Consumer Protection Issues for Digital Financial Services

Never Stand Still | Law

Professor Ross P. Buckley

CIFR King & Wood Mallesons Professor of International Finance Law

Leader -- Digital Financial Services Research Team, UNSW Australia

Team Members: Louise Malady & Dr Cheng-Yun Tsang

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Overview

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Background

- Consumer trust is the foundation for achieving sustainable uptake and active usage of DFS.
- Critical factors for success – reliable infrastructure, reliable agent network AND the consumer protection regime.
- Consumer protection regime is the *safety net*.
- An effective regime provides consumers with confidence to use the DFS.
- Consumers are generally concerned about *unclear pricing* and *options for recourse* (CGAP/Microsave Research).
- Providers and Consumers both need TIME and OPPORTUNITIES to use the DFS and to test the recourse mechanisms.

Concern: Sales and Market Practices

- Misleading advertisement
- Aggressive marketing
- Unsolicited product
- Unsolicited credit/limited increase

Concern: Consumer Awareness

- Lack of Awareness of Key Terms, relevant charges and penalties
- Poor customer responsibility

Consumer Protection Rules

Concern: Lack of Transparency

- Key terms, relevant charges and penalties no clearly disclosed
- Terms not legible and not in plain language

Concern: Debt Collection

- Harassment, intimidation
- Collection charges passed onto customers

Concern: Fees and Charges

- High interest charges
- Hidden Fees
- Unreasonable penalty charges

Reproduced from: Koid Swee Lian's (Bank Negara Malaysia) presentation slides for the CGAP/SEACEN Microfinance Regulation and Supervision Training Course in Sri Lanka, October 2010.

Examine the Existing Regulatory Regime

- Is there a comprehensive consumer protection regime that regulates all industries?
- Is there a specific consumer protection regime that regulates the finance industry or consmer credit?
- Is there a specific consumer protection regime that regulates DFS?

Institutional Structures for Consumer Protection

Minimum integration → *Maximum integration*

Fragmented Model
A body for each business and each regulatory objective

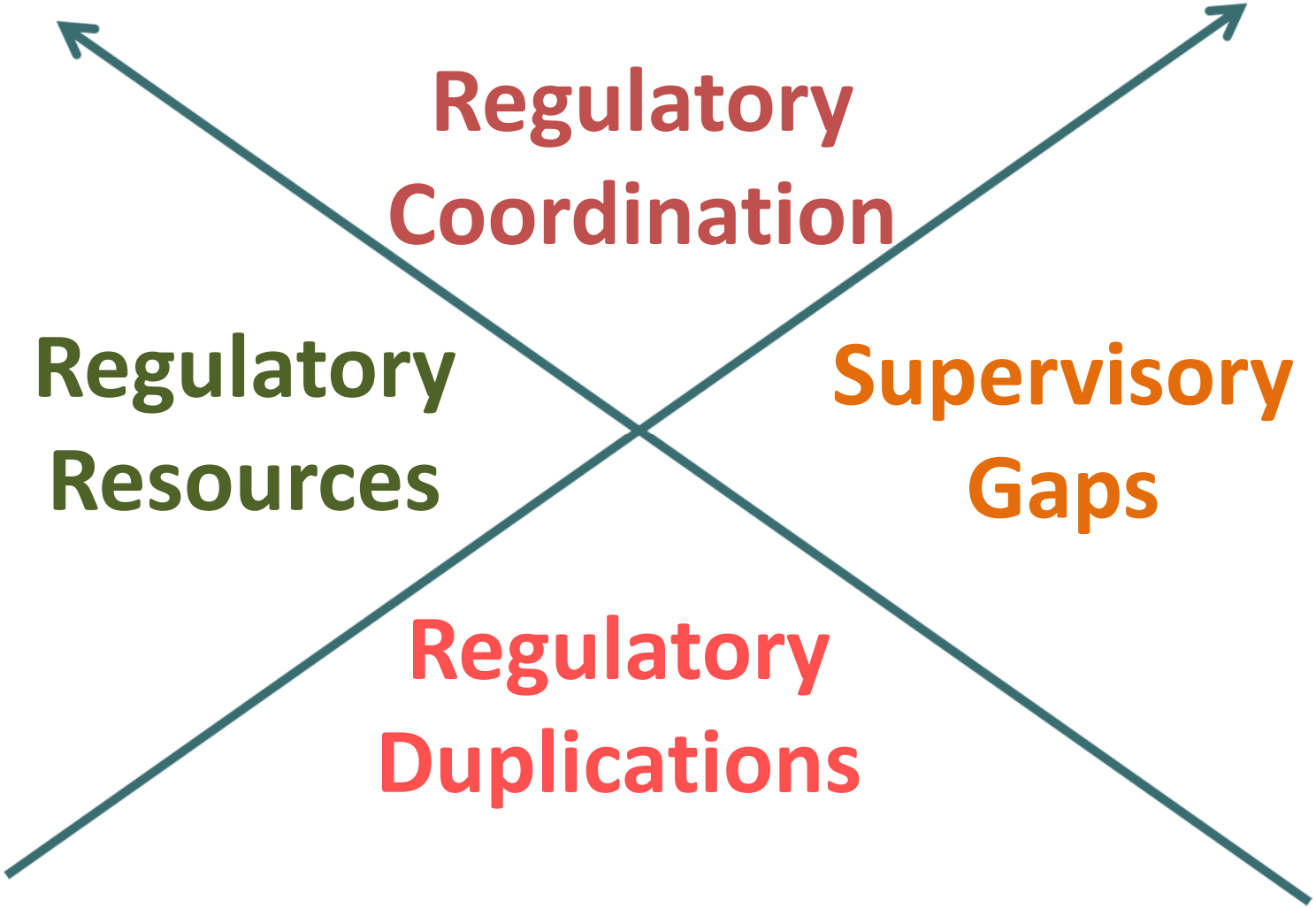
Semi-integrated Model
Different supervisors for different businesses, no financial consumer protection agency (e.g. most countries)

