



MADRAS HIRE PURCHASE ASSOCIATION
(Affiliated to Federation of Indian Asset Financiers Association)

DRAFTED BY

COMMITTEE OF FAIR BUSINESS PRACTICES

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FAIR BUSINESS PRACTICES CODE - WHY

Asset Financing Industry has been facing varied issues including Reserve Bank of India regulations for Non Banking Finance Companies, various Acts such as Money Lenders Act, Usurious Interest Act and Police High handedness, RTO issues, Service Tax Issues, VAT etc. apart from local regional problems. To compound all these problems, apart from poor market conditions, governments also come out with kneejerk reactions to issues which could have been handled in a better manner.

Governments after Governments have brought in laws and rules to protect the interest of mutual parties in any business but unfortunately though we perform a very important role in economic development, lending is seen in a different way and accorded the least respect because of some wrong practices/ greedy motives or due to lack of knowledge of a few who follow business practices without understanding the very purpose of the said practices, due to which Governments have brought in Laws & Acts which go against the lending fraternity.

It is eminent to understand that asset financing is facing one of the worst turbulences and is in the threshold of decimating the very business due to wrong and illogical laws of various state governments. The entire blame does not just shift to governments alone since there may be some operators from our Industry who knowingly or unknowingly are following wrong & unfair practices.

From the Industry's Association view point Asset financiers /NBFCs should be allowed to transact their lending business without loss of capital. With this end in view the following fair business practices are recommended for observance by the members transacting automobile hire purchase business.

We would have to bring in transparency & practice fairness in all spheres of business be it lending, borrowing, documentation, re-possession, settlements and an array of activities where we need to ensure to follow:

- 1. Highest ethical standards with Transparency**
- 2. Ensure maximum transparency to the satisfaction of the customer.**
- 3. To consider objectively the view point of the borrower.**
- 4. Satisfy the borrower with the prompt efficient friendly service at a reasonable price.**
- 5. Not mislead or support activities against law of the land**

Thereby move one-step beyond the Government expectations by taking giant steps to save our industry from self-decimation. It is time for us to regain our respectability by imposing self discipline which is bigger than any law. By following this only we would be able to start the journey of moving towards being recognized as a respected industry and move the corridors of power to deal with us with a compassionate handle and support our moves. As there is a lull before a storm here is our opportunity to face the storm before it washes us away. So this brings in the necessity to act / form a self regulatory system with Fair Practices code to ensure all, whether NBFCs or Individual Financiers or Firms, to follow the right practices which shall be updated from time to time.

FAIR BUSINESS PRACTICES

Reserve Bank of India, has issued Fair Practices code vide its circular dated 18.02.2013 (enclosed)for NBFCs for following them in the spirit of circular.

The Association recommends all member NBFCs, Firms and Individuals to follow the below mentioned fair practices (apart from the ones recommended by RBI for NBFCs which are not mandatorily applicable for firms & Individuals):

1. Get a proposal form filled by the Borrower and Guarantor duly filling in all their details, purpose of loan, amount of loan etc , collect KYC documents and all possible required details of the Borrower & Guarantor.
2. Issue a sanction letter clearly specifying quantum of loan with details of assets against which the loan is being approved, instalment details, dates of Instalment payments, details of other charges like additional finance charges / overdue interest, travelling expenses, cheque dishonour charges, cheque collection charges etc. In fact, as much information as possible should be given in an annexure to the sanction letter so that the Borrower will also know his liability without any doubt and get it signed by the borrower on the copy for your file purposes.
3. On execution of the contract/agreement, a duly filled in copy of the same shall be given to the customer and an acknowledgement obtained from the borrower.
4. Members shall not accept any blank promissory notes or blank post dated or security cheques.
5. Members shall ensure issuance of proper receipts for payment and if possible shall get them countersigned by the borrower, particularly when made in cash payments.
6. Default charges for delay in remittance of instalments shall be charged as per the Agreement and shall preferably be collected at the time of collecting the defaulted instalment.

