THE HIRE PURCHASE INDUSTRY IN FIJI

A CONSUMER COUNCIL OF FIJI REPORT

JULY 2012

Funded by Australian AID

CONSUMER COUNCIL OF FIJI
About Consumer Council of Fiji (CCF)

Consumer Council of Fiji (CCF) is a statutory organization dedicated to protect the rights and interests of consumers in Fiji and promote consumers’ interests nationwide through education, research, campaign and lobbying. It was established in 1976 and currently has 3 offices in Fiji.

For more information, visit www.consumersfiji.org

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The Hire Purchase Industry in Fiji

A Report
by
Ganesh Chand

July 2012
A number of people and organisations contributed to the preparation of this report.

I acknowledge AusAID for providing funding to the Consumer Council of Fiji with the aim to build credit competency for vulnerable groups in Fiji.

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The findings contained in this report were presented to an open forum organised by the Consumer Council of Fiji in February 2012. I acknowledge the stakeholders participating in the Forum for useful comments and suggestions, which have strengthened this report.

The hire purchase dealers provided useful comments on earlier drafts of this report; these are referenced as ‘Response to the Draft Report’. I acknowledge in particular Courts (Fiji) Limited, Carpenter’s Fiji Ltd, the parent company of the MH Homemaker and Comfort Home Furnishings Ltd.; the opportunity to discuss the report at length in person with Mr. Hemendra Chandra of the latter organisation is acknowledged. I also acknowledge comments on earlier drafts of the report from the Consumer Council of Fiji, the Reserve Bank of Fiji and the Fiji Commerce Commission.

For continuous and most timely advice, I thank professor Ram Karan, who is now producing a companion volume of this report, focusing on the laws governing consumer credit.

The views expressed in this report is not necessarily those of the Australian Government or the Australian Agency for International Development (AusAID).

None of those acknowledged above are responsible for any errors or omissions.
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Executive Summary

1. In 2011, the Consumer Council of Fiji commissioned a project on Consumer Credit in Fiji. There were two parts to this, one dealing with the effectiveness of the Consumer Credit Act 1999, Consumer Credit [Amendment] Act 2006 and Consumer Credit Regulations 2009 and the other with the practices of the hire purchase (HP) market in Fiji. This report contains the findings of the second component of the project.

2. This report examines the size of the hire purchase market in Fiji and issues relating to the conduct of the HP business. The report relied on primary data as collected from a nationwide survey on hire purchase, and that collected from HP outlets.

3. The survey showed that 46% of all respondents had purchased white goods on hire purchase during the period January 1997 to June 2011. On the basis of the survey results, it is suggested that 81,125 households in Fiji purchased goods on hire purchase during the period January 1997 and June 2011.

4. On the basis of the survey data, we estimate the total value of business involving HP to be $60m per year. This income is generated on the basis of $35m worth of consumer durable goods sold on HP per year.

5. Annually HP companies manage a credit business of $57m per year. Of this, credit charges alone account for $25.5m annually.

6. The Consumer Credit Act as amended in 2006 requires full disclosure of all costs of credit extended by HP companies. This research has found that the leading HP dealers are in breach of the disclosure requirement provisions of the Act.

7. Another breach is in the calculation of the credit charges. The law allows a credit charge to be levied, to no specific limit, on the actual outstanding credit, calculated on a daily basis. No HP dealer abides by this; instead they levy a credit charge on the sum that is already repaid. To this extent, this is fraudulent conduct. It is estimated that this fraudulent conduct generates at least $13.3m per annum.

8. There is no regulation on interest rates charged by the hire purchase companies. The Consumer Credit Act (supra) provides for the Minister responsible for Commerce to prescribe the maximum annual percentage rate of interest for a credit contract (s264 (1)). However, no such regulation has been published to set the maximum percentage rate which the hire purchase companies can charge.

9. The study also found that the major hire purchase credit providers in Fiji are Courts (Fiji) Ltd and MH’s Homemaker, which account for over 95% of the credit business. Between these, Courts is the market leader by a market factor of 3:1.

10. The research examined numerous characteristics of the HP consumers. It finds that about three quarters of the HP consumers had incomes less than $15,000 per annum, with about 70% of the consumers having joint family incomes of less than $20,000. 18% of the HP consumers had
their own homes while 82% stayed in rented accommodation. In terms of education, 70% of the HP consumers had no post-secondary school education. 47% of the consumers, however, had members of their families who had tertiary education. 31% of the HP buyers are below 35; 36% are in the age group 35-45, while a third is above 45. The main reason cited for the purchase decision was convenience.

11. The research further found significant consumer illiteracy on the functioning of the HP system; this is largely on account of lack of clear information given to consumers by the hire purchase companies.

12. The research also shows that the HP contracts consumers enter into, waive the rights of consumers to privacy of their financial/credit information. To this extent, the activities of the Data Bureau Limited are within the law.

13. The results of the research also show that the repossession market is worth approximately $7m per annum. So far, there is no regulation on resale of repossessed items and there is a serious need for regulation on the repossession market. Given that repossession is predominantly for reasons of financial hardship, the default and repossession market of over $7m per year hit the poorer workers/farmers the most.

14. Confusions on warranties, extended warranties, and insurances also abound in the HP industry. This is the cause of a large share of total grievances which consumers have. From a business point of view, HP dealers also engage in reselling manufacturers’ warranties to consumers for all periods of warranties over 12 months. This generates an additional business of $1m annually. Likewise, insurance or related activities (payment protection plans) are additional businesses in which HP dealers engage. The insurance industry regulator in Fiji has so far not examined the insurance business component of the HP industry.

15. The HP industry is an important industry for consumers and for the durable goods market. There is, however, a need for serious attention to the industry by the regulating authorities. A number of unethical practices, together with practices which are contrary to the law, need to be put to an end. This report has listed a number of such practices.

16. A number of consumers noted grievances on HP and/or with their HP companies. But none sought judicial intervention on account of the costs involved. This calls for an alternative redress mechanism for resolution of HP disputes.

17. This report suggests that the establishment of a Financial Ombudsman and/or Independent Financial Commission in Fiji is absolutely necessary. The operations of the office can be funded through both tax contributions and levies on defaulting, inter alia, HP companies.
Introduction

In 2011, the Consumer Council of Fiji commissioned a project on Consumer Credit in Fiji. There were two parts to this, one dealing with the effectiveness of the Consumer Credit Act 1999, and the other with the practice of hire purchase in Fiji. This report contains the findings of the second component of the project. A separate publication is intended for the report on Consumer Credit Act1.

The terms of reference required the study to be conducted within the framework of the Consumer Council’s general mandate, that attention be paid to access consumer redress by the poor, disenfranchised and consumers in remote areas of Fiji. This component of the project required a critical examination of the Hire Purchase Market in Fiji, with the following tasks/activities:

a. Estimate the size of Hire Purchase business in Fiji;
b. conduct a comprehensive survey of consumers in urban and rural areas to establish the extent of problems faced by the consumers when buying goods and services on Hire Purchase. Consumer complaints registered at the Council about Hire Purchase should also be used to identify problems faced by the consumers;
c. examine strengths, weaknesses and deficiencies in the Hire Purchase provision of the law and suggest ways to improve consumers’ ability to obtain a credit facility in a just and fair manner;
d. develop resource materials to educate consumers relying on Hire Purchase to build their assets including case studies to highlight consumer problems and the protection available under the Consumer Credit Act;
e. suggest options that are available to consumers to refinance loans and also suggest how an awareness program should be designed to empower consumers on loan refinancing;
f. assess transparency (if any) in providing ac-

1The legal analysis of the Consumer Credit Act is done by Professor Ram Karan; this component is referenced here as Karan (forthcoming).
curate and full information as part of good faith disclosure under the laws;
g. assess the penalty provision for late payment and how the consumer is protected from unfair foreclosure or seizure of properties; and
h. examine the legality and operation of the Data Bureau and its implication on consumers who access credit.

Concerns Leading to the Project
The Consumer Council articulated its concerns on consumer credit as follows:

1. With the rapid pace of financial innovation, the growing complexity of financial products, and the increasing financial risks and responsibilities transferred to households, make it very difficult for the average consumer to cope. The need to teach people how to spend, save, invest, borrow and manage debt wisely has become more important than ever. Therefore improving consumer financial literacy and awareness in the credit area has become a critical need. The consumer credit sector is often seen as a sector where unscrupulous creditors try to make a profit out of vulnerable consumers.

2. Consumer rights stem out of broad economic rights as part of our human rights and in that sense every individual needs the ability to understand and possess knowledge to deal with credit providers. In Fiji there is no financial safety net. Empowering the people by educating them on their rights related to the Consumer Credit Act, which is the most important financial legislation, will assist consumers to deal confidently with credit providers or on practices that are unfair and predatory in nature. Consumer protection in financial services in this modern day and age is vital where victims of poor financial advice are a vulnerable group caught in the never-ending debt cycle. In Fiji consumer protection laws are designed to accord consumers’ minimum protection when entering into financial borrowings such as mortgages, loans, credits, etc. However, the Council’s research and complaints data reveal that almost 96%, if not all the cases, are due to lack of understanding of the terms and conditions of the credit facility. Consumers do not ask the right questions to understand the risks associated with the credit and what protection measures are in place to safeguard their interests.

3. An assessment of the complaints received by the Council shows that majority of the credit problems are because consumers lack understanding of their rights and responsibilities when borrowing from credit providers. Lack of understanding of the implications of credit contracts, over committing to credit, being unable to make repayments and being unaware of their protection under the Consumer Credit Act are some of the common problems faced by the consumers. For example, a major concern of the Council for many years is hire purchase, which has consistently featured in the top ten most recurring complaints registered with the Council annually. In the past 4 years, the Council registered 225 complaints from hire purchase customers. This does not include complaints registered with other authorities or those that are never officially lodged because of consumers’ lack of awareness.

4. For consumers to have access to just, fair and competitive financial services, it is essential that consumers are educated to allow them to make informed choices in the marketplace. The assignment has potential to disseminate information that will empower consumers to borrow wisely. To that end, hire purchase companies will be forced to re-look at their contracts and market practices once consumers question them.

The underlying purpose of the project, therefore, was to unravel the specific provisions of Consumer Credit Act 1999, Consumer Credit (Amendment) Act 2006 and Consumer Credit Regulation 2009 that purport to give rights or protection to consumers when accessing goods and services on credit. These provisions were to be used to generate information and advocacy in the marketplace to demand fair or just treatment of consumers as well as to educate and inform consumers about what to demand when entering into a credit situation. The ultimate purpose was to mobilize and empower consumers on their rights and responsibilities under the Consumer Credit (Amendment) Act 2006 / Regulations 2009.
Background
Prior to the Consumer Credit Act 1999, credit transactions were regulated mainly by contractual agreements prepared by credit providers. There was no consumer input into them, and consumers had no option but to accept terms imposed by the credit providers. In effect, there was no legal safeguard for them. The Consumer Credit Act 1999, Consumer Credit (Amendment) Act 2006 and Regulation 2009 now sets down minimum compliance standards when such documents are drafted and executed that must be fully disclosed and made clearly known to the consumer at the time of signing and execution. Right to adequate remedy, especially under hardship clauses are a crucial aspect and feature of the Consumer Credit Act 1999, Consumer Credit (Amendment) Act 2006 and Regulations 2009. Therefore, consumers have a right to access and utilize this law for their benefit, particularly in the current economic times where credit facilities are open to abuse. The Regulations provide consumers important information in relation to credit contracts, such as how credit is calculated, credit fees and charges, default interest, etc.

Credit contracts come in various forms such as hire purchase agreements, loan and mortgage documents and bills of sale, to name a few, which are normally technical and legally binding documents. Such documents are often drafted in fine print with various “legal” terms and conditions that purport to give consumers rights and responsibilities. The practical issue is whether consumers comprehend the complex legalities within the documents, or whether the documents are confusing to an average consumer. The average consumer lacks legal knowledge and complex mathematical logic. Unless, therefore, the minimum compliance standards require all legal obligations be explained to consumers in simple terms when they enter into a credit contract, and that they are provided with all the calculations which they can take with them for detailed scrutiny, the chances are strong that credit contract transactions would be treated merely as paperwork to kick-start a purchase, but which in effect could bind the consumer to many years of legal obligations under a credit facility. If certain terms and conditions in credit contracts are drafted in such a manner that they dilute a consumer’s right to remedy, or reduce consumer protection, or cause ambiguities, or simply cause confusion, then that would be bordering on unfair market practice.

Hire Purchase: Introduction
The following aspects of the HP market are examined in this report:

- The size of the HP business in Fiji;
- problems faced by the consumers when buying goods and services on Hire Purchase. Consumer complaints registered at the Consumer Council of Fiji are also used to identify problems faced by the consumers;
- strengths, weaknesses and deficiencies in the Hire Purchase provision of the law as related by HP consumers;
- ways to improve consumers’ ability to obtain a credit facility in a just and fair manner;
- transparency (or lack of it) in providing accurate and full information as part of good faith disclosure under the laws – as experienced by consumers;
- consumer experiences with penalty provisions on defaults;
- consumer views on Data Bureau Services and the legality and operation of the Data Bureau and its implications on consumers who access credit.

Additionally, this section provides the framework for the development of resource materials to educate consumers relying on Hire Purchase.

The section is based largely on a nation-wide survey of consumers carried out between July and September 2011. The survey methodology is provided in Appendix I.
The nation-wide survey of consumers showed that 46% of all respondents had purchased white goods on hire purchase during the period January 1997 to June 2011. 29% of these households had purchases on multiple occasions during this period. A larger proportion had multiple purchases on at least one occasion.

The provincial distribution of HP incidence is provided in Table 1. On the basis of the survey results, it is suggested that 81,125 households in Fiji purchased goods on hire purchase during the period January 1997 and June 2011.

The data, as collated in Table 1 shows that a large majority of consumers in Serua, Nadroga/Navosa, and Cakaudrove relied on hire purchase at least once during the period January 1997 to June 2011. These provinces are relatively remote. On the other hand, two other relatively remote provinces, Ra and Tailevu also had significantly lower incidence of reliance on hire purchase. Thus the explanation for the trend would be founded in economic reasons and the impact of marketing. The very small number of consumers from Lau and Kadavu relying on hire purchase is understandable, given the lack of easy access of consumers from these areas to major hire purchase companies.

### Table 1: Incidence of Hire Purchase

<table>
<thead>
<tr>
<th>Provincial Distribution</th>
<th>No White Goods Purchased</th>
<th>White Goods Purchased</th>
<th>Total</th>
<th>White Goods purchased on HP</th>
<th>%HP</th>
<th>HP Households for Fiji</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ba</td>
<td>62</td>
<td>163</td>
<td>225</td>
<td>111</td>
<td>49.3%</td>
<td>24,182</td>
</tr>
<tr>
<td>Bua</td>
<td>6</td>
<td>10</td>
<td>16</td>
<td>8</td>
<td>50.0%</td>
<td>1,408</td>
</tr>
<tr>
<td>Cakaudrove</td>
<td>17</td>
<td>41</td>
<td>58</td>
<td>37</td>
<td>63.8%</td>
<td>6,269</td>
</tr>
<tr>
<td>Kadavu</td>
<td>2</td>
<td>9</td>
<td>11</td>
<td>1</td>
<td>9.1%</td>
<td>178</td>
</tr>
<tr>
<td>Lau</td>
<td>7</td>
<td>4</td>
<td>11</td>
<td>1</td>
<td>9.1%</td>
<td>187</td>
</tr>
<tr>
<td>Lomaiviti</td>
<td>2</td>
<td>10</td>
<td>12</td>
<td>6</td>
<td>50.0%</td>
<td>1,597</td>
</tr>
<tr>
<td>Macuata</td>
<td>46</td>
<td>85</td>
<td>131</td>
<td>69</td>
<td>52.7%</td>
<td>8,120</td>
</tr>
<tr>
<td>Nadroga/Nav</td>
<td>9</td>
<td>33</td>
<td>42</td>
<td>27</td>
<td>64.3%</td>
<td>7,717</td>
</tr>
<tr>
<td>Naitasiri</td>
<td>25</td>
<td>148</td>
<td>173</td>
<td>82</td>
<td>47.4%</td>
<td>15,660</td>
</tr>
<tr>
<td>Namosi</td>
<td>2</td>
<td>23</td>
<td>25</td>
<td>13</td>
<td>52.0%</td>
<td>700</td>
</tr>
<tr>
<td>Ra</td>
<td>7</td>
<td>22</td>
<td>29</td>
<td>11</td>
<td>37.9%</td>
<td>2,267</td>
</tr>
<tr>
<td>Rewa</td>
<td>48</td>
<td>89</td>
<td>137</td>
<td>39</td>
<td>28.5%</td>
<td>5,803</td>
</tr>
<tr>
<td>Serua</td>
<td>2</td>
<td>10</td>
<td>12</td>
<td>10</td>
<td>83.3%</td>
<td>3,104</td>
</tr>
<tr>
<td>Tailevu</td>
<td>22</td>
<td>55</td>
<td>77</td>
<td>27</td>
<td>35.1%</td>
<td>3,932</td>
</tr>
<tr>
<td>TOTAL</td>
<td>257</td>
<td>702</td>
<td>959</td>
<td>442</td>
<td>46.4%</td>
<td>81,125</td>
</tr>
</tbody>
</table>
Size of Hire Purchase Market

Survey data shows that the total value of business involving HP is estimated to be $60m per year. Table 2 shows the breakdown of the total credit business amongst these components.

The hire purchase business of $60m per annum is generated on the basis of $35m worth of consumer durable goods sold on HP per year; in Table 2, this is shown as the cash price of the goods purchased on hire purchase. 5% of the business accounts for the deposit on the goods. Charges relating to HP, shown in the table by ‘Credit Charges’ constitute 42% of the total HP business.

Annually, therefore, HP companies manage $25.5m of charges from carrying out a credit business. Total credit business is $57m per year, which is 95% of the value of the goods sold on HP annually.

The ‘credit charges’ listed include all incomes which HP dealers gain from selling goods on HP credit. These incomes include those from interest charges, insurance charges, administration levies, documentation levies and extended warranties. The leading market HP dealer does not separate interest charges from other charges that make up the total credit charge.

The credit business of the HP companies is a separate line of business from selling goods from their stores. It is, in essence, business relating to finance. These companies, however, do not fall within the ambit of the regulatory authority of the Reserve Bank of Fiji.

<table>
<thead>
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<th>Table 2: HP Business in Fiji: Annual, 1997-2011 Average</th>
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<tbody>
<tr>
<td>Dollar Value (F$)</td>
</tr>
<tr>
<td>-------------------</td>
</tr>
<tr>
<td>Cash Price</td>
</tr>
<tr>
<td>Deposit</td>
</tr>
<tr>
<td>Balance</td>
</tr>
<tr>
<td>Credit Charges</td>
</tr>
<tr>
<td>Total Credit Sum</td>
</tr>
<tr>
<td>Total Value of HP Business</td>
</tr>
</tbody>
</table>

2The total HP business for the 4.5 years for which data was gathered from households was estimated to be $271m for the population.
The Consumer Credit Act requires full disclosure of all costs of credit extended by HP dealers. The leading HP dealers are in breach of the Act.

First, the Act (s2) defines "credit fees and charges" as "fees and charges payable in connection with a credit contract, mortgage or hire purchase" but these do not include:

[a] interest charges (including default charges); or 

[b] any fees or charges that are payable to or by a credit provider in connection with a credit contract, in connection with which both credit and debit facilities are available if the fees or charges would be payable even if credit facilities were not available (not being annual fees or charges in connection with continuing credit contracts under which credit is ordinarily obtained by the use of a card); or

[c] government charges, or duties, on receipts or withdrawals; or

[d] enforcement expenses.

The intent of the legislation was to provide a clear distinction between, and relevant disclosures of, interest charges and other charges relating to credit.

Neither of the two largest HP dealers provide this disclosure to any consumer. They evade this by utilising terms which are not provided for in the legislation. The market leader, Courts (Fiji) Ltd, utilises the term "charge for credit" to refer to all the consolidated costs of credit. The MHs uses the term "term charges" to refer to the credit charges.

