



Banking Your Future

Towards a **fair** & **inclusive** banking sector

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*Providing banking is a privilege.
Not a right.*

*Using banking is a right.
Not a privilege.*

Contents

SECTION 1

| | |
|-------------------------------|---|
| Letter of Transmittal | 4 |
| Composition of the Task Force | 5 |
| Acknowledgements | 6 |
| Acronyms | 7 |

SECTION 2

| | |
|-------------------|----|
| Preamble | 11 |
| Executive Summary | 13 |

SECTION 3

| | |
|---------------------|----|
| The Customer Speaks | 18 |
|---------------------|----|

SECTION 4

| | |
|-------------------|----|
| Defining Fairness | 21 |
|-------------------|----|

SECTION 5

| | |
|--|----|
| The Eight Pillars of Fairness | 24 |
| Pillar 1: Banking is Accessible to All | 26 |
| Pillar 2: Fair Fees and Charges | 31 |
| Building Block 1: Reviewing the Pricing Strategy of Banks | 32 |
| Building Block 2: Promoting Competition | 45 |
| Building Block 3: Enhancing Transparency | 51 |
| Pillar 3: Fair Terms and Conditions of Contracts | 59 |

SECTION 5

| | |
|--|-----|
| Pillar 4: Fairness in the way Terms and Conditions are set out | 69 |
| Pillar 5: 'Treating Customers Fairly' | 75 |
| Pillar 6: Protecting Customers | 79 |
| Pillar 7: 'Treating Bankers Fairly' | 83 |
| Pillar 8: Empowering Customers | 87 |
| SECTION 6 | |
| Towards a Fair & Inclusive Banking Sector | 91 |
| SECTION 7 | |
| The 100 Recommendations of the Task Force | 95 |
| SECTION 8 | |
| Selected References | 106 |
| Legends | 107 |

Section 1

- Letter of Transmittal
- Composition of the Task Force
- Acknowledgements
- Acronyms



Letter of Transmittal

6 June 2014

Mr Rundheersing Bheenick
Governor
Bank of Mauritius
Sir William Newton Street
Port Louis

Dear Governor,

Banking Your Future: Towards a Fair & Inclusive Banking Sector

I am pleased to submit the Report of the Task Force on Unfair Terms and Conditions in banking contracts, entitled: *'Banking Your Future: Towards a Fair & Inclusive Banking Sector.'*

The Report proposes measures that provide the basis for a meaningful reform of the banking sector. If successfully implemented, these measures will bring about a change in culture, and pave the way for a fairer banking sector.

I propose that this Report be released for Public Consultation.

Yours respectfully,



Sonali Sewraj-Reetoo
Chairperson

Composition of the Task Force

Bank of Mauritius Members

- Sonali Sewraj-Reetoo (Chairperson) Chief - Legal Services, Governor's Office
- Lily-Claude Bastien-Sylva Analyst, Governor's Office
- Dhirajsingh Rughoobur Analyst, Governor's Office

External Members

- Harish Bundhoo Chairperson, Price Observatory
- Guy Fletcher Former Commercial and Investment Banker
- Mario Hennequin Banking and Finance Consultant, former Director of Retail Banking
- Harry Sutherland Investment Banker

Acknowledgements

On behalf of all the members of the Task Force, I would like to thank Mr Rundheersing Bheenick, Governor, Bank of Mauritius, for his unflinching support throughout this exercise. Without Governor Bheenick's vision and determination to achieve a fairer banking sector, this report would not have existed.

My deep gratitude goes to Ms. Lakshmi Appadoo, Head-Governor's Office. She has been instrumental in bringing this report to life.

My profound appreciation extends to Ms. Vijaylaxmi Ramdonee, Bank Officer, Supervision Department, who has provided us with invaluable assistance in our work.

Special recognition goes to all those who have shared with us their experiences and perspectives. Their insight is at the heart of this report.

No project of this importance can be accomplished without the committed effort of a strong and dedicated team. My special thanks go to all the members of the Task Force.

Finally, I am grateful to all those who have contributed, in one way or another, to this report.



Sonali Sewraj-Reetoo
Chairperson

Acronyms

| | |
|----------------|--|
| AER | Annual Effective Rate |
| AML-CFT | Anti-Money Laundering and Combating the Financing of Terrorism |
| APR | Annual Percentage Rate |
| ATM | Automated Teller Machine |
| BPA | Borrower Protection Act |
| FATF | Financial Action Task Force |
| FSA | Financial Services Authority |
| KFiC | Key Facts in Contracts |
| KYC | Know Your Customer |
| MBA | Mauritius Bankers Association |
| MCIB | Mauritius Credit Information Bureau |
| MDR | Merchant Discount Rate |
| NGO | Non-Governmental Organisation |
| NPS | National Payment Switch |
| PLR | Prime Lending Rate |
| TBF | 'Treating Bankers Fairly' |
| TCF | 'Treating Customers Fairly' |
| VAT | Value Added Tax |

Section 2

- Preamble
- Executive Summary



“... I would like to say that I am sure the interest charges will be less than those we pay now, for instance, it is the usual rule for commercial banks to pay 6½ per cent and later on to lend this at about 7½ per cent to local industries or to local people, hardly making much out of the transaction. We are hoping that with proper administration and better methods and procedure of banking, the interest charges will certainly be lower than those we are accustomed to pay now...”¹

Sir Seewoosagur Ramgoolam (1966)

Preamble

1. **'Banking services are not meeting our requirements!'** This is what comes out of the complaints that the Bank of Mauritius has been receiving from bank customers.

2. Customers feel that banking services are too expensive. They feel that they are being unfairly treated. They feel that their hard-earned money is being used to generate substantial profits for shareholders, while they are being made to pay high interest rates, and onerous fees and charges. Their grievances indicate that there is a loss of trust in the sacrosanct relationship between the bank and its customers.

3. The frequency of the complaints and their varied nature became a source of concern to the Bank of Mauritius.

4. Mr. Rundheersing Bheenick, Governor, Bank of Mauritius, urged banks, on a number of occasions, to be more attentive to the needs of customers. Despite his repeated calls, the complaints continued.

5. Governor Bheenick decided that it was time to act. He set up a Task Force to investigate the terms and conditions of banking contracts. Members of the public were invited to take up the debate and to put forward their submissions so that, collectively, a more balanced and effective solution could be achieved. The objective of this exercise was to help banks and customers strike a fairer deal.

6. Governor Bheenick's decision was a timely and, undoubtedly, bold one. His foresight, and determination of moving "... towards a vision where the interests of banks are more aligned with those of the wider population",² play a decisive role in giving a new direction to the banking sector.

7. It is the first time, in its 47 years of existence, that the Bank of Mauritius has set up a Task Force of this kind. It is also the first time that the Bank of Mauritius is engaging in an exercise of public consultation.

Public Consultation

8. The Task Force has been set up to give customers an opportunity to voice out their concerns and share their grievances. Their voices have not gone unheard. At the information-gathering stage, we listened. In this Public Consultation Document, we are responding to their pleas, grievances and proposals.

9. We thank all those who have taken the time to bring their contribution to the banking reform initiative that we are proposing in this Public Consultation Document.

10. We welcome and encourage the public at large, consumer associations, non-governmental organisations, welfare associations, and banking and real sector operators to contribute further, by commenting on the recommendations set out in this Public Consultation Document.

11. The Bank of Mauritius will receive comments and proposals on the recommendations made, until 6 October 2014.

Preamble

12. Comments and proposals may be made to the Bank of Mauritius:

- by email on sdg@bom.mu;
- in person at the dedicated desk (Tel: 202 3802) that the Bank of Mauritius has set up to help members of the public who wish to make comments; or
- in writing to:
The Second Deputy Governor
Bank of Mauritius
Sir William Newton Street
Port Louis, Mauritius

13. **The voice of each stakeholder matters.**

Executive Summary

Introduction

14. The submissions received from members of the public provide an insight into the profound resentment of customers. They use strong words such as “*exorbitant*” and “*extortionate*” to qualify banks’ fees and charges. One customer describes the banking relationship as “*an asphyxia of customers by banks*”.

15. Customers are angry about the ‘excessive’ level of profits registered by some banks. They also complain, amongst other things, about the lack of transparency of fees and charges, the absence of information, the inability to compare products, the difficulty to switch banks, the complexity of language and style used in bank documentation, as well as the unsatisfactory services being offered by banks.

16. We are recommending, in this Public Consultation Document, a package of reforms, which includes the abolition of certain fees and charges, to address mounting concerns which clamour for intervention.

17. Customers are also concerned about interest rates. They feel that interest rates are too high on loans and too low on savings. Although interest rate complaints rank high on the list of submissions, we have not made any recommendation in this respect, since the Bank of Mauritius is not empowered to regulate interest rates. It is worth noting that proposals have already been made to the Ministry of Finance and Economic Development, to empower the Bank of Mauritius to regulate interest rate spreads.

18. We feel that the power of the Bank of Mauritius to regulate fees and charges will not effectively address the issue of high-priced banking services, unless and until, it is complemented by the power to regulate interest rate spreads. There is cause for concern that income foregone through regulated fees and charges, gets translated into higher borrowing costs and lower deposit remuneration.

Structure

19. This Public Consultation Document is made up of five main sections:

Section 3: ‘The Customer Speaks’ - a snapshot of some of the submissions received.

Section 4: ‘Defining Fairness’ - the minimum criteria that constitute fairness.

Section 5: ‘The Eight Pillars of Fairness’ - on which the recommendations of the Public Consultation Document, rest.

Section 6: ‘Towards a Fair & Inclusive Banking Sector’ a banking sector where ‘*Fairness: First and Foremost*’ is the motto.

Section 7: ‘The 100 Recommendations of the Task Force’.

Scope

20. The recommendations, contained in this Public Consultation Document, relate to products and services offered by banks to individual customers in the Mauritian domestic market. This does not preclude banks, providing services to corporate clients or to customers in the global market, from taking on board any applicable measure. Non-bank deposit taking institutions may also take on board any measure applicable to them.

21. The present exercise is not meant to be an exhaustive review of all aspects of personal banking services. It is one of the several initiatives that form part of the ongoing banking review and reform agenda of the Bank of Mauritius.

Executive Summary

Our Approach

22. Our first step, in this exercise, was to undertake a detailed review of the submissions received from members of the public.

23. We have been significantly guided, in our work, by these pertinent submissions. We have, however, not limited ourselves to them.

24. We are of the view that the terms and conditions of banking contracts give a good indication of whether the parties are striking a fair deal. Our next step was, therefore, to undertake a two-tiered review of the terms and conditions of banking contracts (i) those governing fees and charges and (ii) those setting out the rights and obligations of parties to banking contracts.

25. We then compared our banking practices with those prevailing internationally, and have found that, in many respects, there is room to improve the customer's banking experience.

26. We have reached the conclusion that, whilst some of the submissions may be valid, not all concerns expressed are justified. In this Public Consultation Document, we are making recommendations on the issues which, in our view, warrant intervention.

Defining Fairness

27. Fairness is the guiding principle all through this Public Consultation Document, whether in the setting up of the Task Force, the analysis of submissions, the examination of contracts, and the formulation of recommendations. We think it essential, therefore, to set out our definition of fairness.

28. In our view, fairness is achieved when, at a minimum, the following four elements are present:

- (i) Banking is Accessible to All;
- (ii) Fees and Charges are fair;
- (iii) Terms and Conditions setting out the rights and obligations of the parties are fair; and
- (iv) The way, in which all the Terms and Conditions are set out, is fair.

Our Recommendations

29. In the formulation of our recommendations, we have been guided by the need to capture the above elements of fairness. We have also borne in mind that it would be neither practical nor desirable that the Bank of Mauritius repeatedly intervenes, to ensure that the bank-customer relationship is fair.

30. Our recommendations, therefore, rest on eight pillars, **'The Eight Pillars of Fairness'**. We are also recommending that banks review their pricing strategy by adopting a principle-based approach to pricing, **'The Seven Principles'**. In our view, the successful implementation of all our recommendations will help both banks and customers achieve a fairer deal, whilst limiting the need for constant regulatory intervention.

Pillar 1: Banking is Accessible to All

31. **Banks should offer a free basic bank account, the 'Compte GO'.** The 'Compte GO' will have sufficient features to meet the basic needs of a customer. It will be available to all Mauritian citizens, above the age of 16. The 'Compte GO' will have no minimum balance requirement, and will offer a free ATM/debit card, with unlimited access to the bank's ATM. It will be a no-frills account, and will attract no fees. The 'Compte Go' will address the concerns of those who find banking too expensive, and will be an important step towards the vision of the Bank of Mauritius to bank the unbanked.

Pillar 2: Fair Fees and Charges

32. Pillar 2 rests on three building blocks:

- (i) Building Block 1: Reviewing the Pricing Strategy of banks;
- (ii) Building Block 2: Promoting Competition; and
- (iii) Building Block 3: Enhancing Transparency.

Building Block 1 Reviewing the Pricing Strategy of Banks

33. Banks should ensure that their pricing strategy complies with the Guiding Principle that 'Fees and Charges should be fair to both the customers and the banks'. In so doing, they should comply with '**The Seven Principles**' detailed in Paragraph 93.

34. We have identified fees and charges, which may fall short of the Guiding Principle, and we are recommending the abolition of 19 fees and charges. We have also identified 13 other fees and charges which, in our view, require further examination.

35. Banks should obtain the prior approval of the Bank of Mauritius before introducing new fees or increasing existing fees. Where fees and charges are lowered, no approval is required unless the proposed revision results in a reduction in the benefits or features of the products offered.

Building Block 2 Promoting Competition

36. Banks should compete both on price and service. Enhanced competition will provide a fairer deal to customers through reasonable prices, good quality products and better service.

37. We recommend the following five measures to promote competition:

- (i) Practices which may be viewed as being anti-competitive should be eliminated;
- (ii) Alternative market players, like credit unions, should be equipped for competition;
- (iii) Banks should provide their customers with clear information on how to move to another bank;
- (iv) A study focused on ensuring customer mobility should be commissioned by the Bank of Mauritius; and
- (v) Transparency should be enhanced.

Building Block 3 Enhancing Transparency

38. Transparency in the market will enable customers to take more informed decisions and will spur competition. This should, in turn, help to bring down the prices of products and services.

- (i) Banks should use the same name to describe the same products and services. The terminology of the different products and services offered by banks is being standardised. A list of products and services, along with the corresponding proposed new standard appellations, has been prepared. One example of such standardisation relates to the fee that banks variously describe as 'service charges', 'ledger fee', 'maintenance fee', 'activity fee', and for which we recommend the standard appellation of 'service fee'. We recommend that the list be finalised after discussion with banks.

Executive Summary

(ii) The disclosure of fees and charges is also being made uniform e.g. 'service fee' which was, up to now, variously disclosed by some banks as a flat fee per month, by others as a flat fee per half year, or as a fee per number of transactions, would henceforth be reportable as a flat fee per month. Banks should adopt this standardised approach in the disclosure of their fees and charges.

(iii) A comparative table, '*The BankSmart Window*', setting out all fees and charges of banks alongside one another, is being devised. '*The BankSmart Window*' will use the standard terminology and disclosure described at (i) and (ii) respectively.

(iv) Banks should only charge for the services which will appear on '*The BankSmart Window*'.

39. Other recommendations to enhance transparency are detailed in Paragraph 179.

Pillar 3: **Fair Terms and Conditions of Contracts**

40. When drafting contracts, banks should consider their customers' legitimate interests, their weaker bargaining position and their lack of experience.

41. We have examined some contracts and identified ten clauses, which banks should revisit to ensure that they are fair to the customer. Examples of these clauses are those containing unequal termination rights and unduly harsh obligations on borrowers. (*Paragraphs 226 to 262*)

Pillar 4: **Fairness in the way Terms and Conditions are set out**

42. Banks should ensure that, when they draft contracts, they adopt the General Principle that 'Contracts should be drafted in clear and simple terms.' In so doing, they should comply with a number of provisions that we have detailed in Paragraph 278.

43. We recommend, for example, that the use of technical terms, archaic English and very long sentences (with some even running over 38 lines and containing 501 words) be abandoned. We also recommend that sentences do not contain double negatives or exceptions to exceptions.

44. All credit agreements should contain, by way of summary, at the beginning or the end of the document, *on a separate sheet*, the Key Facts in Contracts, the 'KFIC'.

45. The 'KFIC' should be a standard one-sheet template, and should set out in simple and clear language, the most important terms and conditions of the contract. It should be standard in terms of layout, font and colour so as to enhance comparability of offers across banks.

Pillar 5: **'Treating Customers Fairly'**

46. Banks should adopt the '*Treating Customers Fairly*' initiative, and should achieve the following six outcomes³:

(i) Customers are confident that they are dealing with banks where the fair treatment of customers is central to the corporate culture.

(ii) Products and services are designed to meet the needs of identified customer groups, and are targeted accordingly.

(iii) Customers are provided with clear information and are kept appropriately informed before, during and after the point of sale.

(iv) Where customers receive advice, the advice is suitable and takes account of their circumstances.

