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A Single Statute for Consumer Credit in Malaysia





Introduction

During the recent Budget 2021 speech at parliament on 6 November 2021, Datuk Seri Tengku Zafrul Tengku Abdul Aziz (Minister of Finance ('MOF')) announced that given the ever-evolving business environment, the Government shall aim to focus on business continuity to accelerate investments, strengthen strategic sectors and improve access to financing¹. He further announced that to encourage standardised credit lending activities and consumer protection, the Consumer Credit Act ('CCA') will be formulated² with the assistance of Bank Negara Malaysia ('BNM') and the Securities Commission ('SC')³ to be a regulatory framework for activities related to the issuance of consumer credit such as the "Buy Now Pay Later" Scheme⁴ which is currently unregulated. The CCA is also intended to strengthen the supervision of non-bank and non-supervised credit providers. This was lauded as one of the most important announcements from Budget 2021.

The intended CCA aims to cover several matters relating to consumer credits such as moneylending, pawnbroking and hire purchase which are currently segregated into several statutes under the purview of different bodies wherein the Moneylenders Act 1951 and Pawnbrokers Act 1972 are both under the purview of the Ministry of Housing and Local Government ('KPKT') and the Hire Purchase Act 1967 is under the purview of the Ministry of Domestic Trade and Consumer Affairs.

IMONEY

How the buy now, pay later platforms stack up			
PLATFORM	TENURE	PROCESSING FEE	LATE PAYMENT FEE
Atome	3 months	0%	RM30 per late payment (maximum RM60 per purchase)
myIOU	2, 3 or 6 months	0%	RM5 or 1% on outstanding amount per late payment — whichever is higher
Hoolah	3 months	0%	RM7.50 to RM75 per late payment
PAYLATER	4 months	0%	RM10 for every 7 days of non-payment
PayLater by Grab	Pay the following month or 4 months	0%	RM10 per late payment (max RM30 per purchase)
SPayLater by Shopee	Pay at the end of the month or 2, 3 or 6 months	1.25% per month on total order amount	1.5% per month on overdue amount
Split	Up to 3 months	0%	RM0

THE EDGE

Crucially, CCA aims to regulate the rapidly growing "Buy Now Pay Later" Scheme offered by non-financial institutions that are not regulated by BNM or any other regulatory agency⁵. This is particularly important and concerning because the "Buy Now Pay Later" Scheme appears to be a

cheap (0% interest) and easy (0% down payment) scheme at first glance, however it fails to

¹ 'Full Budget 2021 Speech' (6 November 2020), The Edge Markets, <https://www.theedgemarkets.com/article/full-budget-2021-speech>

² Ibid (1) para 191

³ 'Bank Negara to enact Consumer Credit Act in 2022' (12 November 2021), The Star, <https://www.thestar.com.my/business/business-news/2021/11/12/bank-negara-to-enact-consumer-credit-act-in-2022>

⁴ 'MOF BNM, SC to formulate framework on consumer credit regulation', (15 March 2022), Press Citation, Ministry of Finance, <https://www.mof.gov.my/portal/en/news/press-citations/mof-bnm-sc-to-formulate-framework-on-consumer-credit-regulation>

⁵ Izzul Ikram, 'BNM says working with MOF, SC to regulate 'Buy Now Pay Later' schemes, (30 March 2022), the Edge Markets, <https://www.theedgemarkets.com/article/bnm-says-working-mof-sc-regulate-buy-now-pay-later-schemes>



disclose at the outset that it includes high unlimited late payment fees and collection fees. Due to the rosy picture illusion posed by the scheme, consumers are encouraged to spend beyond their means to the extent which they may not be able to commit for repayment in the future.

Further, the CCA could also strengthen the regulatory framework to protect credit consumers in this digital age, including microfinancing such as Touch n' Go's *Gopinjam* and online moneylending which the KPKT recently issued new guidelines for on 13 November 2020. From the new KPKT guidelines for online moneylending, it appears that online moneylending is not bound to the same strict requirements as conventional moneylending under the Moneylending Act 1951. While the flexibility and leniency are warranted during the Covid-19 pandemic crisis which restricts movement of persons, it defeats the intention of the Moneylending Act 1951 to protect borrowers.

This article seeks to analyse the laws protecting credit consumers in other jurisdictions, in particular the United Kingdom of Great Britain and Northern Ireland ('UK') and New Zealand. From the analysis of the laws in other jurisdictions and with reference to the existing credit consumer problems in Malaysia, this article seeks to suggest several recommendations to be considered for incorporation into the Malaysian CCA.

Analysis of Laws in Other Jurisdictions

The suggestion for the formulation of the CCA is not news in Malaysia or the world at large. In fact, it has long been advocated by the Federation of Malaysian Consumers Associations⁶ and the Consumers' Association of Penang⁷ in Malaysia. Looking to the West, UK's Consumer Credit Act 1974 has been in force for the past 50 years.

