TOWARDS NEW CONSUMER CREDIT LEGISLATION IN SINGAPORE

For some time now, controversy has raged around consumer credit[1] in a number of countries.[2] In the United States and in the United Kingdom, the arguments have gained sufficient cohesion and momentum to generate reformative legislation. In New Zealand and parts of Canada and Australia, the debate still continues. Much of the agitation is connected with the assertion of consumerist values which basically demand truth and fair dealing between parties of unequal bargaining power. But a strong thrust of the argument for change goes beyond issues of consumer protection to challenge the foundations of credit legislation in many countries, including Singapore, which have not as yet undertaken the extensive reforms. This challenge has two heads: first, it postulates that consumer transactions are inherently different from commercial transactions and that accordingly, legislation or controls should take cognizance of the differences; secondly, it argues that the *form* of a consumer credit transaction should not dictate legal treatment.

[1] For the purposes of this article, 'consumer credit' is the provision of any kind of financial accommodation to a private individual for his consumption as opposed to business purposes. It includes moneylending, credit accounts, credit sales, conditional sales, credit cards, hire-purchase and pawnbroking.

[2] See the vast amount of material on the reform of consumer credit:
United States of America
The Uniform Consumer Credit Code (1969 and 1974 Official Texts)
The Consumer Credit Protection Act of May 29, Pub. L. No. 90-321, 82 Stat. 146 N.C.C.U.S.L. — *6th Working Draft on the Uniform Consumer Credit Code*
Canada
Consumer Credit Guide (Topical Law Reports: Commerce Clearing House Inc., U.S.A.):
Ontario: The Consumer Protection Act, R.S.O. 1970, c. 82
Report of the Select Committee of the Ontario Legislature on Consumer Credit (1965, Queens Printer, Toronto)
Ontario: Unconscionable Transactions Relief Act, R.S.O. 1970, c. 472
United Kingdom
Report of the Committee on Consumer Credit [The Crowther Report] Vols. 1 and 2 (Cmnd. 4596, London: H.M.S.O., 1971); *Reform of the Law on Consumer Credit,* Department of Trade and Industry, 1973 (London: H.M.S.O.)
Australia
Rogerson, Detmold and Trebilcock, *Report to the Standing Committee of State and Commonwealth Attorneys-General on the Law Relating to Consumer Credit and Moneylending,* (1969, Government Printer, Adelaide) [The Adelaide Report]; *Report on Fair Consumer Credit Laws* (1971-72) [The Molomby Report] (Victoria); *Report of the Honorary Royal Commission appointed to enquire into Hire Purchase and other Agreements* (1972, Western Australia); Judge J.M. White, *Fair Dealing with Consumers* (1975, Adelaide).
The State of Victoria has produced a set of Bills which are currently being amended and revised with a view to their providing the basis for uniform legislation in Australia.
New Zealand
Working Paper on the Reform of the Moneylenders Act, 1908 (Contracts and Commercial Law Reform Committee, N.Z. (1971); *Credit Contracts — Report of the Contracts and Commercial Law Reform Committee,* (1977, Wellington, N.Z.). (fn. cont'd *post)*

It is axiomatic that commercial transactions do not require quite the same degree of protection as consumer transactions. Business and corporate bodies have access to professional help and advice to safeguard their interests. Consumers, *i.e.* private individuals, on the other hand, rarely have the same kind of counsel. Thus it makes eminent sense to legislate separately in respect of consumer and commercial transactions. This head of the argument, therefore, does not really require elaboration. The second head of the argument, however, needs some explanation. Fundamentally, the argument is premised upon the economic reality of credit transactions. From a functional point of view, whether the transaction takes the shape of a credit sale, hire-purchase or straight loan, it should be recognised that a loan is always involved. The argument postulates that since all credit transactions are essentially loans, they should be similarly regulated and not be subject to disparate legislation. In other words, all the various types of credit transactions should be given uniform treatment and as far as possible, *one* law should apply 'across the board'.

It is not intended to marshall all the main arguments for change in this article or to provide detailed criticism of the present unsatisfactory state of the law relating to consumer credit. This has been done elsewhere.[3] The task of this article is to indicate ways of reforming consumer credit legislation in Singapore on the basis that it *is* unsatisfactory. To that end, only the briefest outline of the general inadequacies of the present law need be provided to give the reader an overview of the problems confronting the present law.

For a start, consumer credit covers a wide territory and the volume of legislation covering the area is considerable, if not confusing. The local statutes include the Moneylenders Act, Hire-Purchase Act, Pawnbrokers Act, Banking Act, Finance Companies Act, Insurance Companies Act, Co-operative Societies Act and the Bills of Sale Act.[4] Add to these the number of United Kingdom statutes which *may* apply to Singapore under section 5 of the Civil Law Act,[5] and a general picture of disarray, of bits and pieces of legislation, begins to emerge.

See also, Curran, *Trends in Consumer Credit Legislation* (Chicago and London: U. of Chicago Press, 1965); Caplovitz, *Consumers in Trouble — A Study of Debtors in Default* (N.Y.: The Free Press, 1974); Kripke, 'Consumer Credit Regulation: A creditor-oriented viewpoint' (1968) 2 *Columbia Law Review* 445; Ziegel, 'Consumer Credit Regulation: A Canadian consumer-oriented viewpoint' (1968) 68 *Columbia Law Review* 488; Neilson (ed.), *Consumer and the Law in Canada* (Business Law Program, Osgoode Hall Law School); Ziegel and Foster (eds.) *Aspects of Comparative Commercial Law* (N.Y.: Oceana, Dobbs Ferry, 1969); McGarvie & Begg, 'The Implementation of Fair Consumer Credit Laws' (1971) 45 A.L.J. 708; Rhodes, 'Consumer Credit Laws in the Common Law Countries' (1976) *Cal. Western Int. Law Journal* 263; Haddon Storey, 'Recent Developments in Fair Consumer Credit Laws' (1974) 11 U.W.A.L. Rev. 341; Kripke, *Consumer Credit* (West Publishing Co., 1970); Goode, *Introduction to the Consumer Credit Act 1974* (London: Butterworths, 1974); *Sales of Movables by Instalment and on Credit in the member States of the Council of Europe* (Strasbourg: Unidroit, 1970); Sauveplanne (ed.), *Security over Corporeal Movables* (Sitjhoff-Leiden, 1974); Diamond (ed.) *Instalment Credit* (B.I.I.C.L., London: Stevens & Sons, 1970).

3 See C.Y. Lee, 'Consumer Credit and Security over Personalty — The Law in Singapore' (Ph.D. dissertation, University of London, 1978).

4 Caps. 220, 192, 222, 182, 191, 193, 186 and 29 respectively, of the 1970 Revised Ed.

5 Cap. 30 of the 1970 Revised Ed., and see fn. 50, *post.*

The deficiencies of the current legislation are evident whether one examines the individual statutes separately or *en masse*. On a narrower focus, the inadequacies are demonstrated, for example, by the excessive technicalities in the Moneylenders and Bills of Sale Acts, by the poor quality of amendments and draftsmanship where local modifications have been engrafted on 'borrowed' statutes, and by a singular failure to distinguish in each statute between consumer and commercial transactions. Difficulties are also experienced in the way of interpreting the civil effect of violation of statutory provisions. In some cases, the consequences of statutory infringement can be excessively harsh: for example, in the Moneylenders Act, where a technical slip might render a transaction not only void but the loan irrecoverable. In others, the consequences are not spelt out and resort must be had to the nebulous guidelines employed at law to determine the effect of non-compliance. There is no rational or co-ordinated policy towards the treatment of the subject of statutory infringement and in the few instances where consequences have actually been prescribed, they have been formulated without regard to laws regulating other forms of consumer credit transactions.

In a broader context, the present legislation may be castigated for its disparate treatment of various forms of consumer credit. In a sense, the disparity in Singapore is even greater than that which exists in the Commonwealth countries mentioned earlier. In the United Kingdom, for instance, the reason for differentiation in treatment before the 1974 Consumer Credit Act was that the laws developed on an *ad hoc* basis as new forms of transactions were invented. Because the emphasis was on the *form* of the transaction and not on its essence, there was consequently no functional coherence or unity between the various Acts. Singapore has not only 'inherited' some of the old United Kingdom Acts[6] together with their resultant incongruities, but it has also borrowed from legislation in Australia. The Hire-Purchase Act is an example of one such 'borrowed' Act. It is based on Australian legislation of the 1960s and is thus relatively modern in its approach. But the old United Kingdom legislation, which dates back to the nineteenth and early twentieth centuries[7] on which the other consumer credit Acts in Singapore are modelled, are statutes that are unsuitable in modern economic conditions. Thus the treatment of hire-purchase embodies facets of modern thinking which contrast sharply with the treatment of other forms of consumer credit transactions that do not fall within the scope of the Hire-Purchase Act. The fact that some forms of unsecured credit transactions are not subject to regulation at all[8] further disperses any uniformity in the regulation of consumer credit transactions.

Let us take one example to illustrate the inconsistencies which may arise as a result of the non-uniform laws. Hire-purchase, of course, is a legal fiction which was given validity in *Helby* v. *Matthews*.[9] But

6 Moneylenders, Pawnbrokers, Bills of Sale Acts.

7 See, *e.g.* Pawnbrokers Act, 1872 (38 & 39 Vict.) c. 25; Moneylenders Act, 1900 (63 & 64 Vict.) c. 31.

8 *E.g.* credit sales, revolving accounts and credit sales. There is no regulation of the credit aspect although they may be governed by the (U.K.) Sale of Goods Act, 1893.

9 [1895] A.C. 471.

intrinsically, hire-purchase transactions, like all other forms of secured consumer credit transactions, involve two elements: a loan and security. If the loan arises in connection with the purchase of goods, the security aspect acquires the colouring of a sale. If not, then there is really a mortgage or pledge transaction. Yet, depending on the form the transaction takes, different consequences will entail. If X borrows money from Y to purchase a motor vehicle which he then mortgages to Y as security for the loan, the transaction might be caught by the Moneylenders and Bills of Sale Acts. If he buys it on hire-purchase from Y who obtains security by retaining ownership, it does not fall within the ambit of either of those Acts, but may be caught by the Hire-Purchase Act. Under the Moneylenders Act, Y would have to be licensed or the transaction is void. Under the Hire-Purchase Act, he need not be licensed. Under the Bills of Sale Act, Y must register the chattel mortgage if the transfer of ownership is embodied in a document. Under the Hire-Purchase Act, no registration is necessary. These are but some of the irrational differences arising from regulation that is based on form.