(v) Customers are provided with products, that perform as banks have led them to expect, and the associated service is both of an acceptable standard, and as they have been led to expect.

(vi) Customers do not face unreasonable post-sale barriers, imposed by banks, to change the product, switch provider, submit a claim or make a complaint.

Pillar 6: Protecting Customers

47. The framework for consumer protection should be more robust and responsive to customers' needs. A proper framework for the protection of bank customers should consist of the following six key features:

(i) A legally-binding code, **'The Protection of Bank Customers Code'**, to protect bank customers;

(ii) Unified and strengthened laws for the protection of bank customers;

(iii) An Ombudsperson for the financial services sector;

(iv) Specialised tribunals or courts, at different levels, dealing with banking and financial matters;

(v) Financial advisory units offering free financial advice to the vulnerable groups; and

(vi) A more active role for the Mauritius Bankers Association in developing case studies and examples of best practice for customer service, conducting research on ways to improve market conduct, and providing training for banking staff.

Pillar 7: 'Treating Bankers Fairly'

48. Customers should abide by the concept of *'Treating Bankers Fairly'*, the TBF. The objective of the TBF is to ensure that customers act fairly towards banks throughout the duration of the banking relationship.

49. The two principles of the TBF concept are that

(i) Customers should act in a responsible manner.

(ii) Customers should take responsibility for their actions.

50. Consumer Associations and other NGOs should engage in the task of embarking customers on the road to *'Treating Bankers Fairly'*.

Pillar 8: Empowering Customers

51. Customer Empowerment should be at the centre of this reform initiative. We consider that the Customer Empowerment initiative would best achieve its objective, if undertaken jointly by the banking industry and the Bank of Mauritius. The collaboration of all stakeholders is critical in this endeavour. Giving customers an edge in the bargain is the ultimate objective of empowering customers.

Concluding Remarks

52. We are recommending many fundamental changes to the bank-customer relationship, which place the focus on customers' interests. We recognize that these far-reaching changes cannot happen overnight. The reshaping of the banking industry will require the collaboration of all. Banks may view these changes as a challenge. We invite them to see in these changes an opportunity, an opportunity to connect with their customers, an opportunity to improve their image in the eyes of the public, an opportunity to rebuild the trust that befits the role of a bank. We invite them to start the journey towards **'Banking Your Future'**.

Section 3

- The Customer Speaks



The Customer Speaks

Once banks approve loans, they issue offer letters to clients which contain conditions attached to the proposed facility. Such offer letters are normally quite brief being one or two pages long. However, on the day of the signature of the loan deed, the borrower is asked to sign on the spot numerous page of a thick document filled with complex and technical terms beyond his understanding. At this stage of the process, he/she cannot ask to take it home or to a legal counsel before signature for the simple reason of what I call imbalance of the parties.

The poor borrower is begging for a few thousand rupees from the mighty banker and if one dares open one's mouth too wide, then the facility can simply be withdrawn!

I suggest that loan documents should be made as simple and concise as possible and THE OFFER LETTER AND THE PROPOSED CONTRACT TO BE SIGNED SHOULD BE HANDED OVER TO THE BORROWER AT THE SAME TIME! This will give him/her ample time to check, recheck, crosscheck and countercheck the contents before signing anything.

Regarding loans, commercial banks do not provide enough information on how interests are calculated on the capital. There is no specific mention about the calculation on the contract except the interest rate. Moreover, we receive our loan statement with capital and interest separated on the sheet. More details should be provided on the formula used. We can thus verify the loan statement against an excel sheet (drafted by ourselves) with the formula used by bank.

All my documents have been signed hastily at home. On that very day I wanted to complain at the BOM but I realized that I had already signed the documents without reading.

Suggestions: The applicant should get a personal copy of the deed to examine at leisure before signing.

...observations on what it considers as an asphyxia of customers by Banks.

We hope that the TF will give due consideration on the above and initiate appropriate measures to help customers have a breath of fresh air.

Further decreases in the Repo rate have not led to a decrease in the rate of interest on my loan. I have paid an enormous amount as shortfall to the..., caused by accumulation of outstanding interests.

There should be special court for banking matters at low cost for low income customers.

I could not repay my loan. Now the banks are claiming me an exorbitant sum which I will not be able to pay. The penalties and additional interest which seem to me exorbitant & is causing me prejudice.

We pay a very high interest on loan. It is not given as charity

No agreement stipulates conditions of breach for unfairness by a bank towards a customer.

Clients are bound to comply to bank terms and conditions which become effective upon opening of a bank account itself, however does a bank have obligations vis a vis a customer?

When applying for a mortgage, why do banks charge an application fee? The fees are set at a percentage of the loan, therefore the higher the application fees the higher the loan amount.

Is the application process different if it is over Rs3m? How is it different that it commands a higher fees?

I am writing this letter because I believe that ... is not treating customers fairly and also charging excessive fees

...the banking industry is distinguishing itself by its greed and arrogance. This is not good for anyone; it bodes ill for the future.

Banks in general are very quick at charging penalties on failed standing orders, unpaid loan instruments etc. However, when it comes to refund of overpaid items or issue erasure notes on full repayment of a facility, they do so at a slower pace than people in a comatose state.

...if you have say a housing loan, and you wish to change bankers, it is such an obstacle that one just throws in the towel instead of going through painful, lengthy and costly procedures

Despite being offered very low rate of interest by other institutions for refinancing the loan, I have been unable to take advantage of the opportunities, because of the high early repayment penalty.

Practice of applying penalty and deducting A/c is unfair when a/c falls below Rs X...
At least at X amount outstanding, the A/c may not earn interest, but not reduced by Y amount as penalty/charge.

Complex contracts

Unclear or Lack of information

High interest rates

Unfair terms



The Customer Speaks

Each time that I make a withdrawal at the counter of the bank Rs20 is charged for fees. When I enquired they told me that if I had a card I will not pay that fees. I have taken the card because I did not have choice. I find this very unfair to pay Rs20.- each time that I have to withdraw money. I am a pensioner and at the end of the month half my pension would have gone...

The top commercial banks charge a fee of some Rs15 per sheet for a copy of the Statement of Account. This is just exorbitant when we know that a copy of any sheet, except coloured sheet, costs no more than Rs2. The fee for internal money transfer effected within two days is approximately Rs100.

Is this fair?

The duties performed in connection with the above and many others do not involve any special skill or extra work after normal working hours!!! So why claim such exorbitant fees? In fact these services should have been provided free of charge.

.... by charging a small amount, people don't bother to fight them back. It is pushing the limit of psychological acceptance.

Ask for some copies of statement, you will see how much they will charge you.

This practice of charging for everything once applied to commercial clients which can claim a tax credit for their banking costs. Retail clients cannot. Yet, to build your house you must borrow money. In the end, despite the unfairness of the system, you are left with no choice but to pay the fees. Either that, or you don't have a roof over your head.

Whenever banks announcing each trimester their astounding hundreds of millions or several billions of rupees profit, ordinary people cannot help but feel the urge to revolt.

This is way too much, and banks – although they will be stoutly defended by their own “banksters” that they are committing no sin - have morally no right to brag about their unscrupulous enrichment strategies when they know how to cull the living out of ordinary citizens

Legal fees are also charged and the amount usually depends on the amount of the loan. Banks have their own legal department with lawyers being paid a fixed salary irrespective of the number of loan applications they process. So I suggest that only a fixed nominal legal fee be charged instead of ad valorem or case-specific ones.

All bank clients receive their statement of account every three months. In between these three months, if you ask for a statement, you have to pay a bank charge of Rs75 for it.

Unbelievable!

Let's see how much it costs to produce one such sheet.

1 sheet of A4 paper = 0.25 c
Ink = 0.25c
Electricity & Labour = 0.50c

Total = Rs1.00

I am trying to rationalize such a charge [the transfer charge]. There are no additional electricity charges to run the computers when a transfer is made. It does not take more than one clerk to process the request. It is a transaction that should not take more than 1 minute. Au contraire, it would take more than one minute for a teller to process a cheque had I chosen the paper option.

And I would not have to pay a fee to cash my cheque. I believe that this is a form of legalized robbery.

In Mauritius... a bank charges a Swift fee and an additional commission stated as 'in lieu of exchange fees'.

This appears to me to be a blatantly inequitable practice. As much as to state: "as we are unable to earn a currency exchange turn, we're going to invent a new commission so that we still earn extra fees". This is outrageous.

Why also charge a legal fee to process the [loan] application?

The contracts are already drawn up and it is simply a matter of typing the name of the mortgagees on the documents and perhaps a quick review by the legal department, nothing that can justify a fee.

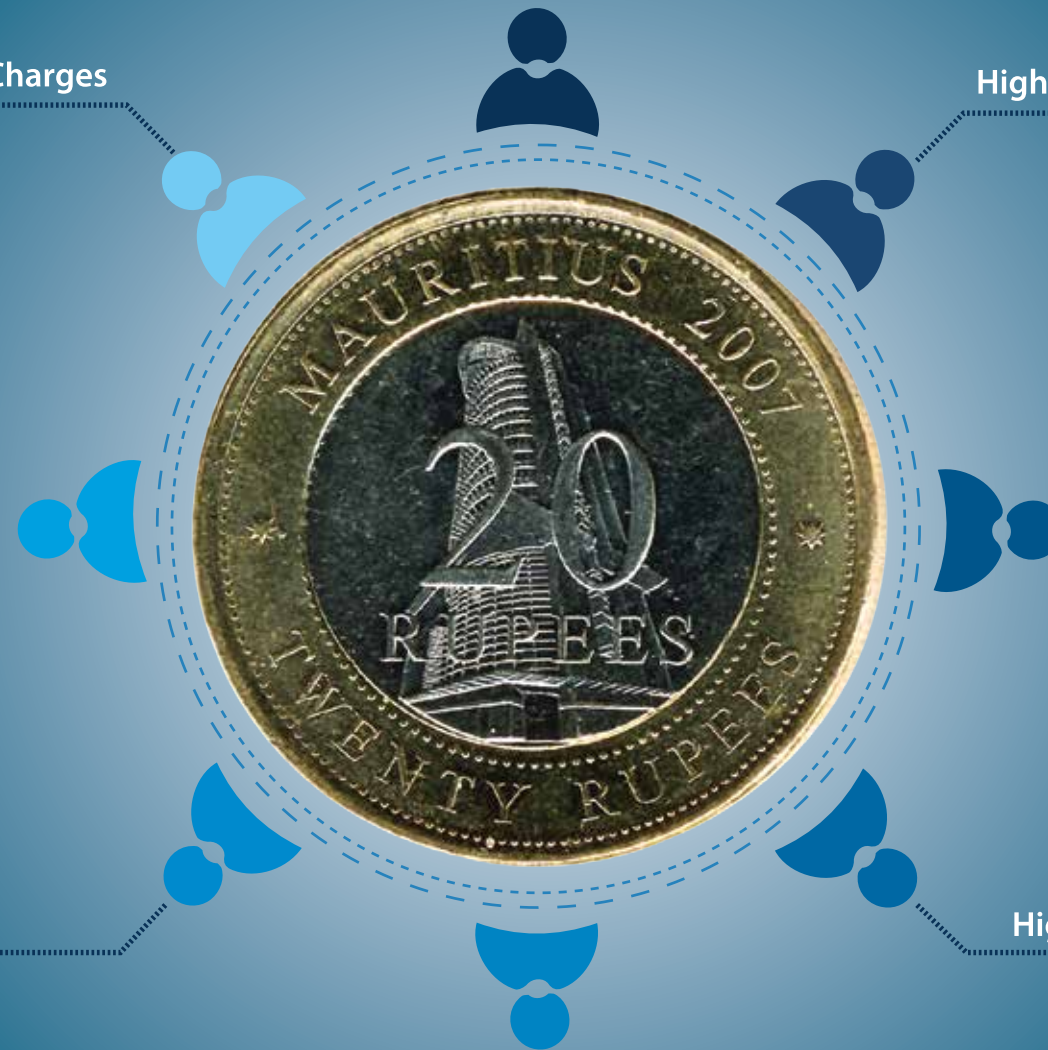
There is also the fees on credit cards. Don't banks earn 3% (or even more) commission of the amount spent on a credit card? Why charge the customer an additional yearly fee to use the card? The banks end up double-dipping: a fee for the credit card client and commission from the merchants.

High Bank Fees & Charges

High Bank Fees & Charges

Unfair treatment

High Bank Fees & Charges



Section 4

- Defining Fairness



*“These men ask for just the same thing,
fairness, and fairness only.
This, so far as in my power,
they, and all others, shall have.”*

Abraham Lincoln

Defining Fairness

Defining Fairness

53. The Task Force was set up with the mandate of helping both banks and their customers strike a fairer deal.

54. Defining fairness has not been easy. No universal criteria exist for the application of fairness, and different countries define the concept of fairness in a variety of ways.

55. After careful consideration and discussion, we have concluded that fairness is achieved when, at a minimum, the following four elements are present:

- (i) Banking is Accessible to All;
- (ii) Fees and Charges are fair;
- (iii) Terms and Conditions of the contract are fair; and
- (iv) All Terms and Conditions of the contract, including fees and charges, are set out in a fair manner.

56. We have been guided by the need to capture the above elements of fairness and have borne in mind that it would be neither practical nor desirable that the Bank of Mauritius repeatedly intervenes to ensure that customers are being treated fairly.

57. Our recommendations, therefore, rest on eight pillars, **'The Eight Pillars of Fairness'**, which, if successfully implemented, will help both banks and customers achieve a fairer deal, whilst limiting the need for constant regulatory intervention.

58. The Eight Pillars of Fairness are

Pillar 1 Banking is Accessible to All

Pillar 2 Fair Fees and Charges

Pillar 3 Fair Terms and Conditions of Contracts

Pillar 4 Fairness in the way Terms and Conditions are set out

Pillar 5 'Treating Customers Fairly'

Pillar 6 Protecting Customers

Pillar 7 'Treating Bankers Fairly'

Pillar 8 Empowering Customers

The Customer Speaks...

"... they are making money by using our money and charging us a fee before we are allowed to use it. Where is the fairness in all of this..? Please tell me where."

Section 5

- The Eight Pillars of Fairness



Pillar 1

- Banking is Accessible to All



“Consumers by definition, include us all.

They are the largest economic group in the economy,

affecting and affected by almost every

public and private economic decision...

But they are the only important group...

whose views are often not heard.”⁴

President John F. Kennedy (1962)

A Free Basic Bank Account

Introduction

59. Customers perceive banking as being too expensive. However, banking is a need in any modern society. The Mauritian population is increasingly using electronic platforms for its transactions e.g. payments of utility bills by direct debit, purchase of consumer goods online, and internet and mobile banking. This is a normal transition in a modern society, and Mauritius is no exception. In the years to come, we are likely to become a cashless society.

Banking is a Right

60. We are of the view that the 'High-Banking-Cost' perception and the fundamental need for banking services in a modern society have to be reconciled. During our discussions, the idea that **banking should be a right**, started to germinate. After careful consideration, we have come to the conclusion that there is a need for a bank account that will enable a customer to conduct his basic banking activities, free of charge.

61. We, therefore, recommend that a basic bank account, the '**Compte GO**', having the features set out below, be made available:

- (i) No minimum balance;
- (ii) Free ATM/ debit card;
- (iii) Unlimited access to the ATM of the same bank;
- (iv) No charge for cash deposits/withdrawals;
- (v) No charge for receipt of money through electronic payment channels;

(vi) No charge for salary, pension, and social security benefit credits;

(vii) No maintenance, or any other, fee;

(viii) No cheque book facilities; and

(ix) No overdraft facilities.

Eligibility Criteria

62. We consider that the '*Compte GO*' should be available to all Mauritian citizens, above the age of 16.

63. Holders of '*Compte GO*' will not be eligible to open another account either with the same bank or with any other bank.

64. Above a certain balance, to be determined during the consultation period, the '*Compte GO*' will be interest-bearing.

65. Customers can upgrade the account (with appropriate conditions such as fees) to suit their additional needs and/or economic interests, in line with their improved financial capability.

66. Existing account holders will be automatically eligible to the '*Compte GO*', but will have to forego other facilities attached to a standard account.

Providers of the 'Compte GO'

67. Banks in Mauritius, engaged in retail banking, have their own target markets. At this stage, we do not think that it would be appropriate to identify which banks should provide the 'Compte GO'. We are convinced that we can rely on the industry to reach a consensus on which banks will offer these accounts. The aim is to achieve a reasonable geographical coverage, and to witness the early emergence of a viable account base at national level, including Rodrigues.

Banking the Unbanked

68. Mauritius is considered, in the Sub-Saharan region, to be the country with the highest number of accounts per head. It is, nonetheless, a fact that there are still sections that are underserved or even unserved. A recent study of the 'Consultative Group to Assist the Poor' of the World Bank revealed that about 20% of the population in Mauritius is still unbanked. It is not our intention, here, to discuss the issue of financial exclusion in Mauritius, but we do believe that access to bank accounts should be opened up, for the greater benefit of the society.