The lack of a full disclosure, the above attempt notwithstanding, is still contrary to law. The Consumer Credit Act (s14) requires each consumer to be given a pre-contract statement before a HP contract is entered into. As part of the pre-contract statement, they must provide, amongst other details, the following:

[a] amount of credit

[b] annual percentage rate or rates

[c] calculation of interest charges: The method of calculation of the interest charges payable under the contract and the frequency with which interest charges are to be debited under the contract

[d] total amount of interest charges payable: The total amount of interest charges payable under the contract

[e] repayments

[f] credit fees and charges: The amount of any such fee or charge, if ascertainable, but if not, the method of calculation of the fee or charge, if ascertainable.

Without this, a credit provider "must not enter into a credit contract" (s14).

None of the credit providers have been complying with s14 of the Consumer Credit Act. None provide any disclosure on the calculation of interest charges, nor any information on the total amount of interest charges payable. They also do not provide any breakdown of "charge for credit" or "term charges", which can show the details of credit fee and/or charges, if any.

A further breach is in terms of non-compliance with s15 of the Consumer Credit Act. This section requires that the credit contract contain the following information:

[a] credit provider’s name

[b] amount of credit

[c] annual percentage rate or rates

[d] calculation of interest charges: The method of calculation of the interest charges payable under the contract and the frequency with which interest charges are to be debited under the contract

[e] total amount of interest charges payable: The total amount of interest charges payable under the contract

[f] repayments
(g) credit fees and charges: A statement of the credit fees and charges that are, or may become, payable under the contract, and when each such fee or charge is payable.

For credit that is over $5,000, further additional breaches are in terms of non-compliance with additional provisions under s15 of the Consumer Credit Act. These are:

(h) changes affecting interest and credit fees and charges: If the annual percentage rate or rates or the amount or frequency of payment of a credit fee or charge or instalment payable under the contract may be changed, or a new credit fee or charge may be imposed, a statement or statements to that effect and a statement of how the debtor will be informed of the change or the new fee or charge must be given.

(j) default rate: If the contract is a contract under which a default rate of interest may be charged when payments are in default, a statement must be made to that effect on the default rate and how it is to be applied.

(k) enforcement expenses: A statement given that enforcement expenses may become payable under the credit contract or mortgage (if any) in the event of a breach.

(m) commission: If a commission is to be paid by or to the credit provider for the introduction of credit business or business financed by the contract, then the quantum of this, and details on the payees are required.

(n) insurance financed by contract

(o) other information: Any other information and any warning required by the regulations.

The law provides that it would be sufficient compliance if the information required above is provided in the pre-contract statement and contract document respectively (s.8 Amendment Act).

But none of the credit providers give any information on the calculation of interest charges, nor any information on the total amount of interest charges payable. They also do not provide any breakdown of ‘charge for credit’ or ‘term charges’, which can show the details of credit fees and/or charges, if any, or of any commission charged to the consumer for insuring the items sold on HP. These comprise a breach of both, s15 as well as s157 of the legislation. S157 makes a breach of s15 a criminal offence. To date, however, no dealer has been prosecuted under this section of the law.

None of the dealers comply fully with s157 of the legislation. This section states:

[l] Before any hire purchase agreement is entered into in respect of any goods -

(a) any person conducting negotiations leading to the making of the hire-purchase agreement must inform the intending hirer in accordance with sections 12, 13, 15, 16, 17, 18, 19 and 20, as applicable to hire purchase agreements; and

(b) the credit provider must provide the intending hirer with a written summary of the hirer’s financial obligations, in the form set out in Schedule 4.

The leading HP dealer is in breach of the legislation for not providing in its credit contract details of credit fees and charges. Some details are provided separately, as an addendum on delivery charges, documentation fee and a number of charges on defaults and repossessions. But given that these are done in an ‘addendum’ and not on the invoice, consumers cannot ascertain whether the dealer’s “charge for credit” sum contains only the interest charges, delivery fee and documentation fee, and not any other hidden charge or fee.

Since there is no separate listing of various components of the credit charges, any assessment of the ratios of various credit charges becomes less than perfect. However, on the basis of disclosures by some other HP dealers, insurance is estimated to comprise approximately 7% of the cash price value. Only one HP dealer charges consumers directly.

3The information to be provided is to be done in a form which the legislation prescribes. The form uses the term ‘term charges’, which is not defined anywhere. This is a weakness of the legislation. However, this does not prevent dealers from providing the disclosures required under s15, as one item in the form requires them to disclose “Particulars relating to Financial Obligations” under which all necessary information required under s15 ought to be provided.

4The Addendum is printed in a faint colour, making it quite impossible to read it. This matter is discussed later in the report.
for insurance. Other HP dealers do not reveal any information on whether they have built in insurance charges in the total credit charge.

Courts (Fiji) Ltd has advised that it does not provide "insurance". Instead, it provides a 'Payment Protection Cover' which pays off the balance of the HP or credit account in the event of certain events as covered. This cover is through what it calls a 'Credit/HP Pearl option'. Under this, consumers are charged a higher interest rate (currently at 20.9%) that includes a Payment Protection Plan (Courts (Fiji) Ltd’s response to the draft report). From this response, it can be deduced that the insurance component is the difference between the ‘normal interest’ and the Pearl interest rate. The current ‘Opal’ option has an interest of 18%, while a ‘Take-Ten’ option has an interest rate of 12% for 10 months, during which period the repayments need to be completed.
The legislation provides the maximum amount of an interest charge that may be imposed or provided for under a credit contract. This sum (s26) is:

(a) if only one annual percentage rate applies to the unpaid balances under the contract - the amount determined by applying the daily percentage rate to the unpaid daily balances;

(b) in any other case - the sum of each of the amounts determined by applying each daily percentage rate to that part of the unpaid daily balances to which it applies under the contract.

Table 3: Interest Overcharge

<table>
<thead>
<tr>
<th>C-1</th>
<th>C-2</th>
<th>C-3</th>
<th>C-4</th>
<th>C-5</th>
<th>C-6</th>
</tr>
</thead>
<tbody>
<tr>
<td>Credit Taken</td>
<td>$1,088.35</td>
<td>$1,009.88</td>
<td>$1,867.69</td>
<td>$2,382.74</td>
<td>$508.77</td>
</tr>
<tr>
<td>Period (Months)</td>
<td>12</td>
<td>24</td>
<td>12</td>
<td>24</td>
<td>12</td>
</tr>
<tr>
<td>Interest Rate</td>
<td>15.5%</td>
<td>16.5%</td>
<td>20.9%</td>
<td>20.9%</td>
<td>20.90%</td>
</tr>
<tr>
<td>Dealer: Monthly repayment</td>
<td>$98.00</td>
<td>$48.00</td>
<td>$170.00</td>
<td>$116.00</td>
<td>$47.00</td>
</tr>
<tr>
<td>Dealer: Residual Repayment</td>
<td>$86.24</td>
<td>$167.17</td>
<td>$92.85</td>
<td>$37.93</td>
<td>$105.93</td>
</tr>
<tr>
<td>Dealer: Total Repaid</td>
<td>$1,164.00</td>
<td>$2,037.17</td>
<td>$2,760.85</td>
<td>$554.93</td>
<td>$2911.93</td>
</tr>
<tr>
<td>Daily Reducing Bal: Monthly Payment</td>
<td>$90.70</td>
<td>$40.08</td>
<td>$155.64</td>
<td>$99.28</td>
<td>$42.40</td>
</tr>
<tr>
<td>Daily Reducing Bal: Total payment</td>
<td>$1,088.35</td>
<td>$1,009.88</td>
<td>$1,867.69</td>
<td>$2,382.74</td>
<td>$508.77</td>
</tr>
<tr>
<td>Credit Charge: Dealer Calculated</td>
<td>$156.00</td>
<td>$291.84</td>
<td>$352.17</td>
<td>$813.85</td>
<td>$49.77</td>
</tr>
<tr>
<td>Credit Charge: As per Legislation</td>
<td>$80.35</td>
<td>$149.72</td>
<td>$182.69</td>
<td>$435.74</td>
<td>$49.77</td>
</tr>
<tr>
<td>Overcharge of Credit Charge</td>
<td>$75.65</td>
<td>$142.12</td>
<td>$169.48</td>
<td>$378.11</td>
<td>$46.16</td>
</tr>
<tr>
<td>% Overcharge of Credit Charge</td>
<td>94%</td>
<td>95%</td>
<td>93%</td>
<td>87%</td>
<td>93%</td>
</tr>
</tbody>
</table>

The law provides for regulations to be put in place by the Minister to provide for the calculation of unpaid daily balances. So far, no such regulation has been published. Given this, the provisions of the legislation hold – that interest charged be on the actual outstanding credit, calculated on a daily basis. Any deviation from this would be contrary to law.

Fraud
Six random consumer documents have been analysed for credit charges, and the charges compared with the provisions of the legislation. The analysis shows that dealers have been charging an interest on a sum greater than the outstanding credit. In fact they have been charging an interest for the entire duration of the credit contract on the basis of the full sum of credit taken\(^5\). This is contrary to law.

The overcharges have ranged from 87% to 95%, that is, almost twice what the charge should have been. This is a serious breach of the legislation as well as a considerable amount of consumer money being siphoned off by HP dealers through adopting a method of calculation which is contrary to law. Table 3 provides the data on credit charges.

\(^5\)This is compound interest rate.
produces the same results as the Rule of 78 on actual credit, term of credit and interest rate figures.

There are mixed views on the Rule of 78. Karan [forthcoming] calls for this rule to be abolished. The Reserve Bank of Fiji agrees that the rule should be abolished “because it is confusing and difficult to understand” (response to Draft Report). MH’s, on the other hand, states that this rule is “a universally accepted method of determining interest income/ rebate. It is the legislated authority determining interest apportionment on Hire Purchase goods pursuant to the Consumer Credit Act. It is our submission that the Rule of 78 is a logical and fair means of determining interest income. It considers condition of the goods.”

Thus, since the Rule of 78 is used to calculate interest rebate in the event a customer pays the debt off earlier than the full term of the credit contract, a correct method of calculating interest rebate is provided for. To this extent, there is no problem with the Rule. The problem arises, however, because there are two different standards used by HP dealers in working with credit charges. They charge interest throughout the life of the credit term, including for that component of the credit which consumers pay off through repayments. While this is contrary to law, HP dealers have persisted with this method. However, when it comes to interest rebate for early repayments, they utilise the Rule of 78, which yields results with are the same as one would arrive at by calculating credit charges on a reducing balance method. This inconsistency is more worrying than any confusion that Rule of 78 generates.

It is established that the method of calculating the actual total interest payment and monthly repayments is incorrect. The dealer declares the interest rate. But given that the quantum of interest charged at each repayment remains the same over the term of the loan, in effect the consumers are charged an interest for both credit due, and credit already made good by repayments.

One of the HP dealers, Courts [Fiji] Ltd defends this position on account of depreciation: “… the ‘straight line’ or ‘upfront interest on a reducing balance’ methods will not be fair or be economically viable for HP providers for the main reason that our product item/s condition or value depreciates at a much faster rate and is usually in a dilapidated state or condition with a much lower, if not zero, value, in the inevitable cases of default and/or recovery action processes”. [Response to Draft Report].

The massive overcharge, which is contrary to law, has gone on unchecked for a long time. At an estimated $25.5m of credit charge per year with an average 92% overcharge as calculated from the six cases given above, amounts to $13.3m appropriated per year by HP dealers contrary to law. This substantial sum of money appropriated from consumers, who are generally less well to do in Fiji, a sophisticated fraud outside the law which fraud detecting agencies have not been able to uncover so far. Urgent action needs to be taken on this. The legislation does not make any provision for any specific penalty for acting contrary to law in the matter of calculating the interest payments. The law [s184] provides for a penalty of a fine of $5,000 for a first offence and $10,000 for a second or subsequent offence – which relate to offences specified in the legislation. The matter here is that of fraud. The law makes a general provision for fraudulent activities; s184(2) provides:

If a natural person is convicted of any offence against this Act and the court by which the person is convicted is of opinion that the offence was committed with intent to defraud, the person is liable, in addition to or instead of any other penalty, to imprisonment for 3 years.

The issues here are two-fold. First, the law does not regulate on how the interest is calculated; it is assumed that an interest is only due on amount that is actually on loan, and that there is no interest on sums which have been repaid. Any demand for an interest on a sum that is not owed by a consumer, is fraudulent. The second issue has to do with that of prosecution: who is the authority who can commence a prosecution on the matter of fraud? The likely agents could be an affected consumer, or the state, or a consumer body. So far, this matter has not been dealt with by these bodies, possibly on account of a lack of awareness that such systematic frauds are taking place in the industry. The penalty for fraud by a body corporate is a fine that is 5 times the fine provided in s184(2) The law also provides for the people affected by the fraud to be paid back the extra sums that they lost through the fraudulent activities.
High Interest Rates

The matter of charging interest where no credit is due is aside from the rate of interest itself. Consumers have been complaining about ‘high interest rates’. HP interest rates range from about 12% to more than 20% per annum. The larger share of HP business falls in the higher interest rate side.

The leading HP provider, Courts (Fiji) Limited, responded to the matter of the high interest rate stating:

HP providers have very little alternative or option but to apply a slightly higher interest rate on our Hire Purchase products because we simply engage in high risk lending or credit which is afforded to lower and/or average income earners. A few of the reasonable justifying aspects we would like to highlight are as follows:

1) Unlike banks and semi financial institutions that secure their funds from the public at very low interest rates, Courts (Fiji) Ltd secures its funds from commercial banks at significantly higher interest rates. Therefore our cost of capital is much higher and therefore we have to charge slightly higher interest rates to help cushion this effect.

2) HP is risky lending with approvals given in minutes for our customers’ convenience without charging any approval fee. We also deal with a substantial number of very low to middle income earners who have very sketchy and/or no proof of income details or verification records at all.

3) Lending without security – effectively the chattels do not constitute security as most often these items once used or if not maintained well will have a much lower value or even a nil value for damaged items etc.

4) We also lend on high risk items such as furniture, electrical equipment, brush cutters, power tools, outboard engines, other small/micro business items etc which if not maintained well become dysfunctional, damaged or broken etc resulting in customers generally refusing to pay up.

5) A good portion of our customers live in remote, rural, interior and outer island areas and access becomes very difficult or impossible for collections, repossessions and/or even pursuing legal action, with the Credit Data Bureau logging also a non issue as it has very little or no effect on them. This greatly impacts on our credit recovery capabilities thus escalating our risks and losses.

6) Bad debt write offs are generally high due to the nature of this risky lending which warrants a marginally higher interest rate to help recover and/or compensate these relative costs.

7) Our lending rates are very reasonable and comparable to interest rates charged by banks and credit card companies on credit card facilities and unsecured loans, including money lenders etc. Credit card companies and banks offer these unsecured facilities to higher net worth customers, whilst we offer these facilities to lower and middle income earners. Therefore we relatively offer more competitive and reasonable rates in general.

The justification for high interest rates needs to be examined by a regulatory authority. Unfortunately, while financial transactions involving banks and insurance companies are regulated by the Reserve Bank of Fiji, there is no regulatory authority on financial transactions of the consumer credit industry. In the absence of this, the prospect of a fair trading body examining the basis of the interest charges needs to be explored by consumers and/or consumer bodies like the Consumer Council of Fiji.

Another HP Dealer’s parent company, Carpenters Fiji Ltd also responded in like terms stating:

Hire Purchase financing is in a different type of credit financing compared to Mortgage and Bill of Sale. Risks are high and rewards have to be high as well to mitigate high risk factor.

The reason risk is high is because target market is generally average to lower end income earners or the job profile is riskier. These persons are often refused loans by commercial banks as they cannot meet stringent finance conditions....
Furthermore, interest rate is reflective of the risk in terms of the following:

(i) target market includes civil servants, teachers, farmers, garment factory workers, office staff and other low income earners
(ii) high default rates
(iii) susceptibility of items financed being subject to misappropriation and natural disasters
(iv) different demographics make it difficult to locate customers
(v) high collection costs
(vi) high bad debts

The default rate ranges from 45% to 50%, whilst the ratio of collection staff to total staff is above 53%. In this regard, a high number of accounts are settled according to their hire purchase contract in order to generate a positive return on funds utilized (Response to Draft Report).

Interest rate regulation is provided for by the law. The Consumer Credit Act provides for the Minister responsible for Commerce to prescribe the maximum annual percentage rate of interest for a credit contract [s264(1)]. So far, however, no such regulation has been published. The market, therefore, has been left to determine this rate. In this respect, the HP dealers are within the law, the concerns of consumers notwithstanding. What is needed, however, is to bring financial transactions of the consumer credit industry under a credible regulatory authority.
Market Concentration

The major hire purchase credit providers in Fiji are Courts (Fiji) Ltd and MH’s Homecentres. These outlets dominate the market, accounting for over 95% of the credit business. Between these, Courts is the market leader by a market factor of 3:1. Other smaller providers are Subrail’s Furniture Centre, Tappoos Home and Leisure, Comfort Home Furnishing Ltd and Deo’s Furniture & Joinery. None of the companies, however, release their financial statements.

The HP business is a critical business for a large segment of Fiji’s people. As already stated, over 46% of all households in Fiji relied on HP during the past 4.5 years to acquire goods. Of this, according to the own assessments of those who purchased on HP, 73% of the households would not have been able to purchase these goods without the provision of HP. Overall, therefore, at the very minimum, 34% of Fiji’s entire population would not have been able to purchase white goods without hire purchase.

But this same proportion pays to HP dealers nearly twice (1.73 times more) for the goods as they would have paid if they could afford to buy cash: goods worth $34.8m in cash yielded for the HP dealers a revenue of $60.3m, comprising $3m in deposit, $31.6m in loans to consumers, and $25.5m in charges for the loans per year. The total credit business itself is $57m, comprising $31.6m in loans and $25.5m in credit charges.
Survey results show that about three quarters of the HP consumers had incomes less than $15,000 per annum. The joint family incomes of a vast majority of HP consumers (70%), as shown in Table 4, was in the less than $20,000 category.

18% of the HP consumers had their own homes while 82% stayed in rented accommodation. In terms of education, as Table 5 shows, 70% of the HP consumers had no post-secondary school education. 47% of the consumers, however, had members of their families who had tertiary education.

While age is not an important feature in the HP propensity, for the record, 31% of the HP buyers are below 35; 36% are in the age group 35-45, while a third are above 45.

As Table 6 shows, in 18% of all purchases, children were the main advocates. Parents of the household heads formed 12% of the principal advocates. In the remaining cases, the husband or the wife in the household formed the principal advocate for the purchase.

The main reason cited for the purchase decision was convenience, with 65% of the purchases citing this as the main reason. Another 8% cited time saving as the principal reason. As Table 7 shows, extraneous factors – like pressure from family, demonstration effects, etc. – comprised 26% of the purchase decisions.

**Table 4: Income Profile of HP Consumers**

<table>
<thead>
<tr>
<th></th>
<th>Self</th>
<th>Family</th>
</tr>
</thead>
<tbody>
<tr>
<td>&lt;5,000</td>
<td>22%</td>
<td>13%</td>
</tr>
<tr>
<td>5,000 to &lt; 10,000</td>
<td>27%</td>
<td>25%</td>
</tr>
<tr>
<td>10,000 to &lt; 15,000</td>
<td>24%</td>
<td>21%</td>
</tr>
<tr>
<td>15,000 to &lt; 20,000</td>
<td>12%</td>
<td>11%</td>
</tr>
<tr>
<td>20,000 to &lt; 25,000</td>
<td>6%</td>
<td>8%</td>
</tr>
<tr>
<td>25,000 to &lt; 30,000</td>
<td>5%</td>
<td>9%</td>
</tr>
<tr>
<td>30,000 to &lt; 35,000</td>
<td>1%</td>
<td>4%</td>
</tr>
<tr>
<td>35,000+</td>
<td>3%</td>
<td>8%</td>
</tr>
</tbody>
</table>

**Table 5: Education Profile of HP Consumers**

<table>
<thead>
<tr>
<th></th>
<th>Self</th>
<th>Family</th>
</tr>
</thead>
<tbody>
<tr>
<td>No education</td>
<td>2%</td>
<td>2%</td>
</tr>
<tr>
<td>Primary (class 1-8)</td>
<td>20%</td>
<td>3%</td>
</tr>
<tr>
<td>Forms 3-4</td>
<td>23%</td>
<td>8%</td>
</tr>
<tr>
<td>Forms 5-6</td>
<td>20%</td>
<td>30%</td>
</tr>
<tr>
<td>Form 7</td>
<td>6%</td>
<td>10%</td>
</tr>
<tr>
<td>Tertiary Certificates/diplomas</td>
<td>19%</td>
<td>29%</td>
</tr>
<tr>
<td>Tertiary: degrees</td>
<td>10%</td>
<td>18%</td>
</tr>
</tbody>
</table>

**Table 6: Principal Advocate of the Purchase**

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Husband</td>
<td>36%</td>
</tr>
<tr>
<td>Wife</td>
<td>35%</td>
</tr>
<tr>
<td>Son</td>
<td>11%</td>
</tr>
<tr>
<td>Daughter</td>
<td>7%</td>
</tr>
<tr>
<td>Father</td>
<td>6%</td>
</tr>
<tr>
<td>Mother</td>
<td>6%</td>
</tr>
</tbody>
</table>

The main reason cited for the purchase decision was convenience, with 65% of the purchases citing this as the main reason. Another 8% cited time saving as the principal reason. As Table 7 shows, extraneous factors – like pressure from family, demonstration effects, etc. – comprised 26% of the purchase decisions.