Fundamentally, consumer X is not concerned with the manner in which he obtains credit or the form the transaction takes. His concern is whether credit is obtainable upon easy terms. The means are not important; the ends, however, do matter. Thus it is both unreasonable and highly artificial to regulate consumer credit transactions on the basis of form. If the regulation of consumer credit is considered desirable, new legislation is required which discards the formal distinctions and recognises that regulation of consumer credit transactions must rest on the basis of function which is the common factor. It is in this direction that reform measures must step. In this connection, it should be noted that in other jurisdictions, the trend has also been to recognise the need for a uniform and consistent policy in the treatment of consumer credit, and in a number of countries, legislation has been enacted accordingly.[10]

Another point of note is that there is not only a host of legislation regulating piecemeal the different types of security taken according to their form, but there are also several systems for determining priorities between contesting claimants to a security in existence. The majority of the statutes affecting secured transactions, *e.g.* the Companies Act, the Bills of Sale Act, the (U.K.) Policies of Assurance Act, the Hire-Purchase Act, the (U.K.) Sale of Goods Act, the (U.K.) Factors Act, 1889, the Pawnbrokers Act, have each devised its own scheme to determine priorities and/or title. Juxtaposed to these systems are the common law and equitable rules. There are still other rules to determine priorities in bankruptcy proceedings and distress. Thus the picture which unfolds reveals a chaotic state of the law.

My purpose then, is to consider the ways by which the present chaos may be resolved. The ensuing paragraphs contain suggestions for reform and the discussion is in five parts:

I. The desirability and purpose of consumer credit legislation;

[10] U.S.: Uniform Commercial Credit Code; U.K.: Consumer Credit Act, 1974; South Australia: Consumer Credit Act, 1972 and Consumer Transactions Act, 1972.

II. The practical constraints which would affect, limit and shape any proposal for reform;

III. Protection of the consumer — the particular areas of consumer credit which require control and regulation. This will be explored in the light of objectives set out in (I) and circumscribed by the limitations in (II);

IV. Organisational aspects of reform: (a) Legislation; (b) Administration and Enforcement;

V. Other miscellaneous areas of reform.

I. *The Desirability of Consumer Credit Regulation*

Whenever controls of any nature are deliberated, it is essential first to consider the object or purpose of the controls. In the field of consumer credit, one must look at the question in the light of social and economic conditions.

A — *Social objectives*

Singapore cannot truly be said to be a consumer credit society at its present stage of development. However, it is a society in transition from traditional virtues like asceticism, self-denial and thrift, to spending on a grander and more liberal scale. The change is largely the result of a desire for better living standards fostered by greater affluence, western influence, and subjection to advertising and high-pressure salesmanship. Thus while the motive for becoming indebted in one sector of the population might be to provide for necessaries and other urgent requirements, the motives of the more 'enlightened' generations are rather different. The latter-day credit-conscious consumer uses credit for a number of reasons. First, it enables him to enjoy goods or services immediately and to confer upon the individual a social status which in Singapore, is measured to a large extent by material possessions.[11] Secondly, depending on the rate of inflation and interest rates, there are occasions when it might make better economic sense to purchase on credit immediately instead of postponing acquisition to a later date for a higher price. Thirdly, for those who are unable to form the habit of saving, buying on credit represents a form of obligatory saving which thus 'enables' a purchase to be made which would have been impossible in the absence of credit facilities. Fourthly, instalment purchase constitutes a convenient way of spreading payment for goods and services. Fifthly, it enables the consumer to make purchases of a 'capital' nature that are more beneficial to him than interest accrued on savings. For example, a sewing machine bought on credit may be used to produce income or to reduce expenditure on clothing. A good musical instrument or antique bought with a loan will appreciate in value. Sixthly, it enables consumers to 'bulk buy' and thus take advantage of the economies of scale. Clearly, consumer credit has many advantages and is here to stay.[12] However, the potential for abuse is tremendous unless tran-

11 Ironically, he may in so doing undermine the status.

12 It is likely that consumer credit will bring about changes in the value structure if it has not already done so. Whether this is desirable or not is not within the scope of this article.

sactions are regulated to protect the consumer or debtor. The consumer in Singapore is usually ignorant of his rights and afraid to take legal counsel or action unless compelled to. Also, in the nature of things, the debtor is always in a much weaker position than the creditor and there is no bargaining equality. The creditor may therefore impose harsh terms and make unreasonable demands. The borrower must evidently be protected by law from his own ignorance or desperation. He must be protected against exploitation and extortionate or unconscionable bargains. This is the main function of a consumer credit law.

B — *Economic objectives*

How does consumer credit affect the economy? This is a question to which the answer must be sought when considering whether consumer credit legislation ought to be a vehicle for carrying out economic objectives. No statistics are available by which it is possible to measure with accuracy the significance of consumer credit in Singapore or to extrapolate its growth in the future. But to gauge from the experience of more advanced countries, it is likely that the volume of consumer credit will expand rapidly, barring deliberate government intervention, as more and more people become acquainted with its advantages and the *modus operandi* of the various forms. There would seem to be no reason why the trend for rapid growth in the consumer credit industry should not match the experience in other developed countries. Since no empirical data is available to facilitate a study of the impact of consumer credit on the economy, only the theoretical nature of its dangers may be considered here.

Briefly, consumer credit is said to affect savings, to add to the problem of inflation, to produce downturns in the economy at certain times, and to contribute to the instability of the economy. It is said to have an adverse effect on savings with the result that less money is available to foster investment.[13] It is said to promote inflation by encouraging consumer expenditure. It is said that an overlarge consumer instalment debt may result in a contraction of business activity either because of apprehension over the liquidation of unsound debts or because the consumers have reached the limits of their ability to carry debts. Consumer credit is also said to magnify the amplitude in the swings between boom and recession of the trade cycle and so to aggravate instability in the economy. These then are the main threats which consumer credit is said to pose.[14]

If these theoretical assumptions are correct, what regulatory steps may a government take to control the volume of consumer credit? This question is particularly relevant to consideration of anti-inflationary measures in times of excessive consumption and growth in money

[13] This is a dangerous argument. Companies with increased consumer sales may in fact plough back profits into investment and thus foster growth.

[14] This is not the place to discuss economic theories. For more expanded accounts, see *e.g. The Crowther Report* (Cmnd. 4596, London: H.M.S.O., 1971); Oliver, *The Control of Hire-Purchase* (London: George Allan Unwin Ltd., 1961); McCracken, Mao and Fricke, *Consumer Instalment Credit and Public Policy* (U. of Michigan, 1965); Oliver and Runcie, 'The Economic Regulation of Instalment Credit in the United Kingdom' — draft for the conference on *Instalment Credit Law* organised by The British Institute of International and Comparative Law, 1968.

supply. There are various alternatives. The first of these is terms control. The law can require minimum deposits to be taken by the financier in any credit transaction and specify maximum periods over which the credit contract may run.[15] This makes it more difficult for the consumer to obtain credit because he has first to produce the statutory deposit, and the shortened period means increases in the amount of instalment repayments which he may be unable to afford. Demand may be curtailed by employment of these measures. It may also be argued that the requirement of a minimum deposit fulfils a social objective too in that it may prevent the consumer from over-committing himself. Another advantage of terms control is that it is easy to implement and to enforce, and that it tends to act with almost immediate effect. However, several arguments may be put against the imposition of terms controls. One is that in a free society,[16] the consumer should be left to allocate his resources as he pleases. The second is that there is no guarantee that curbs on the availability of credit would cause the consumer to save. He may channel his money towards other expenditure instead. Thirdly, terms controls tend to suffer from 'fatigue' and to have negligible impact on the volume of credit in the long run. Fourthly, they can be easily evaded by the use of alternative forms of credit to which the controls do not apply. Fifthly, unless properly timed and carefully measured, the imposition of terms controls could be counter-productive and lead to violent fluctuations in demand with resulting inefficient production and higher operational costs. Thus, instead of damping the swings in the trade cycle, terms control may actually add to the destabilizing forces of instalment credit.

Another way of controlling the volume of consumer credit is to control the sources of funds of financiers or credit providers. This could be achieved by control of bank credit and restrictions on capital issues.[17] Thus if a financier is restricted by these means from raising funds, it follows that there is less available money to lend to consumers. A third alternative is the imposition of loan ceilings so that credit exceeding a specified amount is prohibited. Yet another method of control is to require collateral to be provided to secure the extension of credit.[18] A fifth possibility is to raise interest rates to a level which is beyond the means of the ordinary consumer.

It should be stressed that the purpose of raising the issues here is only to identify questions which may be pertinent to the question of economic control. Experience may show that controls are not really necessary and that at most, consumer credit would only add marginally to the swings in business activity. The evidence in the United Kingdom and the United States seems to indicate that, on balance, no case ought to be made out for terms control.[19]

15 See e.g. section 30, Hire-Purchase Act.

16 Of course, no society is totally free.

17 At present, restriction on bank credit is done by moral suasion. The Monetary Authority issues directives to finance institutions which are expected to act accordingly, failing which there is the threat of being blacklisted.

18 See *e.g.* section 18, Finance Companies Act.

19 See *The Crowther Report,* (Cmnd. 4596, London: H.M.S.O., 1971) and McCracken, Mao and Fricke, *Consumer Instalment Credit and Public Policy,* (U. of Michigan, 1965). But *contra* F.R. Oliver, *The Control of Hire-purchase* (London: George Allan & Unwin Ltd., 1961).

II. *Practical Limitations on Reform of Law in Singapore*

There are certain constraints to which the reformer must address his mind when considering the shape and structure of consumer credit reform. Chief among these is that there is considerable lack of manpower and funds which may be allocated to the protection of consumer interests. There are more pressing priorities than consumer credit in a tiny republic with a population of 2.3 million and lacking natural resources. Moreover, the Government's aim in relation to finance is to make Singapore one of the world's main financial centres. Thus it is more concerned with upgrading the level of sophistication of credit facilities and services geared towards international banking and finance, international trade, the international money market, and industry. In the present financial structure, other credit providers like moneylenders, pawnbrokers and chit fund companies occupy only the tail end of the hierarchy. In moving ahead and improving the services of the higher ranking institutions, this fringe end is often ignored. This is deemed essential for Singapore's survival as a nation. Moreover, there is lack of a strong consumer lobby to press for improvements in the field of consumer credit. The average citizen is normally apathetic and unwilling to fight for his rights.