69. The purpose of the 'Compte GO' is, therefore, two-fold. While it will address the concern of those who find banking too expensive, it will be an important step towards realising the vision of the Bank of Mauritius of banking the unbanked.

Sensitisation

70. It serves no useful purpose if banks offer a free basic account, and the public is not aware of its existence. Communication is, therefore, crucial. The Bank of Mauritius, together with the banking industry, should educate the public, not only on the existence of the 'Compte GO', but, also, on the importance of being banked. Banks, offering this service, should market the product in such a way that people can simply walk into a bank and get this account 'off-the-shelf'.

No Mis-selling

71. It is crucial for the front line staff of banks to be properly trained. They need to have a thorough knowledge of their banks' client base, so that they are able to identify those who will benefit the most from having a 'Compte GO'. They will be called upon to advise customers on the merits, namely the cost savings, of holding a 'Compte GO', and on the facilities they will have to forego if they opt for the 'Compte GO'.

72. We recommend that banks put in place the necessary controls to ensure that there is no mis-selling, i.e., sales teams do not deliver the wrong outcome to the customer. We recommend a close monitoring of the number of persons who are eligible for the 'Compte GO', and who have opened one over the year.

Less Restrictive KYC

73. Stringent KYC requirements, whilst an integral and necessary component of the AML-CFT framework, may be an obstacle for those in the lower income group to open an account.

74. International standard-setters, like the FATF and the Basel Committee on Banking Supervision, have recommended that the KYC requirements, adopted by banks, should not be so restrictive as to inhibit financial inclusion.

75. Against this backdrop, many jurisdictions have simplified the due diligence process by introducing less restrictive KYC requirements for customers in the lower income groups.

76. We recommend that the Bank of Mauritius considers reviewing the KYC procedures without any undue relaxation of the set standards, to ensure that people from the lower income segments are not denied the possibility of opening a 'Compte GO'.

A Free Basic Bank Account

77. A threshold, below which banks may be allowed to open accounts with an elementary due diligence, needs to be determined. The documents, to be provided by the prospective customers, should be agreed upon. The transactions, which will be permissible on accounts opened on the strength of the basic due diligence, should also be defined. Accordingly, a risk assessment exercise at national level needs to be carried out.

78. We recognise that reviewing the KYC procedures will require not only the collaboration of many stakeholders, but also amendments to the law.

Pillar 2

- Fair Fees and Charges



BUILDING BLOCK 1

Reviewing the Pricing Strategy of Banks



“...the banking licence...is the regulatory authorisation given to a bank for accepting uncollateralised deposits, at a relatively low cost, for virtually unlimited amounts, from the members of public, who may not be financially very savvy. Moreover, the banks are also allowed to deploy a very high degree of leverage through mobilisation of deposits, on a relatively small capital base... it is only reasonable to expect that the bank customers, who entrust their hard-earned money to the banks in good faith and are the primary source of low-cost funding as well as those who provide revenue to a bank, deserve to be treated fairly and efficiently in provision of various banking services.”⁵

V Leeladhar (2007)

Reviewing the Pricing Strategy of Banks

Introduction

79. The extract from the address of Mr V Leeladhar, Former Deputy Governor of the Reserve Bank of India, highlights three critical aspects of the sacrosanct bank-customer relationship.

(i) Banks owe their legitimate existence to the banking licence that the regulator grants them.

(ii) This licence is granted with a seal of trust that banks will not put at risk the hard-earned money of customers.

(iii) Banks will, in return, treat their customers fairly, and will offer good quality service.

80. Whilst the bank-customer relationship would ideally be founded on these precepts, our investigation of the submissions indicates that they might be in peril.

81. The submissions received provide an insight into the profound resentment of customers. They use strong words such as “exorbitant” and “extortionate” to qualify fees and charges. One customer describes the banking relationship as “an asphyxia of customers by banks.” The profound feeling that they are victims of injustice, is palpable.

The Customer Speaks...

“...what the bank is charging amounts to abusive practices. They are already making money on the difference in interest rates between what they give to depositors and what they charge to mortgagees. And anything else is gravy to greedy bankers who are guilt-free in charging the most outrageous fees to their clients knowing that they have nowhere else to go but to one of the banks for their financial needs.”

82. Customers feel unfairly treated because their hard-earned money is used to generate substantial profits⁶ for banks, while they are made to pay what they perceive as being exorbitant fees and charges.

83. Whilst we cannot obviate the anger and resentment of customers, it is important to remember that banks are profit-driven businesses, and that a profitable bank is a source of comfort for a regulator.

84. Irrespective of whether the feeling of unfairness is well-founded, it is evident that there is an unequal bargaining power between banks and their customers. It is partially to restore some balance in this relationship that the Bank of Mauritius is empowered to regulate fees and charges.

The Customer Speaks...

*“All sorts of horrible and fantastic charge,
all sorts of inventions to grip the ‘pep admirab’”.*

85. Interestingly, this complaint of unfairness is not confined to Mauritius. Bank customers, in many other countries, report similar grievances: bank fees and charges are too high, and as customers, they do not seem to be able to do anything about it. Countries, all over the world, seem to be confronted with the same difficulties.

Our Approach

86. We began by reviewing the submissions of those who had come forward during the information-gathering stage. Since the submissions included complaints about fees and charges, we

decided to review the whole list of fees and charges of the different banks to gain a better understanding of the issues.

87. We have focused on the fees and charges levied by banks on individuals in the domestic market, and have tried to understand the rationale behind them. Some fees seem justified while the rationale for others is not immediately obvious.

88. In line with our mandate, we have considered fairness to the customer, and fairness to the bank, as the benchmarks against which we have reviewed the fees and charges listed by the banks. In our assessment, we have acknowledged, on the one hand, the right of banks to levy a fair charge for the service provided and, on the other, the right of customers to be fairly treated in the process.

89. After a careful examination of the key issues, and a review of international best practices, we have opted for a principle-based framework, within which we are recommending direct intervention by the Bank of Mauritius, and are making proposals for reform, and for further action, beyond the existing powers of the Bank of the Mauritius.

Structure of Building Block 1

90. In this Building Block:

- A. We are recommending a framework, made up of a general principle and seven underlying principles of fairness, for the pricing of products and services offered by banks to individuals in the domestic sector;
- B. We have identified a list of fees and charges that would fall under the seven principles of fairness defined below;
- C. We are listing out the fees and charges for those products and services that deserve further examination; and
- D. We are recommending further measures that the Bank of Mauritius should adopt.

A. Framework for pricing

General Principle

91. We recommend that banks adopt a principle-based approach to pricing i.e. the General Principle that: **'Fees and Charges should be fair to both the customers and the banks'** should be at the core of the pricing strategy of banks.

92. We have identified seven underlying principles, **'The Seven Principles'**, which we believe, would define fairness. These underlying principles are, by no means, all-encompassing but represent the minimum we expect banks to consider. We invite banks to expand on these principles and address other fairness issues which may come to light, when they review their pricing strategy.

The Seven Principles

93. The Seven Principles are as follows:

- (i) Banks should not impose fees and charges which may be viewed as being anti-competitive.
- (ii) Banks should not impose fees and charges for services which form part of the core features of the product.
- (iii) Banks should not impose fees and charges on processes which are meant to enhance their own internal operating model and/or risk management practices.
- (iv) Banks should not penalise customers twice for a single omission on their part.
- (v) Banks should apply 'penalty' or 'default' charges only to recover additional administrative costs.
- (vi) Banks should apply '*ad valorem*' charges only in limited cases, and subject to a reasonable maximum.
- (vii) Banks should charge, at cost price, 'third party services', which do not entail significant administrative costs to them.

Reviewing the Pricing Strategy of Banks

B. Fees and Charges falling under 'The Seven Principles'

94. We have identified some fees and charges, which may fall short of the principle of fairness as defined by **'The Seven Principles'** and address these in paragraphs 96 to 109 below.

95. We recommend that banks review their pricing structure to identify other fees and charges which run counter to the identified principles.

Principle 1

Banks should not impose fees and charges which may be viewed as being anti-competitive.

96. Competition is vital in a well-functioning market and should be encouraged. Banks levy certain fees e.g. 'account closure fee', 'standing order cancellation fee' and 'debit card cancellation fee'. When these fees are applied to a customer wishing to move to another bank, they increase the cost of switching banks. These fees may thus have an anti-competitive effect. We are of the view that any fee that might be an obstacle to a free and fair market should be abolished.

97. We, therefore, recommend that the following fees, whenever applied, be abolished when customers switch banks:

- (i) 'Account closure fee';
- (ii) 'Standing Order cancellation fee'; and
- (iii) 'Debit Card cancellation fee'.

98. We also recommend that the 'account closure fee' be abolished when customers wish to close their accounts.

Principle 2

Banks should not impose fees and charges for services which form part of the core features of the product.

99. We are of the view that banks should not charge for services which form part of the core features of the product. As an example, some banks charge fees for cash deposits and withdrawals. Cash handling is a core, important and integral part of banking, and we believe that there should be no charge for it.

100. The following fees fall in this category, and we recommend that they be abolished:

- (i) Fee for cash deposits and cash withdrawals, in rupees, at the counter;
- (ii) Fee for crediting salaries, pensions and social security benefits;
- (iii) Annual fee for a debit card;
- (iv) Fee for requesting an increase in credit card limits; and
- (v) Fee for transferring funds between accounts held by the same customer within the same bank.

The Customer Speaks...

"...to transfer money from one account to another, both belonging to you, you have to pay a transfer fee. I find it stupid."

"I prefer to withdraw cash and bank it in the other account free of charge, both transactions effected with the same cashier"

Principle 3

Banks should not impose fees and charges on processes which are meant to enhance their own internal operating model and/or risk management practices.

101. We are of the view that banks should not charge for processes which serve to enhance their own internal operating model and/ or risk management practices. Such processes do not add value to the product or service provided to the customer.

102. We, accordingly, recommend that the following fees be abolished:

- (i) 'Dormant account fee';
- (ii) 'Inactive account fee';
- (iii) 'Reminder fee' for dormant accounts;
- (iv) 'Reminder fee' for inactive accounts;
- (v) 'Reminder fee' for accounts in arrears;
- (vi) 'Ledger fee' for financing facilities; and
- (viii) 'Fee for site visits' associated with the grant of credit facilities.

Principle 4

Banks should not penalise customers twice for a single omission on their part.

103. The principle of fairness requires that banks do not apply fees twice for a single omission on the part of the customer. In other words, customers should not be penalised twice.

104. The following fees may, in our opinion, fall short of this principle:

- (i) *'Late payment fee' or 'returned payment fee'* – Where a late payment is triggered by a returned payment, and a fee is applicable, we recommend that banks impose either a 'late payment fee' or a 'returned payment fee', whichever is less costly to the customer.

- (ii) *'Late Payment Fee' or 'Over-limit fee'* – Where a late payment triggers an excess over limit, and a fee is applicable, we recommend that banks impose either a 'late payment fee' or an 'over-limit fee', whichever is less costly to the customer.

- (iii) *'Fee for falling below minimum balance'* – Where there is a minimum balance to earn interest, we are of the view that this is, in itself, a fee on the customer. The fee applicable for the balance falling below the required minimum is, in our opinion, a double penalty. We, therefore, recommend that this fee be abolished.

- (iv) *'Service fee' or 'penalty fee'* – Where there is an unauthorised excess over an overdraft limit, we recommend the application of either a 'penalty rate' or a 'service fee', whichever is less costly to the customer.

Principle 5

Banks should apply 'penalty' or 'default' charges only to recover additional administrative costs.

105. We are of the view that fairness requires that banks impose 'penalty' charges only to recover additional administrative costs incurred. We, therefore, recommend that banks review the 'penalty' or 'default' charges to ensure that these charges can be justified as additional administrative costs.

Reviewing the Pricing Strategy of Banks

Principle 6

Banks should apply *ad valorem* charges only in limited cases, and subject to a reasonable maximum.

106. *Ad valorem* charges are charges which are levied according to the value of the transaction. We are of the view that such charges should only be allowed if the operational cost and risk involved rise with the increase in value of the transaction. However, the charges cannot rise proportionately above a certain value. We, therefore, recommend that *ad valorem* charges be also subject to a reasonable maximum.

Principle 7

Banks should charge, at cost price, 'third party' services, which do not entail significant administrative costs.

107. One bank disclosed the 'fee for valuation report and survey' as follows:

"0.75% of loan amount with a minimum of Rs1,000 and a maximum of Rs10,000 or as prescribed by the valuer, whichever is higher."

108. This fee structure suggests that banks may earn a profit on the valuation report. We see no justification for this. We recommend that 'third party' services, which do not entail significant administrative costs to the bank, be charged, at cost price, to the customer.

109. When 'third party' fees are shared, there should be transparency as to which part is kept by the bank, and which part is paid to the 'third party'. Any additional fee, which is being imposed by the bank, should be disclosed as such.

C. Fees and charges which deserve further examination

110. There are a number of other fees and charges which, in our opinion, deserve further examination. They are as follows:

- (i) Penalty payable on deposits withdrawn before maturity;
- (ii) 'Service fee' on current account;
- (iii) Fee for balance falling below the required minimum for non-interest bearing accounts;
- (iv) 'Penalty fee' for returned cheques;
- (v) Fee payable on statements of accounts;
- (vi) 'Processing Fees' on loans;
- (vii) Fee for rescheduling loans;
- (viii) Commission *in lieu of* Exchange;
- (ix) 'Early Repayment Fee' on loans;
- (x) Fees for Certificates of Balance/ Letter for Travel/ Loan Balance Certificates/ Liability Certificates;
- (xi) Merchant Discount Rates; and
- (xii) Attorney's commissions.



Penalty payable on Deposits withdrawn before maturity

111. Term deposit accounts are usually accounts which earn a higher rate of interest than the normal savings accounts, since the money is tied up for a certain period of time. If the money is withdrawn, before the maturity date is reached, it usually attracts a penalty.

112. We find that the terms and conditions relating to the encashment of deposits, prior to the maturity date, (both for Rupee accounts and foreign currency accounts) are, in the case of some banks, unsatisfactory. The penalty payable (a) is not always clear; and (b) in some instances, seems on the high side.

A. Unclear Penalty Payable

113. In determining the applicable penalty, diverse formulations, which lack clarity, are used by some banks.

(i) The penalty charged is, at times, discretionary. One bank reports the penalty on encashment of deposits, prior to the maturity date, as being *"At the discretion of the bank and subject to penalty."* Another bank reports it as *"Penalty [is] charged on a case to case basis."* However, there is no disclosure of either the factors that will influence the decision or the penalty rate.

(ii) We also challenge formulations describing the applicable penalty as *"Interest paid at savings rate less penalty rate"* and *"Applicable penalty interest will be advised at the time of early withdrawal."* They do not specify the penalty rate, and the customer is not aware of the amount of penalty, unless and until, he wants his money back before the maturity date.

(iii) One bank reports the penalty as being *"1%"* without specifying the basis on which the *"1%"* will be calculated.

(iv) Reporting the penalty as being *"Penalty will be applied based on cost incurred by the bank in making up for the shortfall in funds"* is equally unsatisfactory. The customer is not in a position, at the time that he decides to invest in the term deposit account, to know or understand what the cost of shortfall will be.

114. Unclear disclosure of the penalty rate goes against the principle of transparency. Absence of information is also detrimental to competition since a customer cannot make an informed choice and shop around for the best deal.

115. We, therefore, recommend that any penalty payable by a customer for cashing in a deposit before its maturity date be set out in a clear and transparent manner so that the customer knows, in advance, the penalty payable.

B. High Penalty

116. One bank reports the penalty payable as follows:

"If the deposit is withdrawn before maturity but after 3 months a penalty interest of 1% p.a. applicable to the redeemed capital and the Interest Payable if pre-terminated between 3 and 12 months from date of deposit: savings rate will apply over the period actually covered by the deposit."

117. We are of the view that, where the depositor wants his money back before the maturity date, the penalty payable might be excessive if it causes the depositor's capital to be eroded.

118. We, therefore, recommend that any penalty payable by a customer for cashing in a deposit before its maturity date should not erode the customer's capital, but may merely reduce the interest earned by him.

Service Fee on current account

119. We have identified two issues relating to the monthly service fee on current accounts:

(i) The way banks calculate and report these fees differs from bank to bank, making it difficult for customers to compare costs across banks. Some banks apply a monthly fee. Others apply a fee on a half yearly basis. For some banks, the fees are dependent on the number of transactions on the account. Consequently, the way fees are reported makes it difficult, even for the most well-informed customer, to make a meaningful comparison; and

Reviewing the Pricing Strategy of Banks

(ii) There is a wide disparity in the level of fees charged by the different banks. One bank offers a free service; others charge a fee as high as Rs80 monthly. We find it difficult to understand why there are such differences in the pricing of a core banking service which is essentially the same across banks.

120. We find it commendable that there is one bank which does not charge for this service. We encourage other banks to follow suit. If there is to be a fee for this service, we recommend that a reasonable 'flat-fee-per-month' formula be adopted.