**Table 7: Reasons for Purchase**

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Convenience</td>
<td>65.4%</td>
</tr>
<tr>
<td>Time saving</td>
<td>8.3%</td>
</tr>
<tr>
<td>Pressure from family</td>
<td>9.8%</td>
</tr>
<tr>
<td>All neighbours had it</td>
<td>2.5%</td>
</tr>
<tr>
<td>All relatives had it</td>
<td>2.2%</td>
</tr>
<tr>
<td>House looked empty/ incomplete without it</td>
<td>5.7%</td>
</tr>
<tr>
<td>Appeared good on TV/radio/news-paper</td>
<td>1.3%</td>
</tr>
</tbody>
</table>

**Consumer Literacy on Hire Purchase**

41% of the population claim that they are loyal HP consumers. Of those relying on HP, 79% understand that HP is a loan that they take from the seller to purchase the items. A fifth, on the other hand, think that the HP system is a system of delayed payments for the items bought, without any additional charge on the cash price of the item.

Of those who purchased goods on HP, 36% stated that for their last purchase, the supplier did not advise them of the interest and principal components of the purchase. As a part of the HP requirements, sellers are required to provide documentation on the various charges and fees for the items. These are given as part of
the contract between the seller and the buyer. However, not all buyers are financially literate. As such, an explanation in their preferred language would have a lasting impact on their minds on the key financial commitments that they are making under the contract. There currently is no requirement that each HP customer receive an explanation in a language of their choice of the financial terms and conditions of the HP agreement.

53% of the HP customers asked the seller to advise them of the total interest payments on the purchase. Most were shown the contract between the seller and the buyer. The contract does not have any statement or explanation on the way the interest rates are calculated.

Financial literacy empowers a party to assess the options available to each. One option that consumers of HP have is paying off their loans earlier than the due date. To exercise this option they would need to know the financial advantages that they would get out of early payments. Actual responses from consumers show that 71% of the consumers do not get shown any calculations on rebates for early payments. Of the 29% who were shown some calculations or any formula on the calculation of the rebates, a quarter could not understand the calculations.

HP companies also levy a ‘documentation fee’ on every HP activity. The legislation is silent on the types of fees which credit providers can levy, and their quantums6.

44% of the consumers in Fiji do not know that there is a documentation fee that is included in the calculations for the HP credit terms. Further, of the 56% who are aware of this fee, only 58% learnt of this before they bought the items on HP; 42% learnt of this fee either after they had agreed to buy the item or after repayments had started.

6Historically, in credit provisions, interest payments were justified on one and only one basis: providing credit is an investment for the credit provider, and in making this investment, the credit provider incurs some expenses, as well as foregoes the use of the funds which it has provided. These costs – which are the direct cost of the credit and the cost of the opportunity forgone – are covered by an interest charge. Over the years, however, credit providers have begun to recover the direct costs through levies other than interest charges, thereby leaving the interest component as a net margin. Regulators and society generally have tolerated this in the name of free enterprise – where buyers and sellers can agree on any price they wish to. As a side note, one finds a similar logic creeping in public sector finance – where, for example, municipal and local authorities levy a rate to provide all the services, and then levy separate rates for services already included in the rate levy – like garbage services, loan repayment levy, or street light services. In like manner, governments levy taxes to, amongst other services, provide roads and infrastructure, and then load on additional user pay levies like a road levy or a departure tax at the airport, etc.
Confidentiality of Consumer Information

HP consumers in Fiji do not have a right to confidentiality of their financial information. HP contracts require consumers to sign in for the following:

- their financial information to be listed on the Data Bureau Limited;
- their financial information to be made available by the HP company to any other credit provider, and
- the HP company permitted to seek financial information on them from any other source.

The contracts also require consent from the consumer that his/her electronic signatures can be retained and relied upon by the company “for any purpose”, including legal or other debt recovery proceedings.

Data Bureau Limited is a company that was initiated by a group of financial institutions and insurance companies in Fiji in 2001. Its membership covers 100% of the financial market. An official statement from the Data Bureau states: “The beauty about this service is that it is absolutely free. We do not make a commission on the recoveries nor do we charge a fee for the uploading of files. Members are only charged for their membership or for the use of the credit search services” [http://www.databureau.com.fj/fiji/index.aspx]. The core function of the company is the “operation of a Credit Bureau database where members can access the credit history and identify details of their customers”; the Bureau also assists its members “with debt collection when defaulting debtors are listed on the Credit Bureau” [http://www.databureau.com.fj/fiji/index.aspx]. Information is obtained from the members of the Bureau and from public records.

60% of HP consumers in Fiji did not know that their records could be listed on the Data Bureau Limited database. 62% did not know that their credit information could be provided to others. And 60% did not know that the HP company could seek information on them from other businesses or sources.

The lack of awareness on Data Bureau listing is despite the fact that the HP contract that consumers sign contains a provision that by signing the contract, they allow the HP to provide their credit information to the Data Bureau, for this information to be made available to others, and for the HP seller to seek information on them from other sources. A majority of HP consumers, therefore, do not seem to have read, or understood the terms of the contract before they sign the HP contract. It is clearly more likely that the credit providers do not advise consumers of this conditionality in the credit contract in a language that the consumers understand.

7The exact contractual terms which HP consumers are required to sign by one of the larger HP dealers are:

1. I/We irrevocably authorise [company name] to obtain a report about my/our commercial activities or commercial credit worthiness from Data Bureau Limited and/or any other firm or company which provides information about a person’s commercial credit worthiness for the purpose of assessing my/our credit application
2. I/We irrevocably authorise [company name] to exchange information about my/our credit arrangements including information about my/our credit worthiness, credit history, credit standing or credit capacity with other credit providers. This information may be used to assess application for credit and or my/our credit worthiness, to assist me/us to avoid default and notify other credit providers of my/our default.
3. I/We irrevocably authorise [company name] to make enquiries about the information included on my/our credit application from any other sources.
4. I/We hereby authorise and consent to [HP Company name], obtaining through means of electronic signature pads or electronic scanning, my/our electronic signatures on the Credit Agreements and other ancillary documents relating to the Credit purchase(s) and to retaining and relying on such Electronic Signatures for any purpose, including any legal or other debt recovery proceedings.
Data Bureau member MH defends the Data Bureau practices:

The Data Bureau is a key agency for Hire Purchase financing as it acts as a credit assessment tool. It is a mechanism that allows credit providers determine customer rating and this is the usual practice overseas where similar agencies offer this service. Our demand notices carry a disclaimer that customer details would be loaded on Data Bureau if customer defaults repayments.

In Fiji, government and statutory bodies such as Fiji Electricity Authority, Water Authority of Fiji, Fiji Development Bank and the Municipal Councils are also members of Data Bureau (Response to Draft Report).

The Reserve Bank of Fiji also defends the operations of the DBF, saying that it plays an important role in the area of credit risk management and the promotion of a sound credit culture in the financial system of the country. The existence of DBL makes it easier for financial institutions to make informed and responsible lending decisions in a timely manner. Checking with the Credit Bureau would also help the financial institutions to mitigate any possibility of serious problems such as fraud cases and the possibility or the risk of defaulting (Response to Draft Report).

The RBF, however, accepts the issue of consumer confidentiality. It states:

The Reserve Bank of Fiji is of the view that to protect the confidentiality of consumer information the data bureau should only provide personal credit information to a financial institution for the purpose of assisting the financial institution to evaluate a credit facility application or for a periodical credit review if the person is an existing borrower. The financial institutions should not be allowed to access credit information for purposes other than evaluating credit facility application or credit review. For example, financial institutions cannot use the credit report to market their financial products or services (Response to Draft Report).

While there is contractual conditionality on making credit information of HP consumers available to others, which can be interpreted as an individual waiving ones rights to privacy of credit information through signing a credit contract, the issue of right to privacy remains. In Fiji, there is no law that guarantees consumers a right to privacy. The Data Bureau Ltd is a duly registered company in Fiji, which under its articles, is involved in sharing private information on clients of its members with each other and with other entities in Fiji. Given that hire purchase consumers sign a contract which allows their private information to be shared by Data Bureau Ltd, this part of the activity of the Data Bureau Ltd is within the law.

The fact that this is within the law, however, does not end the matter of the right to privacy. A majority of the consumers did not know that their records could be listed on the Data Bureau Limited database or provided to others, or that the HP company could seek information on them from other businesses or sources. But over a third knew this and still entered into the contract of the purchase. The issue here concerns financial literacy. If it was believed that consumer privacy is an important virtue in societies like ours, then the matter could be addressed as a matter of consumer rights advocacy. Legal challenges on the basis of the existing situation may not be a viable option. Consumer advocacy which results in a vast majority of consumers refraining from entering into HP agreements which impact the privacy of their credit information would be more desirable. The state may, however, consider enacting legislation on protection of privacy; this may address the issue of privacy of personal credit records.

A better alternative, however, is to encourage alternative financial institutions that enable consumers to save money and purchase goods on a cash basis. There are a number of informal ‘clubs’ in Fiji, through which members save and deposit small sums of money, to later withdraw to fulfil the purpose of their savings. This concept has a good foundation for growth in Fiji. So far, however, the government agencies have remained oblivious of the potential of this mechanism – resulting in about $25m of consumer money being transferred to HP companies. To address this matter, however, new thinking is necessary on the role of government in an economy.
8% of HP consumers disputed their liabilities with the seller. 29% of the disputes resulted in positive outcomes; some of the outcomes were as follows:

- money was refunded
- agreement to vary payments made
- goods were returned
- seller corrected the mistake

But a resolution in favour of consumers was not the preponderant outcome. In 21% of the cases, the consumers lost out leading either to them paying off for the items early in frustration, or escalating the grievances to the Consumer Council of Fiji, or losing the items through repossession. For 43% of the disputes, the sellers held their grounds claiming contractual provisions, while in 7% of the cases, the consumers were given the runaround within the seller’s premises (see someone else, come later, manager is not in, etc).

An interesting finding is that in none of the grievances in which the consumers had liabilities, did consumers seek judicial intervention. The likely reason could be that seeking judicial intervention would be a more expensive exercise than the total value of liabilities in most cases. Typical legal commencement charges in Fiji for documentation and filing of civil cases involving contracts are around $500; legal professional charges are additional. These sums are disproportionate to the gains that an average HP consumer may get from litigation, since on average, the HP loan is $1,224. This explains why 95% of the consumers had not even considered taking legal action against the sellers for their grievances.

In Fiji, the Small Claims Tribunal is one avenue through which aggrieved parties could seek remedies on claims or disputes. However, data shows that of all claims filed in the Small Claims Tribunal between 1997 and 2008, only 0.135% of the claims were by consumers against HP dealers. In contrast, 23% of all claims filed were by HP dealers against their clients for non-payment. For this period, the average value of the unpaid sums was $581*.

That a very small proportion of HP consumers filed claims in the Small Claims Tribunal raises the issue of whether the SCT operations are empowering consumers. What is known is that a large majority of the HP consumers are those with established incomes. They are either in employment or self employed. Both these categories, but more so those who are employees, would hardly get time off from their work to file claims in the SCT; the SCT operating hours are quite restrictive. The lack of flexibility, particularly of sitting during times when workers would be able to access the SCT facilities, is prohibitive of HP consumers access the SCT with their claims grievances.

About 30% of all consumers apply for variations in payment agreements. Of this, about 70% receive the variations. However, this comes at a cost, which the consumers bear. Financial hardship is the only reason for application for variation that involves extension of repayment period. The outcome is that those who are financially in difficult situations are required to pay more for variation documentation.

For those who did not get any variation approved borrowing from others, including money lenders, to pay the instalments was normally considered. This created further debt and interest burdens. Defaults in payment, which again attract penalty charges, were also common.

A total of 33% of the HP consumers have defaulted in payments to the extent of receiving default notices. But the awareness on key aspects of defaults has been generally lacking. 60% of the consumers did not know that there is a default

*Approximately a half of all claims lodged in the Small Claims Tribunal are claims by commercial entities. Of this, 46% are claims by HP dealers.
penalty that the seller charges for each default. While 43% of the consumers knew that if they default, the dealer will charge for every letter and every call that it made to them, 80% didn’t know that the phone call charges billed are above the normal call rates. For those who default, dealers earn an estimated gross revenue of $0.6m per annum through sending default notices.

On variation of the credit contract, 8% of the consumers advised that they tried to return the goods to the seller. Only 56% of these consumers succeeded, but 90% did not get any money back for the goods returned. The only benefit that these consumers had from the goods that they were paying for was for the brief period that they had the goods with them before their return.

Repossession
About 12% of all customers have reported that their goods have been repossessed. This means that repossession affects about $7.2m of the credit market; this is the potential size of the primary repossession market. Within this market, for the households whose goods were repossessed, they had already repaid 63% of the total repayment sum when the repossessions took place. Resale of repossessed items is the additional repossession market.

There is no regulation on resale of repossessed items. The law provides for the division of proceeds of a resale where the consumer determines the HP contract. But there is no such regulatory provision on resale of items where the dealer terminates the contract on account of non-payment. This means that the dealer is not required to refund the consumer any proceed from the sale if the sale earned more than the amount owed to the dealer. There is also no requirement that the dealer sell the item at a fair market value, or to even advise the consumer of the process of resale and/or the date of the resale, or the price at which the resale took place. S163-167, which deal with repossession, are silent on these matters.

Variation of payments also includes paying off the total sum due earlier than the scheduled payment date. 26% of all HP consumers discussed their intention of paying off the total sum due early. Of these, 57% actually paid off the sum early. 74% of those who enquired about early payments were shown calculations that showed early payments to be beneficial to the consumer, while a quarter saw no benefit of paying off the sum early.

Case Study: 1
Mrs Prasad, a machinist, bought a twin tub washing machine from a hire-purchase company. When she entered into the credit contract with the company, she was not informed about any hidden fees and charges attached to the contract. A happy Mrs Prasad took the washing machine home. She made her payments on time until her husband, who was a temporary staff in a factory, lost his job.

Because of financial hardship, she missed two months payment after which she received a couple of phone calls and a default notice.

Mrs Prasad noted a significant sum added to her account; this was an amount other than what she owed to the hire purchase company for two months of payment. She was charged for the two telephone calls made to her to remind her of the payment (total of $4.40, which is more than $2 per call), the default document posted to her was charged at $3, and late penalty fee at $10. [http://www.fijitimes.com/story.aspx?ref=archive&id=185664](http://www.fijitimes.com/story.aspx?ref=archive&id=185664)
One approach to this matter could be the introduction of a regulatory mechanism for the resales. In this, a number of possibilities exist. The following options, not all mutually exclusive, exist:

1. No item is to be sold at a price below the depreciated value of the item, with the depreciation rate used being the Fiji Revenue and Customs Authority rate.

2. The dealer and consumer agree to independent market valuation of the item, and no item to be sold below the independent market valuation of the item\(^\text{10}\).

3. The consumer to be refunded the difference between the amount owed and the price fetched. This requirement already exists in the legislation, but is hardly abided by.

4. The dealer be required to advise the consumer of the process and/or the date of the resale, and be given the option of attending the resale event.

5. The repossessed item can not be sold until the dealer has obtained an order from a court or the Small Claims Tribunal on the resale.

In practice, however, dealers in HP treat the resale of repossessed items as a third market, with the first time being the sale of the item itself, and the second being the credit business.

A repossession does not end the liability that a consumer has. HP dealers claim the difference between the total credit sum and the sum the dealer received through repayments and resale. Since repossession arises due to defaults, normally repossession takes place before the end of the repayment period. But dealers claim the credit charge for the entire period. In the case study cited above, the credit period was for 24 months, but the repossession took place in 7 months only.

The above needs to be addressed through, first, enforcing the provisions of the law in correct interest charges. This will reduce the burden of repayments and consequently the incidences of repossession. Second, as is the case with limited liability companies or mortgages, an appropriate provision must be made in the legislation that once a good is repossessed, all liability on the hirer ends. This will require an amendment to the legislation.

Where repossession can not take place, dealers resort to claiming the amount due through other means, typically the Small Claims Tribunal.

The following case study shows the makeup of the claim sum.

\(\text{Case Study: 3}\)

A consumer purchased a chain saw $1,629. The consumer paid a deposit of $400 and repayments of $581. The contract was for 24 months. Dealer claimed a sum of $2,035.15 within 13 months through a claim filed in the Small Claims Tribunal.

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\(\text{Case Study: 2 continued}\)

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Purchase price</td>
<td>$2,303.56</td>
</tr>
<tr>
<td>Less Deposit</td>
<td>$69.00</td>
</tr>
<tr>
<td>Charges:</td>
<td>$2,234.56</td>
</tr>
<tr>
<td>Interest</td>
<td>$793.92</td>
</tr>
<tr>
<td>Insurance</td>
<td>$161.25</td>
</tr>
<tr>
<td>Interest on Arrears</td>
<td>$66.59</td>
</tr>
<tr>
<td>Collection Fees</td>
<td>$44.00</td>
</tr>
<tr>
<td>Default Notice</td>
<td>$50.50</td>
</tr>
<tr>
<td>Field Fees</td>
<td>$39.00</td>
</tr>
<tr>
<td>Transport Fees</td>
<td>$40.00</td>
</tr>
<tr>
<td>Documentation Fee</td>
<td>$10.00</td>
</tr>
<tr>
<td>TOTAL</td>
<td>$3,439.82</td>
</tr>
<tr>
<td>Payments</td>
<td>$1,626.70</td>
</tr>
<tr>
<td>Credit Note</td>
<td>$595.00</td>
</tr>
<tr>
<td>Interest</td>
<td>$26.46</td>
</tr>
<tr>
<td>Insurance</td>
<td>$26.84</td>
</tr>
<tr>
<td>Claim</td>
<td>$1,164.82</td>
</tr>
</tbody>
</table>

The reduction in value by $1,438 within 7 months represented a depreciation rate of 127% per annum. The consumer had no legal redress in this matter.

\(\text{10}\) If the highest price offered is less than the fair market value, then the chances are that the initial value of the good was above the initial fair market value.
Given that repossession is predominantly for reasons of financial hardships, the default and repossession market of over $7m per year hit the poorer workers/farmers the most.

On repossession, under law, the seller has to fulfil certain conditions before exercising the repossession option; these are (s163):

(a) there have been 2 successive defaults of payments, or a default in respect of the last payment; and

(b) the owner has served on the hirer a notice in writing at the last known address provided to the owner and the period fixed by the notice (being not less than 21 days after the service of the notice) has expired.

Two successive defaults means a period of 60 days from the last payment. To this, another 21 days is added. Thus a repossession can only take place after at least 81 days from the last payment made. This means that at least 51 days must pass from the first default date before a repossession can take place.

After the repossession, within 21 days, the owner must serve on the hirer a written notice advising the consumer of the cost of repossession and amount to be paid under the agreement and specifying a time within which the amount must be paid if the hirer is to avoid the good being re-sold. The cost of repossession is charged only after the repossession notice is served on the consumer and the goods are taken by the HP Company.

A dealer therefore cannot sell an item within 51 days from the last date of default, and for a further period of time after repossession which is given to the consumer which specifies the date by which the consumer needs to pay to prevent losing the good entirely. If during this period the hirer pays the sum together with the costs of repossession, or remedies any breach otherwise, the dealer has to return the goods to the hirer forthwith and restore the HP agreement.

