

A STUDY ON THE FINANCIAL CONSUMER PROTECTION IN MALAYSIA WITH SPECIFIC REFERENCE TO THE FINANCIAL SERVICES ACT 2013

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Abstract

In recent times many countries across the world have become increasingly concerned on the protection of financial consumers. Malaysia, in that regard has passed the Financial Services Act 2013 (FSA) to fill in the lacunae in the existing legal framework. The objective of this study is to appraise the key provisions of the FSA with reference to financial consumer protection. Adopting a doctrinal and content analysis methodology, the relevant provisions of this statute, as well as related legal articles have been carefully examined. The findings of the study revealed that some principles of financial consumer protection to a certain extent have been successfully tackled, especially those on the redress mechanism with the establishment of the Financial Ombudsman Scheme (FOS). Nevertheless, being at an infancy stage, more comprehensive provisions on the remaining fundamental principles need to be developed. Therefore, several recommendations have been proposed for further improvements. This will help in ensuring a more inclusive, standardized and effective consumer protection regime. This study hopes to significantly contribute in improving the current legislative framework governing financial consumers in Malaysia.

Keywords: financial consumers, consumer protection, financial services, Malaysia

INTRODUCTION

Consumer protection refers to safeguards against malpractices and exploitative techniques by suppliers of goods or services that adversely affect consumers (Anwarul, 1996). Jolowicz (1969) explains that consumer protection can mean one of two things which are; to prevent something from being wrong for the consumers; or, providing redress for consumers when things become wrong.

In the wake of the global financial crisis, initiatives to reinforce financial consumer protection policies have increased with a view to promote financial stability (Financial Stability Board, 2011). Governments and international standard-setters such as the Basel Committee on Banking Supervision, International Organization of Securities Commissions and International Association of Insurance Supervisors have recognized financial consumer protection as one of their prominent political agendas (Nienhaus, 2015). Additionally, in 2001 the Organization for Economic Co-operation and Development issued the G20 High-level Principles on Financial Consumer Protection (Nienhaus, 2015).

In tandem with international trends, the Malaysian government has prioritized the financial services sector as one of the National Key Economic Areas under its Economic Transformation Programme. More precisely, consumer empowerment has been identified as an element contributing to financial stability (Prime Minister's

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Department, 2013). Locally, regulators of both Bank Negara Malaysia and the Securities Commission have recognized that although consumers are expected to be responsible for their own financial well-being; greed, commercial and competitive pressures, lack of sophistication on the part of consumers (Mahmood, 2012), emergence of non-traditional financial institutions, new business models and delivery channels, borderless and virtual transactions coupled with low level of financial literacy (Lian, 2011) are among prime rationalizations for regulating the financial markets. In response to this, the FSA has been introduced with substantial emphasis on financial consumer protection. Thus, this study attempts to analyse the extent of protection provided by this statute.

LITERATURE REVIEW

Financial consumer protection is not a new phenomenon. Numerous insightful debates on this area took place as a consequence of the 2008 financial crisis. A number of literature have spawned, elaborating in detail on the rationales to have specific laws governing financial consumer protection, particularly on market failure, information asymmetry, poor bargaining power and protection from loss, fraud and misrepresentation (Cartwright, 1999; Howells, Ramsay, & Wilhelmsson, 2010; Benston, 1999). Studies by the Financial Stability Board, (2011); Ardic, Ibrahim, & Mylenko, 2011 and Melecky & Rutledge (2011) provide convenient understanding on what constitutes financial consumer protection framework which distinguishes it from other groups of consumers.