It is thus impossible to conceive of any reform on too sweeping a scale. A new consumer credit law must be, as far as possible, simple in conception, homogeneous in application, and easy to administer. There is neither money nor expertise for the creation of efficient and expensive 'watchdogs' of consumer credit.[20]

III. *Protection of the Consumer*

It has been noted previously that the main function of a consumer credit law[21] is to redress bargaining inequality. The scope of application of such legislation should therefore be wide. In determining this scope, two tests may be employed. The first is the 'status' test, by which consumer transactions may be separated from commercial transactions. The reason for such separation is that commercial transactions usually involve negotiating parties of equal bargaining strength[22] so that the commercial borrower stands on a different footing from the consumer and does not require the same degree of protection. Further, the excessive regulation of commercial transactions may actually do the borrower a disservice as it may hinder and hamper enterprise and ingenuity. By the 'status' test, it is proposed that the legislation should apply to transactions whereby credit is extended to a consumer, *i.e.* an individual or natural person as opposed to a corporate body. The second test is designed to limit the ambit of application of the law in circumstances where the borrower clearly does not require special protection because of the sheer size of the transaction relative to individual needs. This is the 'amount of credit' test by which the amount of credit provided or to be extended to a

20 See *e.g.* Office of Fair Trading in the U.K.; the various tribunals in South Australia.

21 The word 'law' here is used to mean legislation affecting consumer credit which may comprise more than one enactment.

22 Theoretically at least, businesses have access to legal and other professional advice in negotiations and in the drafting of contracts.

consumer should not exceed $30,000.[23] In the case of revolving or open-end credit, this figure relates to the ceiling amount which the consumer is permitted to draw or utilise under his credit facility. The legislation would not apply in relation to mortgages of land because such transactions would normally be entered into only upon the advice of a solicitor. There is a third test which may be employed but is rejected here as being too imprecise and likely to lead to controversy. This is the 'purpose of use' test. By this test, the definition of 'consumer credit' may be limited to that credit extended only for personal, family or household purposes of the person to whom the credit is made.[24] But it is possible to envisage circumstances where goods bought on credit are used for dual or more purposes, one of which is not contemplated by the definition in the legislation. A clear example is that of a motor vehicle which may be used for family and social purposes, as well as to ply a trade.

There are three stages in a consumer credit transaction which the protection of the law should encompass, namely:

A — The pre-contractual stage;

B — The making of the contract;

C — Performance and operation of the contract.

A — *Pre-contractual protection*

Pre-contractual regulation to protect the consumer before he enters into a credit contract may be focused on four main areas:

1. Licensing;
2. Disclosure;
3. False or misleading advertisements;
4. Doorstep canvassing.

1. *Licensing*

Licensing has many virtues as an instrument of control. In general, a licensing authority must be satisfied as to minimum standards of character, financial integrity and expertise before a licence is issued. It must also be satisfied that it is in the interests of the community that a licence be granted. A licensing system also permits the authority to keep track of the operations of the licensee, to investigate allegations of malpractices, to check periodically on its accounts, if this is thought desirable. But its greatest advantage lies in the power of the licensing authority to refuse to renew, or to revoke or to suspend the licence when, in the authority's opinion, the minimum standards have not been observed. Unlicensed operations would be prohibited and as such, void and illegal. This offers a powerful safeguard to an unwary consumer.

But a licensing system with close monitoring and supervision of licensees involves a tremendous amount of administrative work, staff

[23] This is an arbitrary figure but it is expected that this should be sufficient to include most consumer credit transactions requiring protection.

[24] See *e.g.* Uniform Consumer Credit Code (U.S.).

and expense. Although ideally all providers of consumer credit should be licensed by the same authority so that consistency and fairness can be maintained, this would not be a justifiable proposition in the light of the practical constraints peculiar to Singapore. At the moment, certain of the 'higher' institutions are under very close supervision by the Monetary Authority of Singapore which also acts as the licensing authority in respect of those institutions. These 'higher' consumer credit institutions are the banks, finance companies and insurance companies. The Monetary Authority, although technically an independent statutory body, is in fact controlled to a large extent by the Ministry of Finance. Other credit providers are presently licensed by separate licensing authorities which come under the auspices of the Ministry of Social Affairs. These 'lesser' licensing bodies do not control or supervise the activities of its licensees to the same extent as the Monetary Authority. The explanation for this disparate treatment is Singapore's development as one of the world centres for finance and commerce. In striving towards this objective, the intensive government policing of banks, finance companies and insurance companies, discount and accepting houses is vital to the building of a sound and reputable finance system which is intended to attract foreign capital and investment. Pure consumer credit providers do not merit such close supervision. It is likely that the disparate treatment will continue into the future for the economic and political reasons outlined. Thus a single licensing authority for all providers of consumer credit does not appear viable.

The following recommendation is therefore made in respect of the licensing of consumer credit providers. All consumer credit providers *i.e.* any person or body or body corporate who extends financial accommodation to the extent of $30,000 to an individual must, with certain exceptions, be licensed by the Registrar of Consumer Credit Lenders. The Registrar of Consumer Credit Lenders would replace and take on the duties presently executed by the Registrar of Moneylenders and the Registrar of Pawnbrokers. He would be responsible for licensing consumer credit providers not exempt from licensing, for maintaining records of the names and addresses of the licensed credit providers, and he would also hear out complaints[25] against licensed consumer credit providers and take appropriate action where necessary to suspend or revoke licences. The bodies or individuals exempt from licensing would consist of:

i) all bodies, whether corporate or otherwise, already licensed under the Banking Act, Finance Act and Insurance Companies Act;

ii) all statutory bodies;

iii) all vendor creditors.

It is thought fit to exclude vendor creditors from the licensing requirement because, in the first place, they are too numerous and any requirement that they should be licensed would involve too much expense and administrative work. Secondly, the extension of vendor credit is only ancillary to the main business of selling goods or services.

25 Through the Consumer Credit Officer. See *infra.*

They need not be licensed therefore unless it is proved that their primary business is that of extending credit to consumers.

Although a large number of consumer credit providers need not be licensed under the listed exceptions, it is intended that they should all be governed and regulated by the same enactment in all other respects except where specifically indicated otherwise.

2. *Pre-contractual disclosure*

Legislation should aim towards full disclosure of the contractual terms. A line is drawn here between disclosures which are intended to help the consumer choose a credit provider or a particular form of transaction, and disclosures of other contractual terms which the consumer should read before signing the contract. At this stage, we are only concerned with the former. By far the most important of these disclosures is the disclosure of the full cost of credit. The term 'full cost of credit' is used deliberately because all charges other than the pure interest charge should be disclosed. This is to forestall any loading of charges to give the appearance of cheap credit. Disclosure of the full cost of credit is necessary in order that the consumer may 'shop' for the cheapest credit available.

The difficulty which arises is, what form of disclosure would be most meaningful to the consumer? The full cost of credit may be expressed as a lump sum,[26] or as a rate of charge per annum. In the writer's view, there are some consumers to whom the lump sum disclosure would be more meaningful, and others to whom a rate per annum disclosure makes more sense. Thus it is proposed that both disclosures should be required by law. But many difficulties are encountered in the calculation of either the rate or the lump sum. A meaningful rate per cent per annum may be expressed as a nominal annual rate, which is approximately accurate because it is calculated upon a reducing principal, or it may be expressed as a true or effective rate per cent per annum, compounded annually. An annual rate is chosen because there is no way by which a consumer can really compare the cost of credit unless the finance charge is expressed on a uniform basis. But flat rate disclosures are ruled out because they may, depending on the circumstances, distort the picture completely. The true or effective rate gives the most accurate basis for comparison. It is the only means by which credit for different durations and repayable by instalments with reference to different intervals of time may be accurately compared. The main argument against a true rate disclosure, however, is that calculations may be extremely complex and different formulae are required to cater for different situations. If this objection can be sustained, the nominal annual percentage rate provides a simpler solution.[27]

In the United Kingdom, three formulae and a series of official tables calculated by the Government Actuary's Department have

[26] Except where calculation of this lump sum is not possible for various reasons, *e.g.* because of the employment of a variable interest rate. In this case, all charges which are quantifiable should still be itemised and disclosed.

[27] The nominal annual percentage rate is used in the U.S. See the Consumer Credit Protection Act and Regulation Z.

been provided in an attempt to solve the complexities of a true rate calculation.[28] The adoption of official rate tables would provide ammunition to demolish the main argument against requiring a true rate of disclosure, because tables simplify calculation. However, tables may only be used where they are exactly applicable to the circumstances. Resort must still be had to other formulae in relation to circumstances to which tables cannot be supplied, *e.g.* in balloon payment-type situations.

In relation to open-end or revolving credit transactions, the United Kingdom formula for calculation where a period rate is charged is

$$100\ [(1 + \tfrac{x}{100})^{y} - 1]$$

where x is the period rate of charge expressed as a percentage; and
y is the number of periods in a year in relation to which the period rate of charge is imposed.

This formula gives the effective annual equivalent of the period rate. The American formula is simply to multiply the period rate by the number of periods in a year to give the nominal annual percentage rate. This is not as accurate as the United Kingdom formula. For example, given a monthly rate of 2%, the effective annual percentage works out at 26.8. The nominal annual rate method gives only 24% per annum. Thus there is a difference of 2.8% which is mathematically significant.

There are additional problems in the calculation of credit charges in revolving credit transactions. The variables which have to be taken into account include the dates of periodic billing, time of the purchases, time and amount of payment. It is possible for the user of an option account, for instance, to obtain more than a month's free credit on purchases. It is also possible for him to pay a high rate of interest depending on the date of purchase and the time of billing. Computation of the true rate is possible, but extremely difficult.

The alternatives then are clearly to opt for a simpler but not so accurate rate disclosure like the American nominal annual percentage rate, or to insist on the true rate per annum and provide standard formulae and tables which are sufficient to cover most consumer credit transactions and to prohibit transactions which cannot be precisely catered for by the prescribed formulae and tables. The latter alternative should not cause undue consternation because in the field of consumer credit, it is unlikely that extremely complicated payment schedules will be employed. In relation to revolving credit transactions, because of the variables mentioned above, only the maximum rate per cent per annum may be and should be given. This should be disclosed together with the period rate before the opening of the revolving facility, subject to alteration of the period rate from time to time and its consequential effect on the maximum true annual rate of charge. It is recommended that the United Kingdom formula for calculating the annual equivalent of the periodic rate be adopted for this purpose.

[28] See *The Consumer Credit (Total Charge for Credit) Regulations, 1977* and *Consumer Credit Tables, Parts 1-15* (London: H.M.S.O. 1977).

The total charge for credit should be disclosed in addition to the true rate per cent per annum. This would include the interest on the whole amount of credit together with all other obligatory payments made directly or indirectly to the creditor, the supplier, or their agents, including premiums, service or maintenance charges, introductory fees, legal fees and stamp duty. A breakdown of the total charge for credit is necessary to show its various components. The reason for requiring disclosure of all these charges is first, to prevent the loading of charges to give the appearance of a low interest charge; and secondly, to prevent arrangements whereby charges made under ancillary contracts to third parties may be passed back to the credit provider. Where the consumer is given a free and not illusory choice of providers of ancillary services, the charges in respect thereof may be exempt from inclusion in the total charge for credit. Default charges should also be excluded from the total credit charge because of their inherently different nature.