United Kingdom – Credit Consumer Act 1974 ('UK CCA')

The UK CCA was initially introduced in 1974 to protect consumers and some small businesses using credit to buy goods and services in the UK. Since then, several provisions were reviewed and amended in 2006 and subsequently 2010 (as a result of the European Consumer Credit Directive 2008). Recently, on 16 June 2022, the UK HM Treasury announced its commitments to reform the UK CCA in line with its efforts to modernise consumer credit laws and simplify

⁶ Datuk Dr. Paul Selva Raj, 'Consumer Credit Act lauded' (11 November 2020), The Star, <https://www.thestar.com.my/opinion/letters/2020/11/11/consumer-credit-act-lauded>

⁷ Mohideen Abdul Kader, 'In sight: A long-awaited Consumer Credit Act' (19 June 2019), Malaysiakini, <https://www.malaysiakini.com/letters/480225>



rules for consumers. Until then, the key features of the UK CCA to be read with other legislation such as the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) No. 2 Order 2013 remain intact and summarised as follows: -

No.	Items	Provisions in the Act	Non-Compliance
1.	Areas of applicability	Various types of consumer credit businesses ⁸ including credit cards, hire purchase agreements, pay day loans, personal loans, store cards and store finance.	
2.	Requirements of regulated businesses	Regulated businesses must apply through Prudential Requirement Authority ('PRA') or Financial Conduct Authority ('FCA') and comply with the threshold conditions imposed by the regulators ⁹ including the Prudential Resources Requirement ¹⁰ .	If a consumer credit business does not fall under the exemption list, it shall be a criminal offence and, in a corporation, even a director, manager, secretary or similar officer of the body corporate or even its members shall be liable for the offence ^{11,12} .
3.	Governing body	PRA and FCA. PRA regulates and supervise banks, building societies, credit unions, insurers and major	

⁹ Schedule 6 of Financial Services and Markets Act 2000

¹⁰ Prudential Resources Requirement under CONC 10.2 requires firm to calculate its prudential resources requirement on its accounting reference date. Upon the calculation, if the prudential resources requirement has changed due to its relevant debts under management, the firm must notify the FCA of its change in prudential resources requirement within 14 days.

¹¹ Section 169 of the UK CCA

¹² R v Dowse and Another [2017] (D) 178 (May) -The Defendants were running an unlicensed and unregulated money lending business of selling motor vehicle on credit and providing cash loans with the rates of interest of 20% - 50% annually. Eventually, the Defendants were charged with 4 counts which are engaging activities of consumer credit business with license under Article 39(1) of the UK CCA, Article 23 of the Financial Services and Markets Act 2000 and 2 other criminal charges. For conducting business and engaging regulated activities without license, the Defendants were sentenced to 15 months' imprisonment.



		investment firms. PRA also regulates businesses providing consumer credit-related services ¹³ . FCA regulates consumer credit businesses not covered by PRA ¹⁴ .	
4.	“Buy Now Pay Later” Schemes	Not provided in the Act ¹⁵	
5.	Digital microfinancing or micro loaning	Not provided in the Act ¹⁶ .	
6.	Online moneylending	Not covered under the Act ¹⁷ ¹⁸ .	
7.	Hire Purchase	Hire-purchase agreements including rent-to-own schemes ¹⁹ are regulated businesses	Debtor under the invalid hire-purchase agreement will be entitled to terminate the agreement by giving of notice before the final payment ²⁰ and shall also be liable to one-half of the total price exceeding the aggregate sums paid before the termination unless

¹³ Further detailed obligation and powers of the PRA can be referred to at Schedule 1ZB of the Financial Services and Markets Act 2000.

¹⁴ Further detailed obligation and powers of the FCA can be referred to at Part 1A and Schedule 1ZA of the Financial Services and Markets Act 2000.

¹⁵ Currently, unregulated “Buy Now Pay Later” Scheme relies on Article 60F (2) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 and must comply with the Consumer Rights Act 2015 and Unfair Terms in Consumer Contracts Regulations 1999 to carry on its businesses.

¹⁶ The UK government has been offering Start Up Loans programme through British Business Bank to provide personal loans as small as £500 at a fixed rate of 6% for small businesses. According to the Expert Group Report, Credit Union can provide unlimited microfinance with interest rate cap on loans of 42.6% on business microloans. Community Development Finance Institutions (CDFIs) on the other hand are allowed to disburse loan with a 100% interest rate cap for a term of less than 12 months.

