

# **A Critical Analysis of the Laws Regulating Credit Card Facilities in Sri Lanka Focusing on Consumer Protection**

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## **Abstract**

*This paper critically analyses the legal framework regulating Credit Card facilities in Sri Lanka, focusing on the aspect of consumer protection. The research identifies the existing legal framework in relation to Credit Card facilities and critically evaluates the same through a comparison with the relevant International Standards and the existing legal framework for banking and financial regulation in United Kingdom and United States of America. The overall research is based on the positivist paradigm and the doctrinal research method was primarily used for the research to obtain an in-depth knowledge of the existing legal regimes. Qualitative data gathered from both primary and secondary sources were used for the research. The researcher identified several flaws in the existing legal framework including lack of cohesion and uniformity in laws, lack of proper monitoring and enforcement mechanisms due to the absence of a dedicated authority responsible for regulation and enforcement of the law, lack of financial literacy and failure of the law to address the pressing issues faced by the consumer in the relevant industry.*

## **Introduction**

The banking and financial sector in Sri Lanka (hereinafter called SL) underwent a rapid advancement in the last decade due to the boom of trade and commerce in the country. Day by day the number of people utilizing the services of credit facilities increases and credit cards

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(hereinafter called CCs) are at the forefront of these services<sup>1</sup>. Commercial banks in SL commenced issuing CCs in 1989 and presently there are 14 banks and 3 finance companies<sup>2</sup> licensed to issue CCs.

With the rise in demand for CCs the competition among Credit Card (hereinafter called CC) issuers to promote their CC has increased. However, it is significant that in obtaining such facilities card issuers have a higher bargaining power and the customer invariably must agree with the terms and conditions of the service provider. Hence, there is evidence that the service providers resort to unethical practices in relation to provision of CCs and recovery of CC payments<sup>3</sup>. In the circumstances a proper legal framework regulating CC facilities have become essential.

### **Legal Framework in Sri Lanka Regulating Credit Card Facilities**

The regulatory framework in relation to CC facilities can be categorized into several segments.

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1 Credit Card users have increased from 1,854,103 in 2019 to 1,892,205 in 2020 (1<sup>st</sup> Quarter). Statistics obtained from the Central Bank Payments Bulletin 2020.

2 Central Bank Payments Bulletin 2018(As at 31<sup>st</sup> March 2018) Payments and Settlements Department Central Bank of Sri Lanka, "Payments Bulletin", First Quarter, 2018.

3 Bandula Sirimanne, 'New criteria for CCs as default rate rises' *Sunday Times* (Sri Lanka, 23 December 2007) ;'Brutal Attach by Debt Collectors' *The Sunday Times* <[www.sundaytimes.lk/180930/business-times/brutal-attack-by-debt-collectors-313530](http://www.sundaytimes.lk/180930/business-times/brutal-attack-by-debt-collectors-313530)> accessed 22 July 2019.

I. Legislation governing the general regulation of the banking and financial sector<sup>4</sup>. Legislation regulating CC facilities in Sri Lanka<sup>5</sup>.

II. Legislation addressing consumer protection<sup>6</sup>.

Analysis of the existing legal framework will be done in categorization of the above stated for clarity.

**I. Legislation governing the general regulation of the banking and financial sector**

**(a) Monetary Law Act (hereinafter MLA)<sup>7</sup>**

The MLA authorizes the establishment of the Central Bank of Sri Lanka (hereinafter called CBSL) which is responsible for the regulation and supervision of the monetary, financial and payment systems in SL. The Monetary Board (hereinafter called MB) is established<sup>8</sup> as the authority to determine the monetary policies to be adopted under MLA and is responsible for management and operations of the CBSL.

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4 Monetary Law Act No.58 of 1949(as amended), Banking Act No. of 1988 Finance Business Act No. of 2011, Banking Charter - Banking Act Direction No. 8 of 2011, Financial Consumer Protection Framework - Finance Business Directions No.01 of 2018, Debt Recovery Act No.2 of 1990.

