

DRAFT FINANCIAL CONSUMER PROTECTION REGULATIONS

This draft Financial Consumer Protection Framework is published as part of the stakeholder consultation process. The Bank invites individuals and institutions to provide submissions regarding their comments on the draft Regulations on or before 31st March 2019. Any submissions on issues outlined in the Regulations should be sent to FCP Project Team, Financial System Stability Group, PO Box 121 Port Moresby, National Capital District or email to Anil Paul at apaul@bankpng.gov.pg.

The feedback from stakeholders as part of these consultations is then used to finalise Financial Consumer Protection Regulatory Framework.

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PART 1 – PRELIMINARY

1. Purpose

The purpose of these regulations is to establish a framework for the fair and equitable treatment of individual consumers of financial products and services.

2. Scope of Application

These regulations apply to Authorized Institutions in respect of the financial products and services they have provided, or may provide, to consumers for either personal or business purposes.

3. Powers of Central Bank

- (1) The Central Bank is the regulatory and supervisory authority for purposes of these regulations and for that purpose may exercise all the functions and powers the Central Bank has under the Central Banking Act 2000, the Banking and Financial Institutions Act 2000 and any other law.
- (2) Without limitation to the Central Bank's powers under any law, the Central Bank may, for the purposes of these regulations, require an Authorized Institution to:
 - (a) correct, or withdraw, any misleading or deceptive terms and conditions, Key Facts Statement, sales material or other data or information;
 - (b) refund, or cease collecting, interest charges or other fees and charges imposed in breach of these regulations; and
 - (c) modify or withdraw from the market any financial product or service.
- (3) Subject to sub-regulation (4), If the Central Bank proposes to exercise its powers under sub-regulation (2), the Central Bank must give the Authorized Institution written notice of its intention to do so, stating the reasons why it proposes to act and giving particulars of the Authorized Institution's rights, and the Central Bank's responsibilities, under sub-regulations (4) to (7).
- (4) An Authorized Institution may make written representations to the Central Bank within 14 days of receipt of a notice under sub-regulation (3).
- (5) Where representations are made pursuant to sub-regulation (4), the Central Bank must take them into account before reaching a decision.
- (6) The Central Bank must notify the relevant Authorized Institution on exercise of a power under sub-regulation (2) and give reasons for its decision.
- (7) Nothing in sub-regulation (4) prevents the Central Bank from exercising its powers under sub-regulation (2) immediately if the Central Bank considers that any delay in exercising the power would be prejudicial to the public interest.
- (8) In assessing whether compliance by an Authorized Institution is adequate for the purposes of these regulations, consideration must be given to the nature, scale, complexity and risks of the Authorized Institution's business and the related financial products and services.

4. Definitions

The following definitions are proposed for the purposes of the FCP Regulations:

"annual percentage rate" means the per annum rate of interest applicable to a credit contract.

"Authorized Institution" has the meaning given to that term in the Banks and Financial Institutions Act 2000.

“Board” means the Board of Directors of an Authorized Institution or, if there is no Board of Directors, the equivalent senior management body or person (if a single individual).

“business day” means a day that is not a Saturday or Sunday or a public holiday.

“Central Bank” means the Bank of Papua New Guinea.

“consumer” means a natural person who is a current or a prospective customer of an Authorized Institution.

“complaint” means an expression of dissatisfaction about a financial product or service provided to a consumer that is not immediately resolved when first brought to the attention of the Authorized Institution and “complainant” has a corresponding meaning.

“Compliance Plan” has the meaning given in regulation [*Financial consumer protection compliance plan*].

“consumer credit insurance” means insurance that insures the capacity of a consumer to make payments under a credit contract, including for a reason related to sickness, injury, disability or death or unemployment.

“consumer contract” means a contract for a financial product or service with a consumer.

“continuing credit contract” means a credit contract under which multiple advances of credit are contemplated and the amount of available credit ordinarily increases as the amount of credit is reduced.

“credit” means the right granted by one person (the creditor) to another person (the consumer) to defer payment of a debt.

“credit contract” means a contract for the provision of credit.

“credit related insurance contract” means the following kinds of insurance in connection with a credit facility:

- (a) insurance over mortgaged property;
- (b) consumer credit insurance;
- (c) extended warranty insurance; and
- (d) insurance of a kind specified by the Central Bank.

“credit reference bureau” means a business that involves collecting, holding, using or disclosing personal information about individuals for the purpose of providing an entity with information about the credit worthiness of an individual.

“dispute” means a complaint which has been made to the relevant Authorized Institution and either:

- (a) the Authorized Institution has advised the complainant of their decision on the complaint, but the decision is not to the complainant’s satisfaction; or
- (b) the Authorized Institution has not advised the complainant of their decision on the complaint within the timelines referred to in regulation [*Complaints to Authorized Institutions*].

“effective interest rate” means a rate which reflects the true cost of a financial product or service, including all interest charges or payments and any fee and charge, which rate is calculated consistently with:

- (a) the formula specified in Annex 3 for a fixed term credit contract; and
- (b) otherwise as specified in a directive issued by the Central Bank.

“financial product or service” means a product or service marketed or provided to consumers by an Authorized Institution of a financial nature and, without limitation, includes any savings or other debit product and any credit, payment, remittance, lease, factoring, insurance, investment or pension product, financial advice and any other product or service specified by the Central Bank.

“Financial Consumer Protection Principles” means the principles described in regulation *[Financial consumer protection principles]*.

“fixed term credit” means credit granted to a consumer for a fixed period and **“fixed term credit contract”** means a contract for such credit.

“Key Facts Statement” means a short form, standardized disclosure document in the form of Annex 1 and prepared in accordance with these regulations.

“payroll deduction” means a deduction made from a consumer’s pay for the real or ostensible purpose of making a payment to an Authorized Institution in respect of a credit contract.

“payroll loan” means a loan which is repaid by deductions from the consumer’s pay.

“personal advice” means advice given to a consumer in relation to the suitability of a specific financial product or service for the consumer taking into account their financial objectives, needs and capacity.

“personal attribute” of a person means their age, gender, race, ethnicity, political affiliation or beliefs, marital status, disability or sexual orientation.

“personal information” means any information which identifies, or may be used to identify, a natural person.

“representative” means an officer, employee, agent or service provider of a person and including, without limitation, any other person authorized to act on behalf of the Authorized Institution.

“security” means a mortgage, guarantee or other form of security relating to a financial product or service provided or proposed to be provided to a consumer.

“standard form contract” has the meaning given in regulation *[Standard form contracts]*.

“unpaid balance” under a credit contract at any time means the difference between all amounts credited and all amounts debited to the consumer under the contract at that time.

“unpaid daily balance” for a day under a credit contract means the unpaid balance under the contract at the end of that day.

PART 3 - OBLIGATIONS OF AUTHORIZED INSTITUTIONS

5. Ongoing obligations of Authorized Institutions

An Authorized Institution must:

- (a) comply with these regulations and ensure that its representatives do likewise;
- (b) ensure that its representatives:
 - i. are trained and competent to provide financial products and services, including understanding features, risks, terms and costs of the financial products or services they deal with; and
 - ii. understand, and act consistently with, the Financial Consumer Protection Principles and other applicable provisions of these regulations;
- (c) ensure that remuneration and commission schemes for representatives do not incentivize them to act in a way inconsistent with these regulations including, for example, by providing financial products and services which do not meet the needs or capacity of consumers; and
- (d) have adequate systems, procedures and resources to ensure compliance with these regulations; and
- (e) must not accept or seek to enforce a contract or security to the extent it is void or unenforceable under these regulations.

6. Consumer protection compliance plan

- (1) An Authorized Institution must have and implement a written plan approved by their Board setting out detailed policies and procedures for compliance with these regulations (**Compliance Plan**).
- (2) An Authorized Institution must ensure that:
 - (a) their Board monitors compliance with the Compliance Plan and receives regular reports from senior management for that purpose;
 - (b) the Compliance Plan is regularly reviewed and updated by the Board;
 - (c) the Authorized Institution reports annually to the Central Bank on their compliance with the Compliance Plan in a form specified by the Central Bank; and
 - (d) A member of senior management is designated as having day to day oversight responsibility for the implementation of the Compliance Plan and the monitoring of its effectiveness.