121. In Building Block 3, 'Enhancing Transparency', we are recommending the setting up of a comparative table, 'The BankSmart Window' in which the terminology used to describe the different products and services will be standardised. We are also recommending consistency in the manner of reporting. The 'service fee' on current account is an area where our recommendations become very pertinent.

Fee for balance falling below the required minimum for non-interest bearing accounts

122. Some banks levy a fee on accounts where the balance falls below a required minimum. The use of penalties for non-maintenance of balance is considered unfair by customers.

123. In paragraph 104 above, we are recommending that, where there is a requirement for a minimum balance to earn interest, there should not also be a fee payable when the balance in the account falls below this minimum.

124. For non-interest bearing accounts which also have a minimum balance requirement, we are of the view that the minimum balance requirement should be fair and reasonable.

125. It may happen that customers find themselves in difficulty and are not able to maintain the minimum balance in their accounts. We recommend that banks advise these customers of the existence of the 'Compte GO' which has no minimum balance requirement and which does not attract any fees.

Penalty Fee for returned cheques

126. Customers are unhappy about penalties applied to both the issuer and the recipient on returned cheques presented in the clearing. We recommend that:

- (i) the recipient be exempted from a penalty since he is already penalised by non-clearance of the cheque; and
- (ii) the issuer should only be penalised where the cheque is returned due to insufficient funds.

Fee payable on statement of accounts

127. Some customers find the practice of being charged for receiving bank statements unacceptable. According to section 57(5)A of the Banking Act, banks need to send or make available statements of accounts to their customers on a regular basis and at least once every year.

The Customer Speaks...

...is unilaterally charging a new "Statement fee" every month for those, like me, who choose to keep their hard copy monthly statement. This is absolutely abusive and totally unacceptable indeed!

For years they had been sending such monthly statements free of charge – which is the least they could do and indeed unquestionable! – and, suddenly, from nowhere and without any advice to the customer, a new additional charge is debited every month! Shameful abuse of position.

128. Mindful of the need for customers to be kept up-to-date on their financial position, we recommend that banks give to all their customers statements of all their accounts on a quarterly basis, free of charge. The statements may be sent by email at the choice of the customer.

Processing Fees on loans

129. We are of the view that the pricing of the processing of loans is unsatisfactory. Whilst some banks describe such charges as 'processing fees', others define them as 'arrangement fees', 'handling fees' or 'legal fees'. In the following paragraphs, we set out our concerns with this fee, which we will refer to as 'processing fees' for the sake of simplicity.

No maximum amount

130. Some banks charge a minimum amount with no maximum amount specified, such that the higher the loan amount, the higher the 'processing fee' charged. One bank states a maximum of Rs100,000. Such a cap seems to us to be unreasonably high. (The issue of *ad valorem* fees is dealt with in paragraph 106.)

Determinants of the fee are unclear

131. The determinants of the fee are also unclear. One bank describes the fee as follows:

| | |
|----------------------------------|---|
| Above 400 000 up to 1,000 000 | 1% for new facilities, discretionary, depending on the complexity/managerial time |
| Above 1,000 000 | 1% on loan amount (Maximum of Rs50,000 for retail customers) |

132. We have difficulty in understanding the rationale for calculating the 'processing fee' based on the complexity and managerial time involved for loans up to Rs1,000,000, whereas this criterion is not applicable for loans above that threshold.

No differentiation between loan types

133. Banks offer different types of loans - those which are fully secured against cash deposits, those

fully secured against collateral, those partially secured and those unsecured. In view of the graduated complexity of the different types of loans, one would have expected that the 'processing fee' charged by banks would be different, depending on the type of loan. However, our investigation reveals that, in several instances, a uniform formula is applied as 'processing fee', irrespective of the type of loan.

Charges in addition to processing fees

134. In addition to charging 'processing fees' on loans, banks also charge fees for related services like creation of security documents, fees for valuers, 'legal fees', 'search fees', 'MCIB fees' etc.

Recommendations

135. Our examination of the 'processing fees' points to the need for banks to review their pricing policy. We recommend that:

- (i) Banks do not charge any 'processing fee' for unsecured loans, and for loans fully secured against cash deposit; and
- (ii) When setting 'processing fees' for loans which are partially or fully secured, banks give consideration to the fact that charges are already being levied for services ancillary to the security being taken.

Fee for rescheduling loans

136. The issue of rescheduling of loans arises when customers find themselves in financial difficulty. Whilst a number of banks, commendably, do not charge for this service, some banks charge fees ranging from 0.5% to 1% of the loan amount (with no maximum amount specified).

137. We are of the view that imposing a fee on customers for rescheduling loans further burdens a customer, who is already struggling financially. We, accordingly, recommend that there should be no fee for rescheduling loans.

Reviewing the Pricing Strategy of Banks

Commission *in lieu of* Exchange

138. We find the charges and the manner of reporting fees on foreign currency accounts across banks to be often complex and at times, potentially misleading.

139. We observe that many banks commonly charge a fee termed 'commission *in lieu of* exchange' when, for example, customers wish to make a transfer from one foreign currency account to another account in the same currency or for deposits/withdrawals in the same foreign currency. Other banks use different terminologies like 'processing fees' or 'general charges' but we found them to be no different to the 'commission *in lieu of* exchange'.

140. Whilst we can understand the need to charge a fee for converting one currency into another, we have difficulty in understanding the rationale for charging a commission when dealing in the same currency.

141. One bank included the 'commission *in lieu of* exchange' under the heading 'service fee'. We find it hard to understand how the 'commission *in lieu of* exchange' can be equated to a 'service fee' on an account. The comments made by some customers, which we reproduce *verbatim* here: '*as we are unable to earn a currency exchange turn, we're going to invent a new commission so that we still earn extra fees. This is outrageous!*', speak volumes on their feeling of perplexity with regard to this fee. We recommend that the commission *in lieu of* exchange, be it termed 'processing fees', 'general charges' or otherwise, be abolished.

142. As an additional observation, we note that two banks report in their tariff guides that the "*minimum balance to earn interest was x*". However, another document on their website indicates that no interest is payable for that type of account.

We are of the view that such a disclosure has the potential of misleading customers and we invite banks to review their reporting practices.

Early Repayment Fee

143. Customers complain that the 'early repayment' fees⁷, charged on loans reimbursed before the end of the term, are excessive. In December 2013, the 'early repayment fee' for new loans (i.e. loans taken with effect from 1 January 2014) was abolished as per section 96 B of the Banking Act⁸.

144. We call on banks to consider whether they can extend the benefit of the waiver of the 'early repayment fee' to customers who have loans which do not fall under the Borrower Protection Act and date back to before the coming into force of the law.

145. One bank indicates that there is no 'early repayment fee' if the payment is effected from 'own sources of funds' but a fee is payable if it is otherwise. Such a practice may be considered as anti-competitive, and we invite the bank to review its pricing strategy.

146. We also believe that fees such as 'prepayment option fee' should be abolished as it defeats the intent of this specific provision of the law.

The Customer Speaks...

"... if you ask for a letter to produce to the Indian Embassy certifying that you have sufficient means if you are going to India, the Bank charge you Rs300 which I consider cheating.

Our money is in the Bank. Just to give a two lines letter, the Bank take Rs300."

Fees for certificates of balance / letter for travel / loan balance certificates / liability certificates

147. Banks charge fees ranging from Rs50 to Rs1000 for providing documents like 'Certificates of balance', 'letter for travel', 'loan balance certificate' and 'liability certificate' to customers. These documents vouch for the customer's financial standing. In our view, confirming the financial standing of customers is an integral part of banking business. Moreover, customers have no choice than to turn to their banks for such documents.

148. With these considerations in mind, we recommend that these documents be provided free of charge. We appreciate that charging a fee may deter repeated and unjustified applications. In cases where banks feel the need to discourage unnecessarily frequent requests from the same customer, banks may wish to levy a reasonable fee for subsequent requests made within a period of three months from the first issuance.

Merchant Discount Rates

149. We have received representations to the effect that the Merchant Discount Rates (MDRs), the commissions paid by merchants on electronic card transactions, are too high.

150. The Bank of Mauritius is currently undertaking a project called the National Payment Switch (NPS), which will route all local electronic payments to a central point (called the Switch). The NPS will positively influence the cost structure of card-based payment transactions and by extension the MDR.

151. At present, the MDR, ranging from 1.4% to 3.5%, is the same for debit and credit cards, although these two products are different. The debit card is a secured product with the card usage being linked to the availability of funds in the accounts of the customers. Credit cards, on the other hand, are a part of the unsecured credit product portfolio of the issuers. Credit card usage is linked to the credit limit sanctioned by the issuer and carries with it an element of credit risk.

152. We are of the opinion that the same MDRs cannot be applied for debit and credit cards, and their range is too wide. However, this issue is beyond the remit of the present exercise which is limited to products and services offered by banks to individual customers in the Mauritian domestic market. We recommend that the Bank of Mauritius commissions a separate examination of this issue.

Attorney's Commission

153. Some banks charge a fee for the recovery of balances on non-performing loans. The amount charged is disclosed, in their tariff guides, as follows *"all expenses including legal fees, commissions & costs not exceeding 10% of the sum covered"*.

154. In its report⁹, the Commission of Inquiry on Sale by Levy, chaired by Sir Victor Glover, GOSK, commented on this contractual obligation:

"...we are not happy with this for 3 reasons. The first is that the obligee has no choice but to agree to such a stipulation and this assumes all its importance in the several cases where, in the case of a loan the borrower gets into a problem through no fault of his because he loses his job or he falls seriously ill. The second is that this may be responsible for the fact that certain attorneys to whom creditors refer cases of non-performing loans will be inclined to collect part payments from borrowers who clearly have no hope of saving their property from being sold. As one "victim" put it quite neatly: "the Attorney should not have taken Rs 50,000 and then Rs 65,000 from me as he knew my property was going to be sold". The third is that, in nearly every case, since the debtor has no money, the commission has to be paid by the person who purchases the property at the bar."

155. The Commission of Inquiry stated, in unequivocal terms, that the law should be amended so that

*"...No person should be permitted to bind a person who enters into an obligation with him to pay to the creditor's attorney, in case of a dispute or litigation, any sum of money, by way of commission or otherwise, other than the costs lawfully incurred..."*¹⁰

Reviewing the Pricing Strategy of Banks

*"...The compulsory payment of a commission by a debtor to the creditor's attorney is open to criticism... an obligee should not be required to effect any payment including commission to the obligor's attorney other than lawful costs."*¹¹

156. We share the views expressed by the Commission of Inquiry. We recommend that, in case of recovery through an attorney, banks should only be allowed to charge customers for costs lawfully incurred.

D. Steps to be taken by Bank of Mauritius

157. It may be argued that the principles-based approach to pricing may lead to a reduction in revenue for banks which may be tempted to recoup the shortfall by:

- (i) rebranding fees and charges under a different name;
- (ii) introducing new fees and charges;
- (iii) increasing existing fees and charges for other services;
- (iv) reducing the features or benefits of certain products; and/or
- (v) adjusting the interest rate spreads in their favour by reducing deposit rates and raising lending rates.

Approval of Bank of Mauritius prior to increasing fees and charges

158. In order to address the above concerns, we recommend that, henceforth, banks seek the approval of the Bank of Mauritius before they (i) rebrand fees and charges; (ii) introduce new fees

and charges or (iii) increase existing fees and charges. The approval of the Bank of Mauritius will not be required where fees and charges are lowered, unless the proposed revision results in a reduction in benefits or features of the products offered.

159. In each case, banks should provide a statement of commercial justification, and information such as historic and forecasted profit and loss data, and projected changes to customer usage.

160. The Bank of Mauritius should ascertain that the right balance is maintained between the interests of the banks and those of their customers, in deciding whether to grant or reject an approval.

Power to regulate interest rate spreads

161. The option to adjust interest rate spreads will remain open to banks since the Bank of Mauritius is not empowered to regulate interest rate spreads. We, therefore, feel that the power of the Bank of Mauritius to regulate fees and charges is inadequate to effectively address the issue of high banking costs and that it should be complemented by the power to regulate interest rate spreads. We fear that any shortfall in revenue arising from the regulation of fees and charges may translate into higher borrowing costs. It is worth noting that proposals have been made to the Ministry of Finance and Economic Development to give the Bank of Mauritius the power to regulate interest rate spreads.



BUILDING BLOCK 2

Promoting Competition



“Well-functioning markets depend both on competition working well and on consumers making good choices. Vigorous competition spurs traders to deliver what consumers want as efficiently and innovatively as possible. Well-informed, confident, effective consumers play a key role in driving that competition. If consumers do not select the best goods and services on offer, traders are less motivated to deliver them”.¹²

Office Of Fair Trading, UK (2011)

Promoting Competition

Introduction

162. Our banking sector is highly concentrated. The market share of assets of the different banks may be used as a proxy for estimating the degree of competition and concentration in the local banking sector. Two of the banks, the “Big Two,” have more than half of the market share. They are established players and enjoy high customer loyalty. Over the years, other banks have joined the market and are eating into the customer base of the “Big Two”. The entry of more players does not seem to have had a major incidence on the product range or on the prices.



163. We are of the view that enhanced competition will provide a fairer deal to customers through reasonable prices, good quality products and better service. It will also make it possible for customers to switch more easily between banks.

Our Recommendations

164. In order to stimulate competition, we are recommending the following five measures:

(i) Eliminating practices which may be viewed as being anti-competitive;

(ii) Equipping and developing alternative market players;

(iii) Providing clear information on how to change banks;

(iv) Commissioning a study focused on achieving customer mobility; and

(v) Enhancing Transparency.

Eliminating practices which may be viewed as being anti-competitive

(i) Eliminating anti-competitive fees and charges

165. In Paragraph 96, we are addressing the issue of fees that may be viewed as being anti-competitive, and are recommending their elimination. We are also recommending that banks review their pricing strategy in the light of the principle that ‘Banks should not impose fees and charges which may be viewed as being anti-competitive’. Such measures will, in our view, eliminate a number of cost-based barriers to customer movement between banks and stimulate competition in the sector.

(ii) Reviewing the practice of some banks to require full Salary Pledges

166. In Mauritius, the long term housing loan is a major immobilizer of banks’ retail customer bases. The typical housing loan term ranges from 10 to 30 years, and is usually secured on the underlying asset and repaid from a pledged salary. It locks the borrower (possibly husband and wife) for decades. During this period, choice is abolished, and neither competitive offers from other banks, nor TCF issues can trigger a flight to quality.

Promoting Competition

167. We are of the view that customers should not be forced to pledge their full salary to the bank from which they are contracting a loan unless there are circumstances justifying this course of action. This flexibility will allow customers to diversify their banking and move to other banks where they may get a better deal. We, accordingly, recommend that banks review the practice of requesting full 'salary pledges' when granting loan facilities.

Equipping and developing alternative market players

The Customer Speaks...

"... there is inter-banking collusion to keep the fees at the same level so that it matters not which bank you go to for your mortgage, you are going to get hit with the same fees."

168. We are of the view that there is scope for other players in the market. Credit unions, which have existed for a long time, may represent a viable alternative to banks. Those with assets exceeding 20 million rupees now fall under the purview of the Bank of Mauritius. This provides a good opportunity for the Bank of Mauritius to groom them to compete with the players in the market. The advantage of credit unions is that they have as objective to cater for the needs of their customers who are also their members. We, accordingly, recommend that alternative market players, for example credit unions, be equipped to compete with existing banks.

Providing clear information on how to change banks

169. We are of the view that banks should facilitate and ease any switching between service providers. They should provide information on how customers may close accounts and move to another provider. The steps should be clearly spelt out and be easily available on the website of each bank.

Commissioning a study focused on achieving customer mobility

170. Many countries have seen the need to enable and facilitate customers' transfer of accounts, at will, between competing banks. The various rationales for the facilitation of bank switching and the outcomes targeted have been driven by market specifics in each country.

171. We are also of the view that choice in financial services equates with the right and the possibility to switch banks and move one's account around the banking industry. In Mauritius, there is a need to investigate the factors that inhibit bank switching.

The Customer Speaks...

"if you have a housing loan and you wish to change bankers, it is such an obstacle that one just throws in the towel instead of going through painful, lengthy and costly procedures"

172. We, therefore, recommend that the Bank of Mauritius commissions a study focused on achieving customer mobility. There are a number of options, that could be considered, including, a switching service, a common utility platform and portable accounts. We recommend that a study of the technical feasibility, costs and benefits of the full range of options be initiated.

173. The preferred option will have to meet the following outcomes:

- (i) address bank concentration through enhanced customer mobility;
- (ii) level out the playing field for all banks, big and small, old-established and new, to compete for business;
- (iii) encourage all service providers to improve transparency; and
- (iv) increase the attractiveness of the banking sector to potential new entrants.

174. This is an ambitious project with wide ranging implications for the future of our financial centre.

Enhancing Transparency

175. Banking products and prices should be available in a clear and transparent manner to allow customers to make meaningful comparisons. This will ensure that customers move to those banks where they get the best deal.