It is recognised that lump sum disclosure is not feasible where the credit extended is of the revolving type. Instead, the creditor should disclose to the consumer at the time of arranging the credit facility and before the first transaction takes place, the following:

i) The conditions under which any charge may or may not be imposed;[29]

ii) The period rate of charge (where applicable);

iii) The basis of calculating:

   a) the balance upon which the period or other charge is levied;

   b) the amount of the credit charge;

iv) Where an annual rate per cent is not quoted, the effective annual equivalent of the specified period rate of charge;

v) The minimum periodic payment required (where applicable).

It is also recognised that in vendor credit transactions, it would be administratively impossible for the above recommendations to be carried out in full in respect of each and every item of goods displayed as available on credit. Some modification of the disclosure requirements is therefore necessary. Where a credit price is quoted together with the cash price for an item, the credit price should include the total charge for credit. Where no credit price is quoted but that is available on application, then the prospective purchaser on credit should be told upon enquiry the total charge for credit as well as the true rate per cent per annum chargeable on the credit transaction.

3. *False or misleading advertisements*

Advertising that is false or misleading should be prohibited and made an offence. It is recommended that any transaction entered into in consequence of such advertisements by the creditor, supplier or any of their agents, should be voidable at the option of the consumer.

[29] This would include a statement of the dates of billing and payment from which charges are calculated (where applicable).

'Bait' advertising and 'switch' selling, that is, the advertising of cheap credit in respect of particular goods intended to lure the consumer into the trading premises when sales pressure is applied to sell other goods on less easy terms, should be discouraged by the prohibition of advertisement of 'bait' items or transactions which are not readily available to the consumer.

4. *Doorstep canvassing*

The hawking of pure credit is an undesirable activity from which consumers must be protected. It is recommended that doorstep canvassing or the solicitation of credit in person away from the trade premises of the creditor be prohibited and made an offence punishable by heavy penalties. However, the extension of credit in connection with door-to-door sales does not attract quite the same degree of odium. This is because the extension of credit is only ancillary to a sale, and furthermore, door-to-door sales retain a measure of favour with 'home-bound' consumers. This is not to say that there is no necessity to regulate door-to-door sales. The problems and abuses arising from this kind of credit transactions and the protective measures which may be taken to safeguard consumers are discussed later.

B — *The making of the contract*

1. *Legibility requirements*

Contractual documents should be printed in a legible type and size that facilitates easy reading and comprehension. The recommendation in this respect is that legislation should specify a minimum size of type to be used in all consumer credit documents, *i.e.* the contractual documents and documents containing statutorily required information. The suggested penalty for non-compliance is the deprivation of credit charges in respect of that transaction. The financier should not be entitled to repayment of an amount in excess of the actual credit extended, and any amount repaid which exceeds the sum of credit provided should be refunded to the consumer.

2. *Language of documents*

One of the problems of a multi-lingual society with four official languages is that of specification of a language to be used for contractual documents. Although it would have been ideal to require the contractual terms to be spelt out in all the official languages, this is manifestly an impractical proposition which would create translation difficulties and necessitate substantial expense. Since the language of the law in Singapore is English, and as the main language of commerce is also English, the contractual documents should also be in English. However, special consideration should be given to door-to-door sales which are aimed at housewives and the sector of society not likely to be fluent in English. It will be suggested later that door-to-door credit sales should be invalid • unless the consumer sends a notice of affirmation to the vendor or financier. Such notice should be in all four official languages, of large type, and of a conspicuous colour. The main contractual document which is signed by the consumer should also bear a warning in all four languages that the transaction is invalid unless the notice of affirmation is sent within the prescribed time. The warning should be in a different colour

from the rest of the document and conspicuously framed in a 'box' of conspicuous colour.

3. *Disclosure of contractual terms before signature*

Here we are concerned with the contractual terms which must be spelt out in the document for the consumer's signature. There are two ways of approaching this question. One is to prescribe forms to be used by financiers in respect of different transactions. These forms would be very comprehensive and permit of no alternation or allow only slight variation. The other alternative is to prescribe a minimum content which must appear in every consumer credit contract. This would provide flexibility and is preferable if consumer credit is not to become ossified. There would also be less interference with freedom to contract. The rigid approach, moreover, suffers from the danger of being insufficiently comprehensive as is so evident in the prescribed form under the current Moneylenders Rules, 1975.[30] Thus it is recommended that legislation or rules made under the consumer credit legislation prescribe a minimum content.

What should the minimum content comprise? Clearly, the main contractual terms. These are:[31]

i) The name and address of the financier or credit provider;

ii) The name and address of the supplier (where applicable);

iii) The amount of credit extended;

iv) The date on which the credit is advanced;

v) The total cost of credit and its constituent charges;

vi) The true rate of charge per cent per annum (or if a periodic rate is stated, both the periodic rate and the effective annual equivalent of the periodic rate);

vii) The total amount repayable;

viii) The number and amount of repayment instalments (where applicable);

ix) The repayment schedule (including dates of instalments and method of appropriation of sums repaid towards amounts owed);

x) A description of security taken, if any;

xi) The rate of default interest chargeable for delinquent payments.

[30] This form has been severely criticised by the author in C.Y. Lee, 'Consumer Credit and Security over Personalty — The Law in Singapore's (Ph.D. dissertation, University of London, 1978), pp. 167-183.

[31] Compare and contrast with: *The Consumer Credit Act, 1974* (U.K.); *The Uniform Consumer Credit Code* (1969 and 1974 official texts, U.S.); Rogerson, Detmold and Trebilcock, *Report to the Standing Committee of State and Commonwealth Attorneys-General on the Law Relating to Consumer Credit and Moneylending,* (1969, Government Printer, Adelaide); *Report on Fair Consumer Credit Laws* (1971-72) [The Molomby Report] (Victoria).

With regard to vendor credit transactions, further information is required:

i) Cash price of the goods;

ii) Amount deposited (including any trade-in allowance).

Open-end credit requires different treatment again. It is proposed that the mandatory information in these transactions include the information previously set out as being required under pre-contractual disclosures, together with the name and address of the financier. Periodical statements should be required to be given at the end of each billing cycle and should contain the following information:

i) The date of the statement;

ii) Sufficient details as to amounts of and to identify the transactions entered into;

iii) Payments made during the previous billing cycle;

iv) The previous balance;

v) The new balance;

vi) The minimum payment required and the date by which it must be made;

vii) The periodic rate of charge on credit extended;

viii) The effective annual equivalent of the periodic rate of charge;

ix) The basis on which calculations and charges are made;

x) The method of appropriation of repayments to outstandings.

Failure to comply with the minimum content would render the transaction void. Legislation should also require all other material terms of the contract to be set out failing which the transaction is void.

The above requirements would achieve nothing unless the consumer actually read the agreement before signing. The law should therefore provide that the front page of the contractual document should contain in large conspicuous lettering a warning admonishing the consumer to read the document before signing. Non-compliance in this respect renders the transaction void. Signature in blank should be prohibited and an agreement so signed also made void. In this connection, acknowledgements to the effect that the consumer has read and understood the contract before appending his signature should be deemed to be of no probative value.

After signature, the consumer should be given a copy containing identical terms of the agreement. Where it is the consumer who has made the offer and signed an agreement of the financier's, as in hire-purchase transactions, a further copy of the agreement must be sent to the consumer within fourteen days of accepting the offer.

4. *Door-to-door consumer credit sales*

Door-to-door sales, whether for cash or on credit, raise problems which stem from the psychological leverage obtained by salesmen over

consumers once the caller has managed to put his foot on the threshold. He will not normally leave until he has obtained a signed contract from the householder. It appears to be the common experience in many countries that when confronted by such persistence and sales talk, the consumer will usually oblige with the consequence that in most cases, he ends up buying goods he has no need for or does not want. There is therefore a strong rationale for controlling door-to-door sales, particularly where the extension of credit is involved. The consumer must be protected from getting into unwanted debt. In some of the advanced jurisdictions, the solution has been found in the creation of a 'cooling off' period within which the consumer may exercise a right to cancel an agreement made at home or at premises other than business premises.[32] But in Singapore, the situation is exacerbated by the fact that many of the 'victims' of door-to-door sales are old housewives with little or no education. It seems pointless giving such person a right of cancellation if she is not aware of such right. The problem is how to make her aware of the right. In other countries, the right is communicated by requiring a conspicuous notice of the right of cancellation to be printed on the front page of the agreement. But even if the law were to require such a notice to be printed in all four languages in Singapore, the likelihood is that the consumer is illiterate in all these languages. The better view would be for the law to provide that all door-to-door consumer credit sale agreements are of no effect unless validated by a notice of affirmation of the contract signed by the consumer *and* witnessed in writing by a spouse or other relative who is proficient in English which must be returned to the vendor within a specified period after signature of the offer or agreement. The notice of affirmation should provide in bold letters, in all four languages, words to the effect: 'DO NOT SIGN THIS AGREEMENT UNLESS YOU HAVE UNDERSTOOD AND WISH TO BE BOUND BY THE AGREEMENT IDENTIFIED AS ....' It is recognised that the requirement of attestation harkens back to the Bills of Sale Act and may attract the criticism of excessive technicality. But it is submitted that there are a number of differences here which merit this requirement. First, this requirement is only applicable to consumer transactions and not to ordinary commercial transactions. Secondly, it is not applicable to consumer transactions generally, but only to door-to-door credit sales. Thirdly, it is the *consumer,* not the creditor, who must take steps to have the notice of affirmation witnessed if he wants to validate the credit contract. Fourthly, it is not necessarily a bad thing to discourage door-to-door credit sales especially where a sizeable proportion of potential debtors are illiterate.

The consumer should be protected from any obligation to return the goods unless the vendor calls for them, and the latter should not be entitled to any charge for their use or misuse. It should be an offence for the vendor to take any payment in relation to a home-solicited consumer credit sale before the affirmation notice is received, and any payment made before validation must be returned to the consumer.

32 *E.g.* The United Kingdom.

5. Rate ceilings

It is pertinent to enquire if there is any point in fixing ceilings in the finance charge rate as in the present moneylenders, hire-purchase and pawnbroking legislation. The danger inherent in the fixing of rate ceilings is that unless they are set sufficiently high, credit providers will be driven out of business or underground. The problem with fixing high ceilings is that, in the absence of a competitive market, all credit transactions will be charged at the maximum rate allowed and it would be extremely difficult to make out a case for a transaction to be re-opened on the ground of excessive interest charged where the rate carries the official 'blessing'.

The reader should note that there is lack of a strong consumer lobby and that there are certainly not the kinds of market conditions which would allow competitive forces to push rates below official ceilings. The best solution would be, it is submitted, to presume that a charge in excess of a specified rate is excessive for the purposes of the re-opening provisions unless rebutted, having regard to all the circumstances. The selection of a figure denoting the dividing boundary is bound to be arbitrary, but it may be arrived at quite equitably after consultation with finance bodies and CASE, the Consumer Association of Singapore. It is possible to have several 'watersheds', each applicable to a different kind of transaction. The writer strongly suspects that the 12% and 18% maximum rates of interest per annum chargeable on secured and unsecured loans respectively under the Moneylenders Act are too low even for adoption as presumptive ceilings.