PART 4 – FINANCIAL CONSUMER PROTECTION PRINCIPLES

7. Overarching principles

An Authorized Institution must comply with, and ensure that its processes and procedures reflect, the following principles at all stages of its relationship with a consumer and their security providers:

- (a) **Fair treatment:** An Authorized Institution must treat all consumers and their security providers fairly and respectfully and not engage in misleading, deceptive, abusive or aggressive treatment or conduct which discriminates on the basis of a personal attribute of the consumer or the security provider.

- (b) **Disclosure and transparency:** An Authorized Institution must ensure that consumers and their security providers are provided with accurate, simple and clearly expressed information about the features, risks, terms and cost of any financial product or service or security they are considering.
- (c) **Product suitability:** An Authorized Institution must ensure that:
 - i. the financial product or services they provide are designed and marketed having regard to the financial objectives, needs, capacity and behaviors of consumers in the target market and with a view to minimizing the risk of harm to those consumers; and
 - ii. the financial objectives, needs and capacity of a consumer are considered before providing them with a product or service.
- (d) **Responsible lending:** Authorized Institutions must have processes and procedures in place designed to ensure:
 - i. credit products for consumers can be repaid without substantial hardship; and
 - ii. the ethical treatment of consumers regardless of whether they are in default.
- (e) **Data protection:** The personal information of consumers and security providers must:
 - i. be kept confidential and secure by an Authorized Institution; and
 - ii. only be used and disclosed by the Authorized Institution for legitimate and lawful purposes.
- (f) **Consumer and security provider recourse:** Consumers and their security providers must be provided with easy access to an accessible, transparent, effective, prompt and free internal complaints system and they must be made aware of any available external dispute resolution service (including any dispute resolution service provided by the Central Bank).

PART 5 - FAIR TREATMENT REQUIREMENTS

Division 1: Monetary obligations

8. Void monetary liabilities

- (1) A contract or security is void to the extent that it imposes a monetary liability on a consumer for:
 - (a) an interest charge more than that permitted by regulation [**Interest charges**];
 - (b) a fee or charge more than that permitted by regulation [**Fees and charges**]; or
 - (c) any other amount prohibited by these regulations.
- (2) An Authorized Institution must not accept, or seek to recover, any monetary obligation which is void under this regulation.
- (3) A consumer is not liable to pay, and may recover from the Authorized Institution, any amount which has been paid in respect of a monetary obligation which is void under this regulation.

9. Fees and charges

- (1) A consumer is not liable to pay, and an Authorized Institution must not accept or seek to recover, a fee or charge relating to a consumer contract:

- (a) which exceeds the Authorized Institution's reasonable costs of providing the product or service to which the fee relates; or
 - (b) which has not previously been disclosed to the person in accordance with these regulations; or
 - (c) for a fee or charge payable to a third party more than the amount payable to that third party; or
 - (d) to the extent that the fee or charge is prohibited under any other provision of these regulations or any other law.
- (2) In determining the reasonableness of an application or establishment fee regard must be had to whether the amount is equal to or less than the Authorized Institution's reasonable administrative costs of assessing the application or establishing the contract or the average reasonable costs for these matters in relation to the relevant class of financial product or service.
- (3) A fee or charge for a partial or full early payment under a credit contract must not exceed a reasonable estimate of:
- (a) the administrative costs of the early payment; and
 - (b) in the case of an early payment under a fixed interest rate contract, the Authorized Institution's loss arising from the early payment to the extent the loss arises from a difference between the annual percentage rate payable under the contract and the market rate for contracts of that type.

10. Publication of fees and charges, annual percentage rates and other terms

- (1) An Authorized Institution must publish the following information in relation to the financial product or services they make available to consumers:
- (a) itemized fees and charges; and
 - (b) any applicable annual percentage rate(s).
- (2) The information referred to in sub-regulation (1) must be published in a prominent manner:
- (a) in at least 2 newspapers circulating in Papua New Guinea on 31 March and 30 December in each year or, if that day is a public holiday, the following business day;
 - (b) on the Authorized Institution's website;
 - (c) at any premises of the Authorized Institution or its representatives attended by consumers; and
 - (d) as otherwise required by the Central Bank.
- (3) The standard terms and conditions for any financial product or service an Authorized Institution may provide to consumers:
- (a) must be published in a prominent manner on the Authorized Institution's website;
 - (b) made available by the Authorized Institution on request; and
 - (c) be the subject of a prominent notice displayed at any premises of the Authorized Institution or its representatives attended by consumers, which notice draws attention to the availability of the standard terms and conditions.
- (4) The Central Bank may publish the fees and charges, annual percentage rates and other terms and conditions of financial products and services in any manner designed to facilitate the ability of consumers to understand, and compare, the relevant financial products or services.
- (5) Authorized Institutions must provide the Central Bank with any information they require for the purposes of sub-regulation (4).

Division 2: Unfair Terms

11. Standard form contracts

- (1) A contract is in a standard form if it has been prepared by or on behalf of an Authorized Institution and was not subject to full and genuine negotiation with the consumer or security provider concerned.
- (2) A contract between an Authorized Institution and a consumer or a security provider for a financial product or service will be presumed to be in a standard form unless the contrary is provided by the Authorized Institution.

12. Unfair terms void

- (1) Any clause of a standard form contract for a financial product or service or related security is void if it is unfair as provided for by these regulations.
- (2) A term of a contract or security is to be considered as unfair if the term:
 - (a) reflects a significant imbalance in the parties' rights and obligations;
 - (b) causes detriment to the consumer or security provider; and
 - (c) is not required to protect the Authorized Institution's legitimate interests.
- (3) Without limitation to sub-regulation (2), a term is to be considered as unfair if it:
 - (a) allows the Authorized Institution to unilaterally change the terms of a contract or security without expressly describing the circumstances in which that change may be made;
 - (b) allows the charging of a fee which has not previously been disclosed to the consumer or which is prohibited by these regulations;
 - (c) prohibits, or limits, early repayment of a credit contract;
 - (d) waives any protection provided for by these regulations;
 - (e) purports to avoid or modify any provision of these regulations;
 - (f) seeks to prevent the consumer or security provider from relying on statements or conduct of the Authorized Institution's representatives; or
 - (g) limits the right of a consumer or security provider to take legal action against the Authorized Institution.

Division 3: Other fair treatment obligations

13. Account closure

- (1) An Authorized Institution must promptly process within 5 business days any request from a consumer:
 - (a) as to the steps and time line for closing an account relating to a financial product or service; and
 - (b) to close an account for a financial product or service.
- (2) When a contract is terminated, the Authorized Institution must, within 5 business days:
 - (a) pay to the consumer or at their direction any money due to them; and
 - (b) cancel any direct debit authority on the relevant account.
- (3) A fee or charge to close an account must not exceed the administrative costs reasonably incurred by the Authorized Institution to process that request.
- (4) An Authorized Institution must not debit a consumer's account with any interest charge or fee or charge which relates to an event or time period which occurs after an account has been closed.

14. Requirement to take out insurance

- (1) An Authorized Institution must not:

- (a) require a consumer or security provider to take out, or pay for, insurance unless it is consumer credit insurance, insurance over mortgaged property, compulsory insurance required by law, or insurance of a type specified by the Central Bank; or
 - (b) require a consumer or a security provider to take out insurance with a particular insurer; or
 - (c) make any unreasonable requirement as to the terms on which insurance must be taken out.
- (2) Any requirement to take out insurance is void if:
 - (a) the requirement, and information related to the insurance policy, is not separately and prominently disclosed in accordance with Part **[Transparency and Disclosure]**; or
 - (b) the consumer or security provider provides evidence that they already have insurance of the relevant type.
- (3) If an Authorized Institution contravenes this regulation the insured is entitled to recover from the Authorized Institution the full amount of any premium paid.