Upon repossession, the law provides the dealer the right to determine the date by which the default has to be made good (s163(4)). This notice can be given immediately upon repossession, and the date specified could be anywhere from as early as the date and time of repossession. The

Given the reasons for defaulting payments are as follows:

- Due to family commitments and financial hardship (vast majority)
- Bad crops that year
- Delay in wages
- Income earner migrated overseas
- Got sick and didn’t go to job or lost job (often)
- Funeral in family
- Direct did not deduct on time
- Family disputes arose (often)
- Forgot payments

(or person asked to pay didn’t do so)

11 The reasons given for defaulting payments are as follows:

- Good not working properly
- Distance is a problem
- Item was not returned when given for repairs
- Didn’t get the papers from the person who bought the item
- Mistaken about the date of payment
- Other cultural obligations and children’s education
- Miscalculated my budget

12 The only exception is when there are “reasonable grounds for believing” that the goods will be removed or concealed by the hirer. The onus of proving the existence of this ground lies upon the owner [s163(3)].
law does not provide for any mandatory layover time for the consumer to arrange payments.

79% of the consumers whose goods were repossessed claim that the seller did not write to them within this time frame. 68% of those whose goods were repossessed did not clear the default or take the good back.

**Case Study: 4**

Consumer purchased a 4-burner gas stove from a company on credit terms last year. Due to non-payment of timely instalments, the company moved in to repossess the stove under the terms and conditions of the Hire Purchase Agreement. The company’s bailiff repossessed the gas stove on the condition that within 21 days the consumer must clear all the arrears, upon which she would get her stove back. The consumer then arranged to have her arrears cleared within the 21 day limit but the company would not accept her payment because they had resold the stove to another customer.

The consumer then lodged a complaint with the Consumer Council regarding breach of her terms and conditions in the Hire Purchase Agreement because she was ready to clear the arrears within 21 days, but the company had sold the stove without honouring the Agreement.

Upon the Council’s intervention, the consumer was able to get a replacement stove by clearing the arrears as she was entitled to.

**Case Study: 5 continued**

Customer to keep seeking the trader’s assistance as the trader would only repair the freezer, only for the consumer to have the problems to re-emerge. She then lodged a complaint with the Consumer Council stating very clearly that she did not want any further repairs, but sought either a refund or a replacement. Upon the Council’s intervention, she was given a new freezer.

**Case Study: 6**

Consumer purchased a stereo system from a major dealer for $1600. However every time he inserted a CD disk to view or listen, the stereo showed disk error in the display. The disk tray would also get stuck and would not open easily. The consumer consulted the dealer, who collected the stereo system for repairs. After the repair, the item was returned to the consumer. However, the consumer found that the same problem persisted. The item was sent again for repair. Again, upon its return, the same problem persisted. The consumer was not satisfied with the item and service and decided to take the matter up with the Consumer Council. The Council then consulted with the dealer, who agreed to provide the complainant with a replacement.

In cases of death of the hirer, only when there are 4 successive defaults by the estate of the hirer, can the company repossess the good. (s163(2)).

**Consumer’s Rights upon Repossession**

In law, “within 21 days” after the owner has taken possession of the hired goods, the HP company “must serve on the hirer and on every guarantor of the hirer a notice, in writing, setting out the cost of repossession and amount to be paid under the agreement and specifying a time within which the amount must be paid” (s163(4)).

Furthermore, after taking possession, the HP company “must deliver or cause to be delivered to the hirer personally a document acknowledging receipt of the goods”; if the hirer is not present at that time, the company is to “send to the hirer...
immediately after taking possession of the goods a document acknowledging receipt of the goods.” This document must provide a short description of the goods and the date on which, the time at which and the place where the owner took possession of the goods (s163(5-6)).

Before and when exercising a power of taking possession, the owner or the owner’s servant or agent must also comply with the requirements on changes on grounds of hardship and unjust transactions (s163(7)).

Under this (s66), a consumer who, because of illness, unemployment or other reasonable cause, is unable to meet the debtor’s obligations under a credit contract, but reasonably expects to be able to discharge the obligations if the terms of the contract were changed, may apply to the credit provider for such a change.

None of the consumers surveyed whose good(s) were repossessed reported that the HP dealer or its representatives advised the debtor of this option. Consumers who purchased under HP did not do so to eventually lose the item through repossession. A large majority intended to pay off the item, but financial circumstances precluded them from paying as agreed. Variation in payment sums could result on consumers saving the item from repossession.

The variation could take the following forms:

[a] extending the period of the contract and reducing the amount of each payment due under the contract accordingly;

[b] postponing for a specified period the date on which any payment is due under the contract;

[c] extending the period of the contract and postponing for a specified period the date on which any payment is due under the contract.

The dealer is allowed to charge reasonable finance fees or penalty interest for the changes made.

This option to prevent repossession was not known by the consumers whose goods were repossessed.

The lack of a fuller financial literacy of consumers in Fiji also prevents sensible financial decision making on HP. While the HP market is an important market in Fiji, there is almost a complete lack of knowledge of consumers and potential regulating authorities that the HP business is, additionally, also a credit business and a repossession and resale business. But these are only 3 of the 5 businesses which the HP industry generates for consumer durable dealers, with the other two being the warranty business, and the insurance business.
A large majority of HP consumers – 85% – knew that the goods they purchased were under some sort of a warranty. However, of the 85%, only 72% were advised of this before they had agreed to purchase the item; 26% learnt of this when they had agreed to purchase the goods, while 1% each respectively, learnt of this when repayments had started or when they took the items for repair. In total only 61% of the consumers had been advised of the existence of a warranty before they purchased the goods.

The Consumer Credit Act provides that in “every hire purchase agreement there is a condition that the goods are of merchantable quality” (s161(2)). Merchantable quality means that the item would achieve the purpose which most ordinary people expect it to with normal use. Normally a manufacturer provides this warranty.

HP consumers are not advised by any dealer on the exact entity which provides the warranty on the goods. Consumers also are not aware of the source of the warranty. MH’s, the market follower, has a manufacturer’s warranty and an extended warranty which itself provides on a number of goods. On the other hand, Courts, the market leader, does not extend manufacturers warranty on any goods. By purchasing goods on HP from Courts, consumers waive the right to any manufacturer’s warranty. The sales contract states: “The Courts warranty supersedes and shall not be read in conjunction with any other warranty offered by the manufacturer whether stated or implied. In some cases, we have made arrangements with local suppliers for warranty terms that differ from normal warranty”. As there is currently no provision in trade standards legislation on this, nor any separate law, this exclusion of manufacturer’s warranty is within the law now.

The Courts’ warranty has a number of exclusions. Some of these exclusions are also applicable to manufacturers’ warranties.

In addition, any commercial utilisation of equipment purchased on HP from Courts deems the Courts’ warranty null and void.

Finally, the Courts’ warranty is in some cases lower than the manufacturer’s warranty. The Fisher & Paykel 172L F/Freezer 169TR, for example, has a 2 year comprehensive warranty, a 5 years rust free warranty and a 5 years sealed system (parts only) warranty from the

Case Study: 7

A consumer purchased a water blaster that had a three month warranty. After using it twice on two separate occasions, he discovered that the water pressure was low and it was not working the way it should have or as expected of a new product. He then took the item back to the supplier hoping that they would either fix the problem or replace the product. The supplier took about two months to examine the item, with the explanation given that the part that was needed to fix the product had to be brought in from abroad, which took time. He was then asked to pay for the repair, as the warranty period had already expired. The consumer took the matter to the Consumer Council of Fiji.

The Council’s representation was that the consumer took the product to the dealer within the warranty period. The fact that the repairs took longer does not prevent the product from being covered by the warranty as it was returned to the supplier within the specified time period. The matter was still under discussion with the dealer when this report was written.

13These are, in Courts’ words:
• Normal wear and tear
manufacturer; the same product under Courts warranty is for 12 months only. But consumers can purchase an additional year of ‘extended warranty’ by paying an additional sum.

In all cases where manufacturers provide a warranty of over 12 months, Courts sells the manufacturers’ warranties for any period over 1 year to consumers as ‘extended warranties’.

An additional business for the market leader in HP, therefore, is reselling manufacturers’ warranties to consumers for all periods of warranties over 12 months. Extended warranties generate an estimated $1.013m revenue annually. This is approximately 4% of the total credit which is extended to consumers.

Many consumer durable products sold in HP stores in Fiji are either unknown ‘brands’ or generic brands or clones, or concocted brands [defined here as ‘brands without factories’]. Over the past 15 years, especially with the rise of mass production consumer durable industries in China and some Asian countries, the proportion of such brands has increased markedly. The standard practice is for a retailer and/or a distributor on behalf of a retailer to register ‘brand’ names in a country, and purchase generic products made by production companies with the brand names supplied.

A widely marketed brand in Fiji, for example, is Akita. This brand was registered in Fiji by Courts (Fiji) Ltd. A number of consumer goods lines have been imported by the company under Akita branding. There is no ‘Akita’ factory anywhere in the world. There is, therefore no manufacturer’s warranty that a consumer can be provided. For this reason, and to prevent scrutiny on product standards and certifications, the retailer itself provides warranties to consumers. It is highly likely that the factory producing the item may provide the distributor/retailer which orders the product with a warranty. But because there is no factory by the name of the brand produced, this warranty can not be extended to the final consumer. It is also the case that the same factory would produce the same goods under different brand names as ordered by the factory.

Given that 15% of the consumers did not even know of the existence of a warranty, adds to the weight of opinion that suggest that a large number of consumers are not being advised by the sellers on the full rights of the consumers on the goods. The consumers do get product specifications and warranty documents. But given that financial literacy in Fiji is quite low, it is unreasonable to expect that all consumers would be aware of their rights, like those on warranties on goods.

13 Continues...
• Incorrect operation of the item including failure to follow proper operating procedures or instructions
• Failure to perform routine maintenance, servicing, cleaning or adjustment
• Damage caused by theft, burglary, and accident including extreme weather conditions, moisture, fire, impact and acts of God
• Damage resulting from excessive volume, over driving of components or excessive amplification
• Damage resulting from inadequate or improper voltage. We recommend the purchase of a UPS (uninterruptible power supply) for all computer equipment.
• Computer software and operating system issues of any kind. This includes (but is not limited to) damage caused by viruses, malware, failure to perform software maintenance, or upgrades. We accept no responsibility for loss of data and recommend the regular back up of all valuable data.
• Replacement of any consumables or accessories.
• Animal or insect infestation or intrusion.
• Loss of resilience or shape of furniture interior fillings, fading or colour loss.
• Servicing of a faulty item by a repairer not authorized by Courts and/or servicing of a faulty item without Courts knowledge.
• The cost of examination/diagnosis of an item where no fault is found.


15 A google search on ‘Akita’ does not produce any return for the first 50 pages of listing. Other similar brands sold are Infinity, Simmons, and Maxton.

16 The Akita ‘brand’ marketed in Fiji raises a number of issues on quality; Appendix II discusses some of these issues.

17 The second largest dealer, MHs, states that “most” of its products come with “acclaimed quality standard and are CE certified”, and that the “products that are financed undergo quality checks from respective regulatory authorities from the country of origin before they are allowed to be sold in Fiji. Every effort is made to comply with these requirements” (Response to Draft Report).
36% of all consumers were asked by the seller to take an extended warranty. The MH’s Homemaker calls its extended warranty ‘Super Protector Extended Warranty’. This kicks in after the expiry of manufacturer’s warranty.

Of the 36% who were asked to take an extended warranty, 75% of the consumers stated that they were advised on the costs of the extended warranty plan and the benefits. However, none were given any specific product related document on extended warranty to read or to take away. 51% of the consumers, who were asked to take extended warranties, actually took these warranties. These consumers received a one page fine-printed ‘Terms and Conditions’ of extended warranty. This document is common to all goods on which consumers took extended warranties. No consumer received any product-specific extended warranty document. The MHS extended warranty provides 20 exclusions, while Courts’ extended warranty provides 15 exclusions. But no consumer was advised that the extended warranty is a dollar value warranty. This means that the maximum liability on the dealer is the purchase price of the item. Thus, though a consumer may have an extended warranty for 2 years, if the product required a number of repairs within the first 6 months of the extended warranty the cost of which totalled the price of the product, the remaining 18 months of the extended warranty, already paid for by the consumer, would be of no effect. Each occasion the extended warranty facility is invoked, costs build up. These costs include costs of inspection, transportation, parts and repairs. Consumers are not provided with any breakdown of the costs of attending to the needs under the warranties.

‘Extended Warranties’ is another profit centre for the dealers. As such, and given that consumers cannot take their product under the extended warranties to more skilled technicians than those with the dealer, the call on the costs of attending to the invocation of the warranties is that of the dealer.

Case Study: 8

Consumer bought a twin tub washing machine with 1 year warranty provided expressly by the manufacturer. In addition, he purchased an extended warranty for two years, which means that the product in totality had a 3-year protection. After lapse of a year, consumer discovered that his washer tub was not spinning or operating as it used to. When he contacted the supplier, he was informed that it will not be able to repair it because his 1 year warranty had already expired and under his extended warranty for two years, such parts were not covered. This was the first time the consumer was informed that extended warranties have limitations and restrictions. This information was never disclosed to the consumer when the extended warranty was sold to him. Consumer then lodged his complaint with the Consumer Council of Fiji.

The Council found that the complainant was not given a proper extended warranty docket, and the docket did not state which parts were covered and which were not. After strong representations by the Council, the supplier agreed to repair the washing machine and was given another three months warranty, which covered everything, including the parts.

The Council also advised the dealer to specify clearly in its documents all the restrictions and/or limitations under the extended warranty and advice consumers accordingly.

Extended warranties have their own terms and conditions which may, for example, only cover certain parts for repairs and maintenance.

Case Study: 8 continued

Given the case study above, claims by dealers that certain parts are not covered when these fail during normal use of the product, contradict their own contracts. Such attempts at evading liability is contrary to contracts, which consumer advocate bodies could raise with the judiciary for clear determination; any action by dealers which are contrary to the court interpretation of the extended warranty contracts could be deemed as contempt of court.
Case Study: 9

Mr X bought a water blaster that had a three month warranty. After using it twice on two separate occasions, he discovered that the water pressure was low and it was not working the way it should have or as expected of a new product. This all happened within the first month of the warranty period of the product. Mr X then took the item back to the supplier hoping that they would either fix the problem or replace the product for one in working condition.

Unfortunately, the supplier took about two months to have the item completely repaired and by this time, Mr X’s warranty period had already expired. According to the supplier, the part that was needed to fix Mr X’s water blaster had to be brought in from overseas, which was why it had taken so long to be repaired. The supplier then asked Mr X to pay for the repairs because the warranty had expired. Not convinced with the explanation given by the supplier, Mr X brought his case to the Consumer Council of Fiji.

Mr X returned his water blaster within the first month of the warranty period. The product was not functioning in the way that a reasonable person would expect it to, and the supplier was alerted to this well within the warranty period. The fact that the repairs took so long that the warranty period had expired does not prevent the product from being covered by the warranty as it was returned to the supplier within the time period covered by the warranty.

There is ample documentary and actual consumer history evidence that full disclosure of the terms and conditions of both warranties and extended warranties are not provided by the dealers. This applies to purchases of products under any conditions – even cash buyers are not specifically advised of the terms and conditions of warranties. Until consumers specifically ask about warranties, consumers are not even advised by the dealer that the product comes with a warranty.

Extended ‘warranties’ are warranties provided by the retailer. As such it is the dealer which imposes the terms and conditions of the extended warranty. The extended warranty ‘terms and conditions’ are not explained to the consumers, nor are these amenable to understanding by the average consumer. The general terms and conditions provided are in a font that makes it impossible for an average reader to read with average comfort. Appendix 2 shows a 600dpi scan of these documents. As could be seen from these, there is considerable wastage of page space either with unnecessary information, or with large tabs (Homemakers), or information is formatted to fill the page in small letters with considerable blank spaces.

To confirm the fine-print problem, both Courts and MH documents were given to two people with Form 6 level education to read; both stated that they lost interest in reading after a few sentences, given the small lettering. This also meant that they could not understand whatever they read as the stress of trying to read kept their attention on the reading rather than in the understanding domain.

Given that this ‘fine print’ tactic has been taken to a literal effect in a number of consumer contract situations such as consumer credit and insurance, it is important to recognise that this habit is not likely to change through internal regulation. It is a deliberate tactic utilised by dealers to keep consumers from reading and seeking clarifications on the terms of the contracts. To prevent this, the legislation has made a clear provision. S172 provides that a credit contract given by a credit provider “must be easily legible”, and “must be clearly expressed”. As such agreements are in print, they “must conform with the provisions of the regulations as to print or type”. However there is no regulation under this legislation that provides for the print and type sizes. Dealers therefore continue to issue agreements in fine, generally illegible print18.

The legislation [s172], however, provides that if a Court is satisfied, “on application by the Director of Fair Trading and Consumer Affairs”, that a provision of a credit contract does not comply with the requirements of this section, it may prohibit the credit provider from using a provision in the same or similar terms in future credit contracts, guarantees or notices.
The Fair Trading and Consumer Affairs Department has been merged with the Fiji Commerce Commission. The Commission can, therefore, apply to the courts for orders on the matter of legibility and/or expression of consumer credit agreements.

A second step in this would be to make it mandatory for dealers to provide the contracts in local languages as well, and for them to explain the terms and conditions in the local language to potential buyers.

A potential worrying feature of the extended warranty business, revealed by the companion report on HP by Karan (forthcoming), is that at least some dealers seem to engage their regular paid employees to sell extended warranties for a commission. The incentives provided to the employees over and above the normal wages compromises the integrity of the employees as white goods salespeople. In effect, these employees are enabled to hold two jobs – one of a salesperson selling goods on HP, and another of an agent of the company selling extended warranties. The consumers are not aware of this fact. In other industries where similar services are marketed, notably the insurance industry, consumers can identify the agents. In the HP industry, consumers are unable to identify ‘extended warranty agents’ when they purchase goods in the HP outlets.

The Consumer Credit Act therefore needs to be amended to require credit institutions extending extended warranties to identify clearly their ‘extended warranty agents’, and to make provision of this declaration to the consumers before any dealing in ‘extended warranties’.

Karan (forthcoming) has further called for disclosure of the commission which the extended warranty agents receive on each sale to the consumer. This call for disclosure is within the law. Section 15 of the Consumer Credit Act requires that consumers be provided, in writing, a number of disclosures, including “If the amount of credit to be provided is ascertainable... the persons, bodies or agents (including the credit provider) to whom it is to be paid and the amounts payable to each of them...” In this case, because employees who sell the extended warranties are clearly ascertainable, it is a legal requirement that the commission on the extended warranties sold on credit be disclosed to the consumers.

The leading HP dealer, Courts (Fiji) Ltd, has responded to the call for disclosure of the commission on extended warranties. In its response to the Draft Report, it states that the commission needs to be treated like any other sales incentive commissions.

In the car industry the sales people receive % incentives for selling vehicles. In the insurance industry the brokers receive commissions from the insurance companies. In these sectors the customers are not advised how much commissions the salesman or broker receives. We appreciate therefore that the policy be consistent across all industry transactions... Therefore, if disclosure is required then it must be made compulsory across all segments.

The suggestion by Courts (Fiji) Ltd on provision for disclosure of all commissions from all types of enterprises does have merit. However, the absence of any legislation on this does not eliminate the legal obligation of disclosure of the commission on extended warranty sales on HP dealers. The non-disclosure is a breach of the Consumer Credit Act.

**Insurance**

The two major HP dealers have divergent approaches to insurance of the product dealt with under HP. MH's Homemaker levies an insurance charge separately from the credit charge on all goods sold under HP. It charges for the Queensland Insurance Company 3.5% per annum of costs of general goods; 5% per annum for computers, and 5.5% per annum for generators, outboard engines, car stereos, air compressors, video cameras, and fast fones.

MH’s Homemaker states:

> Credit insurance is important given the nature of finance involved where the item financed is subject to misappropriation, theft and unforeseen events such as fire and natural disaster. The credit provider is required to reduce its exposure by ensuring insurance cover is placed. The nature of Hire Purchase finance does not allow customers to seek their own insurance as title has not passed to hirer. Credit insurance covers the interest of the debtor; for instance during

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35 One dealer, MH’s has responded saying it “can work with the industry to improve and standardize wording, font size and location within a document” (Response to Draft Report)
natural disasters, customers are relieved of their continuing obligation to repay the balance outstanding. On average, approximately $250,000 worth of claims has been settled by insurers in the past five years, which has reduced customers’ outstanding balances. In some instances, refunds have also been passed to customers.

