, produce the authority under which he or she is exercising powers under this section.

(5) Any person who —

- (a) fails, neglects, or unreasonably delays to comply with any requirement under subsection (3);
- (b) in complying with a request made under subsection (3) furnishes any information or produces any book, record or other document which the person knows to be false in any material particular,

shall be deemed to have committed an offence and is liable on conviction to a fine not exceeding SCR 400,000.

Records to be maintained by the financial services provider

11.(1) Every financial services provider shall maintain physical records of all transactions and correspondences between him and the financial consumer for a period of not less than seven years from the date of last transaction.

(2) Notwithstanding any other law, physical records maintained under subsection (1), shall also be maintained in digital form for a period of 30 years from the date of last transaction.

(3) The retention period of other forms of information shall be such as may be prescribed by regulations.

(4) Where a financial services provider fails to comply with the requirements of subsections (1) and (2) or fails to comply with the provisions of the regulations made under subsection (3), the financial service provider shall be liable to an administrative penalty not exceeding SCR50,000.

Enforcement action by the Competent Authority

12.(1) Where a financial services provider has violated any of the provisions of this Act or any regulations, codes, directives, directions or orders made thereunder, the Competent Authority may in addition to a penalty under this Act, take one or more of the following enforcement actions against such financial services provider—

- (a) direct the financial services provider to take corrective action within a specified period of time;
- (b) suspend whole or partial services or products involved in violation;
- (c) suspend the licence of the financial services provider's business in part or in full for a period until the violation is resolved or corrective action is taken;
- (d) recommend to the financial services provider to take appropriate action against the directors, supervisors, managers or employees;
- (e) direct the financial services provider to refund the customers affected by the violation; and
- (f) any other actions as the Competent Authority may deem fit.

(2) Where a financial services provider fails to take the corrective action under subsection (1)(a) during the time-period set out by the Competent Authority, the Competent Authority may give a notice directing the financial services provider to take corrective action within a specified period of time.

(3) Where the financial services provider fails to comply with the notice issued under subsection (2), the Competent Authority may take any other actions provided under clauses (b) to (f) of subsection (1).

(4) The Competent Authority may revoke the licence of a financial services provider where there has been violation of the provisions of this Act.

13. The Competent Authority shall give an opportunity to the financial services provider to submit a written representation and oral submissions on a matter before it within the timeframe specified in writing before imposing a penalty or taking any enforcement action under section 12.

Right to submit written representation and oral submissions.

14.(1) The Competent Authority may publish all general or individual measures adopted under this Act, including enforcement measures, imposition

Publication by the competent Authority

of penalties and its redress decisions or any statistical data, as it may deem relevant.

(2) The Competent Authority shall publish all aggregated data concerning pricing or aggregated data on other business conditions.

PART III
DUTIES OF FINANCIAL SERVICES PROVIDERS

15.(1) Every financial services provider shall treat all the financial consumers equitably, honestly and fairly.

General
obligation

(2) Every financial services provider shall have a duty of care for all financial services or products it provides where the financial service or product has the nature of a trust or mandate arrangement.

(3) The financial services provider shall bear such fiduciary duty as may be required under any other law for the time being in force or as per contractual stipulations.

(4) Every financial services provider shall treat consumers fairly as an integral part of its good governance principles and corporate culture and impose such values to all its employees, agents and third parties providing services on their behalf.

(5) Every financial services provider shall have internal monitoring mechanism to ensure respect of such principles under the oversight and responsibility of its Board of Directors.

(6) The financial services providers shall either individually or jointly, play an active role in financially educating its employees and financial consumers and may offer training programs on regular basis.

(7) The financial services provider shall give special consideration to the needs of vulnerable groups.

Transparency

16.(1) Every financial services provider shall display conspicuously at each place of its business and of its agents and any other third party acting on its behalf, all relevant and updated documents concerning the services or products, that are comprehensible and accurate.

(2) Every financial services provider shall present its services and products in a consistent manner to facilitate comparison between similar services and products amongst financial services providers.

(3) Every financial services provider shall —

- (a) inform all its financial consumers about procedure to be followed for lodging a complaint; and
- (b) display conspicuously at each place of its business and of its agents and any other third party dealing with financial consumers on its behalf, information about internal dispute settlement as well as redress procedures.

(4) Information and documents displayed in the premises of the financial services provider shall also be displayed on the website of the financial service provider, if any.