7. All other charges like repossession charges, cheque bounce charges etc. shall be charged as per the agreed amounts as in the Agreement.
8. Send regular reminders of the outstanding to the Borrower and Guarantor clearly mentioning the outstanding amount and additional charges for the delay. As far as possible, a copy of all important communications to the Borrower should be marked to the guarantor so that he cannot take a plea later that he was kept in the dark about the status of the account.
9. It is suggested to send reminders to customers for the outstanding and intimation of payments received by SMS also, apart from written communications.
10. Members shall reconcile the outstanding with customers periodically and shall also issue settlement statement on request.
11. Prior to proceeding for re-possession of the Asset, give a notice by registered post asking the Borrower to settle the account in 15 days, or as per the terms as in the agreement, failing which the Asset would be repossessed.
12. Prior to re-possession give an intimation to the local Police station that since the said customer has defaulted we shall be re-possessing the Asset, this is to avoid any kind of hassles at a later date.
13. As far as possible, repossession should be done only by an employee of the financier. Where this is not possible and Agent has to be appointed, due care should be taken in selecting the Agent because, the acts of the Agent shall bind the Principal. It is also necessary to inform the Agent in writing that he should not resort to violence or indulge in law and order problem, to protect the financier from the unlawful actions of the agent.
14. On Repossession of the Asset send an intimation to the Local Police station Borrower & Guarantor that the Asset has been repossessed.
15. At the time of repossession, an inventory of the contents of the vehicle shall be prepared and take the signatures of either the driver or owner or two independent witnesses. This is to prevent the hirer from lodging a false claim that he had kept cash or valuables in the vehicle.
16. There shall be a transparent process of sale of the repossessed asset by getting the asset surveyed and valued by a professional surveyor and photographing the Asset, calling in for quotations in writing and disposing the asset to the best /highest bidder in the given circumstances and also intimating the customer of the saleable value of the asset before sale to avoid disputes.

17. Once the repossessed Asset is sold, inform the sale value to the borrower. In case there is any shortfall in the settlement, this shall be claimed and if there is any excess, this shall be refunded to the customer.
18. In case the vehicle has been transferred by the customer to somebody else with your acceptance, the same shall be done only by doing name transfer & entering in a New Agreement in the new borrower's name.
19. Effect change of address of a customer in your records only on intimation from the customer in writing else all correspondences shall be in the borrower's address as given in the Agreement.
20. Members shall have clear transparent policy on the role of sourcing and collection agent. All collection staff shall be given an photo identity card issued by the company.
21. In case of any dispute or differences with the Hirer, invoke the arbitration clause and proceed for arbitration (as per Arbitration Clause in the Agreement).
22. Members shall give the contact numbers of a contact point along with email ID for the customer to contact in case of any problems .
23. Members shall endeavour to educate the customer for do's and don'ts.
24. All above practices should not remain in print but shall be put into practice in our day to day business.

BENEFITS

Benefits which could be derived by following Fair Business Practices in the long run are as follows:

- 1. It would create an environment that Asset Financiers /NBFCs are the right source and thus build a business confidence through best business practices and these are fostered in an atmosphere of trust and respect between the financiers and the hirers for the ultimate benefit of the society.**
- 2. Various governments would look at our industry differently and would recognize the transparency levels and in turn not unleash a hue & cry against Lenders.**
- 3. We would be able to eliminate wrongful & greedy players from our industry.**
- 4. By gaining respect from customers, the bond of trust & business relationship between borrowers & lenders shall be enhanced.**

RBI/2012-13/416

DNBS.CC.PD.No.320/03.10.01/2012-13

February 18, 2013

To

All NBFCs

Dear Sir,

Guidelines on Fair Practices Code for NBFCs – Grievance Redressal Mechanism - Nodal Officer

1. The Reserve Bank vide its circular dated March 26, 2012, issued revised guidelines on Fair Practices Code (FPC) for all NBFCs to be adopted by them while doing lending business. The guidelines were reviewed in view of the creation of a new category of NBFCs viz. NBFC-MFIs and also rapid growth in NBFCs' lending against gold jewellery.
2. Para 2 A (v) of the guidelines require that the Board of Directors of NBFCs should lay down the appropriate grievance redressal mechanism within the organization to resolve disputes between the company and its customers and the mechanism should ensure that all disputes arising out of the decisions of lending institutions' functionaries are heard and disposed of at least at the next higher level.
3. At the operational level, all NBFCs are required to display prominently, for the benefit of their customers, at their branches / places where business is transacted, the details of the grievance redressal officer belonging to their company as also that of the local office of RBI as detailed at paragraph (A) (vi) of Annexe.
4. The revised guidelines are issued under Section 45 L of the Reserve Bank of India Act, 1934 (Act 2 of 1934). The NBFCs may note to make suitable amendments in their existing FPC. The FPC so modified should be put in place by all NBFCs with the approval of their Boards within one month from the date of issue of this circular and should be published and disseminated on the web-site of the company, if any, for the information of the public.