5 Payment and Settlement Systems Act No.28 of 2005, Payment Cards and Mobile Payment Systems Regulation No.01 of 2013, Service Providers of Payment Cards Regulation No. 01 of 2009.

6 Consumer Affairs Authority Act No.9 of 2003.

7 Monetary Law Act No.58 of 1949

8 Ibid-section 8

**(b) Banking Act (hereinafter BA)<sup>9</sup>**

As per the long title of the BA, the purpose of the BA is the introduction and regulation of the procedure for licensing of persons who are carrying on banking business and business of accepting deposits and investing such money and matters connected thereto.<sup>10</sup>

The BA provides that the banking activities cannot be carried out without a license and a license will only be granted upon submission of specified documents to the satisfaction of the MB. A bank that is licensed under the BA will be subject to constant supervision by the Department of Banking Supervision.

Both the MLA and the BA simultaneously deal with the regulation of the banking sector in SL. The MLA deals with the broader aspect of regulation of the banking sector, through determination of financial policies in the country and operation and administration of the CBSL<sup>11</sup>. The BA addresses the specifics by catering to the specific needs of the banking sector. Hence, the consumer protection aspect is not given much attention. It is noted that there is no other authority established to specifically cater to the protection of the financial consumer.

On the other hand, the study of the US and UK systems reveals that financial regulatory systems in those countries

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<sup>9</sup> Banking Act No. 30 of 1988

<sup>10</sup> Banking Act No. 30 of 1988 Long title.

<sup>11</sup> Monetary law Act 1959, Section 8.

comprise of different authorities that are responsible for different sectors in the financial system<sup>12</sup> and specific authorities have been set up to cater to the needs of the financial consumers. These authorities include consumer protection as their primary objective and work towards achieving that goal.

**(c) Finance Business Act (hereinafter FBA)<sup>13</sup>**

The FBA deals with the regulation of finance companies. Under the FBA obtaining a license is mandatory to carry out a finance business<sup>14</sup>. The act empowers the MB to give directions in the manner of conducting the finance business<sup>15</sup>. The MB is empowered to make rules regarding any matter connected to licensing of finance companies<sup>16</sup>.

It is noted that Sri Lankan system makes a separation in regulation between banks and other institutions providing financial services. However, in the UK and USA the regulation is based on the type of financial service that is provided and not on the nature of the service provider<sup>17</sup> ensuring that any financial product or service provided by any type of service provider is subject to the same

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12 In UK there is the Financial Policy Committee, The Prudential Regulatory Authority, and the Financial Conduct Authority and in US there is the Federal Reserve and the Consumer Financial Protection Bureau

13 Finance Business Act No. 42 of 2011

14 Ibid-section 2

15 Ibid-section 12

16 Ibid-section 16

17 While Financial Services and Markets Act regulate both banks and non-bank financial service providers in UK the Dodd Frank Act regulates the banks and non-bank financial service sector in the US. Dodd-Frank Wall Street Reform and Consumer Protection Act, July 21, 2010.

regulatory framework.

**(d) Customer Charter for Licensed Banks (hereinafter The Charter)<sup>18</sup>**

The Charter specifies certain key standards of fair banking practices envisaged by customers when they undertake transactions with licensed banks and provides guidance to the licensed banks to adopt a ‘Code of Conduct (hereinafter called COC)’ on customer protection. The COC to be prepared and adopted is to address the key areas covered in the Charter<sup>19</sup>. The Charter requires the banks to issue a COC to the agents employed by them for various functions. The COC is to cover areas such as harassment of customers, employing abusive debt collection practices and disclosure of customer information to third parties.

The Charter covers a wide area of matters that are required to be fulfilled in a financial consumer protection framework. It covers areas such as disclosure, transparency, understanding of terms and conditions in order to make informed decisions, information and availability of dispute resolution mechanisms and financial literacy.