(5) A financial services provider who fails to comply with the provisions of subsections (1), (2),(3) or subsection (4) shall be liable to an administrative penalty not exceeding SCR50,000.

17.(1) The financial services providers shall not —

- (a) publish or advertise any information;
- (b) carry out promotional activities in a manner,

that may mislead, deceive, conceal or give out false information to the public.

(3) The obligation to the financial consumers shall not be less than that indicated in the content of the advertisements under subsection (1) or in the materials or explanations provided to financial consumers in the promotional activities.

(3) Financial services providers shall not use the educational and awareness programs to promote their individual financial services or products.

Advertising

(4) Every financial services provider who fails to comply with the provisions of subsections (1), (2) or (3) shall be liable to an administrative penalty not exceeding SCR50,000.

PART IV CONTRACTUAL ARRANGEMENTS

18.(1) Every financial services provider, before entering into a contract with a financial consumer for the provision of financial services or products shall— Disclosure

- (a) take precautionary measures to assess and ascertain the suitability of those services or products to the financial consumer;
- (b) explain the important aspects of the financial services or products and of the contract, to the financial consumer;
- (c) disclose the associated risks; and
- (d) have the financial consumer sign a disclosure form in which the financial consumer acknowledges that contents of the disclosure form has been explained and understood the benefits and risks of the financial services or products.

(2) The financial services provider who engages in lending business shall carefully consider —

- (a) the creditworthiness of the borrower;
- (b) the intended use of the funds;
- (c) the source for repayment;
- (d) the security for its claim;
- (e) the prospective risks and benefits of the loan; and
- (f) such other lending requirements.

(3) Every financial services provider shall, while engaging in the collection, processing and use of personal information, explain to the financial consumer about his or her rights regarding the protection of personal information and the possible negative consequences for any refusal to provide the information requested.

(4) The financial services provider shall provide to the financial consumer, orally and in writing the transaction costs and possible gains and risks and aspects of material significance to the interests of the financial consumer regarding the financial services or product offered to him or her, as required under subsection (6).

(5) The financial services provider shall—

- (a) provide the financial consumer a written terms and conditions of the services or products, before a purchase is made regarding the—
 - (i) fees and charges;
 - (ii) interest rate;
 - (iii) the total, aggregated cost of the services or products and if the service or product requires the consumer to pay in installments, the repayment schedule for such services or products;
 - (iv) key features of the service or product including the benefits, rights and obligations of the financial consumer;
 - (v) significant risks, if any, associated with the services or products;
 - (vi) a summary of the financial services provider privacy policy;
 - (vii) any costs associated with pre-payment or charges associated with late payment; and

- (viii) contact information of the financial services provider's complaints unit and the Competent Authority;
- (b) ensure that such terms and conditions are expressed in plain and intelligible language;
- (c) include aspects of material significance in the Key Facts Statement;
- (d) furnish the financial consumer with timely and updated information on the relevant services and products; and
- (e) give the financial consumer a reasonable time to review the relevant documents before entering the contract.

(6) The Competent Authority shall specify the disclosure forms according to the specific features of a service or product and the financial services provider shall adopt the disclosure form specified by the Competent Authority.

(7) Any financial services provider, who fails to comply with subsections (1), (2) (3),(4), (5), and subsection (6) shall be liable to an administrative penalty not exceeding SCR50,000.

Non waiver of responsibility

19.(1) The financial services provider shall not limit or exempt itself from any of its obligations under this Act by entering into a contract with the financial consumer.

(2) Where a financial services provider limits or exempts its obligations in contravention of subsection (1), the provisions limiting or exempting the obligation of the financial services provider shall be *void ab initio* and not enforceable against the financial consumer.

(3) A financial services provider who fails to adhere with the provisions of subsection (1) shall be liable to an administrative penalty not exceeding SCR10,000.

Standard
terms

20.(1) Where an assessment of the contract shows that the terms of the contract are pre-formulated, notwithstanding that a specific contract term or any aspect of it is in fact individually negotiated, the terms of the rest of the contract are regarded as terms that have not been individually negotiated for the purposes of this Act.

(2) The financial services provider claiming that a contract term was individually negotiated shall have the responsibility of proving that it was so negotiated.

(3) The financial services provider shall ensure that the standard terms in the contract are expressed in plain and intelligible language.