There are also several studies examining the most suitable institutional framework for financial consumer protection (Oughton & Lowry, 2000; Melecky & Rutledge, 2011; Ardic et al., 2011). Most of them suggest the establishment of one dedicated body to oversee the interest of financial consumers. Concerning fairness of contractual terms, the discussion by Amin (2013) offers useful guidance on the concept of substantive and procedural fairness under the Consumer Protection Act 1999 (CPA). Rutledge (2010) recommends some mechanisms to fulfil the transparency and disclosure requirements in respect of financial services and products. A study by the Office of Fair Trading United Kingdom (2008) provides detailed elaboration on the concept of responsible lending within the UK context, while the Australian position has been deeply observed by Tuffin (2009). As far as the FSA is concerned, Tan & Gumis (2014) have briefly summarised the significant provisions of the FSA in general, compared to previously repealed legislations, including provisions on consumer protection and the FOS.

In order to understand the institutional framework of financial consumer protection in Malaysia, Markom et al., (2015) provided a valuable reference, which however is limited to banking and moneylending institutions only. However, no in-depth discussions have been made by the authors with respect to financial consumer protection under the FSA. Thus, there is a gap in the existing literature on the critical evaluation of the said primary legislation governing financial consumer protection in Malaysia. This study fills in such gap and offers noteworthy contribution in the area of consumer law as well as financial services.

METHODOLOGY

This study adopts a doctrinal and content analysis research method. For the purpose of this study, the main legislation examined is the FSA. Analysis is supported with secondary sources such as Bank Negara Malaysia (BNM) guidelines, textbooks, journal articles, online resources from government, non-governmental organizations, general and academic websites and database sources such as CLJ, Lexis Legal research for Academic and HeinOnline.

RATIONALES FOR FINANCIAL CONSUMER PROTECTION

There are several basic justifications in financial consumer protection measures. Firstly, the need to regulate arises from the perspective of a perfect market. Free market economic theory suggests that if the characteristics of a perfect market could be created, there would be no need for regulation. Howells and Weatherill (1995) describe the theory as 'alluring as it is unrealistic'. Secondly, Cartwright (1999) emphasizes that there are several ways which may lead to the failure of the perfect market such as externalities, information asymmetries, market power which arise with public goods, and these traditional failures can be equally applicable to financial consumers. With regard to information asymmetry, scholarship on financial regulation is inclined to underscore it as a key economic rationale for regulation (Goodhart, 1998). Compared to other groups of consumers, financial consumers often have to deal with innovative and complex financial products. Imbalance of the bargaining power between the consumer and financial service providers is also another main justification for financial consumer protection (Howells et al., 2010).

For instance, consumers who are in dire need of credit are in a poor bargaining position and usually will succumb to the credit agreement irrespective of the fairness of terms imposed by the financial service providers. Bentson (1999) further suggests that one of the justifications for regulating financial markets is 'protection of consumers from the loss of their investments, fraud and misrepresentation, unfair treatment and insufficient information, incompetent employees of financial-services providers, and invidious discrimination. Additionally, it has been unanimously agreed that financial stability is another persuasive reason for financial consumer protection. For example, the G20 Leaders' Declaration for the G20 Cannes Summit of 3–4 November 2011 stated that integration of financial consumer protection policies into regulatory and supervisory frameworks contributes to strengthening financial stability (G20, 2011).

FINANCIAL CONSUMER PROTECTION FRAMEWORK

Essentially, laws and regulations that ensure fair interaction between service providers are generally referred to as consumer protection (Ardic, Ibrahim, & Mylenko, 2011). It is not about protecting consumers from bad decisions, but more about enabling consumers to make informed decisions in a marketplace free of deception and abuse (Financial Stability Board, 2011). Ardic, Ibrahim and Mylenko (2011) view that a consumer protection framework in a broader sense includes the introduction of greater transparency and awareness about the goods and services,

the promotion of competition in the marketplace, prevention of fraud, education of customers, and elimination of unfair practices. According to the Financial Stability Board (FSB) (2011), the most common elements of consumer finance protection frameworks include disclosure and transparency; financial education; fair treatment; and dispute resolution mechanisms. Some jurisdictions also aim to protect consumers from over-indebtedness by placing a floor on minimum household earnings to qualify for an unsecured loan, including credit cards. Moreover, the World Bank emphasises that a well-designed consumer protection framework guarantees five principles (Melecky & Rutledge, 2011). These principles are providing the financial consumer with:

- 1) Transparency through clear, material and comparable information about the prices, terms and conditions, and risks associated with financial products and services;
- 2) Free choice via fair, non-coercive and professional practices in the selling of financial products and services, and collection of payments;
- 3) Redress through inexpensive, speedy and effective mechanisms to address complaints and resolve disputes;
- 4) Privacy through control over access to personal information; and
- 5) Access to financial education to enable consumers to empower themselves by improving their financial literacy and capability.

