

# Consumer Protection

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Financial Sector Legislative Reforms Commission

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# The problem

- Complexity of financial markets and the existence of market failures create the need for special protections for financial consumers.
- The current strategy in finance is that of *caveat emptor*: let the buyer beware. We need to move from this towards a *seller beware* regime.
- The responsibility for consumer protection currently vests with multiple regulators.
- There is no definitive guidance in the existing primary laws on the rights and protections that financial consumers should have.

## Meaning of 'consumer and 'retail consumer'

- **Consumer:** A person who has availed, avails, or intends to avail a financial service or has a right or interest in a financial product.
- **Retail consumer:** A consumer that is an individual or an eligible enterprise, if the value of the financial product or service does not exceed the limit specified by the regulator in relation to that product or service.
- **Eligible enterprise:** An enterprise that has less than a specified level of net asset value or has less than a specified level of turnover. Each of these caps will be specified by the regulator.

# FSLRC approach

- Adoption of a consolidated, non-sector-specific, consumer protection framework containing:
  - The consumer protection related objectives to be achieved by the regulator.
  - Rights and protections available to all consumers and some specific protections for retail consumers.
  - Regulation-making, supervision and enforcement powers in the hands of the regulator.
  - Principles to guide the exercise of powers by the regulator.
- Setting up of a specialised Financial Redress Agency (FRA) to address the grievances of retail consumers.

# The regulatory objectives

- Protecting and furthering the interests of consumers of financial products and services.
- Promoting public awareness in financial matters.

# Rights and protections of consumers

## **Basic protections available to all consumers:**

- Financial service providers must act with professional diligence.
- Protection against unfair contract terms.
- Protection against unfair conduct.
- Protection of personal information.
- Requirement of fair disclosure.
- Redress of complaints by the financial service provider.

## **Additional protections for retail consumers:**

- Right to receive suitable advice.
- Protection from conflict of interest of advisors.
- Access to the FRA for redress of grievances.

# Functions and powers of the regulator

## General functions:

- Making regulations to carry out the purposes of the law.
- Issuing guidance to financial service providers.
- Supervising the conduct of financial service providers to ensure compliance with the law.
- Taking appropriate enforcement actions to deal with any violations.

## Consumer protection specific functions:

- Registration of all individuals who deal directly with consumers.
- *File and use* process two months prior to the launch of any new financial products.
- Power to specify modifications to a financial product or service that is found to be harmful for consumers.

# Advisory council on consumer protection

- The advisory council will consist of persons who are consumers or persons representing the interests of consumers.
- It will be responsible for:
  - Making representations on the regulator's policies and practices.
  - Reviewing, monitoring, and reporting to the regulator on the effectiveness of its policies and practices.
  - Creating reports stating its views on draft regulations published by the regulator.



# Financial Redress Agency

- Composition:
  - Chairperson to be appointed by the regulators, in consultation with the Central Government.
  - One official to be nominated by each regulator.
  - Four other members to be appointed by the regulators through a selection process.
- Functions - To redress grievances of retail consumers through:
  - Mediation.
  - Adjudication.

# Steps in FRA's proceedings - I

- *Receipt of complaint*: Complaints against financial service providers may either be submitted directly to FRA or be submitted to the regulator.
- *Screening of complaints*: May dismiss a complaint during the screening process if:
  - the consumer has not made a complaint to the financial service provider before approaching the FRA
  - the complaint is prima facie frivolous, malicious or vexatious;
  - the matter is pending before, or has been adjudicated upon by, another competent authority.
- *Mediation*: Mediator who will assist the parties to arrive at a voluntary settlement. If the mediation process fails, the complaint will proceed to adjudication

## Steps in FRA's proceedings - II

- *Adjudication*: FRA will appoint independent skilled and qualified adjudicators for investigating, considering and determining complaints.
- Unless an appeal is made, the decision of the adjudicator will be final and binding.
- *Appeals*: Appeals will go to the Financial Sector Appellate Tribunal and appeals from the appellate tribunal will go to the Supreme Court.

# Competition law and policy - I

FSLRC recommends a structured mechanism for interaction and co-operation between financial regulators and CCI:

- *Consultation for draft regulations*: CCI should review draft regulations issued by the regulator and provide its inputs.
- *Review of regulatory provisions*: CCI will monitor the effects on competition of any regulatory actions and practices on an ongoing basis.
- *References by CCI*: CCI must make a reference to the regulator if it initiates any proceedings involving a financial service provider, and the regulator must respond with its views on the referred issue.
- Regulator may nominate one non-voting member on to the CCI's board to participate in proceedings relating to that matter.

## Competition law and policy - II

- *Reference by the regulator*: Regulator must report to the CCI about any conduct of financial service providers that appears to it to be in violation the Competition Act.
- *Memorandum of understanding*: CCI and the regulator must enter into a memorandum of understanding to establish the procedures for co-operation between them.