6. *Prohibition of compound interest*

As with the present law, the charging of compound interest should be prohibited, but default interest at a rate not exceeding a prescribed rate per annum may be charged.

7. *Prohibition of certain types of acceleration clauses on default*

Clauses which provide for the whole of the sums (*i.e.* capital + interest) borrowed together with charges to become immediately due and payable upon default by the consumer or upon specified breaches of the agreement should be prohibited and void. This is because acceleration of the interest payments raises the interest rate. There is no objection, however, if only capital is accelerated, provided this occurs only after service of a notice of default and after expiry of the time given to remedy the defaults.

C — *Performance and operation of the contract*

1. *The loan aspect*

i) *Rebates for early completion*

The consumer should be entitled to a rebate of charges when he completes the credit agreement before the end of the contractual period. The fairness of this principle was recognised in the Hire-Purchase Act which has provisions for the calculation of the rebate based on the Rule of 78. The principle of a rebate or 'discount' for the accelerated receipt of capital is also recognised at law: witness *e.g. Yeoman Credit*

Ltd. v. *McLean*[33] and *Overstone* v. *Shipway*.[34] How the rebate is to be calculated poses another question. There are several methods.[35] One way is to make an accurate actuarial calculation of the unaccrued interest. This may be complex and there is no set formula which may be used in respect of all kinds of transactions. Another way is to use the Rule of 78 formula. But this may only be utilised where repayments of equal instalments are to be made under the contract at equal intervals of time. The assumptions made under this formula are that repayment instalments are not proportioned in the same ratio between principal and interest, but that the amount of charges payable is greatest at the beginning of the contract when the consumer has the full principal sum at his disposal, and declines as the date of expiry of the contract approaches. The third method is to employ a *pro-rata* formula, which assumes a constant ratio between the principal and credit charge components in every instalment. Thus, where equal instalments are payable at equal intervals of time, the amount of charges which ought to be rebated by this method is calculated by multiplying the proportion of the contract still to run by the lump sum credit charges. So, if a contract for one year, payable by equal monthly instalments, is completed after the eighth month, and the total credit charges are $100, the rebate to which the consumer is entitled is:

$$\$ \left(\frac{4}{12} \times 100\right)$$

Both the *pro-rata* and the Rule of 78 methods give different results from actuarial calculations, but the *pro-rata* method errs more substantially than the Rule of 78. An illustration is needed to show the magnitude of the differences. Suppose $120 is lent at a flat rate of 10% per annum payable by twelve equal monthly instalments of $11. The true rate, according to the United Kingdom tables[36] is 19.5% per annum.

The table below shows how the interest accruing each month might be calculated, working from first principles.

33 [1962] 1 W.L.R. 131.
34 [1962] 1 W.L.R. 117.
35 These are not exhaustive but are the principal methods by which rebates may by calculated.
36 *Consumer Credit Table,* Part 12 (Flat rate, Equal monthly instalments), published by Office of Fair Trading, U.K.

Table 1: *Calculation of Interest accruing from month to month on a reducing principal* (to show rebate)

Month	Payments required by contract	Principal outstanding	Interest at 19.5% per annum calculated on balance of principal
1	$ 11	$120	$\frac{19.5}{100} \times \frac{120}{12} = \$1.95$
2	$ 11	(120 – 9.05) = $110.95	$\frac{19.5}{100} \times \frac{110.95}{12} = \$1.803$
3	$ 11	(110.95 – 9.197) = $101.753	$ 1.653
4	$ 11	$92.406	$ 1.502
5	$ 11	$82.908	$ 1.347
6	$ 11	$73.255	$ 1.190
7	$ 11	$63.345	$ 1.031
8 Agreement completed	$ 11	$53.376	$ 0.867
9	$ 11	$43.243	$ 0.703
10	$ 11	$32.946	$ 0.535
11	$ 11	$22.481	$ 0.365
12	$ 11	$11.846	$ 0.192
Total	$132		$13.165 (not compounded)

Total credit charge=$132 – $120
=$12

If the agreement is completed after the eighth month, according to the table, the rebate should be:

0.703
0.535
0.365
+ 0.192
$1.795

By the rule of 78, the rebate is $\frac{cn\,(n+1)}{t\,(t+1)}$

(where c is the total credit charge;
n is the number of instalments still to run;
t is the total number of instalments.)

$$= \frac{12 \times 4\,(4+1)}{12\,(12+1)}$$
$$= \$1.5$$

By the *pro-rata* method, the rebate due is $12 \times \frac{4}{12} = \$4.00$

The Rule of 78 method is much simpler than the actuarial method of calculation and gives greater accuracy than the *pro-rata* method. Tables could, of course, be produced to enable rebates to be made on an actuarial basis. But many different sets of tables would be required to cater to all the different situations and rebates do not occur with sufficient frequency so as to warrant the production of these bulky tables. A simpler method of calculation is justified. It is therefore recommended that rebates of charges should be calculated according to the Rule of 78 where repayments are to be made in equal instalments at equal intervals of time. In all other cases, the rebate would have to be calculated upon the actuarial basis.

In practice, the early completion of the consumer credit agreement involves extra administrative costs. The Rule of 78 method of calculation also does not, in many cases, give adequate compensation to the creditor for his setting up costs. These costs may be offset by allowing the credit provider a small charge to cover his expenses. In the United Kingdom, it is understood that the practice is to calculate the rebate on the Rule of 78 applied as at a date three months after the date of settlement. This formula (Rule of 78 + 3), it is suspected, gives the credit provider a slight advantage. In Singapore, this could be reduced to Rule of 78+2 months.

ii) *Supply of information during contract*

The consumer should be able to obtain information as to the state of payments at any stage during the contract. The law should provide that upon the consumer's application and upon payment of a fee sufficient to cover the administrative cost, the credit provider should supply a financial statement detailing the payments made and still remaining unpaid, and a copy of the agreement, if requested.

iii) *Guarantors and indemnifiers*

Guarantors and indemnifiers should be protected and treated by law on the same basis. They should be entitled to copies of all documents which by law are required to be given or served on the consumer. This includes a copy of the credit contract, any notice of default, breach or termination. The guarantor or indemnifier is naturally entitled to a copy of the contract of suretyship or indemnity. He should also be entitled to apply to the credit provider for and obtain a financial statement at any stage of the contract upon payment of a small fee. A surety's liability should only be co-extensive with the debtor's and never in excess, and any contractual provision purporting otherwise should be void.

iv) *Re-opening of harsh and unconscionable transactions*

This is the key to redressing consumer lack of bargaining power. The courts should be empowered to re-open any consumer credit transaction upon application by the consumer or surety or upon its own initiative in any action before it. It should have regard to a wide range of statutory criteria and all the circumstances of the case in determining whether a transaction is harsh or unconscionable. The court should be invested with power to make any order it deems fit and to modify or remould the consumer credit contract. However,

some anticipatory action must be taken to prevent the flood of actions to have transactions re-opened once the virtues of re-opening provisions are recognised. To this end, it is imperative to provide that a creditor should always be entitled to his costs in an unsuccessful application by a consumer. In order to achieve some balance between fear of litigation on this account and the right to have an unconscionable transaction re-opened, it is recommended that a Consumer Credit Officer be appointed to advise consumers on the likelihood of success in legal proceedings and on matters relating to credit generally. The Consumer Credit Officer may bring notice of any unwholesome practices by credit providers to the attention of the Registrar of Consumer Credit Lenders who can take appropriate action to investigate the activities of the credit provider complained of, reprimand the licensee, suspend or revoke his licence, or to inform the other relevant licensing authorities of malpractices suspected to be carried on by financial bodies not required to be licensed under consumer credit legislation. This will be explored in greater depth later, in conjunction with the discussion on the Organisational Aspects of Consumer Credit Reform.

v) *Harassment and coercion*

A severe problem which constantly presents itself arises in relation to debt collection. There are numerous instances of harassment at home and at the place of work of the debtor by moneylenders seeking to recover repayment of sums due. There is no easy solution because the interest of the creditor must be balanced with the protection of the privacy, employment and safety of the debtor and his family. The crux of the problem is: to what extent are extra-judicial collection methods permissible? Under common law, unless there is a threat of violence, defamation or inducement to breach of contract (this refers to the debtor's contract of employment), the debtor has no right of action against the creditor or his debt-collecting agent. There is no tort of causing emotional distress. There is no law prohibiting telephone calls at all hours of the day and letters threatening legal action to recover the debt, or threatening bankruptcy proceedings. There is no meeting point between a creditor who wants his money and a debtor who cannot pay. But there are ways of alleviating the debtor's problems. One of these ways is to apply to a court for extension of time to pay.[37] Another is to enact legislation to prohibit employers from discharging an employee merely on the ground of harassment by the creditor or because of the prospect of administrative inconvenience to the employer when the debtor's wages or salary are garnished. Still another way is to enact legislation giving the harassed consumer a right to apply to a court for relief in the event of unconscionable conduct by persons employed in collecting the debt. In this connection, it is useful to look at developments in the United States.

Under the Revised (1974) text of the Uniform Consumer Credit Code, it is provided that a court may grant an injunction and award the consumer any actual damages sustained against a person who has engaged in, is engaging in, or is likely to engage in unconscionable conduct in collecting a debt. Section 5.108(5) provides that the court shall give due consideration, among others, to the following factors:

[37] See *Hardship due to sickness and unemployment, infra.*

(a) using or threatening to use force, violence, or criminal prosecution against the consumer or members of his family;

(b) communicating with the consumer or a member of his family at frequent intervals or at unusual hours or under such circumstances so that it is a reasonable inference that the primary purpose of the communication was to harass the consumer;

(c) using fraudulent, deceptive, or misleading representations such as a communication which simulates legal process, or which gives the appearance of being authorized, issued, or approved by a government, governmental agency, or attorney at law when it is not, or threatening or attempting to enforce a right with knowledge or reason to know that the right does not exist;

(d) causing or threatening to cause injury to the consumer's reputation or economic status by disclosing information affecting the consumer's reputation for credit-worthiness with knowledge or reason to know that the information is false; communicating with the consumer's employer before obtaining a final judgment against the consumer, except as permitted by statute or to verify the consumer's employment; disclosing to a person, with knowledge or reason to know that the person does not have a legitimate business need for the information, or in any way prohibited by statute, information affecting the consumer's credit or other reputation; or disclosing information concerning the existence of a debt known to be disputed by the consumer without disclosing that fact; and

(e) engaging in conduct with knowledge that like conduct has been restrained or prohibited in a previous action against any person for unconscionable conduct in collecting a debt.