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<sup>18</sup> Banking Act Direction No. 08 of 2011

<sup>19</sup> Ibid- required to ensure that the customers fully understand the products/services provided to them article 2(a), Making available a Key Facts Document with respect to products or services in a language preferred by the customer- article 2(b), prohibited to make misleading advertisements and are required to provide factual information in promotional material- article 2(c), Banks are required to display certain information in the banks which includes the contact details of the Financial Ombudsman and the CCC- article 2(e) iv

The Charter is created as a guideline for the preparation of a COC for banks. Banks are required to implement the procedure within 6 months from the date of the Charter. The Charter itself lacks any authority and does not specify any penalty for the failure to follow the guidelines specified in the Charter. As the Charter has been issued under the BA any enforcement action should be taken under the BA<sup>20</sup>.

**(e) The Financial Customer Protection Framework (hereinafter FCPF)<sup>21</sup>**

The FCPF is issued to ensure protection of rights of customers of finance companies. The FCPF contains provisions similar to the Charter. The FCPF makes consumer protection an integral part of corporate governance, culture and strategic decision making<sup>22</sup>. To ensure disclosure and transparency, the framework requires the customer to be given clear, concise, accurate and not misleading information about the financial products/services and fully understand the terms and conditions of the products<sup>23</sup>. The FCPF also addresses the area of customer education and awareness<sup>24</sup>. The FCPF regulates the business conduct of the employees and agents of the company requiring them to act with due care, skill and diligence when dealing with the customers<sup>25</sup>. Areas such as access of customers to adequate complaint

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20 Banking Act No. 30 of 1988, Section 76(J)(5), Section 46(A)

21 Finance Business Direction No.01 of 2018, issued in terms of section 12 of the Finance Business Act No. 42 of 2011.

22 Ibid-article 2.1.

23 Ibid-article 3.1.

24 Ibid-article 3.2.

25 Ibid-article 3.3.

handling mechanisms<sup>26</sup> and protection of customer data and privacy<sup>27</sup> are also addressed in the FCPF.

The compliance period has been reduced to three months under the FCPF<sup>28</sup> and non-compliance would result in the MB taking action against the finance company<sup>29</sup>.

Both the Charter and the FCPF have been issued for the purpose of creating an effective mechanism for financial consumer protection. The Charter is more detailed with regard to the requirement while the FCPF lays down the basic guideline. The FCPF is more in line with the international standards<sup>30</sup> addressing all the required areas. The Charter fails to address the areas of equitable and fair treatment of customers and data protection and privacy. Data protection and privacy is considered a major concern in provision of financial services and the failure to address the issue can be considered a serious lapse.

It is noted that, by enacting separate guidelines for banks and finance companies, the regulator has created a disparity within the system where providers of same financial services are subject to different rules and regulations.

Since the USA and the UK regulatory systems concentrate on a financial product or service there are several

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26 Ibid-article 3.4.

27 Ibid-article 3.6.

28 Ibid-article 4.1.

29 Finance Business Act No. 43 of 2011 section 25.

30 Good practices in Financial Consumer Protection 2917, OECD G20 High Level Principles of Consumer Protection.



enactments that address the areas covered in the Charter and the FCPF. The areas addressed in the Charter and the FCPF<sup>31</sup> are addressed by the Financial Services and Markets Act (hereinafter FSMA) in UK. Areas such as disclosure, transparency, conduct of business, data protection and privacy are regulated by the Financial Conduct Authority Conduct of Business Handbook (specified in many sourcebooks) in combination with other legislation such as the Consumer Credit Act 1974 (hereinafter CCA), Unfair Terms in Consumer Credit Regulation 1999 (hereinafter UTCCR) and the Data Protection Act 2018 (DPA). The FSMA also provides for the dispute resolution mechanisms. The compliance to the rules and regulations is monitored by the Financial Conduct Authority (hereinafter FCA).