What needs to be appreciated at this juncture is that once a customer signs a credit contract or a Hire Purchase agreement, they are bound to the credit provider for the total sum financed. In the event the goods are destroyed or lost, the customer still has to pay the contract amount to the credit provider. A credit insurance therefore protects the continuing obligation of the customer to the credit provider in the event the item is subject to insurable risk as per the insurance policy (Response to Draft Report).

Consumers, however, are not given the insurance policy, nor are the details of the policy/cover provided to them. It is granted that the goods do not belong to the consumer at the material time, the fact remains that the consumers are ones who are paying the insurance. The prima facie basis of disclosure is that the person who pays for a good needs to have all the information on the subject of payment.

Courts, on the other hand, state that there is no compulsory insurance for goods under any of the Hire Purchase options, but it provides for a payment protection plan that covers for items being lost or damaged due to fire, flood or natural disasters; for death of the consumer; for permanent disability of the consumer; or for the consumer becoming redundant/retrenched or hospitalised. The plan, called “Option Pearl”, provides for a number of exclusions. The interest rate for option Pearl is 20.9%. There are other options, like ‘option opal’, for which the interest rate was 15.5%, which has now been increased to 18%. Opal does not provide any ‘payment protection’. The company has asserted that a “substantial number of our Customer’s who were made redundant or retrenched in the past years have greatly benefited from this ….. government workers, Emperor Gold Mines, Natural Waters Fiji Ltd, Resort & Garment workers and many small business enterprises that were forced to close due to economic downturns…. A substantial number of our Customers that were affected by recent natural disasters, floods etc., have also benefited including approximately 150 in the recent Nadi, Lautoka, Ba, Tavua & Rakiraki floods that devastated most low line area dwellings” [Courts (Fiji) Ltd’s response to the draft report].

But purchase of ‘Pearl option’ is not compulsory. For those who do not purchase Courts’ payment protection and are subject to loss, there is no explicit protection. This risk would, in all reasonable business behaviour, need to be accounted for in establishing the charges. It is likely, therefore, that the ‘insurance’ charge is included in the ‘charge for credit’, a term which the company uses to refer to the amount consumers need to pay on the credit they are taking. Consumers are not advised or informed on the way the ‘charge for credit’ is calculated; no formula is provided, nor any detailed calculation table provided.

Product insurance is a matter on which there are significant problems. First, by changing the tag ‘insurance’ to ‘payment protection plan’, the company has maintained the insurance nature of the service and still makes the consumer pay for goods which haven’t changed ownership to the consumer, but it has also evaded the scrutiny of the national insurance regulator (the Reserve Bank of Fiji).

Second, for both the largest HP providers, one of which uses the term ‘insurance’ and the other does not, no consumer was provided with a written document on the terms of the ‘insurance’, or the ‘insurance policy’. 54% of the consumers did not even know that the product they purchased was insured. Of those who were aware that the product was insured, 41% learnt of this only when they had agreed to purchase the product or when repayments started, or when the item was stolen or damaged. 66% of the consumers were not even asked by the seller to pay any insurance. Of the 34% who were asked to pay insurance, 22% (i.e. 7.5% of all consumers) were asked to take additional insurance on the product. 77% of the consumers did not know how much insurance they paid for the product.

There are other options that are available (like Option Opal, Take 10, Trade Accounts), but the payment protection plan is not included in any of these. Details of the other options are not available. Consumers with “Option Pearl” are provided with a ‘Certificate of Payment Cover’, which lists the scope of the plan and the exclusions. There is no reference to any mechanism for claims under this option.
Case Study: 10

A consumer purchased some furniture from a smaller HP dealer in 2008. A year later, she passed away. Not knowing what to do, the consumer’s husband went and informed the dealer that his wife had passed away and enquired what he should do with the furniture his late wife had purchased. The dealer informed him that he would have to continue with the payments. The consumer’s husband replied that he did not sign any agreement with the company, and was ready to return the items but not make any payments on them. The dealer insisted that he continue with his late wife’s payments.

The husband sought the assistance of the Consumer Council. Upon consultation with the company, the Council was advised that it was stated in the Consumer Credit Act that should an account holder pass away while making payments, the next of kin must continue payments until the account is paid off. After examining the Act, the Council again consulted the dealer’s director. It was then that the Director advised the consumer’s husband that the consumer’s husband would not need to continue with any payments as this should all be covered by insurance. The director apologised for the misinformation the company’s Finance Manager had provided and agreed to train all his staff on this matter.

Third, no information on claims is provided to the consumers. If a consumer who has, for example, paid 85% of the loan, loses the product under insurance or payment protection, there is no written advice on whether the consumer would get a replacement value. For the payments protection plan, the rules are more easily ascertainable: the consumer does not get the 85% equivalent value; only the debt due from him is covered by the insurance. The only benefit to the consumer is that the consumer would not need to complete the payments. There is no disclosure of what the HP dealer has insured with its insurers – whether it is only the payment protection, or the value of the good.

For the HP company which provides for insurance, however, the good itself is insured. But there is no evidence that all consumers who purchase insurance get the item replaced if it is lost due to a factor that is provided for in the insurance cover. Consumers do not get a full and clear disclosure of the insurance policy and coverage scope.

The Reserve Bank of Fiji, which also regulates the insurance industry, states:

If there is credit-related insurance, the credit contract must clearly state who pays the insurance premiums and whose interest the insurance cover will protect. If the cost of the insurance is borne by the debtor, then the credit provider should be required to provide a copy of the insurance policy to the debtor.

For the HP industry, the consumers pay the insurance – whether it is in the name of insurance or payment protection. As such, under RBF interpretation, consumers must be provided with a copy of the insurance policy. Non-disclosure is a breach.

Of concern here is also the fact that to date, the insurance industry regulator has not looked into this component of the insurance business in Fiji. This is negligence of duty.

Defects

21% of the consumers reported that the goods they purchased went bad before payments were completed. 71% reported that the goods were repaired. 55% of the consumers whose goods went bad stated that they asked for a replacement product during the repair period, but only 19% received replacement products.

The fact that approximately 30% of the consumers reported that the seller did not repair the items taken on HP raises issues on the quality of the goods sold. Fiji has a trade standards body. But whether the goods sold by the HP dealers meet the standards is a matter that needs further investigation.
Case Study: 11

A customer purchased a portable DVD player for his grandson’s birthday present. The total cost was $249.00. After a week, the DVD player failed to function. Upon inspection, the complainant realized that the internal part where the DVD is slotted in was obstructed or not held in its position, which made it impossible to take the DVD out. The complainant’s grandson then put super glue so that the part remained at its position to allow flexible manoeuvring of the DVD.

The item was later taken back to the trader for fixing. The trader refused any service saying that the complainant had repaired the item himself in which case they would not attempt any repairs. The complainant was also not given any warranty documents at the time of sale. The complaint was lodged with the Consumer Council. Upon its intervention, the trader agreed to repair the DVD player. However, later the trader informed the Council that the item was beyond repair and so it agreed to refund the whole sum of $249 to the customer.

From this research, what is now known is that 28% of the consumers whose goods became non-functional – which accounts for 6% of all HP consumers - reported that they had stopped repayments during the period the item was being repaired. But they were levied default charges. When the consumers queried this, they were given the run-around – that the repair section is separate from payments and debt section. Thus these consumers suffered from additional charges, as well as non-availability of the goods. Table 10 shows a sample of problems with goods and the repair time.

<table>
<thead>
<tr>
<th>Table 10: Problems and Repair Times</th>
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<tbody>
<tr>
<td>AC problem</td>
</tr>
<tr>
<td>Bed - Creaking sound of bed</td>
</tr>
<tr>
<td>despite tightening</td>
</tr>
<tr>
<td>Blocked water way, non working drier</td>
</tr>
<tr>
<td>Brush cutter</td>
</tr>
<tr>
<td>Brush Cutter - Motor not working</td>
</tr>
<tr>
<td>Digital Camera - damaged lens</td>
</tr>
<tr>
<td>DVD Player - Can not open</td>
</tr>
<tr>
<td>or read disc</td>
</tr>
<tr>
<td>DVD Player (Head Problem)</td>
</tr>
<tr>
<td>DVD Player - cannot play disc</td>
</tr>
<tr>
<td>properly</td>
</tr>
<tr>
<td>DVD player malfunctioned</td>
</tr>
<tr>
<td>DVD Player not working</td>
</tr>
<tr>
<td>Fridge not working</td>
</tr>
<tr>
<td>Fridge went bad after 2 years</td>
</tr>
<tr>
<td>Iron broke</td>
</tr>
<tr>
<td>Iron burnt</td>
</tr>
<tr>
<td>Kettle - not heating well</td>
</tr>
<tr>
<td>Laptop - not working</td>
</tr>
<tr>
<td>Laptop – Not working</td>
</tr>
<tr>
<td>Mobile Phone – No power</td>
</tr>
<tr>
<td>Mobile Phone - no sound</td>
</tr>
<tr>
<td>Mobile Phone – Speaker not working</td>
</tr>
<tr>
<td>Phone stopped working</td>
</tr>
<tr>
<td>Radio – Speakers not working</td>
</tr>
</tbody>
</table>
14% of the consumers reported that the good they purchased was damaged before payments were completed, while 3% reported that the goods were lost or stolen before payments were completed. 89% of these consumers stated that they did not have to complete the payments.
Consumer credit is a socially useful enterprise. Without consumer credit in market based economies, a large proportion of consumers who fall in the wage earning category, and a significant proportion of salaried earners would not be able to purchase consumer durables. Cross-cutting demands for expenditure in Fiji do not allow the average family in Fiji to save sufficiently to purchase large expenditure consumer items on a cash basis. Another category that relies on consumer credit comprises those who join the ranks of employed persons for the first time. These employees do not come with prior savings; their reliance on consumer credit to set up the basics of independent living as an employee, is strong.

Consumer credit business, on the other hand, is a large and a lucrative business. For the major companies in the consumer durable market, consumer credit is a business line on its own – with all the essentials of a profit centre. One approach to growing credit is to get consumers hooked to it.

The leading company, Courts (Fiji) Ltd, does this through a tool called ‘Ready Finance’. The Ready-Finance facility functions like a credit card, where card-holders can spend up to the credit limit at their pleasure, and pay interests on these. The only difference between ready finance and credit cards is that the ready finance card is usable only in the stores of one company. Other than that, the single aim, from the business point of view, is to keep the consumers hooked to both the company and debt. The card holds consumers to products sold by the card-issuing company. And a card with pre-approved credit limit raises the incentives to purchase on credit.

As a business, consumer credit can only succeed when there is a sizeable pool of consumers who rely on consumer credit. The leading consumer credit dealer, Courts, has a product called ‘Ready Finance’. This product goes with stylistic marketing, and branding: “COURTS Ready Finance - it’s Easy, it’s Quick, it’s Possible & it’s the Best, only at COURTS t/a Courts (Fiji) Ltd.”

Under this, consumers are given a finance card facility with a ‘Pre-approved Spending Credit Limit’ to buy anything consumers wish. They can buy as often as they wish as long as they are within the available spending limit.

The catch here is that the spending limit is valid only for 12 months from date of issue. This forces the consumers to keep purchasing goods at least every 12 months. In this way, the consumer would be perpetually in debt to the dealer, paying considerable credit charges, both of which are unregulated as of now, and of which a part is contrary to law. Card holders can graduate to ‘Privilege GOLD Club Member’ with ‘added benefits and fast-tracked customer service’.

The single outcome of a growing credit business is growing present consumption on the strength of future incomes.
An interesting finding is that just under a half of the consumers (47%) did not shop around for the goods before purchasing. This may be due to several factors. First, a vast majority of the HP consumers are working consumers, many of whom also work on Saturdays, thereby having a constrained shopping time available. Such a reality makes advertising a powerful tool in influencing consumer behaviour. The company which emerged as the market leader in HP sector, has had a long period of sustained advertising in Fiji. Branding work for the leading dealer has been quite effective. Third, the outlet décor is a powerful factor in ensuring a sale when a customer enters. Many of leading market company outlets are stylistically designed, with air conditioned comfort, creating a feel of being with the sophisticated part of society by shopping in these outlets.

38% of HP consumers have complaints about the HP system and their purchases. As Table 11 shows, 56% of the first ranked complaint was on repayment, with consumers saying that the repayment sum was too much. 19% of the consumers who had complaints (that is 7% of all HP consumers) ranked defective goods as the leading complaint, while 15% of those who had complaints complained of long queues when paying instalments.

<table>
<thead>
<tr>
<th>Table 11: Leading Complaints (Ranked No. 1)</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>The item was defective</td>
<td>19%</td>
</tr>
<tr>
<td>I was sent a reminder notice or called over the phone when I had paid on time</td>
<td>9%</td>
</tr>
<tr>
<td>Long queues when paying instalments</td>
<td>15%</td>
</tr>
<tr>
<td>Too much repayment</td>
<td>56%</td>
</tr>
</tbody>
</table>

The repayment amounts and terms are contained in the pre-contract agreement which consumers sign with the sellers. This raises the question on whether consumers understood their contracts. 68% of the consumers stated that they read the conditions in the agreement fully. Of this, 61% stated that they understood the conditions. This implies that 41% of all consumers understood the terms of the agreement. Conversely, 59% either did not read the conditions, or did not understand them fully. This assessment is confirmed, for when asked separately whether they understand their rights under the agreement, 55% stated that they did not.

A major issue relating to the conditions is that they are in fine print and dull lettering. An assessment of the actual conditions in the leading HP dealers shows that the font size used is 7 (possibly Arial 7), while the printing has produced an outcome which is equivalent to background watermark standard. A 600x600 dpi scan image of the condition is shown in Appendix II. These make it immensely difficult for average people to read the conditions that are applicable in the contract.

Other complaints listed by consumers were:

- After making the deposits they told us we pay insurance
- Customer service is not responsive and not helpful
- Given item for repair, still paying payment and dont have the item
- Hidden charges, high repairing costs, false/wrongful charges, luring of consumers.
- High late payment fee
- Interest rate very high
- They never explained the consequences
- No choice
- Phone calls all the time even if payment was up to date, adding to costs
- Products not repaired on time
- The item bought is not working after just one month

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As this footnote shows, font size point 7 is not easily readable even if printed in normal black ink. For a legal document, which is written in dry language, and which is dense in content, a 7 point font dull/watermark standard document is aimed at averting close reading and scrutiny.
• The machine was already damaged when we started using
• They don’t attend to our complaints on time.
• They give defective items
• Too much penalty charges on late payment
• Travelling cost/expenses
• Warranty is not worth what we pay
• When paying for my sewing machine, it got bad, they had to repair it several times but they did not replace with a new one
• Wrong item was confiscated

Thus, 39% of consumers stated that given their experiences, they restrained themselves from buying on HP. However, 61% of the consumers state that after knowing how the HP system works, and having purchased goods on HP already, they would still purchase goods on HP.

81% of the consumers reported that they trusted their supplier to be fair. And 64% never thought that they had been dealt with unfairly in a transaction.

79% of the consumers who purchased goods on HP listed financial constraints as the leading reason for them to purchase goods on HP rather than cash. 19% stated that HP either looked an attractive system or was a good way to avoid spending a lot of money. 82% of the consumers had no access to any other source of funds which they could utilise to purchase goods on a cash basis. 87% of the consumers are also not members of any contributory financial system which they could rely on to draw from for cash purchases.

Overall, approximately two thirds (65%) of the consumers state that more information is needed for consumers to make decisions on HP. The prominent areas in which consumers considered more information was needed before they made their HP decisions, grouped into clusters of related areas, were:

**Charges**

- Documentation fee, and administration fee - all these should be explained
- Interests charges
- Additional charges on phone calls and on sending of notices
- Advice on calculation on interest before buying the good instead of during the payment period
- All charges should be displayed
- All extra charges, including how they are calculated, should be explained in detail
- All hidden charges, all the extra charges that are added to the cash price of the item
- Deductions that are included in the instalments
- Calculation of all financial sums - like payments, final prices, insurance, warranty, etc., in simple terms
- Freight charges for goods sent to outer islands
- Warranties
- Insurance, its purpose, formulas, benefits, and replacement conditions.

**Agreement**

- Agreement document in full
- Consumers should be given time to read terms and conditions of agreement
- Terms and conditions needs to be explained in own language
- I’Taukei and Hindi translations of conditions and agreement
- Terms and conditions to be simplified (hard terms are difficult for lay people to understand)
- Sales reps to take their time while explaining conditions to follow

**Consumer Rights**

- Differences in amounts to be paid between cash and HP transactions.
- Right of a consumer on repairs of goods before completing the payments
- Consumer rights on the item
**Repayment Sums**
- Percentage of their salary/wages that would be going for HP payments, and credit limits

**Product Information**
- Make of items to purchase, and durability
- Product details, and details of products from different countries, especially China

Consumers also suggested a number of other areas in which they needed information, but which may not be directly related to the business of a HP sale by a seller. Such information could be provided by independent parties like the Government of Consumer advocacy groups, including Consumer Council of Fiji. These areas are:

- Consequences of HP
- Why sellers should be fair
- Awareness regarding impulsive buying
- Basic information as illiterate people don’t understand the concept of HP
- Tactics used by the seller before making a HP
- Importance of comparing items and prices across different sellers before rushing to buy from any one seller.
- Government should introduce more competitive markets
- How not to be persuaded to buy goods through HP
- On saving money
- On information buyers should seek for any HP, and how to use these.
- Social responsibility of sellers, and
- Ethical aspects of selling goods on HP.

51% of the consumers feel that the government has not done enough to regulate the HP industry. The information provided above is amenable to a number of issues concerning consumer advocacy. First, noteworthy is that almost two thirds of consumers state that after knowing how the HP system works and the problems they have encountered in HP, they would still purchase goods on HP. This is on account of the financial strengths of the families concerned. Better financial management behaviour is necessary for consumers to avoid the HP trap. This can come from financial literacy programmes through agencies like the Consumer Council of Fiji and schools with some attention paid to cultural contexts in which individuals or families may find it difficult to withhold accumulated savings when asked for contributions to traditional obligations.

Second, activist agencies can subject the HP companies to greater scrutiny through becoming the vehicle through which consumers channel their grievances. Regular media coverage of consumer problems with HP dealers – through new TV programmes such as Consumer Watch – would shame HP companies into behaving more ethically.

The related issue of the mandate of the Consumer Council of Fiji also needs to be addressed. Whether the scope of the legal authority of the Council should be extended to enable the Council to also become a financial ombudsman – with decision making authority on consumer grievances about HP and other financial matters – is relevant. What is clear is that the existing mechanisms in Fiji do not work. A new approach to addressing consumer financial grievances, including those on banks and insurances, is necessary. Granted this will show lack of confidence in the existing institutions, particularly the Reserve Bank of Fiji, which claims to be the authority on financial grievances. But this matter of turf needs to be kept aside and real consumer issues addressed; after all this matter involves hundreds of millions of dollars of consumer incomes and expenditures annually. In any case, at present there is no institution which can authoritatively deal with HP grievances. To this extent, the matter of an independent Financial Commission and Financial Ombudsman needs to be pursued further.
1. Urgent action needs to be taken against hire purchase companies for over charging the consumers for payment of interest. Consumers affected by the fraud committed by hire purchase companies should be paid back the extra sums that they have lost through this practice.

2. Since there is no regulatory authority on financial transactions of the consumer credit transactions, the prospect of a fair trading body examining the basis of the interest charges needs to be explored by consumers and consumer bodies such as the Consumer Council of Fiji.

3. There is a need to bring financial transactions of the consumer credit industry under a credible regulatory authority.

4. Consumer advocacy is needed which will refrain consumers from entering into hire purchase agreements which will impact the privacy of consumers’ credit information.

5. A legislation on protection of privacy should be enacted which will address the issue of privacy of personal credit records.

6. A regulatory mechanism for the resale of repossessed hire purchase products should be introduced. The following options should be considered for this regulatory mechanism:
   A. No item is to be sold at a price below the depreciated value of the item, with the depreciation rate used being the Fiji Revenue and Customs Authority rate.
   B. The dealer and consumer agree to independent market valuation of the item, and no item to be sold below the independent market valuation of the item.
   C. The consumer to be refunded the difference between the amount owed and the price fetched. This requirement already exists in the legislation, but is hardly abided by.
   D. The dealer be required to advise the consumer of the process and/or the date of the resale, and be given the option of attending the resale event.
   E. The repossessed item can not be sold until the dealer has obtained an order from a court or the Small Claims Tribunal on the resale.

