



ENHANCING FINANCIAL CONSUMER PROTECTION  
IN CONSUMER CREDIT INDUSTRY IN MALAYSIA BY  
ESTABLISHING A SINGLE REGULATORY BODY

BY

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## ABSTRACT

Proponents of consumer protection concur that the need for protection is apparent in the context of the financial consumer. This is due to exploitation, malpractices and oppressive treatment of credit providers comprising of lack of transparency, high interest rate, hidden charges, unreasonable penalty charges, misleading advertisement, aggressive marketing, unsolicited products and credit advance as well as unfair debt collection practices. The problem is aggravated by fragmented institutional approach regulating a wide-array of consumer credit industry. This primarily leads to inconsistent supervision and enforcement of the law and different levels of protection accessible to a different range of financial consumers depending on the regulator responsible for safeguarding their interests. Confusion is anticipated to arise among consumers as to proper body that should be relied on when their rights are infringed. Hence, comprehensive protection is not achieved by the present framework. These disturbing problems stimulate this study which fundamentally aims at examining the bodies regulating consumer credit industry in Malaysia and the lacunae in the present framework. It also aims to explore the Islamic perspective of financial consumer protection in Islamic consumer credit industry. Other cardinal objectives include to scrutinise the approaches adopted by selected jurisdictions in establishing institutional framework of this industry and eventually to propose recommendations to improve the existing institutional framework in consumer credit regulation. In achieving the said objectives, doctrinal, qualitative and comparative law research methodologies are employed. One major finding of this study is the absence of a single institution to regulate the industry which leads to inconsistent and inadequate protection to all financial consumers dealing with consumer credit. The study recommends the setting up of one regulatory body responsible for all financial consumers. It is hoped that this study will benefit the regulators in reforming the existing framework and ultimately enhancing the protection of the financial consumers as the main stakeholder of this study.

## خلاصة البحث

من المتفق عليه لدى مؤيدي حماية المستهلك أن الحاجة إليها واضحة في سياق المستهلك المالي. وذلك راجع إلى الاستغلال والممارسات الخاطئة والمعاملة الظالمة لمقدمي الائتمان، والذي يشمل عدم الشفافية، وارتفاع معدل الفائدة، والرسوم الخفية، إفراض الغرامة المالية غير المعقولة، والخدعة الإعلانية، والتسويق العدواني، والمنتجات غير المرغوب فيها، وصيد السلفة، والممارسات الجائرة في جمع الديون. تتفاقم المشكلة بانتهاج نهج مؤسسي مجزأ يقرر لمجموعة واسعة من الائتمان الاستهلاكي. وهذا يؤدي أصالة إلى عدم انسجام الإشراف وتنفيذ القانون واختلاف الفوائد التي يمكن الحصول عليها لمختلف مستويات مستهلكي المال، وذلك اعتماداً على المنظمين المسؤولين على إشراف مصالحهم. ومن المتوقع حدوث ارتباك بين المستهلكين فيما يتعلق بالهيئة المناسبة التي يمكن الاعتماد عليها في حالة انتهاك حقوقهم. وبالتالي، فإن الحماية الشاملة لا تتحقق في الإطار الحالي. وهذه المشاكل المثيرة للقلق تحفز هذه الدراسة -التي تهدف أساساً- إلى الفحص عن الهيئات التنظيمية المسؤولة عن صناعة الائتمان الاستهلاكي في ماليزيا والنقص الموجود في الإطار الحالي. وتهدف أيضاً إلى اكتشاف وجهة نظر الإسلام تجاه حماية المستهلك المالي في صناعة الائتمان الاستهلاكي. هذا بالإضافة إلى تدقيق الأساليب التي اتخذتها السلطات القضائية المختارة في ترسيخ الإطار التأسيسي لهذه الصناعة، ومن ثم طرح التوصيات من أجل تحسين الإطار الحالي لقانون الاستهلاك المالي. ولتحقيق الأهداف المذكورة، يتم استخدام منهج الدراسة الفقهية والمنهج النوعي والقانون المقارن في الدراسة. ومن أهم نتائج الدراسة أنها لا يوجد أي مؤسسة لتنظيم صناعة الائتمان الاستهلاكي، مما يؤدي إلى عدم الثبات وتوفر الحماية لجميع مستهلكي المال المتعاملين مع الائتمان الاستهلاكي. ومن أجل ذلك، توصي الدراسة بإنشاء هيئة تنظيمية موثوق بها ومسؤولة عن جميع ما يتعلق بأمور مستهلكي المال. ومن المأمول أن تنفع هذه الدراسة الجهات التنظيمية في تحسين الإطار الحالي، ولا سيما المستهلك المالي لكونه المصلحة الرئيسة لهذه الدراسة.