These provisions may usefully be adopted in Singapore.

vi) *Hardship due to sickness and unemployment*

A good consumer credit law should take cognizance of the fact that, given the best intention to repay, there are times when a consumer will fall behind in his payments because of unexpected hardship. Legislation should therefore alleviate hardship and distress of consumers whose inability to repay is attributable to genuine sickness or unemployment. This objective may be met by empowering the courts to extend the time for payment upon application by the debtor or his sureties. It should also have power to modify the terms of the contract at its discretion, including the reduction of the finance charge payable over the extended period. In the United Kingdom, the Crowther Committee[38] recommended the use of insurance against sickness and unemployment as a simple solution to the problems caused by hardship. Although this recommendation is to be welcomed, the level of sophistication of local insurance companies is not, at the present stage of its development, sufficiently high yet to permit its consideration as a practical reality.

[38] Report of the Committee on Consumer Credit (Crowther Report), 1971 (Cmnd. 4596: H.M.S.O.).

vii) *Consequences of non-compliance*

In order to avoid some of the pitfalls of the Moneylenders and Bills of Sale Acts, it should be provided that infringements of the consumer credit legislation arising from trivial slips or omissions should not invalidate the transaction where the consumer has not been misled by the error unless there is specific provision to the contrary.

2. *The sale aspect*

Although consumer credit sales may be governed by the provisions of the (U.K.) Sale of Goods Act,[39] other purchase money credit transactions are not. It is considered necessary to enact provisions which would regulate all purchase money credit transactions in the same manner. Thus credit card purchases, option account purchases, hire-purchase transactions, conditional sales and credit sales would be brought under one roof for the purposes of implied mandatory terms. As the law stands at the moment, hire-purchase and conditional sales are regulated by the Hire-Purchase Act while other sales contracts may be governed by the Sale of Goods Act, and although the implied terms in both Acts are substantially similar, there are some vital differences. The financier in a hire-purchase transaction as defined by the Hire-Purchase Act has a direct obligation to the hirer in respect of the implied warranties and conditions. All representations made by the dealer are also treated as if they had been made by his agent. The hirer has remedies both against the dealer and the financier. Thus, in respect of hire-purchase transactions under the Act (which includes conditional sales), the hirer has additional protection conferred upon him. This policy arose from the conviction that a person who buys on hire-purchase requires more protection than a consumer who pays cash. This rationale also holds true in respect of other credit transactions, and despite the apparent unfairness to the financier who will usually have not seen the goods, the extension of the provisions of Part III of the present Hire-Purchase Act to other purchase money credit transactions is recommended. The financier usually has much stronger links with the dealer or supplier than the consumer and is in a position to 'control' his misdeeds. The financier should, of course, be entitled to an indemnity against the supplier for any damage suffered as a result of breach by the supplier of the implied terms and as a result of the dealer's representation, warranty or statement made to the consumer. Exclusion clauses exempting the financier from liability should be void.

3. *The security aspect*

i) *Generally*

Despite the various ways in which a credit transaction may be secured, it must be recognised that the commercial essence of secured transactions, by whatever nomenclature, is the same. Once this is realised, ways and means may be found to harmonise their diverse rules and forms. A common system of rules may be created to govern the taking and discharge of the security and to set up a scheme of priorities to protect the various interested parties, thus ridding the present law of its confusing array of principles and rules.

[39] By virtue of Section 5 of the Civil Law Act, Cap. 30 of the 1970 Revised Ed.

In the United States, a system of registration of consensual security interests over personalty has been provided under Article 9 of the Uniform Commercial Code (UCC). The concept of this Article is founded upon the recognition of the importance of regulation on the basis of function and not form. It is proposed to give a brief outline of Article 9 now as an example of the degree of harmonisation possible.

The most important feature of Article 9 is that it provides a simple and commercially viable structure within which secured transactions can operate and be regulated. Traditional distinctions based on form are discarded, and so are priority rules based on title, authority, or time of creation. Instead, the Code offers a brilliant scheme of priorities whose cornerstone is protection through the publication of a security interest to third parties. Publication of a security interest may take one of two forms:

(i) By the filing of a financing statement disclosing sufficient particulars to warn third parties about its existence;

(ii) By possession.

Under the Code, a security interest only becomes enforceable if:

(i) it has attached (*i.e.* there is an agreement that the security interest is to attach);

(ii) value has been given; and

(iii) the debtor has rights in the security.

But to protect a security interest that has attached against the claims of third parties, the security interest must be perfected. This can be achieved by notice filing (*i.e.* filing of the financial statement); filing or registration pursuant to other statutes, or possession of the security itself. The policy behind these perfection requirements is to give effective notice to the public that a security interest has been taken in the collateral. It follows that the collateral must be identifiable. In certain cases, there is automatic perfection upon attachment. Broadly speaking, this occurs where it is considered that the benefits of publication are not worth the inconvenience of publication. Thus purchase money security interests in consumer goods (except motor vehicles and fixtures) are perfected automatically.

The general priority scheme under the Code involves the rule: *First in time, first in right.* This does not refer to the time of attachment of the interest, but to the time of perfection. As between an unperfected interest and a perfected security interest, the latter prevails even though it may have attached subsequently to the unperfected interest. These form the twin pillars of the priority structure. But there are further refinements to these rules, which generally involve asking three questions:

1. Who is the contesting party? Is he a secured party, a seller, buyer, etc?

2. What is the nature of the collateral? (whether equipment, consumer goods or inventory etc.)

3. Is it a purchase money security interest or a non-purchase money security interest?

The Article makes distinctions between certain contesting parties, different types of collateral, and purchase money security interests and non-purchase money security interests. Within the broad priority rules, modifications are made to suit particular contexts.

In streamlining the structure of the security legislation, the drafters of Article 9 found it necessary to adopt new and neutral terminology. The chart below illustrates the use of the UCC nomenclature and compares it with conventional terminology employed in Singapore in respect of consensual personal property security.

Table 2: *Consensual Personal Property Security: Nomenclature and Method of Protecting Security Interest*

	Secured Transaction (UCC)	Chattel Mortgage	Conditional Sale	Pledge	Choses in Action	Hire-Purchase
Names of Parties 1. Debtor	Debtor	Mortgagor	Conditional Seller	Pledgor or Pawnbroker	Assignor	Hirer
2. Secured Creditor	Secured Party	Mortgagee	Conditional Buyer	Pledgee or Pawner	Assignee	Owner
Interest of Creditor in the Security	Security Interest	Title	Title	Possessory Interest	Absolute or security transfer	Title
Name of Agreement	Security Agreement	Bill of Sale	Conditional Sale Agreement	Pledge or Pawnbroking Agreement	Assignment	Hire-purchase agreement
Method of Protecting Security Interest	1. File financing statement 2. Possession 3. Automatic perfection	Registration	Reservation of title but defeasible under Factors and Sale of Goods Act	Possession	Notice to Assignor	Automatic perfection

It seems to the writer that a Personal Property Security Act based on Article 9 of the UCC should be recommended in Singapore.[40] There are obvious advantages in adopting Article 9 because it exhibits many of the desirable characteristics of a good security law:

(i) It is simple;

(ii) It clearly defines rights;

(iii) It is based on the very sound principle of giving of notice by a secured party to others;

(iv) By its system of publication of notice, a creditor can easily protect his interest and a potential creditor can easily discover if there are prior encumbrances;

(v) It adopts a unified approach to different security interests;

(vi) It is modern in concept.

However, it should be noted that Article 9 applies both to securities taken in conjunction with consumer credit as well as to securities taken in a commercial context. For this reason, the provisions of Article 9 cannot be incorporated in consumer credit legislation unless it is to be duplicated again in some commercial legislation. There would therefore have to be a separate enactment of a Personal Property Security Act and repeal of present laws regulating personalty. Since this article is on consumer credit only, it is not the proper forum to discuss the modifications that would be required for the 'import' of Article 9. The problems would require to be viewed with a wider-angled lens. But even here, it is possible to envisage some of the objections which may be raised against the adoption of Article 9. These would relate principally to the cost of setting up a Registry of Security Interests. Subsidiary but important questions like whether a compensation scheme ought to be set up to recompense parties who have suffered loss through the error of Registry officials will need to be examined. A full-scale study of the registration of securities ought to be implemented. Thus, only the seeds of reform in this area may be sown here.

But there is one item which can be debated before the discussion on the radical reform of security is closed. It is whether, in relation to consumer goods, a system of registration of security interests might be workable. This suggestion meets with two obstacles. First, the value of consumer goods is not normally commensurate with the trouble and expense involved in setting up machinery for the registration of these interests, and in getting the security interest in them registered or placed on public record. The second is posed by the difficulty of identifying consumer goods. There is one category of consumer goods to which the objections raised cannot apply, however. These are motor vehicles. The Registrar of Vehicles already maintains a computerised register of all motor vehicles bought and sold in the country.[41] It is primarily for the collection of revenue, but there is no reason

[40] *I.e.* if government funds permit. It is recognised that this would be extremely expensive if applied 'across the board'.

[41] At the end of 1976, there were 279,864 motor vehicles on the register: see Table 8.11, Vol. XVI, No. 2 *Monthly Digest of Statistics.*

why it may not be utilised to provide a system of notification of security interests to safeguard both creditors and third parties who unwittingly purchase vehicles subject to a consumer credit agreement. Such a system may easily be tied in with the enactment of a Personal Property Security Act in the future.

At present, Singapore employs a log book system similar to the United Kingdom system. The log book is not a document of title to the vehicle, but it records the names of registered owners and identifies the vehicle by the engine and chassis numbers. It also records the licence plate number of the vehicle. The usual practice is to register a vehicle bought on hire-purchase in the name of the hirer, but as a security measure, the log book is retained by the finance company or dealer. This system provides no safeguard to a bona fide purchaser of the vehicle from the hirer because a fraudulent hirer can easily obtain a duplicate log book from the Registrar of Vehicles simply by making a statutory declaration of loss. Since, in a hire-purchase transaction the owner retains title till all the conditions are fulfilled, the bona fide purchaser loses out in a title contest with the true owner.