This study will concentrate on the four main principles of financial consumer protection framework, namely, fair treatment, transparency and disclosure requirement, responsible lending and the redress mechanism. Discussion on privacy is excluded since it requires a thorough study on the Personal Data Protection Act 2010, while financial education will not be covered as well because the focus of this paper is more on the legal aspect.

FINANCIAL CONSUMER PROTECTION UNDER THE FINANCIAL SERVICES ACT 2013

Background

In Malaysia, one of the important developments in strengthening financial consumer protection is the introduction of the FSA which came into force on 30 June 2013 (Except section 129 and Schedule 9). This legislation is administered by BNM. The FSA, which is based on an identical framework to that of the UK Financial Services Act 2012 and the Australian Financial Services Reform Act 2001, repeals the Banking and Financial Institutions Act 1989, the Insurance Act 1996, the Payment Systems Act 2003 and the Exchange Control Act 1953, and combines the regulation of the matters under the repealed legislations under a single act and licensing regime (Tan & Gumis, 2014). It is argued that a more uniformed, systematic and rigorous supervision over those institutions can be aptly implemented under this Act. The principal regulatory objective of the FSA is to promote financial stability, and in pursuing this objective, BNM shall, inter alia,

strive to protect the rights and interests of consumers of financial services and products. Thus, one of the key statutory duties of BNM is to safeguard the rights and interests of financial consumers in Malaysia.

Definition of Financial Consumers

Under section 121 of the FSA, there are four categories of financial consumers. Firstly, any person who uses, has used or may be intending to use, any financial service or product for personal, domestic or household purposes. Secondly, any person who uses, has used or may be intending to use, any financial service or product for a small business. Thirdly, any person who use, has used or may be intending to use, any financial service or product and the value of the financial services or products does not exceed an amount as may be specified by the Bank under section 123 of the FSA notwithstanding whether they are for personal, domestic or household purposes. Fourthly, also regardless of the purpose, any person who uses, has used or may be intending to use, any financial service or product and falls within a class, category or description of persons as may be specified by the Bank also under section 123 of the FSA. Section 123 of the FSA provides wide discretion to BNM to specify any class, category or description of financial consumers. To date, the third and fourth categories of financial consumers have not been specified by BNM. These provisions offer flexibility for BNM to specify later simply by issuing standards to that effect without undergoing legislative amendment process.

Financial Services or Products and Financial Service Provider

To further comprehend the scope of financial consumers covered by this statute, it is incumbent to know the meaning of financial services or products as well as financial service provider as stipulated in section 121 of the FSA. Financial services or products refer to financial services or financial products developed, offered or marketed, by a financial service provider, or for and on behalf of another person by a financial service provider. Financial service provider on the other hand is defined as an authorized person. Accordingly, financial service provider refers to authorized persons i.e. being granted a license by the Minister of Finance or being approved by BNM as stated by section 2 of the FSA. The former includes banking business, insurance business and investment banking business, while the latter includes the operation of payment system, issuance of a designated payment system, insurance broking business, money broking business and financial advisory business. Another category of financial service provider based on section 121 of the FSA is a registered person but excludes an approved money-broker. Registered person refers to merchant acquiring services and adjusting business.

FAIR TREATMENT PROVISIONS

Fairness of Terms

Section 123 (2) of the FSA grants power to BNM to specify standards on business conduct including fairness of terms in a financial consumer contract for financial

services or products and promotion of financial services or products. Presently, no standards on fairness of terms have been issued yet.