## APPROVAL PAGE

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## DECLARATION

I hereby declare that this dissertation is the result of my own investigations, except where otherwise stated. I also declare that it has not been previously or concurrently submitted as a whole for any other degrees at IIUM or other institutions.

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*Dedicated to my late father Ilias Ismail and my beloved mother Saudah Mohamed*

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National Credit Amendment Act 2014  
Prevention and Combating of Corrupt Activities Act 2004  
Public Finance Management Act 1999

## LIST OF ABBREVIATIONS

AAR	Affordability Assessment Regulations
AC	Assistant Controller of Hire-Purchase
AH	After Hijrah
ACLC	Australian Company Law Cases
ADI	Authorised Deposit-taking Institution
ADR	Alternative dispute resolution
AITAB	al-Ijārah thumma al-Bay‘
AMLA	Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001
Anor	Another
APR	Annual Percentage Rate
APRA	Australian Prudential Regulation Authority
AS	Australian Standards
ASEAN	The Association of Southeast Asian Nations
ASIC	Australian Securities and Investment Commission
BBA	Bay‘ bi thaman ajil
BNM	Bank Negara Malaysia
CAP	Consumer Association Penang
CBA	Central Bank of Malaysia Act 2009
CCA	Consumer Credit Act 1974
CCID	Commercial Crime Investigation Department
CCMC	Consumer Complaint Management Centre
CCRIS	Central Credit Reference Information System
CEO	Chief Executive Officer
CEP	Consumer Education Programme
CLJ	Current Law Journal
CMC	Consumer and Market Conduct Department
COND	Threshold Conditions
CPA	Consumer Protection Act 1999
CPC	Criminal Procedure Code
CPR	Consumer Protection (The Tribunal for Consumer Claims) Regulations 1999
DSR	Debt Service Ratio
DTI	Department of Trade and Industry
EC	European Community
ed./eds.	edition/editions; editor, edited by
EDR	External Dispute Resolution
EG	Enforcement Guide
ER	England Law Reports
et al	(et alia): and others
etc.	(etcetera) and so forth
EU	European Union
FCA	Financial Conduct Authority
FDC	Circular on Fair Debt Collection Practices
FEN	Financial Education Network