176. The measures that we are recommending to enhance transparency are discussed in greater detail in Building Block 3 on 'Enhancing Transparency'.

BUILDING BLOCK 3

Enhancing Transparency



*“We need to shine the torch of transparency on
everything connected with banking.”¹³*

Rundheersing Bheenick (2012)

Enhancing Transparency

Introduction

177. Transparency and fairness are intrinsically linked. Fairness would require, amongst other things, that clear and precise information is freely available.

Our Approach

178. We have examined the practices prevailing in the market and have identified some features which, in our view, may not characterise a transparent market. We have also studied the relevant international best practices. Accordingly, we are recommending certain measures to improve transparency.

Structure of Building Block 3

179. In this Building Block, we are recommending twelve measures:

- (i) A comparative table, *'The BankSmart Window'*, displaying the fees and charges applied by banks in respect of all their products and services in a standardised format;
- (ii) A standard and explicit table setting out the services for which banks may charge;
- (iii) The provision of illustrative calculations based on sample situations to enable the customer to know the cost of a particular product or service;
- (iv) The setting up of independent comparison websites;
- (v) The upfront on-screen disclosure of ATM fees;

(vi) The disclosure of the methodology of interest calculation;

(vii) Advance notice before changes are made to contracts;

(viii) Provision of contracts in advance;

(ix) The opportunity to withdraw from a loan contract;

(x) Greater transparency in the credit cards' domain;

(xi) Inclusion in advertisements of the name of the regulatory body under which the organisation falls; and

(xii) The issue of a glossary of common banking terms.

'The BankSmart Window'

180. A customer needs to be able to easily compare information amongst the different banks. This is the key to spurring competition.

181. In November 2008, the Bank of Mauritius devised a standard template for the publication of the main fees and charges of banks. This initiative was motivated by the necessity to harmonise the different terminologies used by banks for similar services to enable customers to easily compare prices of products with similar characteristics. This template is available on the website of each bank, and can be consulted at any time by any potential customer. The template of each bank can also be accessed from the Bank of Mauritius website.

Enhancing Transparency

182. We have examined the template filled in by each bank and have noted the following:

- (i) Some banks have modified the template of the Bank of Mauritius by including other services and products; and
- (ii) Each bank has its own way of reporting its charges.

These practices defeat the purpose for which the template of the Bank of Mauritius was originally intended, and do not allow for any meaningful comparison.

183. Moreover, the present system has inherent limitations:

- (i) a customer has to access the website of each and every bank to get the information. Such a process is impractical and inefficient since by the time the customer accesses the 4th bank, he may have forgotten the deal being offered by the first bank! In sum, no meaningful comparison can be made; and
- (ii) the template does not capture the whole range of products and services.

184. We feel that a more comprehensive table will address the identified shortcomings and meet the desired objective of enabling and facilitating comparison of the various services across the banks.

185. We have worked on the design of a comparative table, '*The BankSmart Window*', which will cover all products and services.

186. Designing '*The BankSmart Window*' has not been an easy task. In fact, we embarked on the herculean and critical task of (i) capturing all the products and services offered by banks, and (ii) standardising the names of the various products and services as well as the manner of reporting.

Standardising the names of products and services

187. Banks have their own appellations for their different products and services. We have worked on a list of those products and services along with the corresponding proposed new standard appellations. One example of such standardisation relates to the fee that banks variously describe as 'service charges', 'ledger fee', 'maintenance fee', 'activity fee'. In '*The BankSmart Window*', we are recommending that this fee be, henceforth, called 'service fee'.

Standardising the manner of reporting

188. The disclosure of fees and charges is also being made uniform in '*The BankSmart Window*'. For example, we are recommending that the 'service fee' which up to now was variously disclosed by some banks as a flat fee per month, by others as a flat fee per half year, or as a fee per number of transactions, would, henceforth be reported as a flat fee per month.

189. We also recommend that banks adopt the following principles in reporting:

- i) The present practice of reporting a fee as 'Rs xx + VAT' should be abandoned. Where applicable, VAT should be included in the fees.
- ii) Many banks report the interest payable on credit cards as a monthly rate. We believe that this has the potential of misleading the customers and hindering comparability across banks. Accordingly, we recommend that banks report interest rates in a yearly basis format i.e. as a percentage per annum. This should apply for advertisements as well.

iii) We have noted with much concern that as at March 2014, some banks had not yet updated their tariff guides or their contracts to show that 'early repayment fees' were no longer applicable on new loans pursuant to the legislative amendment of December 2013. The websites (and tariff guides) of banks should be updated whenever there are changes in legislation and/or policy decisions.

190. We recommend that 'The BankSmart Window' proposing standardisation of names of the various products and services as well as the manner of reporting, be finalised and adopted after discussions with banks.

Banks should use the same format in brochures and on their websites

191. We also recommend that banks use the same appellation and manner of reporting on their websites and in their brochures as in 'The BankSmart Window'.

Banks should disclose the Annual Percentage Rate and the Annual Effective Rate

192. In the Guideline on Control of Advertisement, banks are required to disclose information relating to the Annual Percentage Rate, APR, (applicable to loans and credit products) and Annual Effective Rate, AER, (applicable to deposit accounts) on their advertisements. We recommend that banks disclose these rates in their tariff guides as well.

193. We recommend that the APR and AER calculation be standardised across the industry, and that all fees and costs be incorporated into the annual rate calculations formulae.

Banks may only charge fees appearing on 'The BankSmart Window'

194. In some instances, we have observed that information relating to fees and charges is fragmented and dispersed and the tariff guides on banks' websites are incomplete.

195. On one tariff guide published on a bank's website, alongside a list of fees and charges, we have come across statements like these:

- » *Other rates, fees & charges applicable to credit facilities are available at our counters.*
- » *Other fees & charges applicable to credit cards are available at our counters.*

196. Such formulations do not allow customers to obtain the information they are looking for at a single point, and are definitely not in the best interests of the customer. We, therefore, recommend that all tariff guides display all applicable fees and charges and that banks do not apply fees and charges, that do not appear on their tariff guide.

197. We recommend that banks charge only for those services and products that appear on 'The BankSmart Window'.

Illustrative Calculations based on sample situations

198. We recommend that banks provide illustrative calculations of the costs to customers of the most commonly used products or services. For example, banks should publish the total costs for credit facilities with fee-incorporated APR for three typical loan values. The value of the typical loans illustrated should be standardised across banks to facilitate comparison.

199. This measure will be very helpful to bank customers and will enable them to make more meaningful comparisons before taking a decision.

Independent comparison websites should be promoted

200. Many countries have independent comparison websites which assess and present information on selected banking products. We believe that there is a need for a similar initiative in Mauritius. NGOs and consumer associations are invited to consider offering this service.

Enhancing Transparency

ATM Fees should be disclosed upfront on the screen

201. Banks charge a fee on ATM withdrawals effected through cards which are not issued by them. Transparency requires that fees for any service or transaction be disclosed before the service is availed of. In many countries, ATM screens prompt the user upfront on charges applicable to the proposed transaction, so that the user can decide whether to proceed with, or cancel, the transaction.

202. We recommend that banks ensure that their ATM screens prompt users on charges applicable prior to each transaction. The message must appear before the user commits himself to making the transaction.

Disclosure of the methodology of interest calculation

203. According to section 37(6) of the Banking Act, "(6) Where a financial institution extends credit to a person, it shall –

(a) disclose to him -

(i) the interest charged and the manner in which it is to be calculated;"

204. The above section relates only to interest charged on credit facilities. We are of the view that banks should disclose the method and any formula used for calculation of interest chargeable on credit facilities and payable on deposit accounts.

The Customer Speaks...

"The formula for Interest Calculation should be made public. Everybody should know how banks calculate interests both for savings and for loans. Every six months, interest is being credited on my savings account but how do I know if the sum credited is correct or not? Should I accept blindly what the bank offers me? No banks in this country can be trusted."

Advance notice before changes are made to contracts

205. At present, the law does not provide for a minimum notice period before banks bring changes to existing contracts. We recommend that the law be amended to ensure that reasonable advance notice is given to customers, before banks make any changes to the applicable fees and charges.

206. Banks should also ensure that customers are given the option of, either accepting the change or exiting from the relationship with the bank, without any cost if the change is not accepted within the above notice period.

207. Banks should inform customers of the right to exit the contract, without any penalty, if the revised terms are not acceptable to them, whenever there is a notice of change.

Provision of contracts in advance

The Customer Speaks...

"All my documents have been signed hastily at home. On that very day I wanted to complain at the BOM but I realized that I had already signed the documents without reading. Suggestions: The applicant should get a personal copy of the deed to examine at leisure before signing."

208. We believe that it is essential for customers to read and understand the contracts that they enter into so they can be fully responsible for their actions. Accordingly, they should be given the time to do so.

209. We, therefore, recommend that customers be given an advance copy of the contract that they will be required to enter into.

Opportunity to withdraw from the loan contract

210. Banks should give the customer the opportunity to withdraw from the loan contract, as long as the loan has not been disbursed.

Greater transparency in the credit cards' domain

211. 'Credit cards' is another area where we believe there is scope for improvement in terms of transparency. We recommend the following measures:

- a) Banks should disclose to customers
 - i) the total amount and time needed to fully pay off their debts, if they make only the minimum payment each month; and
 - ii) the amount of debt that would accumulate by the end of six months, if they make no payments during that period.

b) Banks should clearly show how their interest-free periods work. This will make it easier for customers to take advantage of these offers and benefit from the reduced amount of interest they would be charged.

c) Banks should give customers the choice to opt-in and opt-out of 'over-limit fees'. Customers, who opt-out, will have their transactions rejected if they exceed their credit limits, thus avoiding 'over-limit fees'. Opting-in and -out should be done through a convenient channel e.g. credit card application forms and/or monthly statements, by way of a separate and distinct application.

d) Banks should notify customers when they have reached their credit limit so that they can decide to either not use the card or to make a payment to reduce their balance.

Advertisements

212. In the light of the outbreak of the Ponzi Schemes, we believe that there may be a justification to require all institutions licensed by the Bank of Mauritius and the Financial Services Commission to include in their advertisements, a statement informing members of the public that they are regulated entities.

Glossary of common banking terms

213. The MBA should issue a glossary of common banking terms. This will foster transparency and standardisation in the industry.

Pillar 3

- Fair Terms and Conditions of Contracts



“ We must bear in mind that although the creditor and the debtor have entered freely into a contract where the debtor has created a floating charge over all his assets, this is a contract where on the one hand we have an ‘institution agréée’ (....) which is a powerful body as opposed to an individual who is in a weaker position.

...Too many debtors blindly enter into loan agreements with banks and other institutions and create a floating charge over all their assets without realising how far they are committing themselves. They seem to be attracted by the prospect of being granted generous overdrafts.”¹⁴

Hon. D. B. Seetulsingh, Judge (2001)

Fair Terms and Conditions of Contracts

Introduction

214. The terms and conditions of contracts provide the most tangible evidence of the bank-customer relationship. They are the best indicators of the extent to which the deal is fair to both parties. Banks, in Mauritius, use standard contracts where customers do not generally have the possibility of negotiating the terms. The contracts are pre-written and do not usually vary from customer to customer. They are often of the 'take-it-or-leave-it' type.

215. The use of standard contracts is widespread in many jurisdictions around the world. The advantages of standard contracts, notably in terms of cost savings, are undeniable.

216. However, standard contracts do have drawbacks which have been succinctly summarised by Professor Hondius¹⁵ as follows:

- a) a consumer will usually not go through the trouble of looking at standard contract terms...;*
- b) even if the consumer receives the full text of the general conditions, their length and typography do not invite the consumer to read the small print;*
- c) even if the consumer does read the text, a consumer will often not grasp its full meaning;*
- d) even if the consumer grasps the full meaning, a consumer may think that the event dealt with will not take place or that the supplier will not invoke the terms in such cases;*
- e) a consumer may be under the false impression that the contract terms have been officially endorsed or at least are in compliance with the law;*

f) a consumer will usually not succeed in altering the contract terms - the agent or employee of the supplier will usually lack the authority to do so;

g) these make it possible for suppliers to draft standard form contracts to the detriment of consumers."

217. Three main issues are highlighted in the extract above:

- (i) Contracts are complex;
- (ii) Customers do not understand contracts; and
- (iii) Customers cannot alter the terms of contracts.

218. The prevalent use of standard contracts and their recognised deficiencies, point to the fact that potential for abuse does exist. Customers need to be protected.

219. These issues have been addressed in this report. In Pillar 4 on 'Fairness in the way Terms and Conditions are set out', we are addressing the issue of complexity of contracts. In Pillar 8, on 'Empowering Customers', we are recommending financial literacy and education to enable customers to understand their contracts. In this Pillar, we are focusing on the substance of the terms and conditions, in recognition of the fact that customers have little or no bargaining power, and expect the regulator to protect them.

Our approach

220. We have laid down certain key principles which, in our view, would define fairness in the terms and conditions of banking contracts. We have then examined sample contracts and measured them against the test of fairness as defined by these key principles. In so doing, we have identified certain clauses which do not, according to us, pass the test of fairness.

Fair Terms and Conditions of Contracts

Key Principles

221. Banks should consider the legitimate interest, the weaker bargaining power and the customer's lack of experience in the drafting of contracts, for the terms and conditions to be fair.

222. For example, if a bank retains extensive and/or open-ended discretion to change the terms of a contract, this may indicate that the customer's legitimate interest may not have been taken into account.

223. It should be borne in mind that a term may be considered unfair, if it could have an unfair effect, even if it is not, at present, being used unfairly in practice, and there is no current intention to use it unfairly.

224. During our examination, we have identified the following ten clauses which may be potentially unfair:

- i) Unequal termination rights;
- ii) 'Have-read-and-understood' declarations;
- iii) Exclusion and limitation clauses;
- iv) Unduly harsh obligations on customers;
- v) Unilateral variations to contracts;
- vi) Unclear limits to Guarantees given to banks;
- vii) Double Penalty on default/late payment;
- viii) Minimum interest rates on variable rate loans;
- ix) Capitalisation of interest in arrears; and
- x) Absence of compensation clauses indemnifying the customer.

Unequal termination rights

225. Fairness requires that customers and banks should be on an equal footing with regard to the rights to terminate a contract. The bank's rights should not be excessive, nor should the customer's rights be over-restrictive.

226. We have identified the following clauses which, in our view, give excessive rights to the banks.

- » "... shall have the right at any moment to put an end to the present agreement..."
- » "The Bank reserves the right to cancel/suspend/reduce any or all the limits sanctioned and to alter/amend/vary the terms of the sanction including rate of interest at its sole discretion without assigning any reason whatsoever." (emphasis is ours)
- » "The Bank reserves to itself the right to recall the facility at any time if it deems necessary and to vary or to cancel any of the above terms and conditions, without having to seek the prior consent of the debtor and/or without having recourse to any formality judicial or extra-judicial including service of notice "mise-en demeure" for any such variation or cancellation. The Bank shall within a reasonable time notify such variance or cancellation to the debtor in writing by registered post to the address given by the debtor in the present document." (emphasis is ours)

227. These examples indicate that one party is at the mercy of the other.

228. We recommend that banks review their contracts to ensure that the power to put an end to the contract is not unfairly tilted in favour of one party. In particular, banks should ensure that they do not reserve to themselves the power to terminate the contract for *any* breach, even a minor one. Termination clauses have the potential of causing immense prejudice to customers. Banks should ensure that clauses in their contract allow for the termination of contracts only in serious circumstances warranting this exceptional course of action.

'Have-read-and-understood' declarations

229. The former FSA¹⁶ of the UK has ruled that a declaration, requiring customers to agree that they have read and understood a contract, is unfair. The former FSA felt that customers may either not have read the contract, or they may have read the contract, but may not have understood it. The former FSA found such a declaration to be unfair for two reasons:

- (i) A firm could rely on it to indicate that it had fulfilled its obligation to allow the customer to examine all the terms; and
- (ii) A firm could rely on it to reject a customer complaint.

230. We have, during our investigation, come across a similar clause:

"The Customer hereby declares that these presents have been duly read out and explained to him in such a manner that he is fully satisfied with the content thereof."

231. We are of the view that such clauses have the potential of being unfair to the customer because the contract may not have been read out or explained to him. Additionally, although the contract may have been read out and explained to him, he may not have fully understood it.

232. We recommend that banks review their contracts in the light of our observations.

Exclusion and limitation clauses

233. During our review, we have come across the following clauses :

- » *"The Bank shall not be liable for any delay in the erasure procedures or for any error, omission, delay, objection or refusal from the Conservator of Mortgages or for any cause whatsoever."*
- » *"even if errors may be discovered at a later stage"*
- » *"In case you have entrusted the Bank to effect payment of the insurance premium, you should provide adequate funds in your account to enable the Bank to effect payment of Insurance premium as and when due. You should verify your bank statement regularly and inform the bank urgently in case the insurance premium has not been recovered from your bank account. The Bank may at its sole discretion debit your loan account, with the premium amount which will be capitalized and bear the same interest as the loan account. Such insurance premium shall be spread over the residual life time of the loan and become payable along with the monthly capital and interest."*

234. We are of the view that rights and duties under a contract cannot be considered evenly balanced, unless both parties are equally bound by their obligations under the contract. The above clauses undermine the customer's ability of seeking redress from a bank, which has not complied with its obligations, and, are, therefore potentially unfair.