(4) Where there is a disagreement over the meaning of any contractual provision, the provision shall be interpreted in its general meaning to the advantage of the financial consumer.

21.(1) The standard terms of a contract shall be fair and shall not be prejudicial to the rights of a financial consumer.

Unfair
standard terms

(2) A standard term of a contract shall be deemed unfair when it causes an imbalance between the rights of the financial services provider and the financial consumer and is detrimental to the financial consumer.

(3) In determining the standard term of a contract as unfair under subsection (2), consideration shall be given to the following—

- (a) the nature of the financial services or product for which the contract is concluded;
- (b) all other terms of contract between the parties on which the contract is dependent;
- (c) the interests of the financial services provider;
- (d) the interests of the particular class of financial consumers who are likely to enter the contract; and

(e) all other circumstances at the time of conclusion of the contract.

(4) An unfair standard term of a contract shall be *void ab initio* and not enforceable against a financial consumer.

22.(1) A financial consumer shall, subject to sub-section (2), have a cooling-off period after the date of entering the contract, within which the financial consumer may terminate such contract relating to any financial services of products.

Cooling-off
period

(2) The cooling-off period referred to in subsection (1) shall be prescribed by the Competent Authority from time to time and the period may vary, depending on the financial services or products.

(3) Where a contract is terminated under subsection (1), the financial service provider shall—

(a) refund the money that the financial consumer has paid under the contract within 14 working days after the delivery of the notice to terminate;

(b) cancel any automatic payment plans and give notice of termination on the CIS; and

(c) require the consumer for payment of a reasonable fee to compensate the costs incurred by the financial services provider.

(4) Every financial services provider shall provide notice of the consumer's right of rescission in all contracts and disclosures in respect of a financial service or product.

(5) A financial consumer shall, where a contract is terminated under subsection (1), refund the money, that the financial services provider has paid under the contract within a period of 14 working days from the delivery of the notice to terminate the contract was given to him.

**PART V
DISTANT PROVISION FOR SERVICES OR PRODUCTS**

Regulation
by the
Competent
Authority

23.(1) Unless prohibited by the Competent Authority, the supply of financial services or products by means of distance communication or the undertaking of distance contracts shall be permitted.

- (2) The Competent Authority may make regulations—
- (a) to protect the interest of the financial consumer under distant contract;
 - (b) relating to advertising and marketing of such distant contracts;
 - (c) with respect to the transparency, clarity and fairness of distance contracts and the provision of services and products by means of distance communication; and
 - (d) requiring the financial services provider to give required information to the financial consumer.

(3) Provisions to protect the financial consumers shall apply irrespective of whether the financial services provider provides the services or products directly or through its agents or third parties.

**PART VI
ABUSIVE PRACTICES**

24.(1) A financial services provider shall not put in place any unfair, deceptive or abusive practices.

Prohibited
acts and
conduct

- (2) A financial services provider shall not —
- (a) offer or provide any financial services or product in violation of the provisions of this Act;
 - (b) refuse to take any action required under the provisions of this Act or regulations, codes, directives, standards, guidelines or orders issued under this Act.

25.(1) A financial services provider shall not apply any collection or debt recovery measures that are detrimental to the financial consumers.

(2) (a) A financial services provider may, subject to the conditions provided in paragraph (b), appoint a debt collection agency for the recovery of debts.

(b) Where a debt collection agency has been appointed under paragraph (a), the financial services provider shall inform the financial consumer in advance about the type of debt to be collected by the debt collection agency and the conditions of recovery and the period within which the debt is to be collected by such agency.

(3) The debt collection agency appointed under subsection (2) shall be bound by the same obligations as to the financial services provider, in terms of collection and debt recovery practices.

(4) The debt collection agency appointed under subsection (2) shall not aggravate the financial position of a financial consumer.

(5) The financial services provider shall monitor the debt collection agencies appointed under subsection (2).

(6) (a) Debt collection agents shall follow the code of conduct specified by the financial services provider in consultation with the Competent Authority.

(b) The code of conduct shall be published and made available to the financial consumer by the financial services provider and also the same is to be displayed in the website of the financial services provider.

(7) (a) Where a financial services provider exercises its right to foreclose an asset, it shall inform the financial consumer in writing in advance about the procedures involved, and the process to be used to foreclose such property it holds as collateral security.

(b) The financial services provider shall inform the financial consumer about the legal remedies and options available in respect of the foreclosure process.