In USA similar to the position in UK, the Dodd Frank Wall Street Reform Act 2010 (hereinafter DFA) regulates the area of responsible business conduct<sup>32</sup> in combination with acts such as the Truth in Lending Act 1968 (hereinafter TILA), Fair Credit Reporting Act 2012 (hereinafter FCRA), Fair Debt Collection Practices Act 1977 (hereinafter FDCPA), CARD Act 2009 and Fair Credit Billing Act 1974 (hereinafter FCBA) which will be dealt with in detail with specific reference to CC. The main authority monitoring compliance of the law is the Consumer Financial Protection Bureau (hereinafter CFPB) together with Federal Trade Commission.

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31 Disclosure and transparency, responsible business conduct, equitable and fair treatment of customers, financial literacy, data protection and privacy

32 Unfair deceptive, abusive acts and practices, disclosure, access to information, complaints, and inquiries

The significant matter to be noted in respect of the above systems is the existence of a specific authority set up for the specific purpose of consumer protection having the power of enforcement of the regulations.

**(f) Debt Recovery Act (hereinafter DRA)<sup>33</sup>**

The DRA provides lending institutions a quicker procedure for recovery of debts (including CC debts) higher than Rs.150,000/- through summary procedure. The DRA is greatly weighted towards the lenders as the lenders can obtain a decree nisi upon establishing that a debt is justly due by the debtor without the debtor being present in court<sup>34</sup>. The debtor has to thereafter obtain leave of the court and show cause as to why the decree nisi should not be made absolute. Before appearing in court, the debtor is also required to furnish security in a sum mentioned in the decree<sup>35</sup>.

Study of the debt collection practices in the UK reveals that the debt collection is carried out by specialized third party debt collecting agencies. Debt collectors have to be registered and are required to adhere to fair debt collection practices specified under the FCA. The FCA has issued the Consumer Credit Source Book<sup>36</sup> specifying the procedure to be followed in debt recovery.

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33 Debt Recovery (Special Provisions) Act No. 02 of 1990.

34 Debt Recovery Act No.4 of 1990, Section 4(2).

35 Ibid-Section 6(2).

36Consumer Credit Sourcebook, Chapter 7, Arrears, Default and Recovery (Including Repossession), August 2019.

In USA debt collection is governed by FDCPA which will be dealt in detail with specific reference to CCs.

## **II. Legislation regulating credit card facilities**

### **(a) Payment and Settlement Systems Act (hereinafter PSSA)<sup>37</sup>**

The PSSA deals with the area of regulation, supervision and monitoring of the payment, clearing and settlement systems<sup>38</sup>. The PSSA empowers CBSL to take necessary action in the event it is of the opinion that the financial service provider is resorting to or about to resort to unsafe, unsound, or unfair practice or if contravening or about to contravene provisions of the act or any regulation, instruction, directive issued thereunder<sup>39</sup> and CBSL is responsible for preparation of a plan for national payments systems<sup>40</sup>. Section 43.2(1).a of the act empowers the minister to make regulations for protection of customers.

### **(b) Payment Cards and Mobile Payment Systems Regulation (hereinafter PCMPSR)<sup>41</sup>**

Under PCMPSR<sup>42</sup> the CBSL is appointed as the regulatory and supervisory authority for payment cards and mobile payment systems. Under the PCMPSR, obtaining a license

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37 Payment and Settlement Systems Act No. 28 of 2005.

38 Ibid-Section 2.

39 Ibid-Section 12.

40 Ibid-Section 4.

41 Divinaguma Act No. 01 of 2013

42 Issued under the Payment and Settlement Systems Act 28 of 2005

is mandatory to function as a service provider of payments systems<sup>43</sup>.

The PSSA and the PCMPSR regulate the CC service providers in SL. CBSL is the regulatory authority responsible for monitoring and supervising the payments systems. A noteworthy mention about the PCMPSR is that the specific mention of protection of customers in relation to issue of directions by the CBSL.