Yours faithfully,

(C.R.Samyuktha)

Chief General Manager

ANNEXURE

Guidelines on Fair Practices Code for NBFCs

A. (i) Applications for loans and their processing

- (a) All communications to the borrower shall be in the vernacular language or a language as understood by the borrower.
- (b) Loan application forms should include necessary information which affects the interest of the borrower, so that a meaningful comparison with the terms and conditions offered by other NBFCs can be made and informed decision can be taken by the borrower. The loan application form may indicate the documents required to be submitted with the application form.
- (c) The NBFCs should devise a system of giving acknowledgement for receipt of all loan applications. Preferably, the time frame within which loan applications will be disposed of should also be indicated in the acknowledgement.

(ii) Loan appraisal and terms/conditions

The NBFCs should convey in writing to the borrower in the vernacular language as understood by the borrower by means of sanction letter or otherwise, the amount of loan sanctioned along with the terms and conditions including annualized rate of interest and method of application thereof and keep the acceptance of these terms and conditions by the borrower on its record. As complaints received against NBFCs generally pertain to charging of high interest / penal interest, NBFCs shall mention the penal interest charged for late repayment in bold in the loan agreement.

It is understood that in a few cases, borrowers at the time of sanction of loans are not fully aware of the terms and conditions of the loans including rate of interest, either because the NBFC does not provide details of the same or the borrower has no time to look into detailed agreement.

Not furnishing a copy of the loan agreement or enclosures quoted in the loan agreement is an unfair practice and this could lead to disputes between the NBFC and the borrower with regard to the terms and conditions on which the loan is granted.

NBFCs are, therefore, advised to furnish a copy of the loan agreement preferably in the vernacular language as understood by the borrower along with a copy each of all enclosures quoted in the loan agreement to all the borrowers at the time of sanction / disbursement of loans.

(iii) Disbursement of loans including changes in terms and conditions

- (a) The NBFCs should give notice to the borrower in the vernacular language as understood by the borrower of any change in the terms and conditions including disbursement schedule, interest rates, service charges, prepayment charges etc. NBFCs should also ensure that changes in interest rates and charges are effected only prospectively. A suitable condition in this regard should be incorporated in the loan agreement.

- (b) Decision to recall / accelerate payment or performance under the agreement should be in consonance with the loan agreement.
- (c) NBFCs should release all securities on repayment of all dues or on realization of the outstanding amount of loan subject to any legitimate right or lien for any other claim NBFCs may have against borrower. If such right of set off is to be exercised, the borrower shall be given notice about the same with full particulars about the remaining claims and the conditions under which NBFCs are entitled to retain the securities till the relevant claim is settled/paid.
- (iv) General
- (a) NBFCs should refrain from interference in the affairs of the borrower except for the purposes provided in the terms and conditions of the loan agreement (unless new information, not earlier disclosed by the borrower, has come to the notice of the lender).
- (b) In case of receipt of request from the borrower for transfer of borrowal account, the consent or otherwise i.e. objection of the NBFC, if any, should be conveyed within 21 days from the date of receipt of request. Such transfer shall be as per transparent contractual terms in consonance with law.
- (c) In the matter of recovery of loans, the NBFCs should not resort to undue harassment viz. persistently bothering the borrowers at odd hours, use of muscle power for recovery of loans etc. As complaints from customers also include rude behavior from the staff of the companies. NBFCs shall ensure that the staff are adequately trained to deal with the customers in an appropriate manner.
- (v) The Board of Directors of NBFCs should also lay down the appropriate grievance redressal mechanism within the organization to resolve disputes arising in this regard. Such a mechanism should ensure that all disputes arising out of the decisions of lending institutions' functionaries are heard and disposed of at least at the next higher level. The Board of Directors should also provide for periodical review of the compliance of the Fair Practices Code and the functioning of the grievances redressal mechanism at various levels of management. A consolidated report of such reviews may be submitted to the Board at regular intervals, as may be prescribed by it.
- (vi) At the operational level, all NBFCs have to display the following information prominently, for the benefit of their customers, at their branches / places where business is transacted:
- the name and contact details (Telephone / Mobile nos. as also email address) of the Grievance Redressal Officer who can be approached by the public for resolution of complaints against the Company.
 - If the complaint / dispute is not redressed within a period of one month, the customer may appeal to the Officer-in-Charge of the Regional Office of DNBS of RBI (complete contact details), under whose jurisdiction the registered office of the NBFC falls.
- In short, the public notice should serve the purpose of highlighting to the customers, the grievance redressal mechanism followed by the company, together with details of the grievance redressal officer and of the Regional Office of the RBI.