One way of providing protection for such bona fide purchaser is to decree, as in South Australia,[42] that bona fide purchasers for value without notice of other interests take good title. This would naturally operate to the disadvantage of the owner. Furthermore, the bona fide purchaser principle might encourage the proliferation of 'bona fide' purchasers in league with fraudulent hirers who abscond after the purported transactions. A better system is one that incorporates some element of notice, like Article 9 of the UCC, to prospective purchasers of hire-purchase vehicles and makes them aware of the fact that there is a security interest over the chattel. This could be done by making it incumbent upon all true owners to file a notice of their security interest with the Registrar of Vehicles. Failure to do so would mean that a subsequent purchaser who takes with or without notice of the interest acquires a good title. The information forwarded to the Registrar would then be fed into the computer and stored for retrieval at a later stage. The log book would also be endorsed 'subject to hire-purchase' or 'subject to a security interest'. Before the issue of any duplicate log book, the Registrar of Vehicles should be obliged to check with the computer records for any security interest still undischarged. If any interest still exists on the records, the duplicate log book should be endorsed accordingly. Thus no fraud by the hirer is possible. The creditor should be under a statutory duty to notify the Registrar of the discharge of the security when instalments have been fully paid up and he should forward the log book to the Registrar for cancellation of the endorsement. Only the Registrar may cancel any endorsements on the log book. The log book is then returned to the registered owner. Where the creditor fails to notify the Registrar of the discharge of the security, the hirer should be entitled to ask for a court order directing the log book and notice of discharge to be forwarded to the Registrar for this purpose immediately.

42 See section 36, *Consumer Transactions Act, 1972* (South Australia).

It may be interesting here to speculate on the effect of such a system of priorities on vehicles disposed of by the hirer in Malaysia and vice versa. In Malaysia, *nemo dat* is the governing principle, and in accordance with the principles in conflict of laws problems, it is the foreign *lex situs* which governs proprietary questions.[43] Accordingly, a bona fide purchaser from the hirer does not take good title because the title is still vested in the credit provider until the hire-purchase transaction is fully paid up. Thus the Singapore owner still remains the owner. But if a Malaysian vehicle is disposed of in Singapore and the vehicle is registered without showing a security interest in the log book or register, the fact that no security interest is shown could possibly deprive the Malaysian owner of his title *vis-a-vis* the Singapore purchaser. This, of course, would turn on the provisions creating the system of priorities.

ii) *Repossession and seizure*

There ought to be restrictions against repossession and seizure of goods representing 'security' in a secured transaction. The present repossession provisions of the Hire-Purchase Act are advanced and sound in concept and ought to be retained in the new law. Basically, these recognise that the hirer has an 'equity' in the goods and calculations arising from repossession take this into account. Where the breach upon which repossession is founded is remediable, the hirer may upon rectification reclaim the goods. It is felt that sections 15 to 19 of the Hire-Purchase Act (the repossession provisions) may usefully be extended to cover chattel mortgages too so that a sale of goods mortgaged may only take place after service of the requisite notices and after an opportunity to remedy any breach is given. This necessitates suitable amendments to the Bills of Sale Act unless the Bills of Sale Act is repealed. In the United Kingdom, consumers are protected by 'protected goods' provisions whereby no repossession or seizure can be made if more than one third of the total debt has been paid without a court order. The adoption of these provisions in Singapore is not recommended for a number of reasons. First, the recommendations just made with reference to the hirer's 'equity' in the goods are, in the writer's opinion, adequate to protect his interest. Secondly, obtaining a court order may entail some delay with the consequence that the goods sought to be repossessed are disposed of or disappear. Thirdly, the 'protected goods' provisions would cause undue congestion and clutter up court work unnecessarily.

D — *Protection vis-a-vis third parties*

1. *Linked or connected transactions*

It would be in the interest of the consumer to enact that where the credit agreement is cancelled or rescinded or void, any linked agreement, *e.g.* an ancillary contract for maintenance or services, or a contract of guarantee, with the exception of insurance contracts, automatically lapses. Insurance contracts would only lapse after the goods under the credit agreement have been returned to the financier or dealer. The consumer should be entitled to a rebate of charges,

[43] See North, *Cheshire's Private International Law* (9th ed., London: Butterworths, 1974) and *Cammell* v. *Sewell* (1858) 3 H. & N. 617; on appeal (1860) 5 H. & N. 728.

fees or premiums paid in advance in respect of the balance of the period still unexpired. This would be calculated according the Rule of 78 applied as at a date two months after the date of cancellation or rescission, or in the case of a void credit agreement, two months after the date of the agreement; but in the case of insurance contracts, the rebate would be:

(i) the amount of premium paid in respect of any annual period not yet commenced; and

(ii) the amount of premium paid in respect of the current annual period less the amount of premium which would have been paid at the insurers' short period rates for the period which the policy has been in force provided no claim has arisen during this period.

But where it was not obligatory for the consumer to enter into the linked agreement with the particular insurance company or provider of services, the rebate should be pro-rated because the advance payments made do not relate in any way to the capital or interest elements in the main transaction.

2. *Assignments and negotiable instruments*

On this subject, there are some problems which have arisen in the United States which might reasonably be anticipated to arise in Singapore in the future unless preventive steps are taken. In America, there is prevalent use of provisions in credit contracts called 'cut-off' clauses which operate as waivers of the consumer's right to assert claims or defences against an assignee of the agreement. It will be remembered that an assignee usually takes 'subject to equities'. The surest way to defeat the employment of such clauses is to prohibit them and to render them void and of no effect. But a result similar to that produced by 'cut-off' provisions may also be obtained by taking negotiable instruments either in payment or as security. These instruments may be negotiated to holders in due course who, by definition, do not take subject to any defences or claims. It seems to the writer that the consumer who gives such an instrument ought to be protected against the use of such devices. The best way is to enact legislation which deems a transferee of such an instrument not to be a holder in due course if it is taken with knowledge that it relates to a consumer credit transaction. It is further recommended that the taking of negotiable instruments strictly as security for payment should be prohibited. An instrument taken in payment should bear the statement that it is taken subject to equities or that it is taken in relation to a consumer credit transaction and it would be incumbent on the credit provider so taking a negotiable instrument in payment to indorse such statement on the instrument. As a back-up, the credit provider should also be made liable to indemnify the consumer for any loss he incurs on the instrument in addition to his liability under the credit contract.

E — *Consumer hire and lease agreements*

In the United Kingdom, the Crowther Committee recommended that rental agreements be brought within the ambit of consumer credit legislation and regulation and this proposal has been implemented in the Consumer Credit Act, 1974. The rationale for their inclusion is

this: although hiring and leasing are not strictly 'credit' transactions because there is no extension of credit, nevertheless the public regards the two as on par with hire-purchase transactions. Whether this is true or not in Singapore is an open question, but a more cogent justification for the inclusion of rental agreements within the scope of consumer credit legislation is, one would have thought, that unless similarly regulated, hire and lease agreements would become convenient 'escape' devices from the consumer credit law. Instead of selling conditionally or on credit, or on hire-purchase, the vendor could turn 'lessor' and let the goods out at rentals calculated to recuperate the price within a limited period. It is therefore recommended that hire and lease agreements involving goods or services up to the value of $30,000 be brought within the purview of consumer credit legislation and that the recommendations made earlier in respect of consumer protection be extended where applicable to include these transactions.

IV. *Organisational Aspects of Consumer Credit Reform*

A — *Legislation*

We have considered the desirable features which ought to be incorporated in a consumer credit law. The present Hire-Purchase Act, Pawnbrokers Act, and Moneylenders Act, would require substantial amendment to conform with the recommendations made. Even so, these statutes, together with the other pieces of legislation relating directly or only peripherally to consumer credit and security only regulate a limited number of consumer credit transactions and it remains to be considered how best the various forms of consumer credit may be regulated on the same basis.

There are a number of alternative ways. One is to amend the existing piecemeal legislation and to enact additional legislation to cover the 'gaps' in present law. Another method is to repeal all the existing legislation affecting consumer credit and to substitute one comprehensive statute which would deal with all forms of consumer credit on the basis of their common function. A third method would be to extract the security aspect from consumer credit legislation and to enact separate legislation relating to securities in conjunction with the consumer credit legislation. This would also entail the repeal of present legislation governing consumer credit. A fourth method would be to separate vendor credit transactions from lender credit transactions and to recognise that although the function of both types of transactions is the same, it is still necessary to distinguish between them because of the sale aspect that requires special treatment. These various alternatives are considered below.

1. *Amendment and updating of present legislation*

This would not in itself be an impossible task but considerable work would be required to examine each piece of legislation and to bring them all up to date and in line with the proposals suggested for a consumer credit law. Further, the enactment of additional legislation would be necessary in order to catch forms of consumer credit presently unregulated. This would add to the number of statutes affecting consumer credit which quantity is already considered to be too abundant and chaotic. For these reasons, this is not an acceptable approach.

2. One comprehensive consumer credit statute

This has been done in the United Kingdom with the enactment of the Consumer Credit Act, 1974. Conceptually, it is a sound approach. It is the best way to put the point across that consumer credit transactions are essentially alike and must be regulated in the same manner. However, the practical aspects of such rationalisation must be carefully assessed. It is difficult to pursue this totally integrated approach without resort to new definitions which exercise the ingenuity of the draftsmen because the field of consumer credit is so wide. Essentially, the formula adopted in the United Kingdom is the same as that adopted by those who drafted Article 9 of the Uniform Commercial Code, but for some reason, the United Kingdom has not been as successful in attaining the desired simplicity. Instead, the Consumer Credit Act, 1974, is complex and difficult to understand until the meanings of its many definitions are completely grasped. The explanation may lie in the fact that the law attempts to do too much by trying to deal with all three aspects of a consumer credit transaction, *i.e.* the loan, sale and security aspects, in one statute. The difference between comprehensive consumer credit legislation and legislation concerning purely security is that the problems in the latter may broadly be defined in relation to four topics: the taking of the security, its method of perfection, its manner of discharge, and the contesting rights between parties; but the issues confronting consumer credit are much more daunting as the subject covers many more aspects, some of which are peculiar only to certain forms of transactions. This poses huge definitional problems which are not helped by the fact that while the loan aspect has been rationalised in the United Kingdom, the same has not occurred with the security aspect.[44] As a result, it has even been necessary to depart from normal drafting procedures in the United Kingdom to provide 'examples' of certain definitions.[45] These considerations also make it necessary to provide for a large amount of delegated legislation. The consequence is that the legislation has turned out to be far from simple. Thus this approach is not to be recommended either.

3. *Separate consumer credit legislation and security law*

Such a proposal would not detract from the proposition that consumer credit transactions need to be regulated by the same principles. All it does is to dissect the security aspect from the single comprehensive legislation discussed in (2) and place it under separate legislation. There are two advantages in doing this. First, it would simplify the consumer credit legislation by posing fewer definitional problems because the new terminology need not be so all-embracing. Secondly, it may be incorporated in the wider context of a general security law permitting the different types of secured transactions to be harmonised.

[44] The U.K. Government did not accept the Crowther Committee recommendation of the enactment of a Lending and Security Act.

[45] See Schedule 2, Consumer Credit Act, 1974.

[46] There are two official texts to the UCCC, the 1969 text which has been adopted in seven states, and the 1974 text, which makes consumer-oriented changes to the 1969 text. The changes relate to the following areas: Holders in due course, sales related loans, credit sales, deficiency judgments, unconscionability, default, consumer remedies. The 1974 Code also provides alternatives with reference to the finance charge calculation methods under open end credit.