15. Termination of insurance contracts

- (1) If a credit contract is terminated, then:
 - (a) any consumer credit insurance contract is immediately terminated;
 - (b) the Authorised Institution must pay to the consumer, or credit the consumer with, a proportionate rebate of the premium paid for the credit related insurance contract in force immediately before the termination with the amount payable to be calculated as specified by the Central Bank; and
 - (c) the Authorized Institution may recover any amount paid under subsection (b) from the insurer.
- (2) An Authorized Institution must expressly inform the consumer of their rights under this regulation on the termination of the credit contract, or as soon as reasonably practicable afterwards.

Division 3: Credit contracts

16. Calculation of interest charges

- (1) The maximum amount of any interest charge payable under a credit contract is an amount equivalent to applying the daily percentage rate to the unpaid daily balance (or the sum of each such amount if there is more than one annual percentage rate).
- (2) An Authorized Institution must not, at any time before the end of a day to which an interest charge applies, require payment of or debit the interest charge.
- (3) A differential rate of interest or any other charge applying on default:
 - (a) may only be applied to the amount in default and while the default continues; and
 - (b) must not exceed the Authorized Institution's reasonable costs of the default.

17. Right to pre-pay credit contract

- (1) An Authorized Institution must accept any payment under a credit contract before it is payable and must credit the consumer with receipt of the payment as soon as reasonably practicable.
- (2) A consumer may pay out a credit contract at any time by paying:
 - (a) the outstanding amount of credit; and
 - (b) accrued fees and charges which are payable consistently with these regulations;

less any rebate of insurance premium which is due under regulation ***[Termination of insurance contracts.]***

- (3) An Authorized Institution must provide a statement of a payout figure as described in sub-regulation (1) within 5 business days after receiving a request to do so.
- (4) A court may, on the application of a consumer, determine a payout figure if the Authorized Institution does not do so as provided for in sub-regulation (3).

18. Allocation of payments under a credit contract

- (1) Payments made by a consumer must:
 - (a) be allocated to clearing any amount in arrears before any fees and charges; and
 - (b) be allocated first to the balance incurring the highest interest charge.
- (2) A consumer that is liable to an Authorized Institution under 2 or more credit contracts or related securities may request that a payment be allocated in a specified way between them and the Authorized Institution must comply with that request.

19. Mortgages which are void or unenforceable

- (1) A mortgage is void to the extent that:
 - (a) it does not describe or identify the property subject to the mortgage;
 - (b) it charges all the property of the mortgagor;
 - (c) it charges property to be acquired in the future which is not specifically identified;
 - (d) it secures an amount that exceeds the sum of the reasonable expenses of enforcing the mortgage and:
 - (i) the liabilities of the consumer under the credit contract where the mortgage is given by the consumer; or
 - (ii) the liabilities of the guarantor under a guarantee where the mortgage is given by the guarantor; or
 - (e) it purports to create a security over a consumer's employment remuneration or benefits or any retirement or superannuation benefits.
- (2) A mortgage is unenforceable in relation to a new credit contract unless the Authorized Institution has:
 - (a) given the mortgagor a copy of the credit contract; and
 - (b) the mortgagor has accepted the extension in writing.
- (3) A mortgagor must not assign or dispose of property subject to a mortgage without:
 - (a) the Authorized Institution's consent which must not be unreasonably withheld; or
 - (b) court approval which may be given subject to conditions.

20. Guarantees which are void or unenforceable

- (1) A guarantee is void to the extent that:
 - (a) it secures an amount that exceeds the sum of the reasonable expenses of enforcing the guarantee and the liabilities of the consumer under the credit contract; or
 - (b) it limits the guarantor's right to indemnity from the consumer whose liability the guarantor has guaranteed or to enforce such an indemnity.
- (2) A guarantee is not enforceable in respect of credit provided under a new credit contract unless there is express provision in the guarantee for it to apply to the new credit contract and the Authorized Institution has:
 - (a) given the guarantor a copy of the contract document of the new credit contract; and
 - (b) subsequently obtained from the guarantor a written acceptance of the extension of the guarantee.

- (3) A guarantee is not enforceable against a guarantor who was less than 18 years old when they gave the guarantee.

PART 6 - TRANSPARENCY AND DISCLOSURE

Division 1: Form and information requirements

21. Advertising and promotional materials

- (1) An Authorized Institution must ensure that any advertising or other promotional material concerning a contract or a security:
- (a) is accurate, simple and clearly expressed;
 - (b) is not misleading or deceptive;
 - (c) states the Authorized Institution's name and registration or licence number;
 - (d) includes a clear reference to any fees and charges that are payable if it includes a reference to an annual percentage rate or any other reference to the cost of credit or return on the financial product or service;
 - (e) if it includes any reference to an interest rate of any type, the rate disclosed is the annual percentage rate and not, for example, a rate for a shorter period; and
 - (f) includes any other disclosures specified by the Central Bank.
- (2) Any advertising or other promotional material that does not comply with sub-regulation (1) is prohibited for the purposes of section 50(2) of the Banks and Financial Institutions Act 2000.

22. Form and manner of disclosure requirements

- (3) Any information, contract or notice provided to a consumer or a security provider must:
- (a) be easily legible;
 - (b) be simply and clearly expressed, without use of technical language;
 - (c) be in a minimum 12-point font;
 - (d) conform to any other minimum print or type requirement specified by the Central Bank; and
 - (e) be written in English and Tok Pisin.
- (4) If the Central Bank is satisfied that any information, contract or notice does not meet the requirements of sub-regulation (2), the Central Bank may prohibit its continued use.

23. Explanations for consumers

- (1) The features, risks, terms and cost of a financial product or service or security must be clearly explained to the relevant consumer or security provider in a language they can understand:
- (a) if it is reasonably obvious that the consumer or security provider is illiterate or cannot understand the relevant contract or security; and
 - (b) on request.
- (2) A potential security provider must also be given a clear explanation, in a language they can understand, of:
- (a) the implications and risks of giving a security, including the possible quantum of any financial liability; and
 - (b) the desirability of seeking independent legal advice.
- (3) An explanation referred to in sub-regulation (1) or (2) must:

- (a) be given a reasonable time prior to the relevant contract or security coming into effect; and
- (b) be the subject of a written record.

Division 2: General disclosure requirements

24. Contractual disclosures

- (1) An Authorized Institution must clearly and prominently disclose the following information in tabular form on the first and immediately following pages of a consumer contract (including a proposed contract and a letter of offer), as at the specified disclosure date, and otherwise in the form specified by the Central Bank (if any):
 - (a) **Features:** the key features of the financial product or service, including the consumer's benefits and rights;
 - (b) **Risks:** the key risks associated with the financial product or service;
 - (c) **Financial service provider:** the name, licence number or registration number and contact details of the Authorized Institution;
 - (d) **Term:** the term of the contract, if any;
 - (e) **Interest (if any):**
 - (a) the current annual percentage rate or rates and how each applies; and
 - (b) the method of calculation of interest;
 - (f) **Fees and charges:**
 - (a) the amount or method of calculation of all fees and charges; and
 - (b) the total amount of ascertainable fees and charges;
 - (g) **Effective interest rate:** the effective interest rate for the relevant financial product or service (if any);
 - (h) **Changes:** details of any changes which may be made to any provision of the contract or any amount payable under the contract and how the consumer will be informed of the change;
 - (i) **Commissions:** details of any commission payable in respect of the contract, including the amount (if ascertainable, or the method of calculation) and by and to whom the commission is payable;
 - (j) **Data protection:** the circumstances in which the Authorized Institution will collect, use and disclose the consumer's personal information and how it will be kept secure;
 - (k) **Complaints:** information as to how to make a complaint to the Authorized Institution;
 - (l) **Dispute Resolution:** contact information for any applicable dispute resolution service (including the Central Bank);
 - (m) **Central Bank:** contact information for the Central Bank; and
 - (n) **Other information:** any other information or warning specified by these regulations or the Central Bank.
- (2) The specified disclosure date for the purposes of sub-regulation (1) must be no more than 2 business days before the information is provided.