7. Enforcement of provisions of the Consumer Credit Act is compulsory to correct interest charges on repossession.

8. Appropriate provision in the Consumer Credit Act needs to be incorporated to include that once a good is repossessed, all liability on the hirer ends.

9. Financial literacy programs for better financial management behaviour needs to be implemented by Consumer Council of Fiji and schools.

10. Activist agencies can subject the hire purchase companies to greater scrutiny becoming the vehicle through which consumers channel their grievances.

11. The State may consider extending the scope of the legal authority of the Consumer Council of Fiji to become the financial ombudsman with decision making authority on consumer grievances about hire purchase and other financial matters.

12. A new approach to addressing consumer financial grievances including those on banks and insurance needs to be considered.

Conclusion

In 2011, the Consumer Council of Fiji commissioned a project on Consumer Credit in Fiji. There were two parts to this, one dealing with the effectiveness of the Consumer Credit Act 1999, and the other with the practice of hire purchase in Fiji. This report contains the findings of the second component of the project. A separate publication is intended for the report on Consumer Credit Act.

This report examined the size of hire purchase business in Fiji and issues relating to the conduct of the HP business here. The report relied on primary data as collected from a nationwide survey on hire purchase, and that collected from HP outlets.

The survey showed that 46% of all respondents had purchased white goods on hire purchase during the period January 1997 to June 2011. Twenty nine per cent of these households had purchases on multiple occasions during this period. A larger proportion had multiple purchases on at least one occasion. On the basis of the survey results, it is suggested that 81,125 households in Fiji purchased goods on hire purchase during the period January 1997 and June 2011.

On the basis of the survey data, we estimate the total value of business involving HP to be $60m per year. This income is generated on the basis of $35m worth of consumer durable goods sold on HP per year. 5% of the business accounts for the deposit on the goods. Charges relating to HP constitute 42% of the total HP business. Annually HP companies manage $25.5m of charges from carrying out a credit business. Total credit business is $57m per year, which is 95% of the value of the goods sold on HP annually.

The Consumer Credit Act requires full disclosure of all costs of credit extended by HP dealers. This research has found that the leading HP dealers are in breach of the disclosure requirement provisions of the Act.

Another breach is in the calculation of the credit charges. The law allows a credit charge to be levied, to no specific limit, on the actual outstanding credit, calculated on a daily basis. No HP dealer abides by this; instead they levy a credit charge on the sum that is already repaid.

To this extent, this is fraudulent conduct. It is estimated that this fraudulent conduct generates at least $13.3m per annum.

So far, there is no regulation on interest rates. The Consumer Credit Act provides for the Minister responsible for Commerce to prescribe the maximum annual percentage rate of interest for a credit contract [s264(1)]. So far, however, no such regulation has been published. The market, therefore, has been left to determine this rate. In this respect, the HP dealers are within the law, the concerns of consumers notwithstanding.

The study also found that the major hire purchase credit providers in Fiji are Courts (Fiji) Ltd and MH’s Homecentres, which account for over 95% of the credit business. Between these, Courts is the market leader by a market factor of 3:1.

The research examined numerous characteristics of the HP consumers. It finds that about three quarters of the HP consumers had incomes less than $15,000 per annum, with about 70% of the consumers having joint family incomes of less than $20,000. 18% of the HP consumers had their own homes while 82% stayed in rented accommodation. In terms of education, 70% of the HP consumers had no post-secondary school education. 47% of the consumers, however, had members of their families who had tertiary education. 31% of the HP buyers are below 35; 36% are in the age group 35-45, while a third are above 45. The main reason cited for the purchase decision was convenience.

The research further found significant illiteracy on the functioning of the HP system; this is largely on account of lack of clear information given to consumers by the dealers.

The research also found that HP consumers do not have a right to confidentiality of their financial information, since the HP contracts they enter into require them to sign for their financial information to be listed on the Data Bureau Limited, their financial information to be made available by the HP company to any other credit provider, and permits the HP company to seek financial information on them from any other source. The contracts also require consent from the consumer that his/her electronic signatures can be retained and relied upon by the company.
for any purpose, including legal or other debt recovery proceedings.

A number of consumers noted grievances on HP and/or with their HP dealers. An interesting finding is that in none of the grievances in which the consumers had liabilities, did consumers seek judicial intervention. Judicial intervention is an expensive exercise, often resulting in costs greater than the total liabilities (the average HP loan is $1,224). There needs to be other mechanisms to address consumer grievances on HP. In Fiji, the Small Claims Tribunal is one avenue through which aggrieved parties could seek remedies on claims disputes. However, data shows that of all claims filed in the Small Claims Tribunal between 1997 and 2008, only 0.135% of the claims were by consumers against HP dealers. In contrast, 23% of all claims filed were by HP dealers against their clients for non-payment.

The results of the research show that the repossession market is worth approximately $7m. So far, there is no regulation on resale of repossessed items. There is a serious need for regulation on the repossession market.

Given that repossession is predominantly for reasons of financial hardship, the default and repossession market of over $7m per year hit the poorer workers/farmers the most.

Confusions on warranties, extended warranties, and insurances also abound in the HP industry. This is the cause of a large share of total grievances which consumers have. From a business point of view, HP dealers also engage in reselling manufacturers’ warranties to consumers for all periods of warranties over 12 months. This generates an additional business of $1m annually. Likewise, insurance or related activities (payment protection plans) are additional businesses in which HP dealers engage. The insurance industry regulator in Fiji has so far not examined the insurance business component of the HP industry.

The HP industry is an important industry for consumers and for the durable goods market. There is, however, a need for serious attention to the industry by the regulating authorities. A number of unethical practices, together with practices which are contrary to the law, need to be put to an end. This report has listed a number of such practices. If the report provides the catalytic effect in this regard, it would have been a worthwhile effort.
References

Consumer Council of Fiji, Terms of Reference.

Consumer Council of Fiji, Complaints against Hire Purchase.

Consumer Credit Act 1999.

Consumer Credit Regulations 2009.

www.energy.gov.au

Various credit documents from credit providers

Appendix 1
Survey Methodology

The terms of reference for the study provided for a "comprehensive survey of consumers in urban and rural areas". This was bound by the financial provision of a random sample of 1000 households.

Actual sampling included 1,144 households in anticipation of responses that would have to be rejected. These households resulted in a total of 1052 returns. Of this, 93 responses were excluded from the analysis on account of incomplete responses or responses that contained major inconsistencies.

Table A.1 summarises the sample data.

<table>
<thead>
<tr>
<th>Attribute</th>
<th>No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>No. of Families in Sample</td>
<td>1144</td>
</tr>
<tr>
<td>No. of Returns</td>
<td>1052</td>
</tr>
<tr>
<td>Responses excluded</td>
<td>93</td>
</tr>
<tr>
<td>Responses for Analysis</td>
<td>959</td>
</tr>
<tr>
<td>% of Fiji’s Households in Sample</td>
<td>0.63</td>
</tr>
<tr>
<td>% of Households in acceptable Responses</td>
<td>0.52</td>
</tr>
</tbody>
</table>

The acceptable responses that are included in the analysis, therefore, represent 0.52% of the households in Fiji.

Sampling

The subject households were selected on the basis of a multi-stage sampling so as to reflect proportionality in the sample with the characteristics of the national population, especially in terms of provincial distribution, spatial distribution (rural-urban), and ethnic distribution. The stages involved in the sampling were:

a. The desired distribution by province, rural-urban, and ethnic composition was determined in the first stage.

b. The targeted households were divided into 138 clusters on the basis of the distributions determined in the first stage.

c. The National Household Database, maintained by the Fiji Institute of Applied Studies, was then used to select the exact clusters.

d. The exact households in each cluster were determined on the basis of a random selection of one household in the cluster, and selection of 8 to 12 immediate households to the one selected by random sampling.

All sampling was done using computerised sampling tools.

Table A.2 provides the details on the clusters.

<table>
<thead>
<tr>
<th>Table A.2: Sample Clusters</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Households</td>
</tr>
<tr>
<td>Vitilevu</td>
</tr>
<tr>
<td>Vanua Levu</td>
</tr>
<tr>
<td>Islands</td>
</tr>
<tr>
<td>Total Households:</td>
</tr>
</tbody>
</table>

The provincial distribution of the sample is shown in Table A.3.

<table>
<thead>
<tr>
<th>Table A.3: Provincial Distribution</th>
</tr>
</thead>
<tbody>
<tr>
<td>% of Sample: Acceptable Responses</td>
</tr>
<tr>
<td>Ba</td>
</tr>
<tr>
<td>Bua</td>
</tr>
<tr>
<td>Cakaudrove</td>
</tr>
<tr>
<td>Kadavu</td>
</tr>
<tr>
<td>Lau</td>
</tr>
<tr>
<td>Lomaiviti</td>
</tr>
<tr>
<td>Macuata</td>
</tr>
<tr>
<td>Nadroga/Nav</td>
</tr>
<tr>
<td>Naitasiri</td>
</tr>
<tr>
<td>Namosi</td>
</tr>
<tr>
<td>Ra</td>
</tr>
<tr>
<td>Rewa</td>
</tr>
<tr>
<td>Serua</td>
</tr>
<tr>
<td>Tailevu</td>
</tr>
<tr>
<td>TOTAL</td>
</tr>
</tbody>
</table>
52% of the sample comprised l’Taukei households; 46% comprised Indian Fijian households, and 2% comprised other ethnic groups. The distribution by province was maintained approximately to the provincial distribution of the ethnic groups. The only exceptions were Ba, Nadroga and Macuata. In Ba and Nadroga, because of larger rejection rates on account of lack of assessed credibility of the enumeration exercise, relatively greater proportion of l’Taukei households were included, and Macuata, where good returns showed a relatively greater proportion of Indian Fijian households in the sample.

**Interviews**

Interviews were conducted utilising structured questionnaires. Questionnaires were designed and field-tested before being finalised. Detailed instructions for interviewers were also written. Interviews were held with the head of the households. Where the head of the household was not available on the site visit, a repeat visit was made if the enumerators were still in the area. If the head of the household was still not available, or if there were difficulties ascertaining the head of the household, the immediate neighbour of the household in the cluster was included. Enumerators were prepared well on the ways of handling responses, or lack thereof through prior training.

Questionnaires were collected as they were filled and subjected to preliminary verification by each team leader. They were then submitted for data entry and analysis.
Appendix 2

Fine Prints

IT IS AGREED Courts (Fiji) Ltd will supply and hire the Goods and the Customer will take them on hire upon the following terms and conditions:

1. Definition and Interpretation:
   In this agreement the following words and expressions have special meaning:
   (a) “Act” means the Consumer Credit Act 1999 and Consumer Credit Amendment Act 2006.
   (b) “Goods” means the goods described in the schedule.
   (c) “Interest Rate” means the rate of interest as specified in the Schedule.
   (d) “Schedule” means the Schedule on the front page of this agreement.
   (e) “Policy” means the insurance policy referred to in the Schedule.
   (f) “Salesman” means a person who is engaged in business or profession.
   (g) “Schedule Payments” means the instalments provided in the Schedule.

2. In this agreement:
   (a) a reference to Courts (Fiji) Ltd includes its successors and assigns.
   (b) a reference to the Customer includes the executors and administrators of the estate of the Customer.
   (c) the singular shall include the plural and vice versa.
   (d) each gender shall include every other gender.
   (e) where there is more than one Customer:
      (i) their obligations under this agreement shall be joint and several.
      (ii) the exercise of their rights by one of them shall bind the others.
   (f) if Courts (Fiji) Ltd deals with one of them that will be taken to be dealing with all of them;
   (g) Headings are for convenience only and do not reflect the interpretation of this agreement.

3. Customer Obligations:
   3.1 The Customer agrees to pay the Balance Payable at the times and in the instalments provided in the Schedule. Payments shall be made to Courts (Fiji) Ltd at any of their branches in the Fijian Islands.
   3.2 The Customer also agrees:
      (a) to keep the Goods at the address specified in the Schedule.
      (b) not to part with possession of the Goods without Courts (Fiji) Ltd consent or as set, resign, pledge, mortgage or charge the Goods.
      (c) to keep the Goods in good repair.
      (d) to be responsible for any loss or damage to the Goods.
      (e) to allow Courts (Fiji) Ltd or its representatives to inspect the Goods at any reasonable times and
      (f) not to conceal or remove the Goods so as to prevent Courts (Fiji) Ltd from exercising its right to Goods.
   3.3 The Customer agrees that interest is payable by the Customer at the Interest Rate and that the account thereof in the terms of the agreement without taking into account the interest on arrears, is included in the Balance Payable. Interest calculated at the Interest Rate, calculated on a daily basis is payable by the Customer on all payments received under this agreement; when the amount falls due until it is received.
   3.4 The Courts Paid Payment Protection Plan is an insurance cover offered only for Hire Purchase or Credit purchases purchased under "Option Pearl".
   4. Retention of Title:
   4.1 Property in the Goods shall pass to the Customer when full pay-out for the goods has been received by Courts (Fiji) Ltd.
   4.2 Courts (Fiji) Ltd may, without prejudice to any of its rights, rates and resume possession of the goods which remain the property of Courts (Fiji) Ltd and may for that purpose enter the Customer’s premises or any other place where goods may be in the possession of the following events:
      (a) The Customer commences proceedings for voluntary winding up or any winding up by any other Creditor or a receiver is appointed.
      (b) The Customer becomes insolvent or commits an act of bankruptcy or makes an assignment for the benefit of a creditor.
      (c) The Customer makes any default in payment of any part of the Agreement, in which case Courts (Fiji) Ltd shall be entitled to
      (d) recover the Goods. The customer is in breach of any of the terms and conditions of the agreement herein.
   4.3 For the purpose of 4.2 herein, the Customer hereby consents to Courts (Fiji) Ltd, by itself or by its agents or employees entering premises to retain possession of the goods.

5. Termination of Hire:
   5.1 The hire of the Goods will end:
      (a) The Customer completes the purchase of the Goods by paying the remaining Balance Payable together with all the other monies payable to Courts (Fiji) Ltd under this agreement.
      (b) If the Customer returns the Goods in accordance with section 16 of the Act or Courts (Fiji) Ltd repays the Goods, and
      (c) The Customer makes any default in payment of the Goods in accordance with section 16 of the Act.
   5.2 If the hire is ended in accordance with clause 5.1 (b) Courts (Fiji) Ltd are entitled to be paid by the Customer the difference calculated at the same time between the value of the Goods and any higher amount payable to Courts (Fiji) Ltd under the agreement.
   5.3 If the Act of Default has occurred, subject to the requirements of the Act, Courts (Fiji) Ltd shall be entitled to
      (a) sell the Goods, and
      (b) receive the proceeds, repair, store and resell the Goods.
   5.4 If Courts (Fiji) Ltd repays the Goods the Customer shall pay Courts (Fiji) Ltd:
      (a) the cost of any incidental to repossession.
      (b) the cost of repair of the Goods to the State and condition required under this agreement.
      (c) the cost of storage and resale of the Goods.

6. General:
   6.1 The Customer shall pay Courts (Fiji) Ltd on demand:
      (a) all costs of
      (b) recovering possession of Goods or any amount payable under this agreement including any forfeit fees payable as per attached "Addendum":
      (c) all value added tax, stamp duty or other taxes or duties paid or payable by Courts (Fiji) Ltd in respect of this agreement on the supply of Goods or services.

6.2 All disputes referred to clause 6.1 and interest on arrears may be deducted to the Customer’s account and when they accrue. The Customer could also
   6.3 No time or indulgence given to the Customer shall prejudice Courts (Fiji) Ltd rights under this agreement.

EXECUTED by the parties.

SIGNED by and on behalf of Courts (Fiji) Ltd

Signed by the Customer in my presence after the foregoing was read over to him/herself and
explained in the English language, whereupon he/she appeared to fully understand the
meaning and effect thereof.

Senior Credit Approval Officer Witness to Hire’s Signature.
YOUR COURTS WARRANTY

Courts (Fiji) Ltd. guarantees everything sold against fault, defective parts and poor workmanship. We shall repair to normal operating condition or replace (at our option) any defective goods at no cost to the customer where the item is within a warranty period and is in one of the categories of the exclusive below apply. This warranty must accompany any goods that requires warranty claim for verification. The cost of repair will be charged if the customer falls outside the warranty period or the terms of warranty. This shall be full extent of our liability and no claim for consequential loss or damage will be entertained.

EXCLUSIONS
We expressly exclude all responsibility for costs arising from the following, none of which are covered by our warranty.

- Normal wear and tear.
- Incorrect operation of the item including failure to follow proper operation procedure or instruction.
- Failure to perform routine maintenance, servicing, cleaning or adjustment.
- Damage caused by storage, neglect or misuse including scratching, odours, dents, scratches, corrosion, marks and damage caused by the incorrect use or application of any cleaning material.
- Damage caused by theft, burglarly and accidents including extreme weather conditions, moisture, fire, impact and acts of God.
- Damage resulting from excessive volume, over-driving of components or excessive amplification.
- Damage resulting from inadequate or improper voltage. We recommend the purchase of a UPS (uninterruptible power supply) for all computer equipment.
- Computer software and operating system issues of any kind. This includes (but is not limited to) damage caused by viruses, malware, failure to perform software maintenance or upgrades. We accept no responsibility for loss of data and recommend the regular back-up of all valuable data.
- Replacement of any consumable or accessories.
- Animal or insect infestation or intrusion.
- Removal or sweeping of internal components, factory seals, warranty stickers, model numbers or serial numbers.
- Loss of resilience or shape of furniture interior fillings, fusing or colour loss.
- Servicing of a faulty item by a repairer not authorised by Courts and/or servicing of a faulty item without Courts knowledge.
- The cost of examination/diagnosis of an item where no faults is found.

CONSULTATION FEES
We reserve the right to charge a consultation fee to inspect items under warranty where we suspect one or more of the above exclusions may apply. This consultation fee is fully refundable where the warranty conditions are met. The consultation fee is offset against the chargeable cost of the repair in the event of breach of warranty conditions. In the event where a breach of warranty conditions has occurred and the customer decides not to proceed with a repair, the consultation fee is not refundable.

DVD PLAYERS
We only guarantee DVD players to play genuine pre-recorded DVD discs. We will only handle playback issues relating to recordable DVD discs where the manufacturer expressly states compatibility with the recordable DVD format in question. Video piracy is a crime and non-playback of pirated material is not a warranty issue. Neither is the failure of any machine to play scratched or damaged discs.

Fiji is a Region 4 market but all DVD players sold by Courts are set to multi-zone prior to sale. Any solutions provided by dealers or regional coding issues are not covered by the warranty and we reserve the right to charge for providing any such services. Courts cannot guarantee absolute compatibility of non-Region 4 discs either now or in the future.

FURNITURE REPAIRS
We will repair to normal operating condition or replace at our discretion covered furniture after it has suffered structural damage caused by defect in materials, workmanship or performance during normal use as follows:

- Frame failure caused by warpage and breakage.
- Bending and breaking of metal components, hinges and casters.
- Failure of mechanical and mechanical mechanisms.
- Failure of drawer mechanisms.
- Separations of seams or upholstery binding.
- Lifting or peeling of veneer on wooden furniture.
- Lifting or peeling of hide on leather furniture.

COMMERCIAL USE
Unless expressly stated, the products we sell are designed for domestic use and the Courts warranty is deemed null and void where evidence of commercial application is discovered.

MANUFACTURERS’ WARRANTIES & GUARANTEES
The Courts warranty supersedes and shall not be read in conjunction with any other warranty offered by the manufacturer whether stated or implied. In some cases, the Courts warranty is separate and it is the responsibility of the customer to sign and return the manufacturers’ warranty card.

RETURN TO BASE
This warranty is return-to-base warranty except where goods are too large to be transported easily. Some specialist items have return-to-supplier-base warranties.

WARRANTY PERIODS
Our warranty periods are displayed in-store and copies are supplied with all credit agreements. Extra copies are available in-stores on request.