235. We recommend that banks review their contracts in the light of our observations.

Unduly harsh obligations on customers

236. The principle of fairness also requires that banks do not impose unduly harsh obligations on the customers.

Fair Terms and Conditions of Contracts

237. During our investigation, we have come across the following clause:

"The Customers [in this case the Borrowers] shall further undertake to notify the Bank, in writing, the particulars of (i) any subsequent credit facility which the customers and guarantors may obtain from any other lending institution and (ii) charge, mortgage and / or any other encumbrances which may be created by the customers and / or guarantors against their assets, as security for the repayment of any subsequent credit facility from any other lending institution." (Emphasis is ours)

238. It must be recognized that it would be very difficult for a borrower to keep track of the facilities that his guarantor avails himself of, notwithstanding that he would have to obtain the guarantor's approval to pass on this information to his bank.

239. We are of the view that such an obligation is unreasonable and, accordingly, recommend that banks review their contracts to ensure that unduly harsh obligations are not placed on the customer.

Unilateral variations to contracts

240. The power to vary contracts unilaterally is a clear example of the unequal bargaining power between banks and their customers.

241. During our investigation, we have come across the following clauses:

- » *"Should there be any variation in the rate of interest at the instance of the [Bank] Prime Lending Rate, the Bank shall vary or adjust its interest rate accordingly. Notwithstanding any such variation or adjustment referred to above, the Bank reserves the absolute right to vary the interest rate of the above facility from time to time as the Bank may deem fit and proper and such variation or adjustment shall*

take effect as from the date specified in a letter to be sent to that effect without any other formality."

- » *"The Bank reserves the right to amend the interest and the method of calculating it at any time in line with market conditions."*
- » *"The Bank shall have the right, in its sole discretion and without prior notice, to change the rate of interest each time the Bank's Prime Lending Rate is altered or the margin over the PLR is altered." (Emphasis is ours)*

242. We are of the view that clauses, giving banks an unfettered discretion to alter the terms of the contract, may lead to unfairness, since they have the potential to change the bargain the customer entered into, without his express consent. We recommend that banks review their contracts to ensure that there are no clauses allowing them to unilaterally vary their contracts unfairly.

Unclear limits to Guarantees given to banks

243. The principle of fairness requires that the limits to any guarantee should be clearly set out, and the guarantor should be duly informed of the amount he is guaranteeing.

244. During our investigation, we have come across the following clauses:

- » *"Consequently the said Guarantor(s) does/do by these presents bind himself/themselves jointly and severally between themselves and with the Borrower to honour the present agreement, to repay personally to the said Bank in principal and interest, any outstanding overdrawn balance as well as for other outstanding amounts under other credit facilities granted by the Bank as aforesaid, as if he/they was/were the Principal Borrower."*

- » *"The Guarantor(s) agree that the Bank may at any time without prejudice to this Guarantee and without discharging or in any way affecting their joint and several liability hereunder, determine, vary or increase any credit to the Borrower."*

245. We are of the view that these clauses are objectionable since

- i) they fail to take into account the guarantor's legitimate interests, by leaving the door open for additional amounts to be added to the sum he is originally guaranteeing; and

- ii) banks reserve excessive discretion to themselves.

246. We recommend that banks review their contracts in the light of our observations.

Double Penalty on default/late payment

247. Some contracts contain clauses that give the bank the possibility of penalising the defaulting borrower twice. For example, we have noted that there are contracts containing clauses both on default interest and on late repayment for amounts overdue on credit facilities. We are of the view that an application of both these clauses may be unfair as the borrower may be penalised twice for the same default.

Default Interest

"Any amount which is overdue on the credit facility (as well as any amount demanded and not paid) shall bear interest at such rate charged by the Bank from time to time or at any other rates deemed appropriate by the Bank (payable both before and after any demand for judgment). This interest rate currently stands at 5% per annum above current pricing and shall apply automatically upon default without the need for the Bank to serve a mise en demeure to the Borrower."

Late Repayment

"Any amount which is overdue on the facility (as well as any amount demanded and not paid) will bear interest at such rate charged by the Bank from time to time or at any other rates deemed appropriate by the Bank (payable both before and after any demand for judgment). This interest rate currently stands at 5% per annum above current pricing and will apply automatically upon default without the need for the Bank to put the Borrower 'en demeure'."

248. Contracts which contain BOTH a clause on interest payable on payment default AND a clause allowing banks to alter the interest margin are also unfair:

"Default Interest

- » *"In case the whole amount of the instalment due on the said loan and/or interests are not paid on the respective due dates, it will carry additional interest at the rate of 5% p.a or any such rate as may be determined by the Bank from time to time over and above the applicable rate on the unpaid instalment without novation or derogation to the right of the Bank to claim the immediate refund of the full outstanding amount of capital together with all interest, fees, cost and accessories thereon."*

- » *"The Bank reserves the right to vary the interest margin should your risk profile change..."*

249. We recommend that banks review their contracts in the light of our observations.

Minimum Interest Rates on variable rate loans

250. Customers complain that their contracts contain 'minimum interest rate' clauses. In our analysis of some of the standard contracts, we have observed the following clauses:

- » *"The Borrower shall pay interests on the above amount at [Bank] Prime Lending Rate plus [...] % **with a minimum of [...] % per annum**, with monthly rests and/or at such rates as may be determined by the Bank from time to time."*

- » *"Interest rate...% above PLR **with a minimum effective rate (where applicable) of [...] %** or any other rate which the Bank may from time to time decide and apply" (Emphasis is ours)*

251. We are of the view that specifying a minimum interest rate in a credit facility with a variable interest rate may prevent the customer from benefitting fully in a low interest rate environment.

Fair Terms and Conditions of Contracts

252. Such a clause is another illustration of the unequal bargaining power between banks and their customers. Interestingly, we have not come across clauses imposing a cap on the amount of interest that would be payable by the borrower; hence reinforcing the notion that the unequal bargaining power favours over-protection of the banks and leaves customers unprotected.

253. We recommend that contracts for credit facilities with variable interest rates, be structured in a manner to allow customers from benefitting fully, when interest rates are low.

The Customer Speaks...

"...Banks apply a minimum interest clause on their letters of offer, which prevents interest on loans from decreasing below a particular threshold. ...It should be noted that rates are readily lowered on fixed deposits, following decrease in repo rates, but in some cases they use the minimum rate clause to avoid reduction in interests on loans."

Capitalisation of interest in arrears

254. Some customers report that when they are unable to pay their instalments as and when due:

- (i) they are charged a higher interest rate (the penal interest rate); and
- (ii) the interest generated is then capitalised i.e. it is added to the capital and interest is charged on the increased capital amount.

255. Our investigation reveals that there are two provisions in the law, namely Article 1154 and 2202-06 of the Code Civil, on which banks rely to capitalise interest in arrears before they are due for a year.

256. Article 1154 of our Code Civil states that:

"Les intérêts échus des capitaux peuvent produire des intérêts, ou par une demande judiciaire, ou par une convention spéciale, pourvu que, soit dans la demande, soit dans la convention, il s'agisse d'intérêts dus au moins pour une année entière. »

Article 2202-06 states that :

«Lorsque la période de remboursement d'un prêt consenti par une institution agréée dépasse trois ans, le titre attestant le prêt peut inclure une stipulation prévoyant la capitalisation des intérêts qui deviendront exigibles. »

257. Article 1154 stipulates that banks must wait for the unpaid interest amounts to be due for at least one year before capitalising them. However, in practice, banks include clauses in their contracts, presumably based on Article 2202-06, allowing them to capitalize interest even if they are due before a year.

258. We have reservations on such an interpretation of these legal provisions. To avoid any ambiguity, we recommend that the law be amended to specifically exclude the possibility of unpaid interest amounts being capitalised, until they become overdue for a year.

Absence of compensation clauses indemnifying the customer

259. One customer pointed out that banking contracts only provide for penalties and sanctions when the customer is in default. There is no provision in the contract providing for compensation when banks breach their obligations.

260. The contracts that we have perused indeed do not contain any clauses requiring banks which breach their obligations to compensate their aggrieved customers. We are of the view that such contracts are further evidence of the weak bargaining power of customers.

261. We recommend that banks review their contracts to restore equality, and include clauses indicating the consequences of a breach of obligation by a bank.

Recommendations

262. The clauses, that we have analysed in this Pillar are by no means exhaustive. We invite each bank to assess its own contracts and exercise its judgment on the need for any amendment. Banks should not rely solely on the strict letter of our recommendations but look beyond and embrace the spirit of what is recommended. We suggest that any amendments are made at the first available opportunity. In the interim, banks should not rely on the clauses that might result in unfairness to the customer.

263. We also recommend that the Mauritian jurisdiction follows the path of countries like the UK which have deemed it essential to enact laws e.g. *The Unfair Terms in Consumer Contracts Regulations 1999* to deal with the issue of unfair terms in contracts.

Pillar 4

- Fairness in the way Terms and Conditions are set out



*“If you can’t explain it simply,
you don’t understand it well enough”*

Albert Einstein

Fairness in the way Terms and Conditions are set out

Introduction

264. Fairness should be reflected in the manner in which the terms and conditions are set out. We have examined samples of standard contracts relating to credit agreements and the related security documents to determine whether this aspect of fairness is being met.

265. We find that one of the main problems is the way in which information is presented. Customers are overwhelmed with information set out in complicated terms.

266. Some contracts are extremely complex and difficult to follow and we share the view expressed by the Commission of Inquiry on Sale by Levy,¹⁷ chaired by Sir Victor Glover, G.O.S.K: *"We have been struck by the archaic and sometimes incomprehensible wording of the agreement forms used by financial institutions."*¹⁸

267. We have classified some of the problems, that we have identified, under the following headings:

- i) Long Sentences
- ii) Archaic English
- iii) Legal Terms and technical jargon
- iv) General References used
- v) Print size

268. This list is not exhaustive. We recommend that banks re-examine all their contracts from a layman's point of view, the final objective being that the terms and conditions of contracts are within the reach of the ordinary person.

Long Sentences

269. Some of the standard clauses are unreasonably long. It is difficult, if at all possible, to expect a person to read and understand a sentence that runs over 38 lines and which contains 501 words.

Archaic English

270. Some of the clauses are drafted in archaic English. The use of expressions such as *"Now these presents witness..."* or *"It has been said as follows"* or *"...without the consent in writing of the Bank first had and obtained..."* makes the documents heavy and discourages people from reading them. We are under the impression that these contracts have been drafted years back, and no attempt has been made to update and bring them in line with current English usage.

Legal Terms and Technical Jargon

271. Legal terms such as *"ipso facto"* and *"Cession bonorum"* are used. Use is also made of technical jargon such as *"monthly rests"*, which are not commonly understood by the non-specialist. The same applies for terms such as *"credits-make"*. Whilst such terms may have a technical meaning, they are clearly not understood by all.

The Customer Speaks...

"le jargon utilisé n'est pas compréhensible. Les banques invitent le client à faire analyser le contrat par une tierce personne, mais dans la pratique les choses ne se passent pas comme cela. Les gens sont pressés d'avoir leur emprunt."

Fairness in the way Terms and Conditions are set out

General References Used

272. Clauses such as *"Disbursements and all other charges will be debited to your account as and when incurred"* or *"I am aware of the Bank's Tariffs and Charges and hereby consent to the charges being debited to my/our account as and when they are due"* are no substitute for actually setting out and detailing, in the contract itself, the actual fees and charges.

Print Size

273. We have come across one contract where the font size used for the whole document was very small, rendering the whole contract extremely difficult to read. This is a notable feature of credit card contracts.

Our Findings

274. The above features are characteristic of the drafting style of certain banking contracts. This style does not seem to pay sufficient attention to the fact that the contract needs to be easily understood. The assurances given by the subscribers to the MBA Code of Ethics and of Banking Practice, that the terms and conditions of contracts will be in plain language, are appealing¹⁹. However, this commitment does not seem to have been translated into practice.

275. The provisions of the Borrower Protection Act (BPA), requiring a summary to be included in the agreement, help to overcome some of these concerns. However, the contracts falling under the BPA are limited. We have observed that although financial institutions abide by the requirements of section 11 of the BPA, they do so in their own way.

There is no uniformity in approach in the presentation of information and this makes it difficult for customers who are not financially literate to understand and compare documents issued by different financial institutions.

Recommendations

Contracts should be drafted in clear and simple terms

276. We are of the view that all banking and financial contracts should be clear and simple. In this context, we recommend that banks adopt a principle-based approach to drafting contracts.

277. The General Principle is that **'Contracts should be drafted in clear and simple terms.'**

278. We are of the view that banks should comply with the following provisions to meet the General Principle:

- (i) Short sentences should be used.
- (ii) Paragraphs should also be short.
- (iii) Undue repetition which unnecessarily lengthens a contract should be avoided.
- (iv) Sentences should not contain more than one condition.
- (v) Sentences should not contain double negatives or exceptions to exceptions.
- (vi) Legal terms and technical jargon should not be used. Where unavoidable, an explanation of the term, in plain language, should be provided, next to it.

(vii) Archaic English should not be used.

(viii) General references should not be used as they render the contract vague. In particular, all fees and charges should be clearly spelt out.

(ix) The print (font and size) should be easily readable.

(x) The layout of the document should be easy to follow and user friendly. Use of headings and, where necessary, sub-headings should be made.

(xi) All pages should be consecutively numbered.

(xii) All paragraphs should also be numbered.

279. The above provisions are by no means all-encompassing but represent the minimum we expect banks to consider. We invite banks to expand on these provisions by addressing other issues which would come to light when they review their contracts.

280. We recommend that the Bank of Mauritius issues 'Guidelines on Simplification of Contracts' which would include the above provisions and be binding on banks.

Key Facts in Contracts (KFiC)

281. We recommend that all credit agreements should contain, by way of summary, on a separate sheet, the Key Facts in Contracts, the 'KFiC', at the beginning or the end of the document.

282. The 'KFiC' should be a standard one-sheet template, and should set out in simple and clear language, the most important terms and conditions of the contract. It should be standard in terms of layout, font and colour so as to enhance comparability of offers across banks.

283. The aim of such standardisation is to allow customers to place all the 'KFiCs' from different lenders side by side, and enable them to make a meaningful comparison of the costs and features of the various loan offers. This initiative will enhance customer empowerment by improving transparency and standardising terminology between products.

284. The 'KFiC' will assist customers to know, at a glance, the extent of their future commitments, prior to signifying their acceptance to the terms and conditions.

285. We are of the view that customers should be properly informed of their rights. Where the contract falls within the provisions of the Borrower Protection Act, the 'KFiC' should also contain a clause indicating to the customer that if he considers that his credit agreement:

(a) requires him to make payments which are exorbitant; or

(b) otherwise contravenes the ordinary principles of fair dealing,

he may, at any time, refer the matter to the Commissioner for the Protection of Borrowers.

286. We remain convinced that simplifying contracts will go a long way towards enhancing customer understanding of matters that affect their daily lives. Simplification of contracts will also contribute to customer empowerment and is a necessary step *'towards a fair & inclusive banking sector'*.

Pillar 5

- 'Treating Customers Fairly'



“A customer is the most important visitor on our premises; He is not dependent on us. We are dependent on him. He is not an interruption in our work. He is the purpose of it. He is not an outsider in our business. He is part of it. We are not doing him a favor by serving him. He is doing us a favor by giving us an opportunity to do so...”

Mahatma Gandhi

'Treating Customers Fairly'

Introduction

287. In this Public Consultation Document, we have analysed various issues from the point of view of fairness, and are recommending measures to address the identified shortcomings. However, we are alive to the fact that our recommendations cannot cover all the potential issues of unfairness that may arise out of the bank-customer relationship.

288. It would be neither practical nor desirable for the Bank of Mauritius to repeatedly intervene to ensure that customers are being treated fairly. At any rate, intervention, after a case of unfairness has arisen, is not a satisfactory solution. As stated by Katherine Webster,²⁰ *"...too often regulators are drawn into tackling problems by shutting the stable door after the horse has bolted – writing yet more detailed rules to address yesterday's problems."*

289. We are of the view that a plethora of rules and regulations is not the answer. The answer lies in self-regulation. We would like to see banks adopt a new way of doing business in which the concept of treating the customer fairly is at the core. In our view, this change in business style and mindset will help restore the rights of customers whilst placing certain obligations on banks.

290. We, therefore, recommend that a program similar to the 'Treating Customers Fairly' (TCF) initiative launched by the former FSA in the UK, be adopted in Mauritius.

'Treating Customers Fairly' – The Concept

291. The overall goal of TCF is to ensure that banks treat their customers fairly throughout the 'product life

cycle' i.e. product design, marketing and promotion, sales and advice, after-sales information and complaints handling.