Prohibited Business Conduct

The FSA prohibits financial service providers from engaging in any prohibited business conduct set out in Schedule 7 of the FSA. There are six categories of prohibited business conduct, namely, misleading and deceptive business conducts, dishonest concealment of material facts, exerting undue pressure or influence, demanding payments from a financial consumer in any manner for unsolicited financial services or products, coercing financial consumers to acquire a financial service as condition to acquiring another financial service and finally, colluding to fix features or terms to the detriment of financial consumers. Non-compliance with these provisions amount to a criminal offence whereby on conviction, be liable to imprisonment for a term not exceeding five years or to a fine not exceeding ten million ringgit or to both as stipulated by section 124(4) of the FSA.

A detailed elaboration on prohibited business conduct can be referred to the Guidance on Prohibited Business Conduct (the said Guidance) which provides non-exhaustive examples of each prohibited conduct. The said Guidance also emphasizes the duty of financial service providers in ensuring the third party agents, representatives or service providers appointed by them to comply with the provisions on prohibited business conduct under the FSA.

For instance, the said Guidance stipulates that the prohibitions under paragraphs 1 and 2 of Schedule 7 collectively cover all misleading and deceptive business conduct. The said Guidance stipulates several non-exhaustive examples of misleading and deceptive business conducts such as; falsely claiming that the financial service or product has been authorized or endorsed by a certain body; falsely presenting a financial consumer's rightful entitlement, e.g. the right to redress, as the financial service provider's exclusive offer to the financial consumers, and claiming that a non-principal protected product is a deposit product. Making repeated solicitations to promote financial services or products to financial consumers who have communicated his or her disinterest in the financial service or product, or creating impediments to deter or prevent the financial consumers from leaving the financial service provider's premises until a contract is signed, are a couple of examples of exerting undue pressure or influence.

Demanding payment for unsolicited financial services or products is illustrated with few examples, one of which is, when the financial service providers demand premium payments for insurance riders without the policyholder's express agreement to purchase such riders. Examples of coercing consumers to acquire financial services or products as a condition to acquiring another financial service or product are, requiring vehicle owners to purchase non-motor insurance (e.g. personal accident) as a condition to obtaining a motor insurance cover, and requiring financial consumers to purchase credit shield insurance as a condition for approving a new credit card facility.

Collusion that results in detriment to financial consumers without proportionate benefits is demonstrated by these instances, namely, agreement between financial

service providers to restrict the payment of interest on current accounts for individual consumers; and collusion among financial service providers to discriminate against drivers of older vehicles by imposing a minimum premium or contribution loading for the purchase of motor insurance. According to the said Guidance, actions may be taken against a financial service provider that has engaged in a prohibited business conduct even if the financial consumer concerned has not suffered any financial losses.

Transparency and Disclosure Requirement Provisions

According to section 123(2) of the FSA, BNM is granted power to stipulate standards relating to transparency and disclosure requirements, including the provision of information to financial consumers that is accurate, clear, timely and not misleading. Although currently no standard pertaining to this has been issued, reference may be made to the Circular on Standardised Documentation for Description of Key Terms for Housing Loan / Home Financing Agreements which was issued pursuant to the then Section 126 of the Banking and Financial Institutions Act 1989. This circular is applicable to all banking institutions licensed thereunder. This circular requires the banks to adopt standardised documentation for description of key terms and conditions in respect of housing loan or home financing agreements and ensure that such terms are presented in a manner that is consistent, clear and easy to understand. From the consumer's perspective, the standardised documentation would promote understanding of their rights and obligations. Consequently, this would enable them to make informed decisions and product comparison that best meet their financial circumstances. This circular is applicable to agreements for housing loans or home financing involving a principal sum of RM500,000 and below, and which are:

- (a) extended to individuals;
- (b) for the purpose of financing the purchase of residential property by the borrower(s); and
- (c) not combined with another different type of facility or facilities.