IF YOU HAVE PURCHASED AN EXTENDED WARRANTY PLEASE READ THE TERMS & CONDITION OF THE EXTENDED WARRANTY AS PER THE EXTENDED WARRANTY DOCUMENT
TERMS AND CONDITIONS

PERIOD OF COVER
This service contract ("Contract") extends the Courts ("we", "our") initial warranty for a further one or two (1 or 2) years on furniture and electrical products. This means that inclusion of the Courts initial warranty period, your product is covered for a total of either two (2) or three (3) years starting on the date of delivery. Coverage is conditional on you paying the applicable fee.

WHAT WE COVER
We will repair to normal operating condition, or replace at our discretion a covered electrical product, after it has suffered a covered breakdown caused by a failure in materials, workmanship or performance during normal use. This contract covers the cost of Parts, Labour and call out charges (where applicable) on non-portable products. Original supplied remote controls are covered as above on a carry-in basis only. In relation to refrigeration products where the warranty claim consists of a covered refrigeration failure, this contract covers the cost of replacing food spoilage as a result, up to a maximum of £325 per incidence. We will repair the product to its normal operating condition, or replace at our discretion, covered furniture after it has suffered structural damage caused by a defect in materials, workmanship or performance during normal use, as follows:

1. Framing failure caused by warping and breakage.
2. Bonding or damage to metal components, hinges and casters.
3. Failure of mechanical and electrical recliners.
4. Failure of drawers mechanisms.
5. Separation of seams or upholstery binding.
6. Lifting or peeling of veneer on wooden furniture.
7. Lifting or peeling of hide on leather furniture.

CONDITIONS
This contract may only be purchased within 90 days of delivery of a covered product and is only valid if:

- The product is purchased new from us and has a Courts initial warranty.
- The product is for domestic and personal use only. Cover is not valid on products intended for commercial, rental or profit generation purposes. Office products such as facsimile machines and computers are covered for home and office use.

WHAT WE EXCLUDE
- Damage caused before or during delivery or cover provided by any other insurance or manufacturer or repairer's repairer guarantee or warranty.
- Manufacturer's recall or modifications or damage not covered under Courts' initial warranty.
- Damage caused by abuse, misuse or alteration including removal or alteration of serial numbers.
- Accessories used in or with the product unless covered under a separate contract.
- Replacement of any consumable or component intended by the manufacturer to be self-replaced, such as electrical plugs, vacuum belts and bags, light bulbs, batteries, external hoses, filters, toner, print cartridges, or Software incorporated into a covered product.
- Routine maintenance, cleaning and external adjustments.
- Damage resulting from power surges, voltage, inadequate voltage or current, reception or transmission problems.
- The cost of repairing, maintaining or reconfiguring computer software.
- Failure to follow the manufacturer's or suppliers instruction for care of the product.
- Accidental, intentional or cosmetic damage including chipping, denting, scratching or puncturing, or damage caused by the incorrect use or application of any cleaning substance or material.
- General wear and tear or furniture consistent with age and usage, including soiling, perspiration, hair, body oils and odours.
- Repairs to seats, backs, or any other natural characteristic of leather furniture.
- Loss of resilience in or damage to furniture interior fillings, fading or colour loss.
- Damage caused by any external influence such as theft, computer virus, acts of god, corrosion/moisture, heat, fire, sand, animal or insect infestation.
- The cost of repair if you use an unauthorized repairer or if no fault is found with the product.

IN THE EVENT OF A BREAKDOWN
- Review the manufacturer's instructions or care guidelines to determine if the problem can be rectified by you.
- Check that the contract is still in force. You must report the breakdown within 5 days of the breakdown for the claim to be valid.
- Use the courts product return form and return the product to the store.
- You will provide in-home service on major appliances and furniture except portable items. You will be told when you report the claim which products qualify for in-home service. All other repairs will be on a carry-in basis only.
- We will need to see this document to proceed with the repair.

LIABILITY
We will repair or replace your product with an identical or similar model at our discretion, up to a maximum value not exceeding the original purchase price. However, no payment in respect of either the aggregates of all claims, or an individual claim, will under any circumstances exceed the original purchase price of the product. If we replace it, the original product becomes our property and the contract terminates with no refund of fee. Any remaining instalments will still be due to us. We are not responsible for any consequential or incidental damages arising from the use or loss of use of the product. Your statutory rights are unaffected. If a replacement product fails to operate results in a covered fixed loss, the repairer will verify the inspect the spoilt fixed within two working days and document the loss. The claims limit is £325 per incidence. This contract is only valid in the country of issue and is not transferable.

CANCELLATION
You may cancel this contract for any reason with 14 days of the date of purchase shown on the receipt, by giving us a notice of cancellation and this document. You will be entitled for a 100% refund of the fee you paid. We may cancel the contract at any time by giving you 14 days notice in writing to your last known address. You will be entitled for a pro-rata refund of the fee you paid. In the event of theft, fraud, sale or return of the product to us, we will cancel this contract with no refund. If any payments are in default and unpaid for more than one month we may cancel the contract at our discretion. Courts Ltd. Limited offer this contract. We reserve the right to amend the terms and conditions from time to time.
Concocted Branding of Consumer Durable Goods: Akita Brands

Akita is the name of a town in the prefecture by the same name in Japan. There is no manufacturing entity called Akita in Japan, or in any other place in the world. Courts (Fiji) Ltd sells a number of products branded ‘Akita’. The name Akita has a similar ring with Akira, which is a recognised international brand registered by the Habara Electric Corporation group of companies.

The documentations on the products can not be always verified or authenticated. In one case studied, it was plainly incorrect. The “Akita Refrigerator Model HD-496FW” has a label of 4-star energy rating, with a statement that the product was “tested in accordance with AS/NZS4474.2, which is a joint Australia/New Zealand standard for regulating energy labelling for refrigerators and freezers. The label on the door of the fridge – as shown in Fig A.1, shows that the rating can be checked at www.energy.gov.au. However, a check on the listed site produces no result for Akita Model DH-496FW.

A search on the site only by the model HD-496FW returned 3 results; these were for the products telmann (marketed in Australia and New Zealand), and Midea (marketed in Australia, Fiji, New Zealand and other countries). There was no return for Akita product. The 2 results all had 2-star ratings. The Akita product marketed by Courts has an energy rating of 4-star. The company has not provided any evidence that the product has a 4-star energy rating. With no way of any independent verification of either the product, or its energy rating, a conclusion that the energy rating label has been fraudulently utilised on the product can not be excluded.

The case above raises serious issues of trade standards in Fiji, which is a matter for authorities to examine in detail.

Fig A.1: Energy Rating Search – Akita Branded Fridge
The manuals/booklets/documentation which accompany the products are quite shoddy, and have a clear lack of professionalism, with ample similarities with the wide range of counterfeit products emerging from the Asian markets. A scanned image of “Akita Refrigerator Model: HD0496FW” illustrates this quite clearly.
Appendix 4
Comments From Stakeholders

Fiji Commerce Commission

Introduction:
Fiji Commerce Commission (Commission) welcomes the opportunity to comment on Consumer Council of Fiji’s Draft Report on “Consumer Financial Protection & Building Credit Competency for Vulnerable Groups: Consumer Credit Law and Practice in Fiji.”
The Commission has a keen interest in such analysis because of the following objectives:
1. promoting effective competition in the interest of consumers;
2. ensure equitable returns for businesses with fair and reasonable prices charged to consumers.

Background:
The Commission is an Independent Statutory Body that promotes effective competition and informed markets, encourages fair trading practices, protects consumers and businesses from restrictive trade practices and controls prices of regulated industries and other markets where competition is lessened or limited.
Being the custodian of the Commerce Commission Decree 2010 the Commission is aware that there is a need to review consumer protection laws such as the Consumer Credit Act 1999 to make it more effective. The study by Consumer Council of Fiji is indeed warranted as it the Consumer Credit Act and Consumer Credit Regulation has not been providing relevant and needed protection for consumers. Due to the ever escalation of consumers complaints on these issues and the evident never ending debt cycle most of us are in the laws need to be reviewed.
Credit allows consumers to finance transactions without having to pay the full cost of the merchandise at the time of the transaction. A common form of consumer credit is a credit card account issued by a financial institution. Merchants may also provide direct financing for products which they sell. Banks may directly finance purchases through loans and mortgages. On 1st October 2009 the government enforced Consumer Credit Regulation 2009 with the purpose to assist in the enforcement and implementation of the Consumer Credit Act 1989 and provides detailed operational aspects of the Act in three following areas:
1. The manner of disclosure of information in credit contracts;
2. The Calculation of interest rates;
3. Various forms required under the Act.

The purpose of having a consumer credit laws is to protect consumers obtaining credit to finance their transactions, ensure that adequate credit is provided, and govern the credit industry in general.

Comments:
The Commission will provide comments on the following issues:
1. Protecting the Vulnerable Consumer Group
2. Do-existing law protects the Consumer
3. Warranties
4. Merchandizable Quality
1. Protecting the Vulnerable Consumer Group:

Being a consumer makes an individual vulnerable and therefore a consumer is always in a position to be taken advantage of from credit providers the one with the bargaining power. Generally speaking, the consumer protection laws currently implemented in Fiji provides rights and responsibilities for both consumers and credit providers. However, there is always disparity between the bargaining powers of a consumer and a credit provider and in many instances this disparity of power works to the advantage of the credit provider. The law only provides an avenue to make consumer aware that they have protection if they have reasonable ground to believe that they have been unreasonably treated by the credit provider. In reality consumers mostly do not use this avenue because firstly they do not know that it exist and for some it is a costly affair they cannot afford. Further the laws with the terms and conditions provided by the credit providers are not always understood by consumers. How then should consumers be able to make informed decisions if they do not understand what they are getting themselves on? The laws should contain provisions that constrain the practices of financial institutions that consumer credit cards. These include bans on practices such as retroactive or unfair rate increases and late fees that result from bills that arrive close to the due date, among other prohibitions. In addition it should also include various requirements for credit card issuers, including that contract terms be written in language that consumers can see and understand, and remain stable for the first year of the contract.

2. Do existing laws protect the Consumer:

The Commission is confident that the current existing laws are able to offer protection to consumers to a certain level but there is still more that needs to be done. Consumers firstly need to know that they have rights to protect them as a consumer and with those rights come certain responsibilities on their part. Therefore a consumer has to be proactive about consumer protection laws and be able to make informed decision in their daily transactions. Fiji’s consumer protection laws offers needed protection to consumers however it is not as effective since it is not applied and enforced as it should be.

Consumers themselves should have prior knowledge before entering into any form of credit agreements be informed about their rights and responsibilities. Only when consumers are aware of their rights and responsibilities they will know what and how to gather all required information before they make their decision. Most people buy products on credit under the impression that it’s the best method to buy household products but they are not aware that they will end up paying and raising a lot more.

3. Warranties

Numerous complaints received by the Commission are on issues of warranties. A warranty is an undertaking in relation to the quality, performance or characteristics of the goods, repairs and damaged parts and future availability of the product or identical product will be available. Many distributors in the country fail to honour their warranties because they fail to provide the services required for the product they sold. There is a reliance by the distributors that the product will experience failure once the warranty period expires therefore distributors do not have to provide such services for the consumers. Hence most distributors do not disclose such relevant information to their customers. Distributors have a duty to inform the consumers whether there is a local service agent for that certain product or not. So that consumers have all necessary information before a product is purchased by them. In most cases warranty are not honoured because the part needed for repair are not available locally and the overseas supplier cannot get the item within the warranty period.

4. Merchantable Quality

The Commission understands that a consumer has a right to buy and receive products that are of merchantable quality. Merchantable quality meaning that the product bought should be fit for its purpose but there is no clear definition concerning the period of the product being merchantable quality. It is necessary that the law should provide a clear definition including the durability of the product which should be reasonable.

The fact that there is no specified period on when the product should be of merchantable quality creates avenue for distributors and sellers like to rely on when complaints are received against them. Everyday consumers work hard for their money so that they may live comfortably and some seller’s sale unmerchantable quality products to desperate and vulnerable consumers who are not aware of the rights. Not have a definite merchantable period does not give consumer any protection for their purchase and sellers can always use it to their advantage.

Conclusion:

The Commission has also received similar complaints mentioned in the report and therefore the Commission is grateful that the Council has addressed this important issue of consumer credit. The Council has been very proactive with consumer issues and from the draft report it is evident the Consumer Credit Act and the Consumer Credit Regulation is not to the Council’s expectations. Since the laws has failed to consider the disparity of the bargaining powers between consumers and credit providers. The consumer has the right to be disclosed all necessary information prior to them making any decision concerning the purchase or entering into an agreement. The Commission notes that Fiji has a relevant Consumer Credit Act but to some extent it seems to be misplaced. The Commission suggests that the Consumer Credit Act be given a better ownership to get the provisions tested and then amendments made accordingly as issues are identified. The review of the legislation may not be appropriate at this point in time as it is still to be tested fully in the market. The Commission welcomes and supports the direction in which the Consumer Council of Fiji is heading with regards to the strengthening of consumer rights and reviewing consumer protection laws. Also the Commission supports the report that addresses relevant issues of consumer protection and awareness.
Reserve Bank Of Fiji

BACKGROUND

1. The Reserve Bank of Fiji (RBIF) has been working on developing an effective and efficient complaints management environment within Fiji’s financial system. In 2010 as a first step, the RBIF issued its major regulated Financial institutions with Policy Guidelines on Complaints Management. These institutions include the commercial banks, FNP, insurance companies, licensed credit institutions, capital market participants, insurance brokers and foreign exchange dealers. The Guidelines require the licensed institutions to put in place a complaint management policy framework and subsequent implementation to ensure that consumer complaints are effectively and efficiently addressed. It also allows for an avenue for consumers to raise their complaints with the RBIF if they have not been satisfactorily addressed by these institutions.

2. The next step in this endeavor to ensure that consumer issues are well addressed was the establishment of a Complaints Management Forum (“Forum”). The Forum was established in 2010 and is an advisory group comprising of nine persons who are representatives from financial institutions, customer advocates, regulatory bodies and other relevant organizations.

THE REPORTS

4. The RBIF generally agrees with the reports that there is a need for a review of the Consumer Credit Act 1999 and Regulations 2009. The legislation should be restructured into a technical (layman’s) language which can be easily understood by ordinary consumers in Fiji. The RBIF also agrees that there is a need to critically examine the Hire Purchase market in Fiji to determine the effectiveness of the Consumer Credit Act and to adequately protect vulnerable consumers.

5. The RBIF believes that there is a need to simplify the terms and conditions of Mortgage contracts and financial institutions should explain these terms and conditions to their consumers.

The following are RBIF’s responses to the specific recommendations and issues discussed in the reports.

PART 1: THE EMPOWERING LEGISLATION ON HIRE PURCHASE: Consumer Credit Act

Chapter 2.0 - Executive Summary

With deregulation of the financial markets and free international trade with emerging cost-sharing among credit providers, consumer credit market has changed dramatically. The use of credit in small amounts is now far more prevalent, particularly to pay for white goods, furniture and electronic equipment. There has also been a spectacular increase in ‘plastic money’ (credit and charge cards) leading to a radical change in attitude to credit. Focus on ‘debt’ as a last resort to regarding credit as part of a suite of financial services to be seriously used. Luckily, this problem has not become as chronic in Fiji as in more developed nations.

RBIF Comment:

The RBIF is of the view that the hire purchase and credit provider markets in Fiji is not at a level of cut-throat competition yet. There are only two major hire purchase providers in Fiji. Competition will ensure that interest rates and customer service would benefit the consumers more. This does not seem to be reflected in the hire purchase and credit market in Fiji.

Chapter 3.0 - Introduction

Subsection 3.1 - Need and purpose of review

One reason that has generally been attributed to this observation is the lack of consumer credit education. It is argued that for consumers to have access to just, fair and competitive financial services, it is essential that consumers are educated to allow them to make informed choices in the marketplace. This will empower consumers to borrow wisely and bank credit providers to offer lender informed terms and conditions to the customers. Any consumer education should definitely help to correct the imbalance in the bargaining power of the two parties.
Reserve Bank of Fiji
Section 6.1 - Rule of 78
Rule of 78 is a formula to calculate the interest charges on a hire purchase transaction for the number of months completed under the agreement.

Example:
Assume total interest under an agreement which is calculated at the outset is $100.00. Total agreement is for 12 months. We want to determine the interest charge for 2 months completed under the agreement.

Interest charge for 2 months:
\[
\begin{align*}
(1+1+2+3+4+5+6+7+8+9+10+11+12) & \times 100 \\
578 & \times 100 = 57.80
\end{align*}
\]

Interest charge for two completed months is $29.49.
Interest for remaining 10 months is $100 - $29.49 = $70.51.

If the debtor pays off the debt after 2 months at the gate interest rebate (refund) of:

\[
\begin{align*}
$100 - $29.49 & = $70.51
\end{align*}
\]

Section 6.3 - Why does the general rule apply in all cases except for a hire purchase agreement where only the Rule of 78 applies?

Recommendation

The rule of 78 should be abolished forthwith and the same methods of calculating interest as for other credit transactions and loans be respected to be used for hire purchase transactions as well.

Interest may be charged up front or on reducing balance and schedule of repayments separately showing principal and interest components should be provided.

RBF Comment:

The RBF agrees that the Rule of 78 should be abolished because it is confusing and difficult to understand.

Section 4.9 - Protection under Hardships

The Consumer Credit Act 1998 provides some protection to consumers who face hardships due to unforeseeable circumstances and the credit provider wants to repossess the goods. The law does not relieve the debtor from his/her debt but only makes it harder for the credit provider to repossess the goods or take other harsh actions to recover their debts. By imposing a number of requirements on parts of both the credit provider and the debtor, the law attempts to achieve an orderly resolution of the problem. This might also give more time to the debtors to find means of getting out of hardships.

RBF Comment:

The RBF agrees that this hardship clause as soon as the notice of default of payment are served on them by the credit provider.

Section 5.3 - Acceleration clause and repossession

An acceleration clause is a provision in the credit contract that provides the lender with the legal right to accelerate the date (stopping forward on which the entire loan becomes due and payable, and if the debt is not then repaid in full, he may take steps to foreclose the contract or exercise his power of sale. This can happen under certain circumstances, usually when a contractual obligation is violated.

Typically, the circumstances that will trigger the acceleration clause are specifically spelled out in the credit document. Such circumstances may include failure to pay scheduled loan installments, sale of the good and title transfer. In the case of default, the contract usually allows for a grace period before the lender can call the loan and begin the foreclosure process.

Recommendation

The provisions of acceleration clause in the event of default on mortgage repayments currently do not place any limits on what the credit provider can repossess and sell to recover his/her debt. In this respect the consumers are completely unprotected. To provide reasonable protection to the consumers, the Act must be amended to specify that the credit provider can repossess and sell only the property or properties of the proceeds of which would be sufficient to clear the payments in arrears.

RBF Comment:

The RBF agrees with this recommendation but repossession should be confined to mortgaged property only.

Section 5.8 - Lessons for Fiji

The consumer credit laws in New Zealand, UK, and Fiji are very similar. However, there are a few significant provisions not present in the Consumer Credit Act of Fiji. These are:

1. Creditors to give a “post-possession notice” to the debtor and any guarantees on standard form within 21 days after repossession, (NZ)
2. Creditors to give a “post-possession notice” to the debtor and any guarantees on standard form within 21 days after repossession, (NZ)
3. Creditors to send a “statement of account” on standard form to debtor within 10 days after selling the goods, (NZ)
4. Creditors to offer a “Time Order Form” which will allow him to find the money to meet the requirements, (UK)
5. If the debtor has paid one third or more of the amount borrowed then the good is protected and it can only be repossessed with an order from the Court, (UK)
Recommmendation

To provide greater protection against representations to consumers in Fiji, the Consumer Credit Act must be amended to include the relevant provisions in the consumer credit laws of New Zealand and UK. These are pre-authorization notice, pre-acceptance notice, statement of account, Time Overdue Form and court order to repossess where one-third or more of the debt has already been paid.

RBF Response:

"The RBF agrees with this recommendation.

Chapter 7.0: Pre-contractual Disclosures

Subsection (G): Credit fees and charges

The contract must include:

(a) A statement of the credit fees and charges that are, or may become, payable under the contract,
(b) The amount of any such fee or charge, if ascertainable, but if not, the method of calculation of the fee or charge, if ascertainable.
(c) The total amount of credit fees and charges payable under the contract to the extent that they are ascertainable.