In USA the DFA regulates the payments and settlements system<sup>44</sup>. Under the UK legal regime the FCA<sup>45</sup> is the licensing authority and the applicant and its management is thoroughly scrutinized before a license is granted to operate a payment service<sup>46</sup>. No such strict licensing requirements can be observed under the Sri Lankan regime<sup>47</sup>.

### **(c) Credit Card Operational Guidelines (hereinafter CCOG)<sup>48</sup>**

The CCOG<sup>49</sup> is a fairly comprehensive piece of legislation

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43 Ibid-Section 4

44 Dodd Frank Act section 801[12.U.S.C 5301] Title VIII-Payment, Clearing and Settlement Supervision Act of 2010

45 Financial Services Act 2012, amendment Financial Services markets Act-section 1H

46 <<https://www.fca.org.uk/firms/authorisation/how-to-apply/lending>> accessed on 08 August 2019

47 Payment Card and Mobile payment Services Regulation - 6

48 Sri Lanka Deposit Insurance Scheme Regulations No.1 of 2010.

49 Service Providers of Payment Cards Regulation. No. 01 of 2009 which was repealed by the Payment Cards and Mobile Payment Systems Regulation No.1 of 2013 Payment Cards and Mobile Payment Systems Regulations No. 1 of 2013.

covering majority of the areas relevant to financial consumer protection. The CCOG covers the areas of marketing focusing on disclosure of benefits and incentives<sup>50</sup>, clear communication of terms and conditions in preferred language of the customer<sup>51</sup>. The CCOG prohibits making false claims on features of the services and providing misleading and unethical information<sup>52</sup>. The CCOG also requires the terms and conditions of CCs to be published in the issuer's website<sup>53</sup> and prohibits the issue of unsolicited cards<sup>54</sup>. The card issuer has the responsibility to ascertain the credit worthiness of the customer and assess the credit risk of the customer<sup>55</sup>. Guideline 6.3 prevents physical or verbal harassment of customers in debt collection. CCOG also addresses the maintenance of confidentiality of customer information<sup>56</sup> and dispute resolution mechanisms<sup>57</sup>. It is noted that non-compliance to the CCOG would entail compliance charges being imposed by the CBSL<sup>58</sup>. The perusal of the above noted section reveal that the CCOG at a glance covers the identified areas of disclosure and transparency, fair treatment and responsible business conduct and dispute resolution mechanisms.

In the UK while the FSMA lays down the basic framework

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50 Credit Card Guidelines No: 01/2010, 2.2.

51 Ibid - 2.3 and 3.10.

52 Ibid -2.5 and 2.6.

53 Ibid-Guideline 2.3.

54 Ibid-Guideline 3.4.

55 Ibid-Guideline 3.5.

56 Ibid-Guideline 7.1.

57 Ibid-Guideline 8.

58 Ibid-Guideline 10.

for conduct of the business in financial sector, the CCA specifically addresses consumer credit services including CCs. The CCA prescribes the form and content of the agreement<sup>59</sup>, the signing process<sup>60</sup> and requires the executed agreement to be given to the debtor or hirer<sup>61</sup>. The act also provides protection to holders who purchase faulty goods through a CC<sup>62</sup>. While under the CCOG issuing an unsolicited CC is prohibited, the CCA goes to the extent of making it an offence<sup>63</sup>.

The CCOG is silent with regard to the form or content of the agreements nor does it require a copy of the agreement to be given to the consumer. In fact, in SL the financial institutions do not have the practice of giving a copy of the executed agreement to the customer. This is greatly disadvantageous due to the fact that most customers only see or go through the agreement minutes before signing. As CC agreements are fairly long and drafted in legal language it precludes the consumer from properly understanding the terms and conditions therein.

The Unfair Contract Terms Act<sup>64</sup> provides for the avoidance of liability under the contract in SL. However, the act does not by any means provide the extensive protection granted by the UTCCR<sup>65</sup> in respect of unfair terms. The UTCCR deals extensively with terms that can

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59 Consumer Credit Act 1974, section 60.