Default
interest

26.(1) The rates of default interest or other charges of the same nature and the time from when the default interest or other charge of the same nature is due shall be stipulated in the contract between the financial service provider and the financial consumer.

(2) The default interest or other charges of the same nature shall not exceed the amount as may be specified by Competent Authority each year.

27. Notwithstanding any other law, the financial services provider shall not initiate recovery process against the guarantor unless the recovery process against the principal debtor and the secured properties is initiated in the first instance and failed to recover the debt from the principal debtor and the secured properties.

Exercise of
rights against
the principal
debtor and
guarantor

28. (1) The financial services provider shall refrain from compelling the financial consumers to acquire bundling services or products.

Prohibition of
bundling and
tying

(2) The financial service provider shall not use tying clauses that unduly restrict the choice of consumers.

PART VII PROTECTION OF CONSUMER DATA AND CONFIDENTIALITY

29.(1) The financial services provider shall not disclose the data of the financial consumers and shall protect the confidentiality of their non-public consumer data and the data shall be utilized only for the purposes specified and agreed to by the financial consumer or as required under any other law.

Confidentiality
and protection
of non-public
consumer data

(2) The financial services provider shall formulate and adopt adequate confidentiality policies and procedures that—

- (a) enshrine that the non-public consumer data is owned by the financial consumer;
- (b) clearly set out the financial services provider's practices and policies with respect to non-public consumer data;
- (c) identify any sensitive data collected and processed;

- (d) explain the purposes for which the non-public consumer data is collected and used;
- (e) provide for security practices and procedures to safeguard non-public consumer data; and
- (f) include clear procedures where a financial consumer may voluntarily allow the disclosure of his or her non-public consumer data.

(3) The confidentiality policy adopted by the financial services providers shall be written in simple and understandable language.

Collection of
non-public
consumer data

30.(1) Every financial services provider shall disclose to the financial consumers in advance about the —

- (a) manner in which the non-public consumer data are processed and stored;
- (b) purpose for which the non-public consumer data is being collected;
- (c) intended recipients of the non-public consumer data; and
- (d) contact details of the financial services provider collecting the non-public consumer data.

(2) Every financial consumer shall have the right to review their non-public consumer data and to correct or amend any inaccurate or deficient data, if found incorrect.

Storage of
non-public
consumer
data

31. Every financial services provider shall—

- (a) implement reasonable and appropriate organisational, physical and technical measures for the protection of non-public consumer data against unlawful access, destruction, misuse or accidental loss;
- (b) determine the appropriate level of security that shall be maintained to preserve the confidential nature of the non-public consumer data, taking into account the risks

of processing, size of the organisation, current privacy practices and cost of implementation;

- (c) require that all of their non-public consumer data controllers and third parties processing personal information shall abide by the confidentiality clause similar in nature to the privacy provisions; and
- (d) report to the Competent Authority and to the affected financial consumers within 24 hours about any security breaches resulting from the unauthorised disclosure of non-public consumer data.

32. A financial services provider may disclose non-public consumer data to a third party in the following circumstances—

Disclosure of non-public consumer data

- (a) where the financial consumer has been informed about such disclosure and permission has been given in writing by such consumer;
- (b) where the third party in question has been authorised by the financial consumer to obtain the data from the financial services provider; and
- (c) where the financial services provider is required to disclose the non-public consumer data under mandated Credit Reporting or under any other law or by Court order.

PART VIII INTERNAL POLICIES AND PROCEDURES

33.(1) Employees engaged in the sale of financial services or products or in advising customers shall perform their duties in accordance with good business customs and professional ethics, integrity and observe the financial customer's person and inform customers fully about the terms for use of those services or product.

Sale of services or products

(2) Every financial services provider shall arrange for adequate and continuous training to their employees.

(3) The Competent Authority shall specify the types of complex and high risk services or products from time to time.

(4) The financial services provider shall report and receive the approval of the Competent Authority before the initial sale of complex and high-risk services or products.

(5) The person responsible for a branch unit in Seychelles, shall seek approval from the Competent Authority for the sale of complex and high-risk services or products, where the branch unit is a foreign financial services provider.

(6) Where a financial services provider fails to comply with subsections (3), (4) or subsection (5), the financial service provider shall be liable to an administrative penalty not exceeding SCR100,000.

Sales
personnel
remuneration
policy

34.(1) The financial services provider shall formulate and adopt a sales personnel remuneration policy and have it approved by its Board of Directors.