While all these have the appearance of providing a fair disclosure of fees and charges to the consumer, in practice a credit provider can legally refuse to disclose these on the grounds that they are not ascertainable at the time of making the contract. Subsequently, the credit provider can impose unreasonable fees and charges called by various names and justified on various grounds.

Recommmendation

To protect the consumers from possible unreasonable practices, the law needs to be amended to specify in the contents of contract documents shown in Schedule 1 the types of fees and charges and maximum amounts or bases for determining maximum amounts that can be imposed by the credit providers.

RBF Comment:

The RBF agrees with this recommendation.

Subsection (H): Changes affecting interest and credit fees and charges

This part of the law requires that if the annual percentage rate or rates or the amount or frequency of payment of a credit fee or charge or instalment payable under the contract may be changed, or a new credit fee or charge may be imposed, a statement or statements to that effect and a statement of how the debtor will be informed of the change or the new fee or charge must be included in the contract.

Recommendation

The law relating to disclosure of interest rates should be amended to specify the circumstances that will warrant possible changes to interest rates, whether they can be expected to go up or down, as well as new fees and charges together with maximum amounts or bases for determining maximum amounts that can be imposed.

RBF Response:

The RBF supports this recommendation. Consumers should be made aware of the reasonable circumstances that warrant possible changes to the interest rate. For the banking industry, the RBF issued the Banking Supervision Policy No. 8 which requires that banks shall not introduce new fees, and interest rate changes or increase existing fees & charges before a written notice through acceptable media has been made available to all customers at least 30 calendar days before the effective date.

Subsection (I): Statements of account

The frequency with which statements of account are to be provided to the debtor, except in the case of a credit contract for which the annual percentage rate is fixed for the whole term of the contract and under which there is no provision for varying the rate.

Recommendation

The exemption from providing periodic statements of account is apparently based on the assumption that where the interest rate does not change the statements of account will not contain new information that the borrower needs to know. Statements of account, however, typically contain not only interest charges, but also include fees and charges including new fees and charges as well as other charges such as penalty for dishonoured cheques and charges for phone calls and letters written to defaulting borrowers. To keep the consumers informed about the activities on their accounts, periodic (e.g. monthly) statements of account must therefore be mandatory.

RBF Comment:

The RBF agrees with the mandatory issue of statements. However in terms of the frequency, this needs to be agreed with the relevant stakeholders.

Subsection (K): Enforcement expenses

A statement that enforcement expenses may become payable under the credit contract or mortgage (if any) in the event of a breach.

Recommendation

The statement of enforcement expenses (Schedule 1) should specify the types and amounts of bases for calculating enforcement expenses that a credit provider can claim.
Reserve Bank Of Fiji

PART III: Hire Purchase: Size, Practices and Perceptions

Confidentiality of Consumer Information

The Reserve Bank is of the view that Data Bureau Ltd (DBL) plays an important role in the area of credit risk management and the promotion of a sound credit culture in the financial system of the country. The existence of DBL makes it easier for financial institutions to make informed and responsible lending decisions in a timely manner. Checking with the Credit Bureau would also help the financial institutions to mitigate any possibility of serious problems such as fraud cases and the possibility of the risk of defaulting.

The Reserve Bank of Fiji is of the view that to protect the confidentiality of consumer information, the data bureau should only provide personal credit information to a financial institution for the purpose of assisting the financial institution to evaluate a credit facility application or for a periodical credit review if the person is an existing borrower. The financial institutions should not be allowed to access credit information for purposes other than evaluating credit facility application or credit review. For example, financial institutions cannot use the credit report to market their financial products or services.

Although the Reserve Bank does not regulate Hire Purchases in Fiji the Reserve Bank agrees with the report that there is a need to review the Hire Purchase market in Fiji to protect vulnerable consumers and to make them aware of their rights and obligations as consumers.

Should you require further clarification, please contact the Ms. Venetia Levula, Chief Manager, Financial Systems Development Group on telephone 3223298, or email venetia@dbl.gov.fj or Mr. James Bulaokado, Acting Manager Financial Systems Compliance, on telephone 3224199, or email james@dbl.gov.fj.

Yours faithfully,

[Signature]

[Name]
Deputy Governor
Courts (Fiji) Limited

We, Courts (Fiji) Limited like all other HP providers have very little alternative or option but to apply a slightly higher interest rate on our Hire Purchase products because we simply engage in high risk lending or credit which are afforded to lower and/or average income earners. A few of the reasonable justifying aspects we would like to highlight are as follows:

1) Unlike Banks and semi financial institutions which secure their fund from the public at very low interest rates, Courts (Fiji) Ltd secures its funds from commercial banks at significantly higher interest rates. Therefore our cost of capital is much higher and therefore we have to charge slightly higher interest rates to help cushion this effect.

2) HP is risky lending with approvals given in minutes for our Customer’s convenience without charging any approval fee. We also deal with a substantial number of very low to middle income earners who have very sketchy and/or no proof of income details or verification records at all.

3) Lending without security - effectively the chattels do not constitute security as most often these items once used or if not maintained well will have a much lower value or even a nil value for damaged ones etc.

4) We also lend on high risk items such as furniture, electrical equipment, brush cutters, power tools, outboard engines, other small/micro business items etc which if not maintained well become dysfunctional, damaged or broken etc resulting in Customers generally refusing to pay up.

5) A good portion of our Customers live in remote, rural, interior and outer island areas and access becomes very difficult or impossible for collections, repossession and/or even pursuing legal action with Credit Data Bureau logging also a non issue as it has very little or no effect on them. This greatly impacts on our credit recovery capabilities thus escalating our risks and losses.

6) Bad debt write off’s are generally high due to the nature of this risky lending which warrants a marginally higher interest rate to help recover and/or compensate these relative costs.

7) Our lending rates are very reasonable and comparable to interest rates charged by Banks and Credit card companies on credit card facilities & unsecured loans including Money Lenders etc. Credit card companies & Banks offer these unsecured facilities to higher net worth customers, whilst we offer these facilities to lower and middle income earners. Therefore we relatively offer more competitive & reasonable rates in general.
Rebate formula & method

The Rule of 78 formula can also be simply detailed as follows:

\[
\text{FORMULA:} \quad \frac{\text{Sum of remaining terms}}{\text{Sum of total terms}} \times \text{Service charge} = \text{Rebate}
\]

With regards to the issue of the HP Rebate process of Rule of 78 we enclose herewith a spreadsheet showing how the interest is earned in a $10,000 case under Reducing Balance or Straight line Method (as applied by Banks) compared to the Rule of 78 Method currently utilized by HP Companies including Courts (Fiji) Ltd. Also detailed is the interest that would be rebated in case there is an early settlement which confirms that there is hardly any difference in the interest rebated under the two systems.

* ps: Excel attachment for your reference

Please also refer your report case study on: 4.7 Transparent and Fairer Methods of Disclosing Debt and Interest on Hire Purchase, which reflects a mere $12.06 difference on your $1.4k purchase in comparison to the risks involved on HP’s.

Therefore the 'Straight line' or 'upfront interest on a reducing balance' methods will not be fair or be economically viable for HP Providers for the main reason that our product item/s condition or value depreciates at a much faster rate and are usually in a dilapidated state or condition with a much lower value if not a zero value in the inevitable cases of default and/or recovery action processes.

Other Observations:

We observe that this survey was only done for rural areas not covering urban towns & cities etc which may or will have an affect on the accurateness of the report therefore restricting a more fairer and true analysis on the industry and major stakeholders like us.

We also note that the survey covered only 442 cases country wide compared to the substantial number of customers and accounts the whole HP industry services. This represents only 0.63% of total customer a/c’s a sole leading HP/Credit provider like Courts helps maintain and service to the very best of our ability and more.

Thank you for allowing us to provide our genuine feedback to help provide you with a much better understanding of the various issues highlighted including its market and relative risks etc.

Yours sincerely

Charles J Work
Director of Credit
Courts (Fiji) Limited
Ph: 679-3380777  DL:3380872  M:9990532
Credit related Insurance:

Kindly note that Courts (Fiji) Ltd also provides this Payment Protection Cover not Insurance cover which pays off the balance of the HP or credit account in the event of certain events as covered, occur.

Our Credit/HP Pearl option which offers a slightly higher interest rate at 20.9% includes a Payment Protection Plan that covers loss of items due to – Fire, Flood & Natural disasters, Death, Hospitalization, Disablement & Redundancy/Retrenchment in comparison to Banks non coverage charging 19.5%-21% on certain credit facilities including loan approval and administration fees apart from interest alone.

A substantial number of our Customer’s who were made redundant or retrenched in the past years have greatly benefited from this premium product namely; previous employees of the Civil Service -Government workers, Emperor Gold Mines, Natural Waters Fiji Ltd, Resort & Garment workers and many small business enterprises that were forced to close due to economic downturns etc.

A substantial number of our Customers that were affected by recent natural disasters, floods etc have also benefited from this premium product including approx: 150 in the recent Nadi, Lautoka, Ba, Tavua & Rakiraki floods that devastated most low line area dwellings.

COURTS Customer Care - CCC

We understand that our CUSTOMERS are the key and success to our business and have placed them paramount in our Corporate Vision & Values to help focus in our strive for Superior Customer Service & Care at all times.

To confirm our genuine commitment, responsibility and accountability to our Customers and Business we have also introduced a Customer Care unit together with its processes to ensure that we deliver on what we promise in giving all our Customers very easy access to recourse for better service and value for their money.

Other Observations:

We observe that this survey was only done for rural areas not covering urban towns & cities etc which may or will have an affect on the accurateness of the report therefore restricting a more fairer and true analysis on the industry and major stakeholders like us.

We also note that the survey covered only 442 cases country wide compared to the substantial number of customers and accounts the whole HP industry services.

This represents only 0.63% of total customer a/c’s a sole leading HP/Credit provider like Courts helps maintain and service to the very best of our ability and more.

Thank you for allowing us to provide our genuine feedback to help provide you with a much better understanding of the various issues highlighted including its market and relative risks etc.

Yours sincerely

Charles J Work
Director of Credit
Courts (Fiji) Limited
Ph: 679-3380777 DL:3380872 M:9990532
Hire Purchase Report

The original copy with the “interest calculation spread sheet” was delivered at 3.45pm today at your office.

Kindly note as an added notation to the report on our unique “Courts Customer Care services” is a toll free line and email/website address which avails an “open 24 -7 communication access” to all our Customers & stakeholders confirming our genuine passion in helping resolve all complaints, concerns, suggestions as well as logging positive compliments etc to help us improve going forward.

This we believe is not available or offered by any other Retailer in Fiji.

Kind Regards

Charles J Work
Director of Credit
Courts (Fiji) Limited
Hi,

Our organization currently deals with Lending institutions to finance motor vehicles that we sell. Customers enter into HP with the lending institutions.

We have gone through the contents and have no comments as such.

Kind Regards

Daljeet Singh

Credit Corporation (Fiji) Limited

Hire Purchase Report

Thanks for offering us the opportunity to be part of the consultative process.

Unfortunately, our business does not entail finance of white and brown goods and as such issues highlighted in the report are not relevant to us.

Credit Corporation (Fiji) Limited is licensed as a credit institution by the Reserve Bank of Fiji under Banking Act unlike other credit providers ie retail financiers and with strict policy and guidelines.

We feel it will be unfair for us to comment as we completely operate under different conditions and totally different products.

Just for your records, we have ceased using Rule 78 some 3 years ago.

Regards

Krishna Raju
General Manager Lending
Credit Corporation (Fiji) Ltd
Suva.

Nivis Motors

Hire Purchase Report

Hi,

Our organization currently deals with Lending institutions to finance motor vehicle that we sell. Customers enter into HP with the lending institutions.

We have gone through the contents and have no comments as such.

Kind Regards

Daljeet Singh

Hire Purchase Report

Good Morning

We have gone through the Draft Report which we think covers a wide cross section of the issues underlying the Hire Purchase Market in Fiji.

However, Nivis Motors is not engaged in any Hire Purchase trading and it would be best to allow the relevant business enterprises and stakeholders to comment on this.

Thank you for allowing us this opportunity.

A Singh
For the General Manager
Carpenters Finance Fiji Limited

Submission to Consumer Council of Fiji

Hire Purchase Report

“Consumer Financial Protection and Building Credit Competency for Vulnerable Groups: Consumer Credit Law and Practice in Fiji”

March 2012

Introduction:
Fiji Commerce Commission (‘Commission’) welcomes the opportunity to comment on Consumer Council of Fiji’s Draft Report on “Consumer Financial Protection & Building Credit Competency for Vulnerable Groups: Consumer Credit Law and Practice in Fiji”.
The Commission has a keen interest in such analyses because of the following objectives:
1. promoting effective competition in the interest of consumers;
2. ensure equitable returns for businesses with fair and reasonable prices charged to consumers.

Background:
The Commission is an Independent Statutory Body that promotes effective competition and informed markets, encourages fair trading practices, protects consumers and businesses from restrictive trade practices and controls prices of regulated industries and other markets where competition is lessened or limited.
Being the custodian of the Consumer Commission Decree 2010 the Commission is aware that there is a need to review consumer protection laws such as the Consumer Credit Act 1999 to make it more effective. The study by Consumer Council of Fiji is indeed warranted as it the Consumer Credit Act and Consumer Credit Regulation has not been providing relevant and needed protection for consumers. Due to the ever escalation of consumers complaints on these issues and the evident never ending debt cycle most of us are in the laws need to be reviewed.
Credit allows consumers to finance transactions without having to pay the full cost of the merchandise at the time of the transaction. A common form of consumer credit is a credit card account issued by a financial institution. Merchants may also provide direct financing for products which they sell. Banks may directly finance purchases through loans and mortgages. On 1st October 2009 the government enforced Consumer Credit Regulation 2009 with the purpose to assist in the enforcement and implementation of the Consumer Credit Act 1999 and provides detailed operational aspects of the Act in three following areas;
1. The manner of disclosure of information in credit contracts;
2. The Calculation of interest rates;
3. Various forms required under the Act

The purpose of having a consumer credit laws is to protect consumers obtaining credit to finance their transactions, ensure that adequate credit is provided, and govern the credit industry in general.

Comments:
The Commission will provide comments on the following issues;
1. Protecting the Vulnerable Consumer Group
2. Do existing laws protect the Consumer
3. Warranties
4. Merchandise Quality
It is our submission that the Rule of 78 is a logical and fair means of determining interest income. It considers condition of the goods.

Furthermore, interest rate is reflective of the risk in terms of the following:

(i) target market includes civil servants, teachers, farmers, garment factory workers, office staff and other low income earners
(ii) high default rates
(iii) susceptibility of items financed being subject to misappropriation and natural disasters
(iv) different demographics make it difficult to locate customers
(v) high collection costs
(vi) high bad debts

The default rate ranges from 45% to 50%, whilst the ratio of collection staff to total staff is above 53%. In this regard, a high number of accounts are settled according to their hire purchase contract in order to generate a positive return on funds utilized.

3.2 Product Disputes/ Warranties (Ref: Pg. 23)

Consumer Council/ Consultant’s Observation
“The respondent was asked to clearly specify in their documents what parts were covered under extended warranty……..as consumers deserve to know such information”.

Our Submission
Our products are subject to warranties from suppliers/ manufacturers. The scope of the warranty is documented in our Super Protector Extended Warranty Terms and Conditions. These include the following:

(i) what is covered
(ii) what is not covered
(iii) the limit of liability
(iv) when MH Homemaker Super Protector extended warranty service contact will cease to operate and no claims will be accepted
(v) steps to follow when claiming & general provisions.

The document is provided to the customers at the time of purchase and customers are advised generally on the nature and effect of the warranty terms and conditions.

3.3 Product Quality (Ref: Pg. 25)

Consumer Council/ Consultant’s Observation
“The poor quality products sold in Fiji are both imported and locally made……..ensuring only quality products enter the market can be very difficult, if not possible”.

Our Submission
Most of our products come with acclaimed quality standard and are CE certified. The products that are financed undergo quality checks from respective regulatory authorities from the country of origin before they are allowed to be sold in Fiji. Every effort is made to comply with these requirements.

3.4 Fine Prints (Ref: Pg. 41)

Consumer Council/ Consultant’s Observation
“This clause can be hidden somewhere in the credit contract or mortgage documents – possibly in fine prints……..whether knowingly or unknowingly, he or she will be legally bound by it”.

Our Submission
Carpenters Finance is in compliance with the documentation requirements however we can work with the industry to improve and standardize wording, font size and location within a document.

3.5 Pre-contractual Statements (Ref: Pg. 55)

Consumer Council/ Consultant’s Observation
“The law requires the credit provider to give to the debtor a pre-contractual statement…….in the form prescribed by the regulations.”

Our Submission
A pre-contractual statement as well as Information Statement pursuant to the Consumer Credit Regulations 2009 is provided to our customers and our frontline staff are trained to explain the contents of the contract to customers prior to the customer entering into the contract.
3.6 Credit Insurance (Ref: Pg. 82)

Consumer Council/Consultant’s Observation

“Credit insurance is a form of insurance that the debtor pays for but it actually benefits his lender……..better balance between the interest of credit providers and consumers”.

Our Submission

Credit insurance is important given the nature of finance involved where the item financed is subject to misappropriation, theft, an unforeseen event such as fire and natural disaster. The credit provider is required to reduce its exposure by ensuring insurance cover is placed. 

The nature of Hire Purchase finance does not allow customers to seek their own insurance as title has not passed to hirer. Credit insurance covers the interest of the debtor, for instance, during natural disasters, customers are relieved of their continuing obligation to repay the balance outstanding. In some instances, refunds have also been passed to customers.

What needs to be appreciated at this juncture is that once a customer signs a credit contract or a Hire Purchase agreement, they are bound to the credit provider for the total sum financed. In the event the goods are destroyed or lost, the customer still has to pay the contract amount to the credit provider.

A credit insurance therefore protects the continuing obligation of the customer to the credit provider in the event the item is subject to insurable risk as per the insurance policy.

PART III: HIRE PURCHASE: SIZE, PRACTICES AND PERCEPTIONS

3.7 Hire Purchase Cost Disclosures/ Credit Fees and Charges (Ref: Pg. 3)

Consumer Council/Consultant’s Observation

“Credit providers do not provide any disclosure on the calculation of interest charges…..do not provide any breakdown of charge for credit or term charges which can show the details of credit fee and/ or charges, if any”.

Our Submission

Credit fees and charges are provided to our customers as part of the contract documents. The written summary of hirer’s financial obligations is provided to customers.

3.8 Language (Ref: Pg. 8)

Consumer Council/Consultant’s Observation

“There currently is no requirement that each HP customer be explained in a language of their choice……terms and conditions of the HP agreement.”

Our Submission

Explaining financial terms and conditions to customers in a language of their choice, is being practised on some occasions, however we can consider enhancement in this area. With regard to translation of our credit documents, Fiji is a multiracial country hence it would be difficult to determine which languages the documents must be translated into as the company can be seen to be discriminatory. However, the major contents are explained to the customers and they are also provided the Summary of Financial Obligations.

3.9 Confidentiality of Customer Information (Ref: Pg. 10)

Consumer Council/Consultant’s Observation

“Customers allow the HP credit provider to provide their credit information to the Data Bureau……seeks information on them from other sources”

Our Submission

The Data Bureau is a key agency for Hire Purchase financing as it acts as a credit assessment tool. It is a mechanism that allows credit providers determine customer rating and this is the usual practice overseas where similar agencies offer this service. Our demand notices carry a disclaimer that customer details would be loaded on Data Bureau if customer defaults repayments.

In Fiji, government and statutory bodies such as Fiji Electricity Authority, Water Authority of Fiji, Fiji Development Bank and the Municipal Councils are also members of Data Bureau.

3.10 Warranty (Ref: Pg. 17)

Consumer Council/Consultant’s Observation

“In total, thus, only 45% of the customers had been advised of the existence of a warranty before they purchased the good”.

Our Submission

We advise all customers of existence of warranty. Furthermore, we offer extended warranty to all customers with an additional charge.

4.0 CONCLUDING REMARKS

We reiterate that the Hire Purchase market must be assessed in its entirety and not compared to other forms of finance. The market for Hire Purchase is also different from that of commercial banks as there is higher degree of risks at stake.

Our customers shop with us due to easy availability of finance, the credible name of Carpenters and the convenience of all our locations in relation to sales, service and repayments.

Any study conducted on the Hire Purchase Market in Fiji and any potential changes to legislation must take into account the contents of this submission.

We hope that our submission would be given due consideration.
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