Based on the said circular, in determining the principal sum of RM500,000, only the loan amount to be applied towards the purchase price of the residential property is to be taken into account. The loan or financing can however extend to cover renovation costs, Mortgage Reducing Term Assurance or such other insurance premium as may be permitted by the banking institution and legal fees incurred in connection to the purchase of the property. The adoption of standardized template for housing loan or home financing agreement which has a principal sum in excess of RM500,000; or is combined with another different type of facility or facilities is at the bank's discretion. The template was developed by the Association of Banks in Malaysia in collaboration with the industry. The template may be varied or modified from time to time to cater to prevailing circumstances subject to consultation with the banks.

Responsible Lending Provisions

The significance of responsible lending is acknowledged in section 123(2) of the FSA when BNM is granted power to provide the standards regarding provision of recommendations or advice including assessments of suitability and affordability of financial services or products offered to financial consumers. However, the relevant standard on responsible lending is also not available yet.

Redress Mechanism Provisions

Cheap, fair and effective redress mechanism is another significant principle of financial consumer protection. Thus, the third approach to uphold the interest of financial consumer is by establishing an FOS approved by BNM as envisaged under the Financial Sector Blueprint 2011-2020. Regarding this, the existing Financial Mediation Bureau (FMB), which is currently operating under a voluntary arrangement, will be transformed into an FOS. As part of the change, the governance and operational arrangements of the FMB will be enhanced in line with international best practices. For the purposes of ensuring an FOS is fair, accessible and effective; regulations may be made for instance on matters that BNM may consider in determining whether to approve the said FOS, withdrawal or suspension of its approval; the functions and duties of person operating the said scheme; its terms of reference; appointment of directors and the documents or information that shall be submitted by any person operating an FOS to BNM. Pursuant to section 126 of the FSA, the Financial Services (Financial Ombudsman Scheme) Regulations 2015 (FSR) was brought into force on 14 September 2015. Section 126(5) of the FSA explicitly forbids any complaint which has been referred to an FOS from being lodged to the Tribunal for Consumer Claims under the CPA. The underlying reason for this prohibition is to circumvent multiplicity of claims and divergence in decisions (Tan & Gumis, 2014).

According to regulation 2 of the FSR, the approved FOS will be implemented by a scheme operator; a company registered under the Companies Act 1965 which operates or proposes to operate the approved FOS. Only a dispute involving an eligible complainant and a financial service provider in respect of financial services or products may be referred to an FOS. This essentially confines the complaints involving financial service providers regulated by BNM only. The Third Schedule of the Regulation spells out three different categories of monetary limit. Firstly, in respect of a dispute involving financial services or products developed, offered or marketed by a member, or by a member for or on behalf of another person, the monetary limit is up to RM250,000. Secondly, for a dispute related to motor third party property damage, the monetary limit is not exceeding RM10,000. Finally, RM25,000 is the limit for a dispute involving an unauthorised transaction through the use of a designated payment instrument or a payment channel such as Internet banking, mobile banking, telephone banking or automatic teller machine; or an unauthorised use of a cheque as defined in section 73 of the Bills of Exchange Act 1949.

Nevertheless, regulation 18(4) of the FSR allows a dispute which involves a monetary claim exceeding the monetary limit as set out in the Third Schedule to be

referred to an FOS, subject to the unanimous agreement of the scheme operator, the eligible complainant and the member involved in the dispute. Regulation 18(1) provides that any award granted by the FOS and accepted by the eligible complainant shall be binding on the member. According to regulation 18(2) of the FSR, the award granted may include monetary award; a direction that requires the member to take certain steps in relation to a dispute; a direction that requires the member to repay the actual cost incurred by the eligible complainant in relation to a dispute or such other matters as determined by the ombudsman subject to the approved terms of reference.