(vii) Fair Practices Code (which should preferably in the vernacular language as understood by the borrower) based on the guidelines outlined hereinabove should be put in place by all NBFCs with the approval of their Boards within one month from the date of issue of this circular. NBFCs will have the freedom of drafting the Fair Practices Code, enhancing the scope of the guidelines but in no way sacrificing the spirit underlying the above guidelines. The same should be put up on their web-site, if any, for the information of various stakeholders.

(viii) Complaints about excessive interest charged by NBFCs (issued vide CC No. 95 dated May 24, 2007)

The Reserve Bank has been receiving several complaints regarding levying of excessive interest and charges on certain loans and advances by NBFCs. Though interest rates are not regulated by the Bank, rates of interest beyond a certain level may be seen to be excessive and can neither be sustainable nor be conforming to normal financial practice. Boards of NBFCs are, therefore, advised to lay out appropriate internal principles and procedures in determining interest rates and processing and other charges. In this regard the guidelines indicated in the Fair Practices Code about transparency in respect of terms and conditions of the loans are to be kept in view.

(ix) Regulation of excessive interest charged by NBFCs (Notification No. DNBS. 204 / CGM (ASR)-2009 dated January 2, 2009)

(a) The Board of each NBFC shall adopt an interest rate model taking into account relevant factors such as, cost of funds, margin and risk premium, etc and determine the rate of interest to be charged for loans and advances. The rate of interest and the approach for gradations of risk and rationale for charging different rate of interest to different categories of borrowers shall be disclosed to the borrower or customer in the application form and communicated explicitly in the sanction letter.

(b) The rates of interest and the approach for gradation of risks shall also be made available on the web-site of the companies or published in the relevant newspapers. The information published in the website or otherwise published should be updated whenever there is a change in the rates of interest.

(c) The rate of interest should be annualized rates so that the borrower is aware of the exact rates that would be charged to the account.

(x) Clarification regarding repossession of vehicles financed by NBFCs (issued vide CC No. 139 dated April 24, 2009)

NBFCs must have a built in re-possession clause in the contract/loan agreement with the borrower which must be legally enforceable. To ensure transparency, the terms and conditions of the contract/loan agreement should also contain provisions regarding: (a) notice period before taking possession; (b) circumstances under which the notice period can be waived; (c) the procedure for taking possession of the security; (d) a provision regarding final chance to be

given to the borrower for repayment of loan before the sale / auction of the property; (e) the procedure for giving repossession to the borrower and (f) the procedure for sale / auction of the property. A copy of such terms and conditions must be made available to the borrowers in terms of circular wherein it was stated that NBFCs may invariably furnish a copy of the loan agreement along with a copy each of all enclosures quoted in the loan agreement to all the borrowers at the time of sanction / disbursement of loans, which may form a key component of such contracts/loan agreements.

B. NBFC-MFIs:

In addition to the general principles as above, NBFC-MFIs shall adopt the following fair practices that are specific to their lending business and regulatory framework.

i. General:

- a. The FPC in vernacular language shall be displayed by an NBFC-MFI in its office and branch premises,
 - b. A statement shall be made in vernacular language and displayed by NBFC-MFIs in their premises and in loan cards articulating their commitment to transparency and fair lending practices,
 - c. Field staff shall be trained to make necessary enquiries with regard to existing debt of the borrowers,
 - d. Training if any, offered to the borrowers shall be free of cost. Field staff shall be trained to offer such training and also make the borrowers fully aware of the procedure and systems related to loan / other products,
 - i. The effective rate of interest charged and the grievance redressal system set up by the NBFC-MFI should be prominently displayed in all its offices and in the literature issued by it (in vernacular language) and on its website,
 - ii. A declaration that the MFI will be accountable for preventing inappropriate staff behavior and timely grievance redressal shall be made in the loan agreement and also in the FPC displayed in its office/branch premises,
 - iii. The KYC Guidelines of RBI shall be complied with. Due diligence shall be carried out to ensure the repayment capacity of the borrowers,
 - iv. As specified in the NBFC-MFIs (Reserve Bank) Directions, 2011, all sanctioning and disbursement of loans should be done only at a central location and more than one individual should be involved in this function. In addition, there should be close supervision of the disbursement function,
 - v. Adequate steps may be taken to ensure that the procedure for application of loan is not cumbersome and loan disbursements are done as per pre-determined time structure.
- Disclosures in loan agreement / loan card
- a. All NBFC-MFIs shall have a Board approved, standard form of loan agreement. The loan agreement shall preferably be in vernacular language.