25. Periodic statements of account

- (1) An Authorized Institution must provide a periodic statement of account free of charge to a consumer for the following financial product or services:
 - (a) a deposit account;
 - (b) a credit account; and

- (c) any other type of financial product or service specified by the Central Bank.
- (2) A statement referred to in sub-regulation (1) must be provided at least at the following intervals:
 - (a) for a credit card contract – every 40 days; and
 - (b) in any other case – every 6 months.
- (3) A statement of account need not be given if:
 - (a) the financial product or service is for the provision of credit and the annual percentage rate and any fees and charges are fixed for the entire term of the contract; and
 - (b) in any other circumstances specified by the Central Bank.
- (4) Subject to this regulation, a periodic statement of account must disclose the following information for the relevant statement period and to the extent applicable:
 - (a) **Statement period:** the dates on which the statement period begins and ends;
 - (b) **Balances:** the opening and closing balance for the statement period;
 - (c) **Credit:** each amount of credit provided in the statement period;
 - (d) **Amount payable:** any amount (including any minimum amount) payable by the consumer and the date it is due;
 - (e) **Payments:** the amount, date and nature of each payment into or out of the account;
 - (f) **Supplier:** the identity of any supplier of goods and services for which credit was provided;
 - (g) **Annual percentage rate:** the current annual percentage rate and details of any change in the statement period;
 - (h) **Interest charges:** the amount and date of any debit or credit of interest charges;
 - (i) **Fees and charges:** the amount, date and nature of any debit for fees and charges;
 - (j) **Insurance:** the amount paid for any insurance financed under the credit contract, and the name of the insurer, the kind of insurance and any applicable commission (unless previously disclosed);
 - (k) **Corrections:** any correction of information in a previous statement; and
 - (l) **Other information:** any other information specified by the Central Bank

26. Transaction receipts

- (1) An Authorized Institution must provide a receipt for any payment made in respect of a consumer contract or a security as soon as reasonably practicable after the payment is received.
- (2) The receipt must contain, at a minimum:
 - (a) the amount received; and
 - (b) sufficient information to identify the contract or security to which the payment relates.

27. Information for consumers and security providers

- (1) An Authorized Institution must provide a consumer on request with a copy of any transaction and contractual information relating to a current consumer contract with the consumer, or to a consumer contract which has been terminated in the last 2 years.
- (2) An Authorized Institution must provide a current security provider on request with a copy of the relevant credit contract, transaction details, information as to any late payments, and details of the outstanding balance.
- (3) The information referred to in sub-regulations (1) and (2) must be given:
 - (a) soon as reasonably practicable and in any event within 5 business days of the request; and
 - (b) free of charge unless a similar request has been made in the previous 6 months, in which case a fee reflecting the reasonable cost of providing the information may be charged.

28. Enforceable contracts and securities

- (1) A consumer contract or security is not enforceable unless:
 - (a) it is in the form of a written document signed by the relevant consumer or security provider or clearly accepted in some other clearly specified and verifiable way (for example, by drawing down available credit); and
 - (b) a copy of the proposed contract or security is provided to the consumer or security provider a reasonable time before the contract is made.
- (2) A copy of the final contract or security must be provided to the consumer or security provider by the Authorized Institution at the earlier of:
 - (a) the contract being executed by all parties; or
 - (b) the consumer or security provider becoming bound by the contract or security.

29. Changes to contracts and securities

- (1) A change made unilaterally by an Authorized Institution to a consumer contract or a security is void except to the extent the relevant contract or security expressly provides for the change and the circumstances in which it may be made.
- (2) An Authorized Institution must not exercise a power to make a unilateral change to a contract or a security which increases the obligations of the consumer or a security provider unless it has given the other party:
 - (a) in the case of a change to a variable annual percentage rate, at least 5 business days' notice of the details of the change; and
 - (b) in any other case, at least 20 business days' notice of the details of the change.
- (3) A reference to a change to a contract or security in this regulation includes, without limitation, a reference to:
 - (a) a different annual percentage rate which increased the liabilities of a consumer, or reduces the return to a consumer from a savings or investment product;
 - (b) a change in the method of calculation of interest payable or due under the relevant contract;
 - (c) a new or increased fee or charge;
 - (d) a change to the terms and conditions of a financial product or service; and
 - (e) a change in the amount or method of calculation of a repayment.

Division 3 – Credit product transparency and disclosure requirements

30. Credit contract disclosures

- (1) In addition to the information referred to in regulation [**Minimum disclosure requirements**], an Authorized Institution must clearly and prominently disclose in a credit contract (including a proposed contract or letter of offer), before they acquire the product, as at the specified disclosure date:
 - (a) **Credit:** the amount of credit or any applicable credit limit;
 - (b) **Deductions from loan proceeds:** the nature and amount of any deduction from the proceeds of a loan before it is disbursed to a consumer;
 - (c) **Term:** the term during which the credit is to be provided;
 - (d) **Interest:**
 - (i) details of any applicable reference rate and how the current reference rate may be ascertained;
 - (ii) the total amount of interest charges if ascertainable; and
 - (iii) any applicable default rate of interest and when it will be applied;
 - (e) **Fees and charges:** enforcement expenses which may be charged;

- (f) **Effective interest rate:** the effective interest rate for the credit contract;
 - (g) **Repayments:**
 - (i) the amount of each repayment or the method of calculating the amount if the amount is not ascertainable;
 - (ii) when each repayment is due;
 - (iii) the number of repayments; and
 - (iv) the total amount of repayments if ascertainable; and
 - (v) the right to prepay a credit contract;
 - (h) **Security:** details of any mortgage or guarantee which is to be provided including a description of the mortgaged property;
 - (i) **Insurance:** details of any insurance to be financed by the credit contract including:
 - (i) the name of the insurer;
 - (ii) the type of Insurance;
 - (iii) the amount payable to the insurer and when it must be paid;
 - (iv) any commission payable in respect of the Insurance;
 - (v) how claims may be made under the Insurance policy; and
 - (vi) details of key risks covered and key exclusions;
 - (j) **Payroll loans:** a prominent, separately disclosed warning in the form of on on the first page of the contract; and
 - (k) **Other information:** Any other information or warning specified by the Central Bank.
- (2) If a credit related insurance contract is to be financed by the credit contract, the Authorized Institution must ensure that the insurer provides the consumer with a copy of the relevant insurance policy within 5 business days of acceptance of the policy proposal by the insurer.
- (3) The specified disclosure date for the purposes of sub - regulation (1) must be no more than 2 business days before the information is provided.

31. Key Facts Statements

- (1) An Authorized Institution must provide a completed, up to date Key Facts Statement to a consumer in relation to a fixed term credit contract:
- (a) on request;
 - (b) when a consumer makes an enquiry about a fixed term credit contract;
 - (c) at the same time a consumer is given the proposed final form of the fixed term credit contract; and
 - (d) as required by these regulations.
- (2) An Authorized Institution must give the consumer sufficient time to read, and have explained to them, a Key Facts Statement before they enter into a fixed term credit contract.
- (3) A Key Facts Statement must:
- (a) be in form set out in Annex 1;
 - (b) include all the information provided for in the form in Annex 1;
 - (c) contain variable information which is current at the time the Key Facts Statement is provided; and
 - (d) be completed in accordance with the instructions in the form provided in Annex 1.