This is the position in the United States, with its Uniform Commercial Credit Code and Article 9 of the Uniform Commercial Code (1969 text) where in one comprehensive code, credit sales are treated separately from loans under distinct headings.[47] The same principles and objectives are retained in both so that there is considerable duplication. But the resulting picture is not as complex as under the United Kingdom model.

Which approach?

The third- alternative seems to provide the best approach to the task of drafting a consumer credit law. It is recommended that the Hire-Purchase, Pawnbrokers, Moneylenders, Bills of Sale Acts be repealed. In their place, two Acts would be enacted. The first is a Consumer Credit Act which would incorporate the loan and sale aspects of the proposals put forward earlier. The second Act, the Personal Property Security Act, would deal with the security aspect of credit transactions. If the cost of setting up a securities register is found not to be too daunting, this Act would be fashioned along the lines of Article 9 of the Uniform Commercial Code. If it is decided that it is better to leave the present laws affecting secured transactions unchanged, then the second Act would have to be scaled down in scope and be confined to consumer secured transactions only. This 'reduced' Act, which may be intituled the Consumer Credit (Secured Transactions) Act, would take consumer chattel mortgages out of the ambit of the Bills of Sale Act, make provisions regarding the form and content of the security, repossession and seizure, and realisation of the security. It would not, as in South Australia,[48] abolish hire-purchase transactions on the ground that it does not represent commercial reality. Hire-purchase has become too well-known and popular here to be extinguished at a stroke of the pen. The essence of this Act would be that, whatever the form of the security, it would be treated as if it were a chattel mortgage or pledge. Hence the necessity to remove consumer chattel mortgages from the application of the Bills of Sale Act which discourages the use of chattel mortgages. Thus fictitious forms or unreal forms would be caught by the provisions of the second Act and would probably die natural deaths when it is realised that no advantage is gained by using these forms. The Act would also provide that, apart from motor vehicles, the bona fide purchaser principle would be applied in respect of security interests over consumer goods. The priorities structure in relation to motor vehicles would be governed by the Road Traffic Act[49] and Regulations thereto which would have to be suitably amended to incorporate the suggestions made earlier. Consumer hire and lease agreements relating to goods would be brought within the provisions of the security Act.

B — *Administration and enforcement*

This Republic has not got the resources for sophisticated machinery to be set up to license credit providers and to supervise and enforce

[47] In the 1974 text, however, the separate treatment of credit sales and loans under the UCCC has been eliminated.
[48] See Division III, *Consumer Transactions Act, 1972* (South Australia).
[49] Cap. 92 of the 1970 Revised Ed.

consumer credit law. Thus the licensing authority envisaged is only a small body to supplement other licensing authorities controlling the higher financial institutions and to replace the Registries of Money-lenders and Pawnbrokers. As stated earlier, these Registries should be amalgamated into a single Registry of Consumer Credit Lenders whose primary duties will arise in connection with licensing financiers required to be licensed under the consumer credit legislation. There should be a Consumer Credit Officer appointed by the Minister of Social Affairs. He would be independent of the Registrar of Consumer Credit and his chief duties would be to act as a kind of consumer credit ombudsman and to filter out the proper cases for litigation upon the re-opening provisions of the legislation. He would also be charged with responsibility to notify the relevant licensing authority of any abuses he suspects are being committed by a credit provider so that the appropriate action may be taken against the offending licensee. But only the relevant licensing authority is empowered to take action to investigate, to admonish, or to revoke or suspend a licence. Where a licence has been revoked or suspended, the licensee has a right of appeal to a court of law.

The main instrument of enforcement of the consumer credit legislation would be the courts of law. This would be through normal litigation and applications in court.

V. *Other Miscellaneous Areas of Reform*

A — *Section 5(1) of the Civil Law Act*[50]

Lawyers familiar with this section will be well aware of the tremendous difficulties it poses in relation to the reception of English law. Unfortunately, it is not possible here to examine the problems caused by the section.[51] It is necessary, however, to point out that the question, whether the provisions of some of the recent United Kingdom statutes, such as the Supply of Goods (Implied Terms) Act, 1973,[52] the Consumer Credit Act, 1974,[53] the Unfair Contract Terms Act, 1977, and the Torts (Interference with Goods) Act, 1977, may be received under the Civil Law Act, is not answerable in decisive terms. The problems are further compounded by the fact that these Acts make changes of a radical nature and modify, repeal or amend other United Kingdom Acts which provisions have in the past been held applicable here.[54] Thus section 5(1) of the Civil Law Act has regrettably left the consumer credit laws, *inter alia,* in a state of confusion. In this writer's opinion, there is no need for the further retention of English law, and in fact, every necessity to halt the continuing reception of statutory law. Section 5(1) has outlived its utility and acquired

[50] Cap. 30 of the 1970 Revised Ed. The Civil Law (Amendment No. 2) Bill was introduced in Parliament at the time of preparation of this article. This purports to (but in the author's opinion, does not) remove the problems posed by the continuing reception of English law. [See now, Civil Law (Amendment No. 2) Act, No. 24 of 1979, Singapore Statutes — Ed.].

[51] The difficulties have been discussed at length in the author's Ph.D. thesis, *supra.*

[52] Which amends the (U.K.) Sale of Goods Act, 1893.

[53] Which amends the Supply of Goods (Implied Terms) Act, 1973, among others.

[54] *E.g.* the (U.K.) Sale of Goods Act, 1893.

a considerable nuisance value. It is therefore firmly recommended that section 5(1) be repealed, or alternatively, a date must be set beyond which English law would no longer be received. Parliament should, in any case, clarify the matter of application of the above United Kingdom statutes.

B — *Chit funds, hweis and kootus*

These are Asian rotating money-loan institutions and associations which in a sense constitute forms of consumer credit because they do provide financial accommodation to private individuals. Unfortunately, they have fallen out of favour with the government in recent times because of malpractices and difficulty of control. Since 1972, government policy towards chit fund companies has been to phase these institutions out of existence not merely on account of the difficulties encountered in enforcing the Chit Funds Act, but also because of the cost of supervision and lack of manpower. Again, this article is not the proper venue to discuss the mechanism of these organisations and the abuses to which they are subject. However, it is clear that these are useful institutions once the opportunities for malpractice and abuse are removed.

In this connection, it becomes important to examine the two principal objections to their retention. Enforcement difficulties may be overcome, it is submitted, by the close monitoring of the activities of chit fund companies and their directors, but the second objection, *viz.* lack of manpower and cost of supervision, is difficult to meet. Yet we must take cognizance of the numerous illegal *hweis* and *kootus* which are still being run today. There are two possible explanations for this: either habits die hard or these revolving credit organisations continue to be needed. In the writer's view, the latter, rather than the former, gives the true assessment of the situation. The very persistence of these organisations illustrates a social need for an arrangement which combines elements of saving, investment, loan and mutual help. One should therefore question the wisdom of a policy designed to eradicate an institution that continues to be needed, without offering a suitable alternative. The possible alternative that springs to mind is the legalisation of *hweis* and *kootus.* This can be done quite easily by amending the Societies Act so as to exempt *hweis* and *kootus* from registration and compliance with that Act. Once the stigma of illegality is removed, the courts would be in a better position to pronounce on the rights and liabilities of the parties to a *hwei* or *kootu.* Better still, legislation could be enacted to spell out the contractual position between the parties. Absconding with the proceeds of the pool amount may be made a serious offence punishable by imprisonment for the protection of participants. Apart from this, participants must bear any risk of loss as they would in ordinary transactions. The Chit Funds Act should also be amended so that claims arising in *hweis* and *kootus* which partake of the nature of a chit fund are not unenforceable.

It would be necessary to consider how to fit *hweis* and *kootus* into the consumer credit legislation if they are legalised. This is difficult in view of the fact that there are two additional elements, namely, investment and mutual help, not associated with other consumer credit transactions. The best solution would be to exclude

hweis and *kootus* from regulation under the consumer credit legislation because of their unique nature and regulate the rights between participants *inter se* under a different enactment.

C — Post Office Savings Bank

Before concluding, there is one matter of institutional reform which must be advocated. This relates to the Post Office Savings Bank. The Post Office Savings Bank is a statutory body which takes deposits from the public and mobilises domestic savings for the purpose of public development. With the demise of chit fund companies and imposition of restrictions on pawnbrokers from taking in deposits from the public at large, a great portion of consumer funds has been transferred to the Post Office Savings Bank. Being a statutory body, the Bank is also in the privileged position of having accounts opened for every national serviceman into which their salaries are paid. This institution, which has excessive short-term depositor funds, could usefully mobilise part of these funds towards short and medium-term consumer lending. It could do this at lower interest rates so that needy members of the community do not have to resort to loan sharks or more expensive forms of credit. It may do this under its powers in the Post Office Savings Bank of Singapore Act,[55] provided the debtor has an account at the bank. Only one dollar is required for the opening of a savings account, so that the Act does not require amendment to achieve this desirable objective. This could be a significant contribution towards protection of consumers by the government and it can be done with readily available funds. It is thus strongly recommended that the Post Office Savings Bank take steps towards the provision of small consumer loans on easy terms.[56]

D — *Education*

At present, there is no government policy to educate consumers on credit. Prevention is the best cure and a potential debtor may best be protected by being made aware of the traps and pitfalls of getting into debt. To this end, it is recommended that some form of consumer credit education programme be implemented in schools and for adults.

In conclusion, it should be stressed that neither the scope of this article nor space permits greater discussion of the proposed reform measures. Thus the recommendations have consisted mainly of pointers to indicate the direction reform should take. The main proposals for consumer credit reform are summarised below. These are:

1. That a Consumer Credit Act which would regulate the loan and sale aspects of consumer credit transactions be enacted;

2. That a Personal Property Security Act, or alternatively, a Consumer Credit (Secured Transactions) Act be enacted;

55 Cap. 198 of the 1970 Revised Ed.

56 At the time of writing, the POSB was offering four types of credit facilities to the private individual, *viz.* housing loans, renovation loans, furnishing loans, and renovation-cum-furnishing loans. The scope of their consumer credit facilities should be further expanded.

3. That a scheme of priorities be built into the existing Motor Vehicles (Registration and Licensing) Rules;

4. That the Registries of Moneylenders and Pawnbrokers be amalgamated to form a Registry of Consumer Credit Lenders;

5. That a Consumer Credit Officer be appointed;

6. That section 5(1) of the Civil Law Act be repealed or amended to set a date subsequent to which new United Kingdom statutes are not to be received;

7. That the Societies Act be amended to exempt *hweis* and *kootus* from registration so that these activities are given legal recognition;

8. That the Post Office Savings Bank should enlarge its role in the field of consumer credit and provide easy loans to needy account holders;

9. That some form of consumer credit education in schools and for adults be launched.

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