60 Ibid-section 61.

61 Ibid-section 63.

62 Ibid-section 75.

63 Consumer Credit Act 1978-section 51(3).

64 Unfair Contract Terms Act No.26 of 1997

65 Consumer Credit Regulation 1999, Unfair Terms

be considered unfair in a contract. As per the regulation a standard form contract where the terms are not negotiated and been drafted in advance and creates and imbalance in the rights of the parties are considered unfair<sup>66</sup>. CC agreements in SL are generally drafted in advance and the consumer does not have any ability to make any changes to the standard format. Most of the consumers are not aware of the terms and conditions and the marketing personnel are not willing to take the time to explain the terms and conditions.

The Consumer Credit Source Book (CCSB)<sup>67</sup> extensively address the area of debt recovery under the UK system. As per the regulation the identification of the caller and the purpose for calling is a must when<sup>68</sup> a call is placed to a debtor. In addition, contacting debtors at unreasonable times<sup>69</sup> and disclosure of debt to 3<sup>rd</sup> parties<sup>70</sup> is prohibited. The manner of contacting the debtor<sup>71</sup>, rules applicable for visitations<sup>72</sup>, visiting the debtor at the workplace<sup>73</sup> are also areas addressed.

US law also includes similar provisions to protect the debtors. In USA the combination of CARD Act, FCBA, FCRA and FDCPA complete the legal regime regulating the CC facilities. Under the CARD Act a minimum of 45

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66 Unfair Terms in Consumer Credit Regulation 1999, Section 5.

67 Consumer Credit Source Book-Chapter 7, Arrears, Default and Recovery (Including Repossession).

68 Ibid-section 7.9.1.

69 Ibid-section 7.9.4.

70 Ibid-section 7.9.6.

71 Ibid-section 7.9.7.

72 Ibid-section 7.9.12.

73 Ibid-section 7.9.15.

days' notice<sup>74</sup> should be given before an amendment is made to the agreement while in SL its' a mere 10days<sup>75</sup>. In addition, the CARD act provides that if the due date of payment falls on a weekend or a holiday the payment can be made on the next business day without any surcharge<sup>76</sup>. The CCOG only requires special mention of the date if it falls on a holiday.

FCBA requires prompt crediting of payments<sup>77</sup>. There is no such requirement under the Sri Lankan legal regime. Although the CC bills can be settled through third party collectors there are so many instances of delayed crediting and the consumers being demanded payment even after the payment has been made.

Under the FDCPA very strict rules are set for debt collectors. The debt collectors are prohibited from informing the third parties about the consumers debt, consumers can only be contacted at specific times and not when the consumer is at his employer's premises, consumer and the spouse (parent in case of a minor) executor and administrator are the only persons that can be contacted<sup>78</sup>. The act provides that repeated calling and calling without identifying the caller is harassment<sup>79</sup>. Although the CCOG addressed harassment there are no details on what amounts to harassment.

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74 CARD Act, Section 101

75 Credit Card Operational Guidelines 4.2 & 4.4

76 Ibid

77 Fair Credit Billing Act -section 164 [15U.S.C 1666c]

78 Fair Debt Collection Practices Act, Sections 805[15 U.S.C 1692c]

79 Ibid-Section- 806 [15 U.S.C 1692d]



It is significant that both the FCA and the CFPB have websites open to the public where the public can make a complaint online about any financial issue that arise. This makes access to justice much easier for consumers. However, such a system is still not in place in SL<sup>80</sup>.

It is apparent from the above analysis that the main document that address the CC services in SL requires much improvement. Although the basic framework has been set, the specifics addressing the pressing needs such as regulation of the agents, harassment by the debt collectors have to be addressed in a more detailed manner.