- b. In the loan agreement the following shall be disclosed.
 - i. All the terms and conditions of the loan,
 - ii. that the pricing of the loan involves only three components viz. the interest charge, the processing charge and the insurance premium (which includes the administrative charges in respect thereof),
 - iii. that there will be no penalty charged on delayed payment,
 - iv. that no Security Deposit / Margin is being collected from the borrower,
 - v. that the borrower cannot be a member of more than one SHG / JLG,
 - vi. the moratorium between the grant of the loan and the due date of the repayment of the first instalment(as guided by the NBFC-MFIs(Reserve Bank) Directions, 2011),
 - vii. an assurance that the privacy of borrower data will be respected.
- c. The loan card should reflect the following details as specified in the Non-Banking Financial Company - Micro Finance Institutions (Reserve Bank) Directions, 2011.
 - i. the effective rate of interest charged
 - ii. all other terms and conditions attached to the loan
 - iii. information which adequately identifies the borrower and
 - iv. acknowledgements by the NBFC-MFI of all repayments including installments received and the final discharge.
 - v. The loan card should prominently mention the grievance redressal system set up by the MFI and also the name and contact number of the nodal officer
 - vi. Non-credit products issued shall be with full consent of the borrowers and fee structure shall be communicated in the loan card itself.
 - vii. All entries in the Loan Card should be in the vernacular language.
- iii. Non-Coercive Methods of Recovery

As specified in the NBFC-MFIs (Reserve Bank) Directions, 2011, recovery should normally be made only at a central designated place. Field staff shall be allowed to make recovery at the place of residence or work of the borrower only if borrower fails to appear at central designated place on 2 or more successive occasions.

NBFC-MFIs shall ensure that a Board approved policy is in place with regard to Code of Conduct by field staff and systems for their recruitment, training and supervision. The Code should lay down minimum qualifications necessary for the field staff and shall have necessary training tools identified for them to deal with the customers. Training to field staff shall include programs to inculcate appropriate behavior towards borrowers without adopting any abusive or coercive debt collection / recovery practices. Compensation methods for staff should have more emphasis on areas of service and borrower satisfaction than merely the number of loans mobilized and the rate of recovery. Penalties may also be imposed on cases of non-compliance of field staff

with the Code of conduct. Generally only employees and not out sourced recovery agents be used for recovery in sensitive areas.

iv. Internal control system:

As the primary responsibility for compliance with the Directions rest with the NBFC-MFIs, they shall make necessary organizational arrangements to assign responsibility for compliance to designated individuals within the company and establish systems of internal control including audit and periodic inspection to ensure the same.

C. Lending against collateral of gold jewellery:

While lending to individuals against gold jewellery, NBFCs shall adopt the following in addition to the general guidelines as above.

- (i) They shall put in place Board approved policy for lending against gold that should inter alia, cover the following:
 - a. Adequate steps to ensure that the KYC guidelines stipulated by RBI are complied with and to ensure that adequate due diligence is carried out on the customer before extending any loan,
 - b. Proper assaying procedure for the jewellery received,
 - c. Internal systems to satisfy ownership of the gold jewellery,
 - d. The policy shall also cover putting in place adequate systems for storing the jewellery in safe custody, reviewing the systems on an on-going basis, training the concerned staff and periodic inspection by internal auditors to ensure that the procedures are strictly adhered to. As a policy, loans against the collateral of gold should not be extended by branches that do not have appropriate facility for storage of the jewellery,
 - e. The jewellery accepted as collateral should be appropriately insured,
 - f. The Board approved policy with regard to auction of jewellery in case of non-repayment shall be transparent and adequate prior notice to the borrower should be given before the auction date. It should also lay down the auction procedure that would be followed. There should be no conflict of interest and the auction process must ensure that there is arm's length relationship in all transactions during the auction including with group companies and related entities,
 - g. The auction should be announced to the public by issue of advertisements in at least 2 newspapers, one in vernacular language and another in national daily newspaper.
 - h. As a policy the NBFCs themselves shall not participate in the auctions held,
 - i. Gold pledged will be auctioned only through auctioneers approved by the Board.
 - j. The policy shall also cover systems and procedures to be put in place for dealing with fraud including separation of duties of mobilization, execution and approval.
- (ii) The loan agreement shall also disclose details regarding auction procedure.