ANALYSIS ON FINANCIAL CONSUMER PROTECTION PROVISIONS UNDER THE FSA

Law & Smullen (2008) describe financial product as any goods or services provided by financial institutions including loans, mortgages, insurance policies, advice, derivatives etc. Financial service providers or equally referred to as financial institutions can be defined as an organization whose core activity is to provide financial services or advice in relation to financial products, including state bodies such as central banks and private companies such as banks, savings and loan associations and also financial market (Law & Smullen, 2008). Other than banks, Clark (2013) also considers a building society, finance house or other institutions that collects, invests and lends funds as falling within the scope of financial institution. Thus financial consumers cover a wide array of consumers acquiring or using various financial services or products from various financial service providers. Nevertheless, the scope of financial consumers under the FSA is confined to those entering into financial transactions with financial service providers regulated by BNM only. Thus, for example, consumers who deal with moneylenders, pawnbrokers, credit companies not governed by BNM are excluded from the purview of the FSA. Moneylenders are subject to the provisions of the Moneylenders Act 1951 while the Pawnbrokers Act 1972 governs pawn broking activities. Both money lending and pawn broking are under the jurisdiction of Ministry of Urban Wellbeing, Housing and Local Government. Meanwhile hire purchase is governed by the Hire Purchase Act 1967 which is under the responsibility of Ministry of Domestic Trade, Cooperative and Consumerism. It is submitted that different levels of protection are accorded to financial consumers depending on the nature of transactions and the respective regulators, although principally they belong to the same group.

Irrefutably, the said ministries' functions are not specifically on financial consumer protection. Multiple functions of the institution may lead to consumer issues being overlooked (Oughton & Lowry, 2000). It is perhaps pertinent to highlight the view of Melecky and Rutledge (2011) on the importance of establishing a compact institutional structure dealing with consumer protection. Different institutions may adopt varying levels of enforcement which may be inferior or greater than their counterpart. Ardic, Ibrahim and Mylenko (2011) stress that implementation of financial consumer protection laws and regulations rely on regulatory and supervisory agencies. Therefore, it is suggested that the scope of

financial consumers under the FSA be extended to other financial consumers as well for a standardized and effective protection. A single institution approach has been adopted by some leading countries such as Australia and the United Kingdom, whereby, Australian Securities and the Investment Commission and Financial Conduct Authority respectively, are in charge of financial consumer protection in both jurisdictions.

With regard to principles of financial consumer protection, it is submitted that presently, fair treatment provisions *vis-à-vis* on prohibited business conducts have been in place with clear and detailed explanations. The prohibitions which entail harsh criminal sanctions in the event of non-compliance will be an effective tool to protect financial consumers. Similarly, the establishment of the FOS and the enactment of the FSR symbolize a continuous effort of the government to provide the best redress mechanism in favour of financial consumers. Nevertheless, it is only confined to eligible complainants to the effect that those who do not come within the scope of eligible complainants are not entitled to forward their grievance to this redress institution. This is unlike the position in Australia for instance, whereby the Financial Ombudsman Service Australia provides dispute settlement mechanism to all financial consumers as long as the financial service providers are registered members. Its members include banks, credit providers, friendly societies, mortgage and finance brokers etc.

However, the provision on fairness of terms are not comprehensively developed yet. Undeniably, most contractual agreements between financial service providers and consumers are individually developed to fit their respective product features. Since consumers are weaker bargaining parties, especially in respect of loan facilities, it is incumbent to ensure that the terms are not one-sided. Concerning this, reference may be made to the substantive and procedural unfairness under the CPA with some modifications to suit the financial nature of the agreements. Despite some weaknesses, especially on the ambiguity of certain terminologies, Amin (2013) views that Part IIIA of the CPA will certainly enhance the rights of the consumers and to some extent will eliminate the unfair terms in consumer contracts in Malaysia, if strictly implemented.