Another significant issue that can be identified is that although CCOG is the key document addressing CC services in SL, it is a mere guideline. It is noted that both in the UK and USA, the relevant legal regime comprises of acts<sup>81</sup> and the enforcement ability of the same is high. In addition, the CCOG puts the burden on the specific financial institutions to adopt appropriate measures in many areas<sup>82</sup>. Although this may be suitable since the CC issuing is done by both bank and non- bank financial institutions this may result in different rules being applied to a single category of financial product. Although the CBSL is entitled to impose non-compliance charges<sup>83</sup> the vagueness of the guideline may lead to lack of objectivity

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80 Under the Financial Ombudsman Scheme in Sri Lanka although information is provided on the website there is no procedure available for making a complaint online.

81 Consumer Credit Regulations 1999, Except the Unfair terms.

82 Credit Card Guidelines No: 01/2010, "Dispute Resolution-8, Design of technical systems"12.7 and 12.12.

83 Credit Card Guidelines No: 01/2010, 10.

and different treatment between similar financial institutions. Systems in the UK and USA have not made such differentiation between the types of financial institutions but enacted legislation applicable to all types of financial institutions providing a particular financial product/service.

**(d) Payment Devices Frauds Act (hereinafter PDFFA)<sup>84</sup>**

PDFFA is the legislation which addresses the aspect of CC frauds in SL. Section 2 specifies that the act is applicable to CC frauds. A wide range of actions are considered as fraudulent actions under the act<sup>85</sup>. Under section 15 of the act the card issuer or any other person incurring a loss due to a CC fraud will be compensated. The High Court has been given the jurisdiction to hear the matters under the act and the punishments include imprisonment of 10 years for persons found guilty<sup>86</sup>.

The PDFFA can be considered as a fairly satisfactory act with respect to providing solutions for many issues existing in the area of CC fraud in SL. However, it is noted that the PDFFA has focused on the fraudulent acts and the criminal process in relation to fraud and less on the aspect of protection of the consumer who is the victim of fraud.

In the UK, the CCA is the relevant act addressing CC fraud which places the burden of the stolen CC on the card issuer

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84 Payment Devices Frauds Act, No. 30 of 2006

85 Ibid section 3

86 Ibid section 3(2)

and limits the cardholder's liability to a maximum of £35 before reporting upon reporting the theft no liability is placed on the card holder. Under the Consumer Protection (Distance Selling) Regulations<sup>87</sup> a consumer is entitled to a refund when her CC has been used fraudulently<sup>88</sup>.

Under the FCBA the liability of a card holder an unauthorized use of the card is limited to \$50.

In considering the above comparison of the different legal regimes, it can be confidently stated that the PFA provides a satisfactory protection to the consumer in relation to CC fraud.

### **(iii) Legislation on Consumer Protection**

#### **(a) Consumer Affairs Authority Act (hereinafter CAAA)<sup>89</sup>**

The CAAA is the main legislation concerned with the protection of consumer rights in SL. The only specific reference to banking and financial services in the CAAA is in the interpretation section<sup>90</sup> where banking and financial services are included under the services. Section 30 of the CAAA enables the consumer to take action in the event the trader resorts to misleading or deceptive practices.

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87 Consumer Protection (Distance Selling) Regulations 2000 (SI 2000/2334)

88 This regulation has now been replaced by the Consumer Contracts (Information, Cancellation and additional charges) Regulations No.13.

However, for transaction before 2014 the distance selling regulations apply.

89 The Consumer Affairs Authority Act No 09 of 2003

90 Consumer Affairs Authority Act 2003, Section 75

Although the CAAA covers banking and financial services the majority of the provisions address regulation of price, standard, and quality of goods.

Similar to the CAAA the Consumer Rights Act (hereafter CRA)<sup>91</sup> of UK does not specifically address the financial services but it specifically covers digital content unlike the CAAA. The CRA also deals with unfair contract terms and transparency in contracts which has a bearing on CCs<sup>92</sup>.