32. Statement of amount owing and other matters

- (1) Without limitation to regulation [**Information for consumers and security providers**], an Authorized Institution must, at the request of a consumer or a security provider, and within the time specified in this regulation, provide a statement of:
- (a) the current balance of the consumer's account;
 - (b) any amount overdue;

- (c) any amount debited or credited in a specified period; and
 - (d) the amount required to pay out any credit contract.
- (2) The statement referred to in sub-regulation (1) must be given:
- (a) as soon as reasonably practicable and in any event within 5 business days of the request; and
 - (b) free of charge unless a similar request has been made in the previous 6 months, in which case a fee reflecting the reasonable cost of providing the information may be charged.

33. Roll-over of loans

Without limitation to any other provision of these regulations, if an Authorized Institution allows a consumer to renew all or part of a loan on expiration of the loan's term, then:

- (a) the renewed loan must be treated as a new loan; and
- (b) all the disclosure requirements in these regulations applicable to a credit contract will apply to the new loan (including, without limitation, regulation **[Contractual disclosures]**, regulation **[Key Facts Statements]**, regulation **[Credit product disclosures]** and regulation **[Effective interest rates]**).

34. Disputed accounts

- (1) If a consumer, by notice to an Authorized Institution, disputes a liability under a credit contract then the Authorized Institution must respond to that notice as soon as reasonably practicable and in any event within 5 business days of the notice being given.
- (2) The Authorized Institution's response must explain in reasonable detail how the liability arose except to the extent the Authorized Institution agrees with the consumer as to the disputed amount.
- (3) A consumer or an Authorized Institution may apply to the court for an order in relation to a disputed amount and the court may determine the dispute on such conditions as it thinks appropriate.
- (4) An Authorized Institution must not, without court approval, begin enforcement proceedings based on a liability disputed by a consumer under this regulation:
 - (a) until at least 30 business days after the Authorized Institution has responded to the consumer; or
 - (b) while a court is determining a dispute as provided for in sub - regulation (3).

35. Effective interest rates

An Authorized Institution must calculate, and provide to a consumer, an effective interest rate for a credit contract:

- (a) on request;
- (b) in a Key Facts Statement;
- (c) calculated in accordance with Annex 3; and
- (d) as otherwise required by these regulations.

Division 4 – Deposit product transparency and disclosures

36. Deposit disclosures

In addition to the information referred to in regulation **[Contractual disclosures]**, an Authorized Institution providing a deposit product to a consumer must clearly and prominently disclose in the contract:

- (a) the type of deposit product;
- (b) any minimum balance requirement;

- (c) any applicable term for a term deposit;
- (d) any applicable penalty for terminating a term deposit early;
- (e) savings withdrawal options; and
- (f) any other information or warning specified by the Central Bank.

PART 7 - PRODUCT SUITABILITY

37. Product design

- (1) An Authorized Institution must have in place, and apply, written policies and procedures to ensure that the financial products and services they provide to consumers are designed and marketed having regard to the financial objectives, needs and capacity of consumers in the target market and with a view to minimizing the risk of harm to those consumers.
- (2) At a minimum, those policies and procedures must:
 - (a) identify and control relevant risks including those relating to product or service features, marketing, distribution, security, usage and account maintenance;
 - (b) assess and define the target market for each new financial product or service to be offered to consumers having regard to their likely financial needs, preferences and capacity and considering their known behaviours;
 - (c) set out the process for the authorization and introduction of new financial products or services for consumers, including the decision makers and how relevant requirements of these regulations will be met (including this regulation, regulation [**Product suitability processes and procedures**] and Part [**Responsible Lending**]); and
 - (d) meet any other requirements specified by the Central Bank.

38. Product suitability processes and procedures

- (1) An Authorized Institution must have in place, and apply, written policies and procedures to determine whether a financial product or service provided to a consumer is reasonably likely to meet the financial objectives, needs and capacity of that consumer.
- (2) The policies and procedures referred to in sub-regulation (1) must require personal advice about the suitability of a financial product or service for a consumer to be provided on request or if it seems reasonably likely that the consumer needs such advice.
- (3) Personal advice referred to in sub-regulation (2) must be recorded in a statement of advice, with a copy to be provided to the consumer.
- (4) A statement of advice referred to in sub-regulation (3) must include:
 - (a) a summary of the advice;
 - (b) any assumptions made by the person providing the advice;
 - (c) applicable fees and charges;
 - (d) any potential conflict of interest;
 - (e) any applicable commissions to be paid to the person providing the advice; and
 - (f) the basis for the advice.

PART 8 - RESPONSIBLE LENDING

39. Credit affordability

- (1) An Authorized Institution must only provide a credit facility to a consumer after:
 - (a) a reasonable assessment of the ability of the consumer to repay the credit without substantial hardship; and

- (b) taking reasonable steps to verify the information on which they rely to assess the consumer's creditworthiness.
- (2) An Authorized Institution must comply with any directions issued by the Central Bank concerning the steps to be taken to determine the matters referred to in sub-regulation (1).

40. Unsolicited offers of credit

An Authorized Institution must not make an unsolicited, pre-approved offer to a consumer of:

- (a) a credit facility; or
- (b) a credit limit increase.

41. Payroll deductions

- (1) If a consumer has authorized their employer to deduct an amount from their pay for direct payment to an Authorized Institution in relation to a credit contract, then:
 - (a) the authority is void to the extent it exceeds any amount that may be deducted from the consumer's wages under any law or regulatory instrument, including General Order 20 *Engagement in Business Activities Outside of Public Service Employment & Other Important Provisions Governing Conduct*, made under the Public Services (Management Act 2014;
 - (b) the Authorized Institution must disclose to the consumer any fee or charge payable to any person in connection with the deduction as if it were payable in connection with the credit contract;
 - (c) a repayment is deemed to have been made consistently with the relevant credit contract as soon as it has been deducted from a consumer's pay and regardless of whether the payment is remitted in whole or in part to the Authorized Institution;
 - (d) the Authorized Institution must immediately cancel the payroll deduction on repayment of all amounts due under the credit contract or termination of the contract for any reason;
 - (e) if a payroll deduction is a "mortgage" as defined in these regulations, the provisions of these regulations applying to a mortgage will apply accordingly; and
 - (f) for the avoidance of doubt, a mortgage is void to the extent it purports to create a security over remuneration or related benefits or retirement benefits under regulation [**Mortgages which are void**].
- (2) An Authorized Institution must not accept, or seek to recover, any payment which is void under this regulation.
- (3) An Authorized Institution is liable to a consumer, and must immediately reimburse the consumer, for any payroll deduction to the extent it exceeds the amount payable under this regulation or the relevant credit contract and must pay interest on the relevant amount at the rate which applied under the relevant credit contract at the time the excess amount was deducted.

42. Notice of default

- (1) An Authorized Institution must not commence enforcement proceedings against a consumer or security provider unless:
 - (a) they are in default and they have been given a notice allowing at least 30 business days to remedy the default and specifying: full details of the default, the amount in default; and the consequences of failing to pay; and
 - (b) the default has not been remedied in the period stated in the notice.
- (2) A notice need not be given under sub-regulation (1) if:

- (a) the Authorized Institution reasonably believes that urgent action is required to protect mortgaged property; or
- (b) permitted by a court order.
- (3) A default is not taken to be remedied if there is a subsequent default of the same kind within the relevant notice period.
- (4) This regulation is in addition to any provision of any other law relating to the enforcement of real property or other mortgages.

43. Debt collection

- (1) An Authorized Institution or supplier must not harass a consumer, a security provider or any other person in relation to the repayment of credit or an amount due under a security.
- (2) Harassment of a person for the purposes of this regulation includes the following actions, except to the extent expressly required by law:
 - (a) unnecessary or excessive contact or communication with a person, going beyond what is acceptable or unreasonable;
 - (b) making threats to seize, or seizing, property which has not been provided as collateral;
 - (c) deliberately damaging personal property;
 - (d) approaching someone other than a consumer or a security provider to seek payment of the amount due;
 - (e) threats of harm to any person and assault;
 - (f) disclosing the existence of the debt to a third party;
 - (g) calling at a place of employment to seek repayment; and
 - (h) public shaming.
- (3) An Authorized Institution must comply, and ensure its debt collectors comply, with any directions issued by the Central Bank concerning debt collection activities.
- (3) Without limitation to regulation [**Liability for representatives**], an Authorized Institution is liable for the acts or omissions of a debt collector acting on their behalf, or on behalf of a person to whom they have assigned a debt, as if those acts or omissions were those of the Authorized Institution.
- (4) Notwithstanding sub-regulation (2)(d), disclosure of the existence of a debt to a debt collector is permitted provided that the debt collector is required to keep the information confidential and secure, as required of the relevant Authorized Representative under these regulations.