BNM also has not yet issued standards on transparency and disclosure. The Circular on Standardised Documentation for Description of Key Terms for Housing Loans / Home Financing Agreements is restricted to housing loans and for the amount of RM500,000 only. Since most financial consumers are not familiar with legal and financial jargon, transparency and disclosure is considered vital. It is proposed that the standard will require the financial service providers to provide a simplified version of the explanation of the main terms of the agreement, relevant calculations, as well as advantages or disadvantages of one product compared to another. Rutledge (2010) suggests the use of a Key Facts Statement, providing all key terms and conditions in simple and plain language for all retail financial products and services or at least standard basic contract provisions.

Responsible lending provision is another significant principle of financial consumer protection particularly related to credit products which is not yet elaborated in detail. Irresponsible lending covers a wide range of predatory lending

practices, including not only affordability and the likelihood of repayment, but also advertising and marketing; selling techniques; product design; use of credit scoring techniques, appropriateness of credit to borrower; sale of associated products; and account management (Office of Fair Trading United Kingdom, 2008). Based on the wording of section 123(2) of the FSA, it is argued that the scope is limited to suitability of the product for the consumers and their affordability to repay the debt. The notorious consequence of lending irresponsibly is that the consumer will be over-indebted and finally be declared bankrupt. Recent statistics show that hire purchase followed by housing loans and personal loans are the top three major causes of bankruptcy in Malaysia (Malaysian Department of Insolvency, 2014). Although there are several reasons which can lead to bankruptcy, Finlay (2009) considers irresponsible lending as one of the factors.

It is feasibly useful to refer to some provisions on responsible lending in the National Consumer Credit Protection Act 2009 (NCCP) which provides specific divisions on responsible lending. Among others, section 128 of the NCCP states that a licensee must not enter a credit contract with a consumer, or increase the credit limit of a credit contract with a consumer, unless, within the previous 90 days, an assessment that is in accordance with section 129 has been made, and the inquiries and verification has been made consistent with section 130. Section 129 of the NCCP imposes a requirement on the credit provider to make a preliminary assessment as to whether the contract is unsuitable for the consumers if the contract is entered into or credit limit is increased in the assessment period. To achieve the objective, inquiries and verifications about the consumer's requirements and objectives in obtaining the credit as well as his financial situation must be made. The credit provider is also required to take reasonable steps to verify the financial situation and make any inquiries or verification prescribed by the regulations.

Section 131(2) of the NCCP specifies several circumstances where the contract will be deemed unsuitable. Firstly, if it is likely that the consumer will be unable to comply with his financial obligations under the contract or could only comply with substantial hardship. Secondly, when the contract will not meet the consumer's requirements or objectives. Other circumstances are as prescribed by the regulations. Additionally, there is a presumption under section 131(3) of the said Act that, if the consumer could only comply with his financial obligations under the contract by selling his principal place of residence, he is under substantial hardship, making the contract unsuitable. Section 133(1) of the NCCP forbids a licensee lender from entering into or increasing the credit limit of an unsuitable credit contract, and failing to comply with this requirement is an offence.

However, there is a need to strike an appropriate balance in the implementation of these provisions especially in protecting consumers while still allowing safe access to credit (Tuffin, 2009). Admittedly it is not an easy task, but very crucial if the legislation is to operate effectively as a consumer protection instrument.

CONCLUSION

In the foregoing, it is apparent that one of the objectives of the FSA is to provide protection for financial consumers, specifically those falling within BNM jurisdiction. However, being a newly enacted legislation, more need to be done. For example, there are yet comprehensive provisions on fairness of terms, disclosure requirements and responsible lending which constitute overarching principles of financial consumer protection. Although provisions on prohibited business conducts and redress mechanisms are readily available, effective enforcement of the said provisions and efficiency of the FOS are yet to be assessed. Furthermore, the privileges are to be enjoyed by financial consumers under the FSA only, while those who are outside the FSA purview are discriminately excluded. Perhaps it is timely to consider the extension of the FSA to other financial consumers as well for standardized and uniform, and hopefully, more effective protection under one umbrella legislation.

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