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91 Consumer Rights Act of 2015

92 Consumer Rights Act 2015, sections 62 and 68

## **Dispute Resolution Schemes - Financial Ombudsman of Sri Lanka (hereinafter FOS)**

The FOS is a dispute resolution mechanism available for consumers of financial products or services set up by the CBSL. It is a voluntary scheme established by the banking industry, the registered finance and leasing companies and primary dealers. The objective of the Ombudsman scheme is the satisfactory settlement and resolution of complaints/disputes by customers of banks and other financial institutions covered by the scheme. The Ombudsman has the power to make monetary awards binding on the participating financial institutions. The Ombudsman is not bound by strict rules or procedures and can make just and equitable decisions<sup>93</sup>.

The DFA establishes an Agency Ombudsman<sup>94</sup> which is more of an informal and voluntary method of dispute resolution. In the UK the Ombudsman system was established and is regulated by the FSMA. There is a compulsory jurisdiction in some matters as well as voluntary jurisdiction<sup>95</sup>. The Ombudsman under the FSMA has the legal authority to require production of documents, failure of which will amount to contempt of court<sup>96</sup>. Under the FOS in SL the Ombudsman does not have such authority and operate in a more informal and a voluntary environment.

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93 Accessed at <http://www.financialombudsman.lk/rules.php#proc> on 18/08/19

94 Private Education Loan Ombudsman Dodd Frank Act-section 1013.a.5

95 Financial Services and Markets Act 2000 -sections

96 Ibid-sections 231 and 232

## **Data Protection**

Data protection is a major concern in CC services as there is a large amount of personal information stored in electronic form. However, there is currently no data protection legislation in SL. The CCOG provides that the card issuer is responsible for the confidentiality of the information used by marketing personnel, agents and outsourced service providers<sup>97</sup> while the FCPF makes reference to protection of data of customers<sup>98</sup>. There is ad hoc reference to secrecy and confidentiality<sup>99</sup> in several acts but no proper legal framework in place.

## **International Standards**

The Good Practices Report<sup>100</sup> has identified certain key principles that should be considered in creating an effective legal and regulatory framework for financial consumer protection. They are;

1. A dedicated licensing authority overlooking the financial services having the authority to create binding laws and regulations and to enforce the laws.
2. A regulatory framework addressing;

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97 Credit Card Operational Guidelines - 7.1,7.2 and 9.3

98 Finance Business Direction No.01 of 2018, issued in terms of section 12 of the Finance Business Act No.42 of 2011, Section 3.6

99 Monetary Law Act Section 45, Banking Act Section 77, Finance Business Act section 61.

100 Good Practices for Financial Consumer Protection 2017 The World Bank Report at p.174.

- (a) Disclosure and Transparency in advertisements, sales material, consumer agreements and requirement of key facts statement to be given to the customer;
- (b) Fair treatment and business conduct relating to unfair terms and practices, product suitability, customer mobility<sup>101</sup>, conduct of agents and continuous monitoring of agents and debt collection practice;
- (c) Data protection and privacy; and
- (d) Proper dispute resolution mechanisms including trained personnel for dispute handling and out of court informal dispute resolution mechanisms.

The above noted factors have to be addressed in drafting laws regulating the financial sector in order to effectively provide the necessary protection to the financial consumer. As already discussed, some of the said concepts have been infused into the SL laws. However, there is a lack of uniformity and cohesion between different legislation.

## **Conclusion**

The comparison of the international standards, the legal frameworks in UK and USA in relation to CCs reveal that the Sri Lankan legal framework requires much improvement in many areas. The lack of a dedicated

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<sup>101</sup> Ability of customer to cancel the service and transfer to another product or service provider

regulatory, supervisory and enforcement authority in relation to financial service providers, lack of enforcement power for violation of the law, failure to focus on the pressing needs such as unfair contract terms, consumer harassment and data protection, lack of effective informal dispute resolution systems and low financial literacy can be considered as areas that require further attention. Although the basic framework has been laid down the laws need to be fine-tuned and remedies sought for the flaws noted above in order to transform the existing system to a system that can provide effective protection to the financial consumer.