(2) A financial service provider shall not provide incentives to staff, management, agents or third-party service providers that encourage unethical consumer treatment or over indebtedness.

(3) The financial services provider shall give equitable consideration to the consumer rights and interests, the various risks that the financial services or products pose to the financial industry and customers, and shall not only consider the sales performance target achievement of such services or products by the sales personnel.

(4) Where a financial services provider fails to comply with subsection (1) or subsection (2), the financial services provider shall be liable to an administrative penalty not exceeding SCR25,000.

PART IX FINANCIAL CONSUMER DISPUTES

Internal
complaint
handling
unit

35.(1) Every financial services provider shall establish an internal Complaint Handling Unit to receive complaints from the financial consumer, either in person or in writing, telephone, e-mail, webpage or other similar methods.

(2) Every financial services provider shall implement and maintain such procedures for the Complaint Handling Unit in such manner as the Competent Authority may prescribe.

(3) The financial services provider shall set a timeline for resolving each complaint which shall not exceed the timeframe prescribed by the Competent Authority.

(4) A financial services provider shall inform the financial consumer of the procedure to appeal or to further pursue the complaint in the event of an adverse decision, including the resolution process specified by the Competent Authority.

(5) The Competent Authority may monitor the complaint handling process.

(6) The Competent Authority may exempt a financial services provider from establishing a Complaint Handling Unit considering the size of the financial services provider or any other relevant conditions.

(7) Notwithstanding subsection (6), every financial services provider shall have in place a complaint handling procedure in line with the requirements of the Competent Authority.

36. The Competent Authority shall, establish a complaint handling mechanism by regulations.

Complaint handling mechanism by the Competent Authority

37. The Competent Authority and its personnel shall keep confidentiality of—

Confidentiality during proceedings

(a) the application and any explanatory material or concessions submitted to the other party of the financial consumer dispute during the course of the dispute;

(b) material and information pertaining to the case,

unless it is already in public, or any other law requires that it be made public.

38. The Competent Authority may, take one or more of the following measures in the case of violation of any of the provisions of this Act by a financial services provider or on an application by the aggrieved person—

- (a) make an order or declare the whole or part of a contract made between the financial consumer who suffered, or is likely to suffer the loss or damage, and the financial services provider to be *void* and if the Competent Authority thinks fit, to be *void ab initio* or at all times on and after such date before the date on which the order is made;
- (b) make an order or direction varying such a contract or arrangement in such manner as may be specified in the order and if the Competent Authority thinks fit to declare the contract or arrangement to have effect as so varied on and after such date or before the date on which the order is made;
- (c) make an order or direction directing the person who engaged in the wrongful conduct to refund money or return property to the person who suffered the loss or direct damage;
- (d) make an order or direction directing the person who engaged in the wrongful conduct to pay to the person who suffered the loss or damage, the amount of the loss or direct damage;
- (e) publish the names of the offenders;
- (f) refer the matter to criminal authorities for prosecution.

39.(1) Every financial services provider shall comply with the decision of the Competent Authority within the time limits specified in its decision.

(2) Where the financial services provider fails to comply with the decision of the Competent Authority within the specified time, the Competent Authority shall take enforcement action under section 12.

PART X – DAMAGES

40.(1) Every financial services provider shall, subject to subsection (2), be liable to damages under section 38(d), where the financial services provider violates any of the provisions of this Act, causing direct and consequential damage to a financial consumer.

Liability
for
damages

(2) A financial services provider shall not be liable where he can prove that the occurrence of the harm was not due to—

- (a) its failure to understand the suitability of a service or product to the financial consumer;
- (b) its failure to provide an explanation, or where an explanation provided was untrue or incorrect; or
- (c) its failure to fully disclose risks to the financial consumer.

41.(1) A Court may, in response to a claim filed by a financial consumer, award punitive damages as it deems reasonable for the damage caused by an act of misconduct of a financial services provider.

Punitive
damages

(2) A Court may also award punitive damages up to the amount of the actual damage, where the damage was caused by negligence of the financial services provider.

(3) The Competent Authority shall not award punitive damages under the Complaint Handling Mechanism established under this Act to settle the financial consumer disputes.

(4) The right to claim punitive damages shall be extinguished, if not exercised within two years from the date the claimant has knowledge of the cause entitling him for damages, or within five years from the date of occurrence of such cause for damages, whichever is earlier.