FinCoNet	Financial Consumer Protection Organisation
FIT	Fit and proper test for approved persons
FMB	Financial Mediation Bureau
FOS	Financial Ombudsman Scheme
FOSA	Financial Ombudsman Service Australia
FOSL	Financial Ombudsman Services Limited
FPC	Fit and Proper Criteria
FSA	Financial Services Act 2013
FSB	Financial Stability Board
FSMA	Financial Services and Market Act 2000
FSR	Financial Services (Financial Ombudsman Scheme) Regulation 2015
G20	Group of Twenty
GIFC	Guidelines on Imposition of Fees and Charges
GRF	Guidelines on Responsible Financing
GPTD	Guidelines on Product Transparency and Disclosure
HPA	Hire-Purchase Act 1967
HPAP	Hire-Purchase (Application of Permit and Procedure of Repossession) Regulations 2011
HPCO	Hire-Purchase (Compounding of Offences) Regulations 1993
HPTC	Hire-Purchase (Term Charges) Regulations 2005
Ibid	(ibidem): in the same place
IBTD	Islamic Banking and Takaful Department
IDR	Internal Dispute Resolution
i.e.	(id est): that is
IFSA	Islamic Financial Services Act 2013
IFSB	Islamic Financial Services Board
IFSR	Islamic Financial Services (Financial Ombudsman Scheme) Regulations 2015
IIIT	International Institute of Islamic Thought
IOU	I owe you
IOCU	International Organisation of Consumers Unions
ISO	International Standards Organization
JITU	Integrity and Governance Committee
KAR	Kedai Ar-Rahnu
LINK	Laman Informasi Nasihat dan Khidmat
MACFEA	The Malaysian Consumer and Family Economics Association
MCLR	Moneylenders (Control and Licensing) Regulations 2003
MCOB	Mortgage and Home Finance: Conduct of Business
MCOR	Moneylenders (Compounding of Offences) Regulations 2003
MCSC	Malaysia Co-operative Societies Commission
MDTCA	Ministry of Domestic Trade and Consumer Affairs
MGIT	Muassasah Gadaian Islam Terengganu
MLA	Moneylenders Act 1951
MLJ	Malayan Law Journal
MLJU	Malayan Law Journal Unreported
MLO	Moneylenders Ordinance No 42 of 1951
MOU	Memorandum of Understanding
MHLG	Ministry of Housing and Local Government

n.d	no date
NCA	National Credit Act 2005
NCAC	National Consumer Advisory Council
NCC	National Credit Code
NCCC	National Consumer Complaints Centre
NCCP	National Consumer Credit Protection Act 2009
NCCPR	National Consumer Credit Protection Regulation 2010
NCP	National Consumer Policy
NCR	National Credit Regulator
NCT	National Consumer Tribunal
NGO	Non-governmental Organisations
No.	Number
OFS	Ombudsman for Financial Services
OFT	Office of Fair Trading
Ors.	Others
PBA	Pawnbrokers Act 1972
PBUH	Peace Be Upon Him
PCLR	Pawnbrokers (Licensing and Control) Regulations 2004
PDA	Payment Distribution Agencies
PERG	Perimeter Guidance
PFMA	Public Finance Management Act 1999
PRA	Prudential Regulation Authority
RA	Radhiyal Allāhu ‘Anhu (m)/‘Anha (May Allah be pleased with him / them/ her)
RAO	Financial Services and Markets Act 2000 (Regulated Activities) Order 2001
RG	Regulatory Guide 218 Licensing: Administrative Action against Persons Engaging in Credit Activities
RGAD	Regulatory Guide 234 Advertising Financial Products and Services (including Credit): Good Practice Guidance
RGAV	Regulatory Guide 204 Applying for and Varying a Credit License
RGCT	Regulatory Guide 206 Credit Licensing: Competence and Training
RGED	Regulatory Guide 139 Approval and Oversight of External Dispute Resolution Schemes
RGIE	Regulatory Guide 165 Licensing : Internal and External Dispute Resolution
RGRL	Regulatory Guide 209 Credit Licensing: Responsible Lending Conduct
RMP	Royal Malaysian Police
ROM	Registrar of Moneylenders
ROP	Registrar of Pawnbrokers
SAR	Skim Al-Rahnu
SAW	Ṣallal Allāhu ‘Alayhi wa-sallam (Blessings and Peace of Allah be upon Him)
SHR	Shariah Reports
SME	Small and Medium Enterprises
SMS	Short Message System

SSRN	Social Science Research Network
SUP	Supervision
SWT	Subhānahu Wa Ta‘āla (Praise be to Allah and the Most High)
TCC	Tribunal for Consumer Claims
TOR	Terms of Reference
UK	United Kingdom
US	United States
V	Versus
Vol. / Vols.	Volume/Volumes
YaPEIM	Yayasan Pembangunan Ekonomi Islam Malaysia