44. Repossession and sale of mortgaged goods

- (1) An Authorized Institution must not enter a home to re-possess mortgaged goods without the occupier's consent or a court order.
- (2) An Authorized Institution must, within 5 business days of taking possession of mortgaged goods, give the mortgagor a notice with an estimate of the goods' value based on the best price reasonably obtainable.
- (3) An Authorized Institution must sell the goods the subject of a notice under sub-regulation (2) to a purchaser nominated by the mortgagor, for the estimated price or a greater price, provided the nomination is received within 14 business days of the date of receipt of the notice.

- (4) Subject to sub-regulation (3), an Authorized Institution must not sell the goods the subject of a notice under sub-regulation (2):
 - (a) within 21 business days of the notice being given;
 - (b) while a stay of enforcement proceedings is in place; or
 - (c) for a price less than the estimated value, other than with court approval.
- (5) Immediately after a sale of mortgaged goods takes place, the Authorized Institution must notify the mortgagor of:
 - (a) the gross and net proceeds of sale;
 - (b) the amount credited to the mortgagor; and
 - (c) any amount required to pay out the credit contract or any security.
- (6) The amount credited to a mortgagor on the sale of mortgaged goods must not be less than:
 - (a) the outstanding amount secured by the mortgage; and
 - (b) the reasonable expenses of the sale.
- (7) A reference in this regulation to the taking possession of mortgaged goods includes a reference to the Authorized Institution taking possession of the goods:
 - (a) pursuant to the terms of the mortgage; or
 - (b) after the voluntary return of the goods by the mortgagor.

45. Limits on guarantees

- (1) A guarantor may withdraw from a guarantee:
 - (a) at any time before credit is first provided under the credit contract; and
 - (b) after credit is provided if the credit contract differs materially from the copy given to the guarantor before the guarantee was signed.
- (2) A guarantor of a continuing credit contract can, by notice to the Authorized Institution, limit the guarantee so that it only applies to liabilities already incurred and any other agreed amount.
- (3) If the terms of a credit contract are changed to increase or allow for an increase in liabilities of a guarantor, the guarantor's liabilities are not increased unless the guarantor has specifically agreed in writing to the increase or the change is:
 - (a) an increase in the annual percentage rate, repayments or fees and charges expressly provided for in the credit contract;
 - (b) a deferral or a waiver of the consumer's obligations for a period not exceeding 90 business days; or
 - (c) a change approved by a court.

46. Enforcement of guarantees

An Authorized Institution must not enforce a judgement against a guarantor unless:

- (a) the Authorized Institution has obtained a judgement against the consumer for the guaranteed amount which has remained unpaid for 30 business days after a written demand;
- (b) the consumer cannot be located after reasonable attempts to do so; or
- (c) the consumer is insolvent; or
- (d) a court authorizes the Authorized Institution to do so.

47. Consumer and security provider responsibilities

For the avoidance of doubt, subject to the protections provided for by these regulations or any law, nothing in these regulations is intended to detract from the responsibilities of consumers and their security providers under any contract or law, including:

- (a) to fulfil their obligations under credit contracts they have entered into and securities they have provided;
- (b) to provide complete and truthful information to an Authorized Institution; and
- (c) not to act fraudulently.

PART 9 - DATA PROTECTION

48. Data protection policies and procedures

- (1) An Authorized Institution must have in place, and apply, policies and procedures to ensure the confidentiality and security of the personal Information of a consumer and a security provider and do so in a manner consistently with these regulations and any directives issued by the Central Bank.
- (2) An Authorized Institution must only use and disclose the personal information of a consumer or a security provider:
 - (a) consistently with the original purpose of collection;
 - (b) with the explicit and informed consent of the consumer or the security provider, as the case may be;
 - (c) as required or permitted by law;
 - (d) in any other circumstances specified in directives issued by the Central Bank.
- (3) The directives referred to in sub-regulation (1) may, without limitation, relate to:
 - (a) the content and form requirements for privacy disclosures by an Authorized Institution;
 - (b) a consumer's or security provider's right of access to their personal information;
 - (c) an Authorized Institution's obligation to consider correction of a consumer's or security provider's personal Information on request;
 - (d) other circumstances in which an Authorized Institution may use or disclose personal information of a consumer or security provider;
 - (e) complaints from a consumer or a security provider about misuse of their personal information; and
 - (f) the privacy policy of an Authorized Institution.

49. Credit reporting data

An Authorized Institution must:

- (a) obtain the specific and informed consent of the consumer or the security provider (as the case may be) before disclosing their personal information to a credit reference bureau; and
- (b) take responsibility for dealing with any complaint from a consumer or a security provider about:
 - (i) the use or disclosure of their personal information by a credit reference bureau; or
 - (ii) the accuracy of the records or information about them which is held by a credit reporting information,where the Authorized Institution has disclosed the personal information of the consumer or security provider to the credit reference bureau.

PART 10 - CONSUMER RECOURSE

50. Complaints to Authorized Institutions

- (1) An Authorized Institution must have in place, and apply, documented policies and procedures for a fair, accessible, transparent, free and efficient internal complaints system that meets the requirements of this regulation.
- (2) An Authorized Institution must ensure that:
 - (a) they have a well-publicized, point of contact to which consumers and security providers may refer a complaint;
 - (b) a complainant can make complaints in person, in writing, by telephone, electronically and by any other channel through which they normally communicate with the Authorized Institution;
 - (c) an adequate number of staff are designated to handle complaints (although they may perform other duties);
 - (d) the staff handling complaints are independent from any staff and function subject to a complaint to the extent feasible having regard to the size of the Authorized Institution;
 - (e) relevant staff are appropriately trained on the Authorized Institution's policies and procedures for handling complaints and have appropriate resources and capacity; and
 - (f) up to date records of complaints received and processed are maintained which include information on:
 - (i) the date a complaint is received;
 - (ii) brief details of the complaint;
 - (iii) the name and contact details of the complainant;
 - (iv) the name and contact details of relevant staff members handling the complaint;
 - (v) details of all communication with the complainant; and
 - (vi) details of any settlement reached.
- (3) An Authorized Institution must actively inform consumers and security providers about how to make a complaint including by:
 - (a) prominently displaying relevant information at physical premises, on websites, in any other form of electronic media used by the Authorized Institution;
 - (b) prominently including relevant information in terms and conditions for any contract or in any security; and
 - (c) providing the information on request.
- (4) An Authorized Institution must:
 - (a) give each complaint a unique tracking number and advise the complainant of the number on receipt of the complaint;
 - (b) establish, and implement, a reasonable timeline for dealing with each complaint which must include, at a minimum:
 - (i) acknowledgement of receipt of the complaint within 2 business days of receipt;
 - (ii) investigation of the complaint as soon as reasonably practicable; and
 - (iii)** advice to the complainant of the outcome of the complaint within [20] business days of its receipt;
 - (c) ensure all complaints are addressed in an equitable, objective and timely manner; and
 - (d) reasons are given for a decision to reject a complaint.
- (5) An Authorized Institution must ensure that:
 - (a) regular (at least quarterly) reports are provided to their Board on the volume and nature of complaints received, the extent to which they have been resolved and the related root causes and systemic issues; and

- (b) lessons learnt through the complaints management processes and procedures are used to improve those processes and procedures, inform training of representatives and to improve financial products and services.
- (6) An Authorized Institution must comply with any additional requirements relating to complaints management specified by the Central Bank.