292. Banks have to achieve the following six outcomes²¹:

- a) Customers are confident that they are dealing with banks where the fair treatment of customers is central to the corporate culture.
- b) The products sold are designed to meet the needs of identified customer groups and are targeted accordingly.
- c) Customers are provided with clear information and are kept appropriately informed before, during and after the point of sale.
- d) Where customers receive advice, the advice is suitable and takes account of their circumstances.
- e) Customers are provided with products that perform as banks have led them to expect, and the service is both of an acceptable standard and as they have been led to expect.
- f) Customers do not face unreasonable post-sale barriers imposed by banks to change the product, switch provider, submit a claim or make a complaint.

293. TCF marks a break from the traditional way of regulation since whilst the desired outcomes are spelt out, the way in which these are to be achieved is not.

'Treating Customers Fairly'

294. TCF is not merely a statement of intentions. As explained by the former FSA, UK:

i) *"TCF is about self-regulation. It is not about banks complying with a further set of prescribed rules and regulations.*

ii) *TCF is not about focusing on the letter of the desired outcome. It is about embracing the spirit of it.*

iii) *TCF is about bringing a change in culture. It is not a tick box process.*

iv) *TCF is the responsibility of senior management. It is not merely a compliance issue."*

297. We recommend that banks adopt the TCF initiative and submit to the Bank of Mauritius an action plan setting out how they propose to implement the TCF programme.



Recommendations

295. TCF is a project that will require the concerted efforts of all parties. It will require putting in place a comprehensive system. The senior management and board of directors of banks would be the drivers of the TCF programme. A change in culture can only happen if top management owns the project.

296. TCF is measurable and we recommend that it be measured. The Bank of Mauritius should assess banks on whether they are achieving the stated outcomes.

Pillar 6

- Protecting Customers



“The question I am often asked is: “Why as a regulator, are you concerned about customer care and protection?”

Why is it not left to the market forces and competition to take care of? The answer to this lies in the fact that in a service industry where market forces and competition play out freely, this may well be the case.

However, banking / financial services industry being a highly regulated service industry with very stiff entry norms, consumer protection cannot entirely be left to the market forces. Hence, the regulator has a role.”²²

Dr. K. C. Chakrabarty (2011)

Protecting Customers

Introduction

298. Banking services have a significant impact on the lives of customers. Customers should be confident that they will be adequately protected if something goes wrong. They have legitimate expectations, and need to be reassured that, in the event of banks failing them, the system will not. Strong customer protection is essential to ensure that customers are getting a fair deal.

Our Approach

299. Against this backdrop, we have examined the current framework for customer protection in Mauritius, and have looked into what prevails elsewhere. We have come to the conclusion that, whilst there are a number of safeguards already in place, more can, and should be done.

300. We are, accordingly, recommending a list of measures that would fill in the gaps that we have identified in the present system:

- a) Issuance of a code to protect customers, **'The Protection of Bank Customers Code'**;
- b) Strengthening and unifying laws;
- c) Appointment of an Ombudsperson;
- d) Creation of Specialised Courts/ Tribunals;
- e) Creation of Financial Advisory Units; and
- f) A more active role for the Mauritius Bankers Association.

'The Protection of Bank Customers Code'

301. The MBA has issued a Code of Ethics and of Banking Practice (2013). We are of the view that, whilst it contains many laudable statements of intent, there is, nonetheless, a need for a code which is legally binding. Such a document would ensure bank compliance and be a reference point for customers in situations where banks are failing in their duty. We, therefore, recommend that the Bank of Mauritius issues a code to protect customers: **'The Protection of Bank Customers Code'**. This Code should be in simple language so as to enable customers to familiarise themselves with it. Customers, who know their rights, will be in a position to force banks into compliance.

Laws should be unified and strengthened

302. The laws for the protection of bank customers are currently disseminated in various enactments. We are of the view that laws, relating to bank customer protection issues, should be unified and strengthened. This will ensure that customers have quick and easy recourse to the law, when the need arises.

Protecting Customers

Ombudsperson

303. In 2012, the Bank of Mauritius was endowed with the responsibility to protect bank customers. This provided a regulatory channel through which customers could route their complaints if they felt aggrieved by their banks. We are of the view that the Bank of Mauritius should remain focused on its primary mandates and should not have as one of its core duties the handling of customer complaints.

304. The appointment of an Ombudsperson for the financial services sector is an imperative. The presence of an Ombudsperson in the financial architecture will provide members of the public with a much-needed complaints forum and a viable alternative to litigation in courts. We have in mind an avenue which is free, easily accessible, where legal representation is not required, where there is minimal formality, and where there is an effective and fast resolution of the dispute at hand.

Specialised Tribunal/ Courts

305. A fast and efficient resolution of all financial matters is crucial if Mauritius wants to raise its profile as a potential financial services hub. Whilst there is a specialised commercial division at the level of the Supreme Court, there is a growing need for bank customers and users of financial services to have access to specialised tribunals and courts, at different levels, to deal exclusively with financial matters.

Creation of Financial Advisory Units

306. The rise in household indebtedness and the glaring lack of financial understanding, brought to light in the outbreak of the Ponzi Schemes last year, reveal that vulnerable groups are in need of support. Customers generally do not serve as their own doctors and lawyers, and it is to be expected that they generally should not serve as their own financial experts. We recommend the setting up of financial advisory units, which would offer free financial advice to such groups. We invite NGOs, Consumer Associations, and the private sector to take up this challenge.

A more active role for the Mauritius Bankers Association

307. Associations of bankers around the world are making a significant contribution to actions to develop the banking sector further. The Mauritius Bankers Association is invited to play a still more active role in, for example, the development of case studies and examples of best practice for customer service, the conduct of research on ways to improve market conduct, and the provision of training to bank industry staff.

Pillar 7

- 'Treating Bankers Fairly'



*“It is not fair to ask of others
what you are not willing to do yourself”*

Eleanor Roosevelt

'Treating Bankers Fairly'

Introduction

308. Fairness lies at the very basis of sustainable business relationships. This holds equally true for the bank-customer relationship in which both parties are expected to treat each other fairly. This obviously implies that banks hold responsibilities towards their customers, and customers, in turn, hold responsibilities towards their banks.

309. The preceding Pillars were geared towards achieving a fairer deal for customers by laying down the tenets of responsible banking that banks should abide by. Pillar 7 deals with responsible banking by customers.

310. We are of the view that both parties stand to gain from understanding each other's position at every stage of the relationship. Whilst banks should adopt the '*Treating Customers Fairly*' initiative, we believe that customers should treat their banks fairly as well. At the core of our approach towards achieving a fair and inclusive banking sector, is the belief that strong synergies exist between banks' responsible provision of banking and customers' responsible usage of banking. This leads us to enunciate the concept of '*Treating Bankers Fairly*', the TBF.

'Treating Bankers Fairly' - The Concept

311. The objective of the TBF is to ensure that customers act fairly towards banks, throughout the duration of the banking relationship.

312. The TBF concept is a broad one, and it would neither be feasible nor practical to lay down all the do's and don'ts in its application. We are, instead, setting out two broad principles that would encapsulate the essence of responsible banking, from a customer's perspective.

313. The two principles of the TBF concept are

- i) Customers should act in a responsible manner.
- ii) Customers should take responsibility for their actions.

Principle 1

Customers should act in a responsible manner

314. Customers should behave responsibly by, for example,

- i) striving to raise their level of financial literacy;
- ii) providing accurate information at all times;
- iii) asking questions when in doubt; and
- iv) borrowing responsibly and within their means.

'Treating Bankers Fairly'

Principle 2

Customers should take responsibility for their actions

315. Customers should take responsibility for their actions by, at least:

- i) setting aside funds for the repayment of loans, when they avail of credit facilities;
- ii) informing banks, as soon as they foresee or encounter any difficulties in repaying any credit facilities that they have been granted; and
- iii) addressing any shortcomings in their obligations as quickly and efficiently as reasonably possible.

316. These actions, listed above, are intended to serve as guidance towards the responsible use of banking by customers. We expect that through the free exercise of their judgment, customers will keep to standards of prudent behaviour which will pave the way towards a fair and inclusive banking sector.

Recommendations

317. We are of the view that Consumer Associations and other NGOs have a crucial role to play in the TBF initiative, since they are already on the field and better placed to promote this concept. We, therefore, invite them to engage in the task of embarking customers on the road to *'Treating Bankers Fairly'*.

318. The *'Treating Bankers Fairly'* concept is intrinsically linked to Customer Empowerment, since it is only when a customer is empowered that he is able to treat bankers fairly. We deal with this important aspect in the next Pillar.

Pillar 8

- Empowering Customers



“Knowledgeable consumers provide the best incentive to effective competition. With the right information, consumers can take responsibility for their own financial well-being, shop around and exert pressure on suppliers which drive a competitive and innovative market.”²³

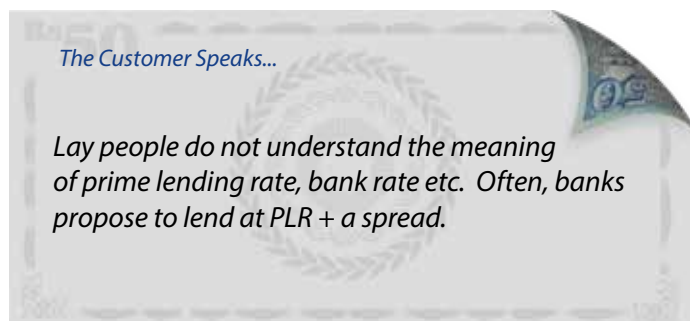
Cruickshank Report (2000)

Empowering Customers

319. Customers should be able to understand, and engage, with the market. There are many critical areas where customers interact with banks and, more often than not, they are not equipped with the capacity to properly understand the intricacies of the financial transactions they are entering into.

320. Our examination of the various submissions, and our analysis of relevant bank contract documentation, has indeed revealed two crucial issues:

- i) The customer's lack of, or limited, understanding of financial matters; and
- ii) The complexity and asymmetry of contractual provisions which operate in favour of the bank.



321. The combination of these two issues has the potential to increase the vulnerability of the customer vis-à-vis the banks. From a broader perspective, the operation of competitive forces is compromised, when customers do not have the necessary skills to understand financial matters, and are not on a level playing field with banks.

322. We are of the view that, if those issues are left unaddressed, they might jeopardise any reform initiatives. Under Pillar 3, we are proposing measures to balance the rights and obligations of both customers and banks. Under Pillar 4, we are recommending measures to simplify contracts. Under this Pillar, we are addressing the issue of customer empowerment.

323. The empowerment of customers is essential for the successful implementation of the measures contained in this Public Consultation Document. The tangible benefits of an empowered customer include the following:

- i) Customers will ask the right questions, and will shop around for the best deal, thus spurring competition among banks;
- ii) Customers will know their rights and be able to pressurize banks into providing them with good service and engaging in the 'Treating Customers Fairly' Initiative;
- iii) Customers will exercise their rights and, where necessary, seek redress; and
- iv) Customers will be able to make financial decisions that will increase their own welfare.

324. In December 2013, the Bank of Mauritius Act was amended to make it a duty of the Bank of Mauritius to "... promote public understanding of the financial system..."

325. With these newly vested powers, the Bank of Mauritius will undoubtedly take a leading role in financial education. We are, however, mindful to the fact that other stakeholders, namely banks and consumer associations, also have a role to play in this major undertaking. We, therefore, recommend the adoption of a comprehensive framework or approach to the Customer Empowerment initiative, which would achieve sustainable results, if undertaken jointly by the banking industry, the Bank of Mauritius and consumer associations.

326. Giving customers an edge in the bargain is the ultimate objective of empowering customers.

Section 6

- Towards a Fair & Inclusive Banking Sector...



“It always seems impossible until it’s done.”

Nelson Mandela

Towards a Fair & Inclusive Banking Sector...

327. The setting-up of the Task Force was the first step towards restoring the rights of the banking customer.

328. In this Public Consultation Document, we are recommending many fundamental changes to the bank-customer relationship. Our aim is to unlock the power of customers and to help banks find profit in fairness.

329. We want to bring meaningful change to an industry that matters to everyone. The reshaping of the banking industry cannot happen overnight. It will require the collaboration of all.

330. We have the vision of a banking sector where banks and customers are guided by the **fairness compass**. We have the vision of a banking sector where the banking relationship is **built on fairness**. We have the vision of a banking sector where banks and their customers live by the motto: **Fairness: First and Foremost**.

331. This vision will necessitate a change in culture, a change in banks' business models, and a change in the way they operate. Banks may view these changes as a challenge. We invite them to see in these changes an opportunity, an opportunity to connect with their customers, an opportunity to improve their image in the eyes of the public, an opportunity to rebuild the trust that befits the role of a bank. We invite them to start the journey towards '**Banking Your Future**'.

Section 7

- 100 Recommendations





The 100 Recommendations of the Task Force

Banking is Accessible to All

1. A basic bank account, the 'Compte GO', should be offered, free of charge, to all Mauritian citizens, above the age of 16. *(Paragraphs 61 and 62)*

2. The Bank of Mauritius, together with the banking industry, should educate the public both on the existence of the 'Compte GO' and on the importance of being banked. *(Paragraph 70)*

3. Banks should take the necessary steps, including the training of their front line staff, to ensure that there is no mis-selling of the 'Compte GO'. *(Paragraphs 71 and 72)*

4. The Bank of Mauritius, together with all relevant stakeholders, should review the 'Know Your Customer' procedures to ensure that people from the lower income segments are not denied the possibility of opening a 'Compte GO'. *(Paragraph 76)*

Fair Fees and Charges

5. Banks should ensure that their pricing strategy complies with the principle that: 'Fees and Charges should be fair to both the customers and the banks'. *(Paragraph 91)*

6. Banks should not impose fees and charges which may be viewed as being anti-competitive. *(Paragraph 96)*

7. Banks should not impose fees and charges for services which form part of the core features of the product. *(Paragraph 99)*

8. Banks should not impose fees and charges on processes which are meant to enhance their own internal operating model and/or risk management practices. *(Paragraph 101)*

9. Banks should not penalise customers twice for a single omission on their part. *(Paragraph 103)*

10. Banks should apply 'penalty' or 'default' charges only to recover additional administrative costs incurred by them. *(Paragraph 105)*

11. Banks should apply 'ad valorem' charges only where the operational cost and risk involved rise with the value of the transaction. Any 'ad valorem' charge should be subject to a reasonable maximum. *(Paragraph 106)*

12. Banks should charge, at cost price, 'third party' services, which do not entail significant administrative costs to them. Any fee that banks charge over and above the actual amount being claimed by a 'third party' service provider, should be clearly disclosed as such. *(Paragraphs 108 and 109)*

13. Banks should not charge any 'account closure fee' when customers close their accounts or switch banks. *(Paragraphs 97 and 98)*

14. Banks should not charge any 'standing order cancellation fees' when customers switch banks. *(Paragraph 97)*



The 100 Recommendations of the Task Force

15. Banks should not charge any 'Debit Card cancellation fees' when customers switch banks. *(Paragraph 97)*

16. Banks should not charge any fee on cash deposits and cash withdrawals, in rupees, at their counters. *(Paragraph 100)*

17. Banks should not charge any fee for crediting salaries, pensions and social security benefits to bank accounts. *(Paragraph 100)*

18. Banks should not charge any 'annual fee' for debit cards. *(Paragraph 100)*

19. Banks should not charge any fee for customers' requests for increases in credit card limits. *(Paragraph 100)*

20. Banks should not charge any fee for transferring funds between accounts held by the same customer within the same bank. *(Paragraph 100)*

21. Banks should not charge any 'dormant/inactive account fees', and 'reminder fees' for dormant/inactive accounts and accounts in arrears. *(Paragraph 102)*

22. Banks should not charge any 'ledger fee' for financing facilities. *(Paragraph 102)*

23. Banks should not charge any 'fee for site visits' associated with the grant of credit facilities. *(Paragraph 102)*

24. Banks should not charge any 'processing fee' for unsecured loans and for loans fully secured against cash deposit. *(Paragraph 135)*

25. When setting 'processing fees' for loans which are partially or fully secured, banks should give consideration to the fact that charges are already being levied for services ancillary to the security being taken. *(Paragraph 135)*

26. Banks should not charge any fees for rescheduling loans. *(Paragraph 137)*

27. Banks should not charge 'Commission in lieu of Exchange,' be it termed 'processing fees' 'general charges' or otherwise on Foreign Currency Accounts. *(Paragraph 141)*

28. Where a late payment is triggered by a returned payment, and a fee is applicable, banks may impose either a 'late payment fee' or a 'returned payment fee', whichever is less costly to the customer. *(Paragraph 104)*

29. Where a late payment triggers an excess over limit, and a fee is applicable, banks may impose either a 'late payment fee' or an 'over-limit fee', whichever is less costly to the customer. *(Paragraph 104)*

30. Where there is a minimum balance to earn interest, banks should not also charge a fee, if the balance falls below the required minimum. *(Paragraph 104)*

31. Where there is an unauthorised excess over an overdraft limit, banks may apply either a 'penalty rate' or a 'service fee', whichever is less costly to the customer. *(Paragraph 104)*