Twin Peaks Model
One prudential supervisors and one financial consumer protection supervisor (e.g. Australia, UK, Belgium)

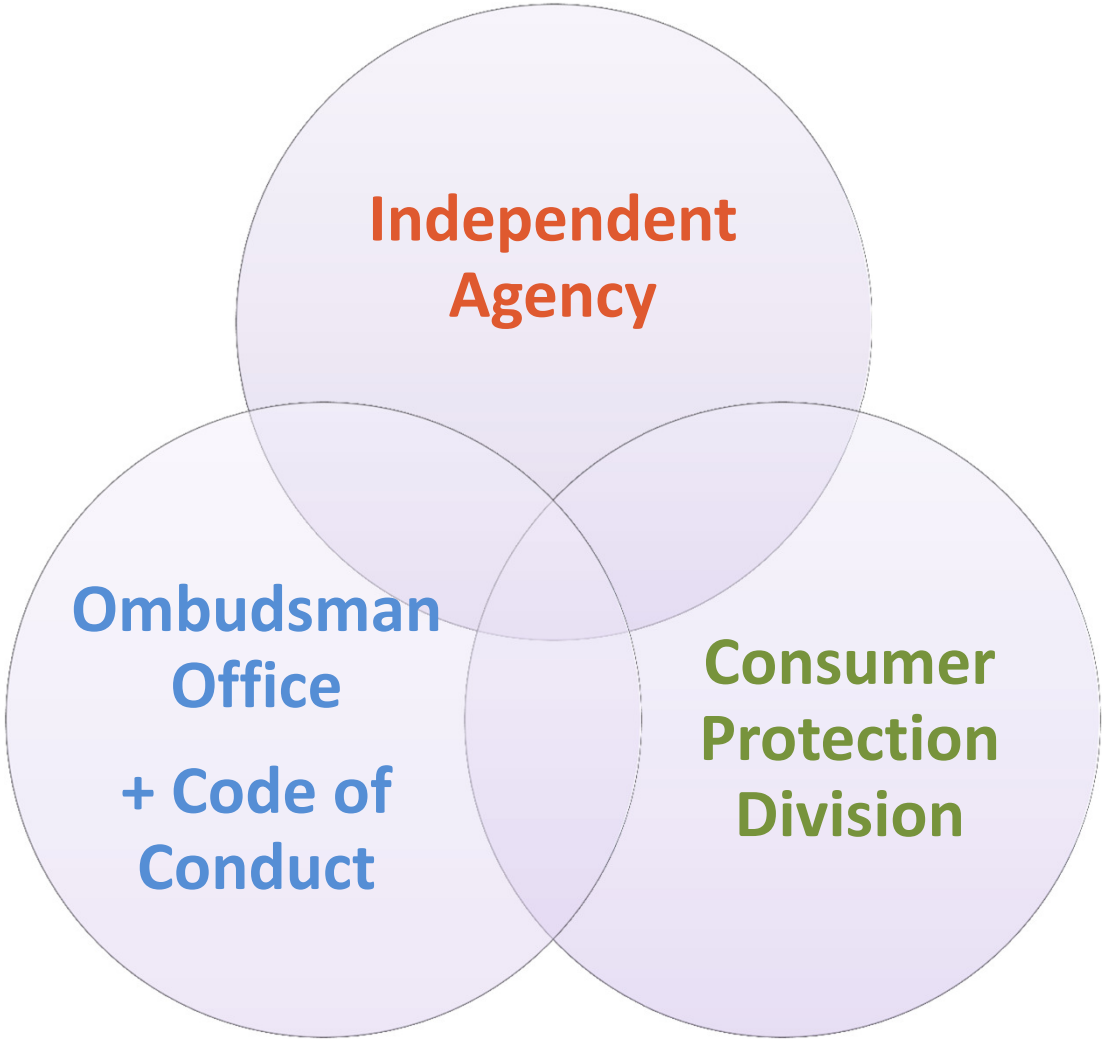
Mega Agency Model
One single agency for prudential and consumer protection supervision in all types of businesses (e.g. Sweden, Finland)