51. Reporting to BPNG

An Authorized Institution must provide reports to the Central Bank on complaints received and processed:

- (a) at intervals specified by the Central Bank; and
- (b) in the form, and containing the information, specified by the Central Bank.

52. BPNG power to consider disputes

- (1) The Central Bank is the responsible authority for mediating disputes between a complainant and an Authorized Institution in relation to a contract or a security or any matter arising under these regulations (“**dispute**”).
- (2) The Central Bank is not required to consider a dispute under this regulation unless:
 - (a) the consumer has first sought to have the dispute resolved through the Authorized Institution’s complaint resolution processes and the outcome of those processes is known; or
 - (b) the Central Bank considers exceptional circumstances apply.
- (3) A dispute must be mediated by the Central Bank for the purposes of these regulations:
 - (a) in an accessible, transparent, free and efficient manner;
 - (b) otherwise in accordance with any process and procedures set out in directives issued by the Central Bank pursuant to sub-regulation (7).
- (4) An Authorized Institution must notify consumers and security providers of the Central Bank’s role:
 - (a) by prominently displaying relevant information at physical premises, on websites, in any other form of media used by the Authorized Institution;
 - (b) by a prominent notice in the terms and conditions of the contract or security (as the case may be);
 - (c) at the time a complaint is made to the Authorized Institution;
 - (d) if a complaint is not resolved to the satisfaction of the complainant; and
 - (e) on request.
- (5) The Central Bank must publicize its dispute resolution service under these regulations.
- (6) A determination of the Central Bank in accordance with these regulations and the Regulations in respect of a dispute referred to in sub-regulation (1) is binding on the Authorized Institution concerned.
- (7) The Central Bank may issue directives for the purposes of this regulation including, without limitation, concerning:
 - (a) the processes and procedures to be followed in relation to a dispute including, without limitation, concerning:
 - (i) an application to mediate a dispute;
 - (ii) the time frame for mediating disputes;
 - (iii) information which must be provided by parties to a dispute;
 - (iv) recovery of costs;
 - (v) the right of a party to be represented (or not);
 - (vi) rules of evidence; and

- (vii) the basis on which the Central Bank may decide a dispute;
- (b) the form of any orders or recommendations of the Central Bank;
- (c) test cases concerning consumer complaint issues of general application;
- (d) limits on the types of disputes which may be considered by the Central Bank; and
- (e) publication of data concerning disputes considered by the Central Bank.

53. Compensation for breach

- (1) An Authorized Institution is liable to a person, including a consumer and a security provider, for any damage suffered because of its acts and omissions, including those of its representatives, in connection with a matter covered by these regulations.
- (2) A court may:
 - (a) order an Authorized Institution to compensate a person affected by any breach of these regulations; and
 - (b) make any consequential or ancillary orders it considers appropriate.
- (3) The Central Bank may initiate and conduct an action for compensation on behalf of a consumer or a class of consumers affected by a breach of these regulations.

54. Reopening of contracts and securities

A court may, if satisfied on the application of a consumer or a security provider that, in all the circumstances, there has been a breach of these regulations, the court may re-open the relevant contract and make any of the following orders:

- (a) relieve the consumer or security provider from an obligation to re-pay any amount due under the contract;
- (b) reopen an account already taken between the parties;
- (c) set aside or revise the contract or security;
- (d) give judgement for an order for payment of an amount to the consumer or security provider that the court considers to be just having regard to all the circumstances of the case; and
- (e) make ancillary or consequential orders.

55. Third party contracts

A person cannot authorize an Authorized Institution, or any associated person, to enter into a consumer contract, or provide a security, on their behalf.

PART 11 - MISCELLANEOUS

56. Breach does not invalidate contract or security

A provision of a contract or a security is not illegal, void or unenforceable because of a breach of these regulations except to the extent provided for by these regulations.

57. Notice requirements

- (1) Subject to regulation [***Electronic contracts, transactions and disclosures***], a notice or another document to be provided under these regulations:
 - (a) must be given to the last known address or other location of the addressee or other nominated address;
 - (b) must be sent by post, or delivered personally or sent electronically;
 - (c) must be given in writing; and
 - (d) must otherwise comply with requirements specified by the Central Bank.

- (2) A notice or another document to be provided under these regulations will be taken to have been delivered:
 - (a) on the date it is given personally;
 - (b) if sent by post, on the date it would be delivered in the normal course;
 - (c) if sent electronically, on the date that it becomes capable of being retrieved by the addressee; and
 - (d) as provided for by any law.
- (3) Nothing in this section limits:
 - (a) the provisions of any other law relating to the giving of notices or other documents; or
 - (b) the power of the court to make orders concerning notices or other documents.

58. Electronic contracts, transactions and disclosures

- (1) For the purposes of these regulations, any contract or transaction is not invalid because it took place wholly or partly by means of one or more electronic communications.
- (2) Any requirement or permission under these regulations, however expressed, to:
 - (a) produce a notice;
 - (b) give information in writing;
 - (c) provide a signature;
 - (d) produce a document;
 - (e) make a request;
 - (f) give a statement of reasons;
 - (g) record information; or
 - (h) retain a document,

may be met by electronic means with the prior consent of any recipient and provided they are given a copy of any relevant disclosure document in a form which they can keep and access for future reference.

NOTE: to consider if there are any other laws / regulations in PNG dealing with electronic transactions.

PART 12 – SANCTIONS

NOTE: To be discussed with BPNG.

PART 12 - TRANSITIONAL PROVISIONS

59. New facilities

This Act applies in relation to:

- (a) a financial product or service; and
- (b) a security; and
- (c) a payroll deduction,

which is entered into or given on or after the date on which these regulations commence.

60. Existing facilities

- (1) Subject to this section, these regulations apply in relation to a financial product or service, security or payroll deduction in existence before the day on which these regulations commence (“**existing facility**”).

- (2) A financial service provider for an existing facility will not be in breach of these regulations in respect of anything done, or omitted to be done, before the commencement of these regulations.

ANNEX 1 – KEY FACTS STATEMENT FOR FIXED TERM CREDIT CONTRACTS

KEY FACTS STATEMENT FOR FIXED TERM LOAN

THIS IS NOT AN OFFER OF CREDIT OR A CONTRACT OF ANY SORT

(Your final loan offer may vary because of your personal financial position or due to interest rate or fee changes)

LENDER'S NAME:

YOUR NAME:

DATE PREPARED:

YOUR LOAN		HOW DOES YOUR LOAN COMARE?	
Loan Amount:	... Kina	Effective Interest Rate (EIR)	... % yearly <i>You can use the EIR to compare this loan with loans of the same amount, term and repayments.</i>
Loan Term:	... months / ... years	<i>This rate includes all interest and fees and charges</i>	
Interest Type:	... fixed / variable <i>If variable, the rate may be changed during the loan term</i>	Nominal Interest Rate:	... % yearly You may have to pay fees and charges as well as interest
Security :	No / Yes Security type: <i>[describe land / goods / assets]</i>		

Amount you will receive (after paying all upfront fees)	+	Total interest	+	Total fees and charges (see below for list)	=	TOTAL AMOUNT YOU HAVE TO REPAY
Kina_____		Kina_____		Kina_____		Kina_____
						<i>This means you will pay back Kina _____ for every 1000 Kina you borrow</i>

REPAYMENTS	
Repayment Amount (includes all costs)	Kina_____ per week / month
Date First Repayment Due	___/___/___ / [Describe: e.g. one month after loan provided]
Number of Repayments	_____

FEES AND CHARGES	
Application Fee	Kina_____
Total of Monthly Service Charges	Kina_____
Total Mandatory Insurance Charges (if applicable)	Kina_____
[Other fees]	Kina_____ (Describe type and amount of each such fee separately)

OTHER KEY INFORMATION YOU SHOULD KNOW

YOUR RIGHTS AND RESPONSIBILITIES

Any questions or complaints? Call the lender: [TELEPHONE], email [EMAIL ADDRESS], or write to [MAILING ADDRESS] to contact us regarding your question or complaint.