PART XI MISCELLANEOUS PROVISIONS

Offence and penalties

42.(1) A financial services provider, who contravenes any of the provisions of this Act shall be deemed to have committed an offence and where no penalty has been provided for such offence, he shall be liable on conviction to a fine not exceeding SCR400,000.

(2) In determining the appropriate penalty for the purposes of this section, the Court shall have regard to the following –

- (a) the nature, duration, gravity and the extent of the contravention;
- (b) any loss or damage suffered as a result of contravention;
- (c) the behavior of the respondent;
- (d) the market circumstances in which the contravention took place;
- (e) the level of profit derived from the contravention;
- (f) the degree to which the financial services provider cooperated with the Competent Authority; and
- (g) the financial services provider has previously been found in contravention of this Act.

(3) The Court may waive payment of all or part of the payment of the penalty which would otherwise be payable under this Act, where there are exceptional circumstances in a particular case.

Power to compound an offence

43.(1) Subject to this section, the Competent Authority may in consultation with the Attorney General, if satisfied that a financial services provider has committed an offence under this Act, where the offence is punishable by a fine, compound the offence in *lieu* of instituting a proceeding under this Act.

(2) The Competent Authority shall exercise the power under subsection (1), if the financial consumer accepts in writing the liability to the offence.

(3) Where an offence is compounded under subsection (1), no proceedings shall be instituted in relation to that offence against the financial services provider.

(4) The Competent Authority, after identifying the offence shall notify the financial services providers in writing of —

- (a) the offence;
- (b) the amount of compounded monetary penalty that may be agreed to;
- (c) the requirement for the financial services providers to notify the Competent Authority in writing, no later than 14 days after receipt of the Competent Authority's written notification informing of their refusal or acceptance to compound the offence;
- (d) the requirement for the financial services provider who agrees for the offence to be compounded to make payment of the compounded monetary penalty to the Competent Authority no later than 5 days after the acceptance of the written notification under subparagraph (c);
- (e) the manner in which payment under subparagraph (d) shall be paid to the Competent Authority; and
- (f) any other information deemed relevant by the Competent Authority.

(5) The compounded monetary penalty shall not exceed the maximum fine prescribed under this Act.

(6) Acceptance to compound an offence and payment thereof shall be final and conclusive.

(7) Where the terms of the agreement to compound the offence has been breached, the Competent Authority may institute appropriate legal proceedings.

Services provided or products offered from abroad

44. Without prejudice to the authorisation mechanisms established under relevant legislation to provide financial services or products in the country, the provisions in this Act shall be mandatory in relation to any financial service provided or product offered in Seychelles, notwithstanding the location of the financial services provider and the applicable law.

Regulations

45.(1) The Competent Authority may make regulations, issue codes, standards, guidelines, directives, directions or orders to carry out the purposes and objectives of this Act.

(2) Without prejudice to the generality of the provisions of subsection (1), regulations, standards, guidelines, directives, directions, code or orders may provide for—

- (a) appropriate product design and delivery;
- (b) the prevention of over-indebtedness;
- (c) transparency;
- (d) the methodology for pricing;
- (e) retention period of other forms of information;
- (f) fair and respectful treatment of financial consumers;
- (g) privacy of consumer data;
- (h) distant provision of services and products;
- (i) the procedures to enforce security interests;
- (j) mechanisms for complaint resolution; and
- (k) amendment of the Schedule.

Transitional provision

46.(1) Every financial services provider shall comply with the provisions of this Act within six months from coming into force of this Act.

(2) Within such period of time, the Competent Authority shall adopt adequate measures to permit smooth implementation of this Act within individual services or products according to the needs.

SCHEDULE
(Section 4)

Financial Services Provider

PART A
A licensee under the Financial Institutions Act.
Any entity to which the Financial Institutions (Application of Act) Regulations, 2010 apply.
A licensee under the Credit Union Act.
A licensee under the Financial Leasing Act.
A payment services provider and operator of a payment, clearing or settlement system under the National Payment System Act.
PART B
A licensee under the Mutual Fund and Hedge Fund Act.
A licensee under the Hire Purchase and Credit Sale Act.
A licensee under the Securities Act.
A licensee under the Insurance Act.
A licensee under the Seychelles Gambling Act.
A licensee under the International Corporate Service Providers Act.