32. If banks charge a 'service fee' on current accounts, it should be reported as a flat fee per month. *(Paragraph 120)*



33. Banks should not charge a 'penalty fee' on the recipient of returned cheques and should only penalise the issuer of a cheque where it is returned due to insufficient funds. *(Paragraph 126)*

34. The 'prepayment option fee' should be abolished. *(Paragraph 146)*

35. The policy on 'early repayment fee' should be reviewed for loans not falling under the Borrower Protection Act and entered into before 1 January 2014. *(Paragraph 144)*

36. Banks should provide 'certificates of balance', 'letters for travel', 'loan balance certificates', and 'liability certificates' free of charge. A reasonable fee may be applied for subsequent requests made within a period of three months from the first issuance. *(Paragraph 148)*

37. In case of recovery of money through an attorney, banks should only be allowed to charge customers for costs lawfully incurred. *(Paragraph 156)*

38. Banks should disclose any penalty payable on deposits withdrawn before maturity in a clear and transparent manner. No penalty should, under any circumstances, erode the customer's capital. *(Paragraphs 115 and 118)*

39. Any minimum balance requirement imposed by banks, on non-interest bearing accounts, should be fair and reasonable. *(Paragraph 124)*

40. Banks should advise customers who are unable to maintain the minimum balance in their accounts of the existence of the 'Compte GO' which has no minimum balance requirement and which does not attract any fees. *(Paragraph 125)*

41. Banks should give to their customers, free of charge, statements of all their accounts on a quarterly basis. Where the clients opt in, the statements may be sent by email. *(Paragraph 128)*

42. The Bank of Mauritius should commission an examination of the 'Merchant Discount Rates' applicable on debit and credit card transactions. *(Paragraph 152)*

43. Banks should obtain the approval of the Bank of Mauritius before rebranding fees, introducing new fees or increasing existing fees. No approval will be required where fees are lowered unless the proposed revision will result in a reduction in benefits or features of the products offered. *(Paragraph 158)*

44. The power of the Bank of Mauritius to regulate fees and charges should be complemented by the power to regulate interest rate spreads. *(Paragraph 161)*

Promoting Competition

45. Banks should review the practice of requesting full 'salary pledges' when granting loan facilities. *(Paragraph 167)*

46. Alternative market players, e.g. credit unions, should be equipped to compete with existing banks. *(Paragraph 168)*

47. Banks should provide customers with clear information on how to switch banks. *(Paragraph 169)*

48. The Bank of Mauritius should commission a study focused on achieving customer mobility. All options including a switching service, a common utility platform and portable accounts should be considered and assessed. *(Paragraph 172)*

Enhancing Transparency

49. A comparative table, 'The BankSmart Window', which will display the fees and charges applied by banks in respect of all their products and services, should be adopted by the banking industry. There should be standardisation in the names of all products and services, and manner of reporting fees and charges, listed in 'The BankSmart Window'. *(Paragraphs 187, 188 and 190)*

The 100 Recommendations of the Task Force

50. Banks should only charge for products and services that appear in 'The BankSmart Window' and on their tariff guides. They should use the same names and manner of reporting on their websites and in their brochures as in 'The BankSmart Window'. (Paragraphs 191, 196 and 197)

51. Banks should disclose the Annual Percentage Rate (APR) and the Annual Effective Rate (AER) in their tariff guides. APR and AER calculation should be standardised across the industry and all fees and costs should be incorporated into the all-inclusive annual rate calculations. (Paragraphs 192 and 193)

52. Banks should abandon the present practice of reporting a fee as Rs xx + VAT. Where applicable, VAT should be included in the fees and charges. (Paragraph 189)

53. Banks should quote and advertise interest rates on credit cards in a yearly basis format i.e. as a percentage per annum. (Paragraph 189)

54. Banks should update their tariff guides whenever there are changes in legislation and/ or policy decisions. (Paragraph 189)

55. Banks should provide illustrative calculations of the cost to customers, at a given point in time, of the most commonly used products or services. (Paragraph 198)

56. NGOs and consumer associations are invited to set up and operate independent comparison websites to assess and present information on banking products. (Paragraph 200)

57. Banks should ensure that their ATM screens prompt users, upfront, on charges applicable to the proposed transaction so that the user can decide whether to proceed with, or cancel, the transaction. (Paragraph 202)

58. Banks should disclose the methods and formulae used to calculate both the interest charged on credit facilities and the interest paid on deposit accounts. (Paragraph 204)

59. The law should provide for reasonable advance notice to be given to customers before banks make any changes to the fees and charges. (Paragraph 205)

60. Customers should be given the option, and informed of their right, of either accepting any change to their contract or exiting from the relationship with the bank, without any cost, if the change is not accepted within a set period. (Paragraphs 206 and 207)

61. Banks should provide customers with a copy of their contracts in advance of the signature date. (Paragraph 209)

62. Banks should give customers the opportunity to withdraw from a loan contract at any time as long as the loan has not been disbursed. (Paragraph 210)

63. Banks should disclose to customers the total amount and time needed to fully pay off their credit card debts if they make only the minimum payment each month. (Paragraph 211)

64. Banks should disclose to customers the amount of credit card debt that would accumulate by the end of 6 months if they make no payments in the next 6 months. (Paragraph 211)



65. Banks should clearly show how their interest-free periods operate for credit cards to enable customers to take advantage of these offers. *(Paragraph 211)*

66. Banks should give customers the choice to opt-in and opt-out of 'over-limit fees' on credit cards. Customers who opt-out will have their transactions rejected if they exceed their credit limits and will thus avoid 'over-limit fees'. *(Paragraph 211)*

67. Banks should notify customers when they have reached their credit limit so that they can decide to either not use the card or make a payment to reduce their balance. *(Paragraph 211)*

68. All licensees of the Bank of Mauritius and the Financial Services Commission should include in their advertisements, a statement informing members of the public that they are regulated entities. *(Paragraph 212)*

69. The Mauritius Bankers Association should issue a glossary of common banking terms. *(Paragraph 213)*

Fair Terms and Conditions of Contracts

70. Banks should take into account the customer's legitimate interest, his weaker bargaining power and his lack of experience in the drafting of contracts. *(Paragraph 221)*

71. Banks should not include clauses containing unequal termination rights in their contracts. *(Paragraph 228)*

72. Banks should review any 'have-read-and-understood' declarations in their contracts. *(Paragraph 232)*

73. Banks should review any 'exclusion and limitation' clauses in their contracts to ensure that there is no unfairness to the customer. *(Paragraph 235)*

74. Banks should not include in their contracts any clause that place unduly harsh obligations on customers. *(Paragraph 239)*

75. Banks should not include unfair unilateral variations clauses in their contracts. *(Paragraph 242)*

76. Banks should not include in their contracts clauses that set out unclear limits to guarantees given to them. *(Paragraph 246)*

77. Banks should not include in their contracts clauses that would enable them to penalise a defaulting borrower twice. *(Paragraph 249)*

78. Banks should structure contracts for credit facilities with variable interest rates, in a way that allows borrowers to benefit fully when interest rates fall. *(Paragraph 253)*

79. The law on capitalisation of interest in arrears should be reviewed to provide clarity as to when unpaid interests can be capitalised. *(Paragraph 258)*

80. Banks should include clauses in their contracts indicating the consequences when the banks breach their obligations towards customers. *(Paragraph 261)*

81. Laws should be enacted to deal with unfair terms and conditions in banking and related financial contracts. *(Paragraph 263)*

Terms and Conditions of Contracts are set out in a fair manner

82. Banks should adopt the general principle that 'Contracts should be drafted in clear and simple terms.' The Bank of Mauritius should consider issuing Guidelines on 'Simplification of Contracts' to enforce this principle. *(Paragraphs 277 and 280)*

The 100 Recommendations of the Task Force

83. In their contracts, banks should use short sentences and paragraphs. All pages and all paragraphs should be numbered. *(Paragraph 278)*

84. Banks should avoid undue repetition in their contracts since these unnecessarily lengthen the document. *(Paragraph 278)*

85. Banks should not use sentences that contain more than one condition in their contracts. *(Paragraph 278)*

86. Banks should not use sentences that contain double negatives or exceptions to exceptions in their contracts. *(Paragraph 278)*

87. Banks should not use archaic English, legal terms or technical jargon. In case reference to legal terms or technical jargon is unavoidable, an explanation of the term, in plain language, should be provided alongside it. *(Paragraph 278)*

88. Banks should not use general references in their contracts since they render the contract vague. In particular, all charges should be clearly spelt out. *(Paragraph 278)*

89. Banks should ensure that the layout of the contractual documents, including print, is easy to follow. Use of headings and, where necessary, sub-headings should be made. *(Paragraph 278)*

90. A standard one-sheet template which will set out in simple and clear language, the Key Facts in Contracts, the 'KFiC', should be annexed to credit agreements. The 'KFiC' should be standard in terms of layout, font and colour so as to enhance comparability of offers across banks. *(Paragraphs 281 and 282)*

'Treating Customers Fairly'

91. Banks should adopt the 'Treating Customer Fairly' initiative (TCF) and aim to achieve the six identified outcomes. *(Paragraphs 290 and 292)*

92. The Bank of Mauritius should assess banks on their adoption and application of the TCF principles. *(Paragraph 296)*

Protecting Customers

93. A 'Protection of Bank Customers Code,' should be prepared and issued under the authority of the Bank of Mauritius. *(Paragraph 301)*

94. Laws relating to the protection of bank customers should be unified and strengthened. *(Paragraph 302)*

95. An Ombudsperson for the financial services sector should be appointed. *(Paragraph 304)*

96. Consideration should be given to the need to set up specialised tribunals or courts, at different levels, to deal with banking and financial matters. *(Paragraph 305)*

97. Financial advisory units offering free financial advice to the vulnerable groups should be set up. *(Paragraph 306)*



98. The Mauritius Bankers Association is invited to play a more active role in developing case studies and examples of best practice for customer service, conducting research on ways to improve market conduct, and providing training for bank industry staff. (Paragraph 307)

'Treating Bankers Fairly'

99. Consumer Associations and other NGOs should engage in the task of promoting the concept of *'Treating Bankers Fairly'* amongst bank customers. (Paragraph 317)

Empowering Customers

100. Customer Empowerment should be at the centre of this reform initiative and should be undertaken jointly by the banking industry, the Bank of Mauritius and Consumer Associations. (Paragraph 325)

“Now this is not the end.

It is not even the beginning of the end.

But it is, perhaps, the end of the beginning.”

Winston Churchill

Section 8

- Selected References
- Legends



Selected References

We have relied on, and sought inspiration from, a number of reports and publications. We are reproducing only a few below.

1. Australian bankers association website : www.bankers.asn.au
2. Financial Institutions (Bank Charges and Fees) Regulations, 2013 – Central Bank of Seychelles
3. Guidelines on the Imposition of Fees and Charges on Financial Products and Services – Bank Negara Malaysia, 10 December 2004
4. Regulations regarding bank loans & other services offered to individual customers – Central Bank of the U.A.E., 23 February 2011
5. Revised guide to bank charges - Central Bank of Nigeria, 1 April 2013
6. Report of the committee on customer service in banks - Reserve Bank of India, 2011
7. Report of the working group to formulate a scheme for ensuring reasonableness of bank charges - Reserve Bank of India, September 2006
8. OECD - G20 High Level Principles on Financial Consumer Protection, 2011
9. UK Parliamentary Commission on Banking Standards - Fifth Report: Changing banking for good
10. Various former 'Financial Services Authority' (UK) and 'Office of Fair Trading' (UK) reports
11. World Bank Report – Good Practices for Financial Consumer Protection, 2012

Legends

¹Address of Sir Seewoosagur Ramgoolam during the parliamentary debates leading to the establishment of the Bank of Mauritius, on 5 July 1966.

²Address at the Annual Dinner in honour of the Economic Operators, Pailles, December 2011.

³Financial Services Authority: 'Treating Customers Fairly' – Towards Fair Outcomes for Consumers, July 2006, page 3 (adapted).

⁴President John F. Kennedy during his address to the US Congress, on 15 March 1962.

⁵Opening keynote address by Mr V Leeladhar, former Deputy Governor of the Reserve Bank of India, at the seminar on "Balancing Cost, Profitability and Customer Experience" organised by The Asian Banker, Mumbai, 24 October 2007.

⁶It is important to understand how banks make profits. Customers of banks can be divided into two broad categories, the depositors and the borrowers. Banks derive their revenue, mainly from the interest they charge on loans and other credit facilities (interest income), and from fees and charges for services provided, namely account-related services (fee income). Interest income constitutes a major part of total income. Net fee income, although not negligible in absolute terms, made up only 9.3% of banks' total income from domestic banking activities, as at 30 June 2013. Banks derive their profits, not only from the domestic market, but also from the global activities of banks. It is worth noting that the bulk of banks' profits come from the banks' global activities.

⁷These fees applied to loans exceeding Rs2 million which do not fall under the Borrower Protection Act 2007. The Borrower Protection Act prohibits the charging of early repayment fees for loans which fall within its ambit.

⁸Section 96B Banking Act stipulates as follows:

"Limitation of interest

(1) Notwithstanding articles 1154 and 2202-6 of the Code Civil Mauricien, where the amount of the principal of a non-performing loan or credit facility granted in Mauritius currency on or after 1 January 2014 in respect of an individual is outstanding and the interest, in accordance with the contract between the bank or non-bank deposit taking institution and the individual, is equal to the outstanding amount of the principal, only simple interest at the prevailing Repo rate determined by the central bank shall be charged on the outstanding balance of the principal.

(2) Notwithstanding section 16 of the Borrower Protection Act, no bank or non-bank deposit taking institution shall, in respect of any individual, charge penalty interest at a rate exceeding 2 per cent per annum above the normal interest rate chargeable under the contract referred to in subsection **(1)**.

(3) No penalty or interest on a penalty shall, in respect of an individual, be charged by a bank or non-bank deposit taking institution, on the early repayment of any outstanding amount of a loan taken by, or credit facility referred to in subsection **(1)** granted to, that individual."

Legends

⁹The Report of the Commission of Inquiry on Sale by Levy dated 26 November 2004 and chaired by Sir Victor Glover, G.O.S.K The Commission of Inquiry had the following terms of reference:

(a) enquire and report on whether the current system of sale by levy -

(i) gives rise to or allows any malpractice;

(ii) causes undue hardship or prejudice to debtors;

(b) report on such changes, including statutory amendments, as may be necessary to better safeguard the interest of the public at large and debtors in particular

¹⁰At paragraph 81 of the report of the commission of inquiry

¹¹At paragraph 86 of the report of the commission of inquiry

¹²Paragraph 1.3 of the "Consumer Contracts – Feb 2011" study conducted by the Office of Fair Trading in the UK

¹³Address by Mr Rundheersing Bheenick, Governor of the Bank of Mauritius, at the opening ceremony of the Bank of Baroda Branch, Rose Belle, 25 July 2012

¹⁴In the case of *D. Ramphul & Anor v/s The Mauritius Commercial Bank Ltd* (2001 SCJ 81)

¹⁵Hondius, E.H. *Standard Form Contracts - A Better Way for Both Parties in National Consumer Affairs* Advisory Council (Australia) (1990) *New Directions in Consumer Financial Services*, pp 93-103 in the 'Procedures for the resolution of consumer grievances with Banking Services' by Dr S Sothi Rachagan Professor & Dean Faculty of Law University of Malaya Malaysia Paper presented at 4th Brazilian Conference on Consumer Law 8-11 March, Gramado, Brazil

¹⁶The UK's former Financial Services Authority

¹⁷ The Report of the Commission of Inquiry on Sale by Levy dated 26 November 2004 and chaired by Sir Victor Glover. The Commission of Inquiry had the following terms of reference:

(a) enquire and report on whether the current system of sale by levy -

(i) gives rise to or allows any malpractice;

(ii) causes undue hardship or prejudice to debtors;

(b) report on such changes, including statutory amendments, as may be necessary to better safeguard the interest of the public at large and debtors in particular

¹⁸Paragraph 39 of the report of the commission of inquiry

¹⁹All written terms and conditions will be reasonable and will clearly set out your rights and responsibilities in respect of a product or service in plain language. We will use legal or technical language only where necessary. Where legal or technical language is used, further explanations and clarifications shall be made available to you as and when you shall so request. (2013 Edition, page 12 paragraph 5.2)

²⁰Manager of the Unfair Contracts Team, FSA at 'The Building Societies' Association Legal Forum', 11 May 2007

²¹Financial Services Authority: 'Treating Customers Fairly – Towards Fair Outcomes for Consumers', July 2006, page 3 (adapted)

²²Address by Dr. K. C. Chakrabarty, former Deputy Governor, RBI at the Annual Conference of the International Network of Financial Services Ombudsman Schemes – INFO 2011 at Vancouver, Canada on September 21, 2011

²³Executive Summary, Paragraph 50, Cruickshank Report : Competition in UK Banking: A report to the Chancellor of the Exchequer (20 March 2000)

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