¹⁷ Conventional moneylending is covered under Section 60B UK CCA

¹⁸ <https://www.fca.org.uk/news/press-releases/fca-secures-confiscation-order-totalling-5-million-against-illegal-money-lender>

¹⁹ Section 189(1) of the UK CCA

²⁰ Section 99 of the UK CCA



			smaller sums is provided under the agreement. ²¹
8.	Protection against high and unlimited interests and fees	Annual Percentage Rates of Interest ('APR') under the Act limits the interest rates for consumer credit agreements. ²² Creditor must also inform the debtor of any variation of interest. ²³	Debtor may rely on unfair relationship for creditor who fails to comply with the interest rates for regulated agreement ²⁴

In conclusion, the UK CCA remains valid especially in respect of the clarity provided to the terms and contents of consumer credit agreements and the obligations of creditors. A flaw of the UK CCA would however be the requirement to read the Act together with other additional regulations introduced by the FCA over time. The UK government has recently decided to reform the UK CCA to simplify the rules for consumers and to regulate the unregulated "Buy Now Pay Later" Scheme to ensure that such businesses ensure affordability of its debtors.

New Zealand – Credit Contracts and Consumer Finance Act 2003 ('CCCFA')

The CCCFA was introduced in 2003 to protect consumer interests with regards to consumer credit contracts. In 2015, CCCFA was amended to introduce responsible lending obligations. This amendment was in accordance with the principle of suitability and affordability between lenders and credit providers. Recently, New Zealand is taking efforts to ensure the effectiveness of CCCFA by making it more principles based.

No.	Items	Provisions in the Act	Non-Compliance
1.	Areas of applicability	Credit transactions where money is loaned for personal use, including consumer credit contracts, credit sales from	Civil pecuniary penalties of up to \$600,000 for a company ²⁵ and \$200,000 for an

²¹ Section 100 of the UK CCA

²² Rule 5 of the Consumer Credit (Total Charge for Credit) Regulations 2010

²³ Section 78A of the UK CCA

²⁴ Section 140A of the UK CCA

²⁵ Stuff.co.nz. (2021, September 29). *ANZ and ASB face multimillion-dollar class action lawsuit over lending failures*. Stuff. <https://www.stuff.co.nz/business/126514312/anz-and-asb-face-multimillion-dollar-class-action-lawsuit-over-lending-failures>



		mobile traders, consumer leases, mortgage, and buy-back transactions.	individual (including directors of corporations), plus statutory damages equal to the cost of borrowing (interest and fees charged to the borrower).
2.	Requirement of regulated businesses	<p>Regulated businesses must be registered and licensed from Financial Market Authority ('FMA') and Financial Service Providers Register ('FSPR'). They also have to be members of an approved dispute resolution scheme.²⁶</p> <p>If a company is a provider of consumer credit (lender) or a mobile trader, and not already licenced or authorised by the FMA or Reserve Bank of New Zealand, they must be certified under Part 5A of the Credit Contracts and Consumer Finance Act 2003 (CCCF Act) by the Commerce Commission.</p>	The FSPR can suspend or deregister a bank that does not meet the requirements. ^{27,28} The FMA also has the power to direct the FSPR to deregister a provider.
3.	Governing body	Commerce Commission New Zealand ('CCNZ'), FMA and FSPR.	

²⁶ <https://www.fma.govt.nz/compliance/licensing-and-registration/registration/> , which explains the compliance need to be fulfilled by financial service provider.

²⁷ *OnePass I Thomson Reuters* (2021). Thomson Reuters Practical Law. <https://signon.thomsonreuters.com/w-007-8664?produ>

²⁸ *Innovative Securities Ltd v Financial Market Authority* [2017] NZCCLR 25



4.	“Buy Now Pay Later” Schemes	‘AfterPay’, ‘PartPay’ and other ‘Buy Now Pay Later’ Scheme are not covered under the Act.	
5.	Digital microfinancing or micro loaning	Not covered under the Act ²⁹ .	
6.	Online moneylending	Not covered under the Act ³⁰³¹	
7.	Hire Purchase	Covered under the Act and known as credit sales in consumer credit contract (an agreement to borrow money or buy products on credit for your personal use, and the lender charges you interest and fees).	Failure to comply with the provisions will cause the disputes to be escalated to the tribunal which have jurisdiction to deal with a dispute involving a sum of up to \$100,000. ³²
8.	Protection against high and unlimited interests and fees	It provides a cap on interest and fees repayable on loan, of 100%. It also restricts the amount of fees and interest a lender under a high-cost loan can charge and compound interest (i.e., interest on interest).	If the business provider charged an interest of more than 100%, it is in breach of the Act and the contract, lease, or transaction is deemed illegal ³³³⁴ .

An analysis of the CCCFA reveals that consumers are sufficiently protected from unsafe practices via amongst others, the recently enforced Responsible Lending Code. It is hoped

²⁹ Bank of New Zealand & KiwiBank developed a micro finance scheme called Good Loans to help low income people as the requirements makes them easily eligible to the programme. This is supervised under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009.