Reproduced from: Carmichael, Fleming, Llewellin (2004)

Institutional Design Options – Factors for Considerations

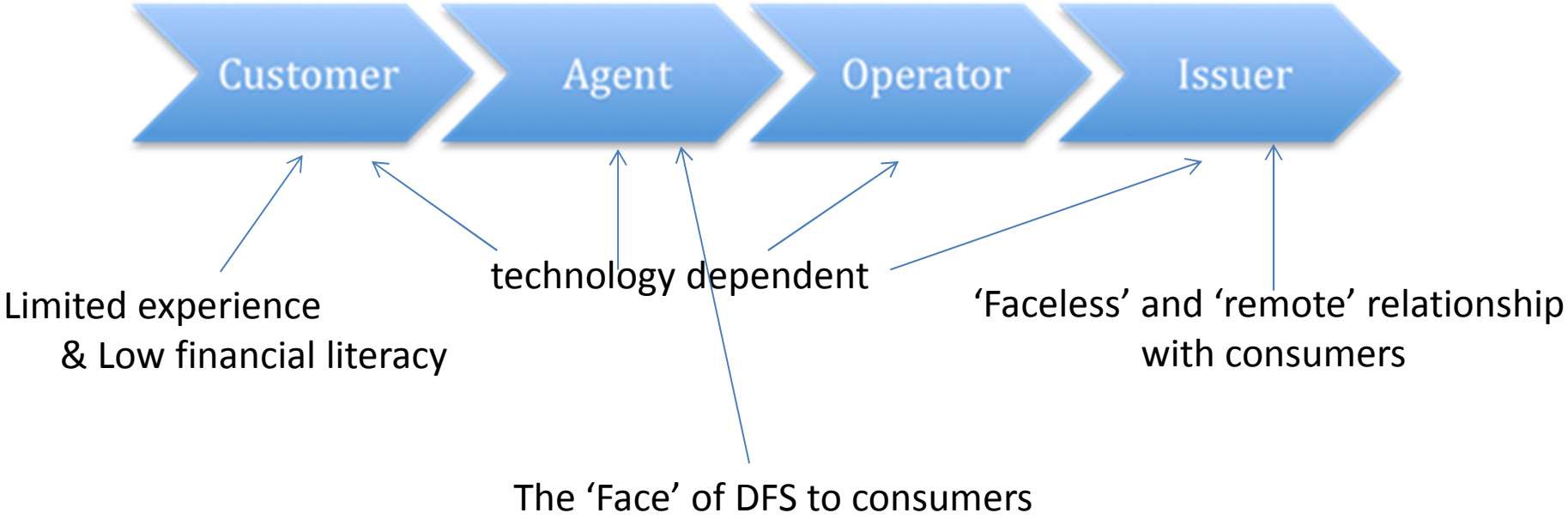


Three Institutional Design Options



Implementing Consumer Protection Frameworks – Payment Value Chain

Value Chain - by player



Consumer Risks in DFS

1. Inability to transact due to network/service downtime
2. Insufficient agent liquidity or float, which also affects ability to transact
3. User interfaces that many find complex and confusing
4. Poor customer recourse
5. Nontransparent fees and other terms
6. Fraud that targets customers
7. Inadequate data privacy and protection

Sourced directly from: McKee, Kaffenberger, and Zimmerman, "Doing Digital Finance Right: The Case For Stronger Mitigation of Customer Risks" CGAP Focus Note No. 103, p1-2.