Want to repay all or part of your loan early? You may have to pay a fee to do this.

If Applicable: The prepayment fee is: Kina.....OR The prepayment fee is calculated as follows:

If you pay late:

- You may have to pay additional fees
- The late payment may be reported to a credit reference bureau
- Your ability to re-borrow may be affected
- You may lose your collateral.

If this KFS relates to a fixed rate credit contract: this means that your repayments should not change during the loan term, assuming there is no change in fees and charges.

If this KFS relates to a variable rate loan: If your interest rate was to increase by 1% per annum, your weekly / monthly repayment would increase by around [*insert change in repayment*].

You should also be aware that:

- The amount required to be paid includes all known interest, fees and charges. It does not include:
 - any fee for an event that may not happen (e.g. a late payment fee)
 - government charges; or
 - third party fees and charges
- All fees and charges will be disclosed in the loan contract.
- The amount of each repayment may change if interest rates, fees or charges change or if you enter into a different loan type.

CERTIFIED CORRECT:

Lender's Representative

Date:

I ACKNOWLEDGE RECEIPT OF THIS STATEMENT

Borrower

Date:

[A signature may be provided electronically provided that the consumer agrees in advance and they are given a copy in a form they can keep and access for future reference.]

ANNEX 2 – WARNINGS ABOUT PAYROLL LOANS

ANNEX 2 – WARNINGS ABOUT PAYROLL LOANS

Do you really need a loan today? *

It can be very expensive to borrow small amounts of money and borrowing may not solve your money problems. And it becomes more expensive every time a loan is re-financed.

Also, take great care to check all deductions from your pay for loan deductions.

If you have any questions, talk to your lender. If they cannot help you then call XXXX

NOTE: could a consumer who has a payroll loan call and has concerns about deductions call BPNG? If so, details should be included.

ANNEX 3 – EFFECTIVE INTEREST RATE CALCULATION

ANNEX I

- I. The basic equation expressing the equivalence of drawdowns on the one hand and repayments and charges on the other.

The basic equation, which establishes the annual percentage rate of charge (APR), equates, on an annual basis, the total present value of drawdowns on the one hand and the total present value of repayments and payments of charges on the other hand, i.e.:

$$\sum_{k=1}^m C_k (1 + X)^{-t_k} = \sum_{l=1}^{m'} D_l (1 + X)^{-s_l}$$

where:

- X is the APR,
- m is the number of the last drawdown,
- k is the number of a drawdown, thus $1 \leq k \leq m$,
- C_k is the amount of drawdown k ,
- t_k is the interval, expressed in years and fractions of a year, between the date of the first drawdown and the date of each subsequent drawdown, thus $t_1 = 0$,
- m' is the number of the last repayment or payment of charges,
- l is the number of a repayment or payment of charges,
- D_l is the amount of a repayment or payment of charges,
- s_l is the interval, expressed in years and fractions of a year, between the date of the first drawdown and the date of each repayment or payment of charges.

Remarks:

- (a) The amounts paid by both parties at different times shall not necessarily be equal and shall not necessarily be paid at equal intervals.
- (b) The starting date shall be that of the first drawdown.
- (c) Intervals between dates used in the calculations shall be expressed in years or in fractions of a year. A year is presumed to have 365 days (or 366 days for leap years), 52 weeks or 12 equal months. An equal month is presumed to have 30,41666 days (i.e. $365/12$) regardless of whether or not it is a leap year.
- (d) The result of the calculation shall be expressed with an accuracy of at least one decimal place. If the figure at the following decimal place is greater than or equal to 5, the figure at that particular decimal place shall be increased by one.
- (e) The equation can be rewritten using a single sum and the concept of flows (A_k), which will be positive or negative, in other words either paid or received during periods 1 to k , expressed in years, i.e.:

$$S = \sum_{k=1}^n A_k (1 + X)^{-t_k},$$

S being the present balance of flows. If the aim is to maintain the equivalence of flows, the value will be zero.

II. The additional assumptions for the calculation of the annual percentage rate of charge shall be as follows:

- (a) If a credit agreement gives the consumer freedom of drawdown, the total amount of credit shall be deemed to be drawn down immediately and in full.
- (b) If a credit agreement gives the consumer freedom of drawdown in general but imposes, amongst the different ways of drawdown, a limitation with regard to the amount of credit and period of time, the amount of credit shall be deemed to be drawn down on the earliest date provided for in the credit agreement and in accordance with those drawdown limits.
- (c) If a credit agreement provides different ways of drawdown with different charges or borrowing rates, the total amount of credit shall be deemed to be drawn down at the highest charge and borrowing rate applied to the most common drawdown mechanism for this type of credit agreement.
- (d) In the case of an overdraft facility, the total amount of credit shall be deemed to be drawn down in full and for the whole duration of the credit agreement. If the duration of the overdraft facility is not known, the annual percentage rate of charge shall be calculated on the assumption that the duration of the credit is 3 months.
- (e) In the case of an open-end credit agreement, other than an overdraft facility, it shall be assumed that:
 - (i) the credit is provided for a period of 1 year starting from the date of the initial drawdown, and that the final payment made by the consumer clears the balance of capital, interest and other charges, if any;
 - (ii) the capital is repaid by the consumer in equal monthly payments, commencing 1 month after the date of the initial drawdown. However, in cases where the capital must be repaid only in full, in a single payment, within each payment period, successive drawdowns and repayments of the entire capital by the consumer shall be assumed to occur over the period of 1 year. Interest and other charges shall be applied in accordance with those drawdowns and repayments of capital and as provided for in the credit agreement.

For the purposes of this point, an open-end credit agreement is a credit agreement without fixed duration and includes credits which must be repaid in full within or after a period but, once repaid, become available to be drawn down again.

For the purposes of this point, an open-end credit agreement is a credit agreement without fixed duration and includes credits which must be repaid in full within or after a period but, once repaid, become available to be drawn down again.

- (f) In the case of credit agreements other than overdrafts and open-end credits as referred to in the assumptions set out in points (d) and (e):
- (i) if the date or amount of a repayment of capital to be made by the consumer cannot be ascertained, it shall be assumed that the repayment is made at the earliest date provided for in the credit agreement and is for the lowest amount for which the credit agreement provides;
 - (ii) if the date of conclusion of the credit agreement is not known, the date of the initial drawdown shall be assumed to be the date which results in the shortest interval between that date and the date of the first payment to be made by the consumer.
- (g) Where the date or amount of a payment to be made by the consumer cannot be ascertained on the basis of the credit agreement or the assumptions set out in points (d), (e) or (f), it shall be assumed that the payment is made in accordance with the dates and conditions required by the creditor and, when these are unknown:
- (i) interest charges are paid together with the repayments of capital;
 - (ii) a non-interest charge expressed as a single sum is paid at the date of the conclusion of the credit agreement;
 - (iii) non-interest charges expressed as several payments are paid at regular intervals, commencing with the date of the first repayment of capital, and if the amount of such payments is not known they shall be assumed to be equal amounts;
 - (iv) the final payment clears the balance of capital, interest and other charges, if any.
- (h) If the ceiling applicable to the credit has not yet been agreed, that ceiling is assumed to be EUR 1 500.
- (i) If different borrowing rates and charges are offered for a limited period or amount, the borrowing rate and the charges shall be deemed to be the highest rate for the whole duration of the credit agreement.
- (j) For consumer credit agreements for which a fixed borrowing rate is agreed in relation to the initial period, at the end of which a new borrowing rate is determined and subsequently periodically adjusted according to an agreed indicator, the calculation of the annual percentage rate shall be based on the assumption that, at the end of the fixed borrowing rate period, the borrowing rate is the same as at the time of calculating the annual percentage rate, based on the value of the agreed indicator at that time.’.
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