³⁰ However, another form of online moneylending, i.e., Peer-to-Peer Lending (**P2P Lending**) (or also known as crowd lending (borrowers & investor)) is covered under the Section 18 of the CCCFA. P2P Lending is regulated by the FMA Financial Markets Conduct Act 2013.

³¹ *Harmony Limited v Commerce Commission* [2020] NZCA 275 - fees charged to borrowers in P2P Lending are considered as “credit fees” under the CCCFA and must not be unreasonable.

³² *Industrial Steel and Plant Ltd v Smith* [1980] 1 NZLR 545

³³ Section 136 of the CCCFA

³⁴ <https://www.borrinfoundation.nz/wp-content/uploads/2020/09/FinCap-Fairer-Consumer-Credit-Report-Final.pdf>



that the increasingly used “Buy Now Pay Later” Scheme will be incorporated into the Act soon.

Recommendations for the CCA

Considering amongst others the UK CCA and the CCCFA, some of the provisions which are recommended to be included in the CCA are briefly set out as follows :-

No.	Problem	Recommendation
1.	Consumer credit laws relating to moneylending, pawnbroking and hire purchase are segregated into several statutes and under the purview of different bodies	<p>Clarity on the law and governing body</p> <p>One of the most important features of the UK CCA and the CCCFA is a main statute providing protection to credit consumers. Further, the UK CCA and CCCFA is clear on the governing bodies and its duties in administering, enforcing, and implementing the provisions of the Acts.</p> <p>Having a single statute to provide for credit contracts and protect credit consumers would certainly provide the clarity that credit consumers need. Further, the clarity in the function of the governing bodies having jurisdiction over the administration, enforcement and implementation of the Act would ensure a consistent and standardised application of the law.</p>
2.	Lack or inconsistent regulation for digital microfinancing, micro loaning, online moneylending and “Buy Now Pay Later” Schemes	<p>Regulation on digital microfinancing, digital micro loaning, online moneylending and “Buy Now Pay Later” Schemes</p> <p>The CCA should include a provision to regulate financial and non-financial institutions that offer these services to ensure that these services can only be offered in limited circumstances and not to be used in lieu of hire purchase agreements. There should also be a provision to ensure a netting to zero (that borrowers have means to repay and less risks of default) and a cap on late payment interests and fees</p>



		imposed on borrowers (for e.g., interests caps under online moneylending are subjected to the Moneylending Act). This is pertinent to ensure continuous financial stability and to protect interests of stakeholders, i.e., borrowers.
3.	Limited scope of hire purchase agreement	<p>Expansion of the hire purchase agreement</p> <p>The CCA should expand the scope of hire purchase agreement to include not only commercial goods such as motor vehicles. The expansion of the scope will encourage borrowers to enter into a hire purchase agreement as opposed to other agreements such as moneylending agreement, microfinancing, micro loaning or “Buy Now Pay Later” agreement.</p>
4.	Protection against high and unlimited interests and fees	<p>Provisions to prohibit oppressive, harsh and unfair terms</p> <p>This provision can set out the definition of what amounts to an oppressive, harsh and unfair term under the CCA as ‘<i>circumstances which result in an unjust disadvantage to consumers, which causes significant imbalance in the rights and obligations of the parties arising under the contract to the detriment of consumers</i>’ and/or ‘<i>which excludes or restricts liability of lenders or excludes rights, duties and liabilities of consumer’s</i>. In the event a contractual term is deemed oppressive, harsh and/or unfair, the term should be deemed unenforceable and void.</p>
5.	Absence of temporary hardship laws	<p>Provisions to include temporary hardship laws</p> <p>One of the provisions found in the CCCFA is the provision to include temporary hardship justification as default by borrowers. This provision is necessary during these economically challenging times because</p>



		borrowers can rely on the temporary hardship laws to suspend loan repayments or reduce the amount of the repayments for an agreed period of time. If the lender refuses to renegotiate, the borrower may take the matter to the Courts to vary the terms of the loan or an order of temporary suspension or reduction of loan repayments. It is also recommended that borrowers be allowed to rely on temporary hardship in response to notice of default issued by lenders.
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Conclusion

The emerging consumer credit industry has proven to be an invaluable contribution to the economy of the country. With a comprehensive single statute for credit consumers under the CCA, credit consumers can enjoy the protection that the citizens of UK and New Zealand already enjoy. The enactment of the CCA in Malaysia is certainly welcomed and looked forward to. It is hoped however, that the requisite reviews, investigations, and consultations with relevant stakeholders especially those that would be directly affected by the enactment of the CCA are carried out beforehand to ensure the smooth implementation of the Act.

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