Key Regulatory Principles

Clear Product Disclosure and Friendly User Interface	• Clear, transparent, complete. Consumers to know rights (recourse) and obligations (PIN safety)
Clear Recourse and Dispute Resolution Mechanisms	• Clear, easy to understand, available and affordable
Well-functioning Recourse Mechanisms	• Mechanisms may look clear and easy to understand but do they work, have they been tested?
Control Agent Behaviour	• Agent selection, training and management
Business Continuity Plans to Include Focus on End-user	• Communicate disruptions to consumers – this effects consumer trust and how they value the DFS

Regulatory Responsibilities in Implementing Key Principles

1. Clarifying accountability for mitigating consumer risks
2. Clarifying lines of regulatory responsibility and enhancing inter-regulatory collaboration
3. Integrating financial education and financial literacy into consumer protection frameworks
4. Using behavioural research to inform policy making
5. Leveraging digital channels to conduct supervision

Supervisory Techniques (1): Market Monitoring

- Analyzing complaints statistics from institutions and consumer protection agency or ombudsman
- Sector-wide thematic reviews to assess issues such as price disclosure, over-indebtedness, advertising, or complaints handling (may combine onsite and offsite reviews)
- Special consultations with industry to address specific concerns and clarify supervisory expectations
- Media monitoring for relevant news on regulated markets or certain topics
- Monitoring actions from industry associations related to consumer protection, such as creation of codes of conduct or ombudsman scheme
- Issuing written guidance to the market on compliance expectations

Sourced directly from: Denise Dias, "Implementing Consumer Protection in Emerging Markets and Developing Economies" (2013)

Supervisory Techniques (2): Offsite

- Analysing complaint statistics
- Analysing compliance returns (provider's own assessment of its regulatory compliance, which may include internal auditor's and internal control's reports)
- Monitoring legal demands from consumers and consumer associations related to poor conduct
- Media monitoring for relevant news about the institution
- Monitoring an institution's website to check against onsite findings (e.g., advertised prices and conditions)
- Analysing written policies dealing with consumer protection issues: internal controls, governance, audit, compensation, reporting and complaints handling mechanisms

Sourced directly from: Denise Dias, "Implementing Consumer Protection in Emerging Markets and Developing Economies" (2013)

Supervisory Techniques (3): Onsite Examinations

- Onsite inspections at head offices of selected institutions, covering internal controls, management and reporting, internal audit, complaints handling, and compliance with industry codes of conduct and other codes to which the provider subscribes.
- Onsite inspections of agents to evaluate consumer issues.
- Structured interviews with customers
- Mystery shopping

Sourced directly from: Denise Dias, “Implementing Consumer Protection in Emerging Markets and Developing Economies” (2013)

Supervisory Techniques (4) : Enforcement Actions

- Enforcement actions can be taken by using moral suasion:
  - Requiring and following up on plan to correct noncompliance with regulatory rules or with institution's own policies.
  - Requiring implementation or improvement of complaints handling system
  - Requiring modification of marketing materials
  - Requiring change of compensation policies and practices.

Source adopted from: Denise Dias, "Implementing Consumer Protection in Emerging Markets and Developing Economies" (2013)

Supervisory Techniques (4) : Enforcement Actions (cont'd)

- Enforcement actions that may require legislative authority:
  - Stopping some operations or not approving new operations
  - Requiring a product to be taken off the market
  - Imposing sanctions such as fines on the institution or management, issuing reprimand letters / notices of violation, suspending or revoking licenses, deregistering a provider
  - Requiring refunds to customers as a result of regulatory noncompliance
  - Barring individuals from management positions

Source adopted from: Denise Dias, "Implementing Consumer Protection in Emerging Markets and Developing Economies" (2013)

Conclusion

- Regulators should adopt a ***risks-based***, ***technology-sensitive***, and ***collaborative*** approach in the to oversight of consumer protection in DFS.
- Regulators should ***be mindful of the distinctive role and characteristics of the key players*** in the payment value chain, and design corresponding initiatives around the proposed Key Principles.
- Regulators should ***stand ready to address gaps*** in DFS consumer protection where industry actions fall short.

Thank You!

Most of our outputs are available at
http://www.clmr.unsw.edu.au/category/regulation-digital-financial-services

or just google: "UNSW DFS"

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