

LAW REFORM COMMISSION

Discussion Paper on "Regulation of surcharge fee for use of credit cards"

[LRC_ R&P 190, April 2025]

**13th Floor, SICOM Building II
Reverend Jean Lebrun Street
Port Louis, Republic of Mauritius
Tel: (230) 212-3816/212-4102
Fax: (230) 212-2132
E-Mail: lrc@govmu.org
URL: <http://lrc.govmu.org>**



LAW REFORM COMMISSION

Chairperson : Mrs. Yanilla MOONSHIRAM [Barrister]

Chief Executive Officer : Mr. Sabir M. KADEL

Members : Representative of Judiciary
[Judge Nicholas F. OH SAN-BELLEPEAU]

Solicitor-General or his Representative
[Mr. Rajeshsharma RAMLOLL, SC]

Director of Public Prosecutions or his Representative
[Mr. Abdool Rashid AHMINE]

Mr. Anwar MOOLLAN, SC [Barrister]

Mr. Bernard D'HOTMAN DE VILLIERS [Notary]

Mr. André ROBERT, SA [Attorney]

Dr. Roopanand MAHADEW [Law Academic (UOM)]

Mr. Percy YIP TONG [Member of Civil society]

Ms. Nirmaladevi Marutha MUTHU [Member of Civil society]

Secretary : Mrs. Saroj BUNDHUN

Staff & Human Resources

Chief Executive Officer : Mr. Sabir M. KADEL

Law Reform Cadre

Law Reform Officer/Senior Law Reform Officer : Ms. Dhan Devi SOOKUR

Mrs. Nishita Devi HORILL-GOPAUL

Ms. Shaseeb MUNGUR

Mr. Ghirish RAMSAWOCK

Law Reform Intern (Under STM) : Ms. Hooriyyah Banu RUJUB

Administrative Support Staff

Secretary to Commission : Mrs. Saroj BUNDHUN

Office Superintendent : Mrs. Marie Roselilette SOOBRAMANIA

Office Management Assistant : Mrs. Neelamani BANSRAM

: Mrs. Kajal RAMDUT

Senior Office Attendant/Technical Assistant : Mr. Subhas CHUMMUN

Driver/Office Attendant : Mr. Naraindranathsingh JANKEE

: Mr. Ritesh JEEBUN

EXECUTIVE SUMMARY

Discussion Paper on “Regulation of surcharge fee for use of credit cards” [LRC_R&P 190, April 2025]

The use of credit cards has become invaluable in people’s lives. Not only are they more convenient, flexible and secure to use, but when used responsibly, they also enable online shopping and provide lifestyle privileges, including rewards and benefits such as point accumulation, cashback, or travel miles.

Nonetheless, the processing of credit card transactions entails a series of steps and interactions amongst several parties to authorise, authenticate, and settle payments between a cardholder and a merchant, which ultimately involve various fees, such as the Interchange Fees, Network Fees, and Merchant Discount Rates. In order to offset the costs of processing credit card transactions, merchants tend to impose surcharge fees. Such fees vary considerably across countries. While certain foreign jurisdictions strictly condemn surcharging practices, others permit merchants to impose surcharge fees, subject to certain conditions.

In 2015, the total value of payments made at points of sale (POS) was approximately Rs146 billion, with an estimated Rs3.6 billion distributed as fees among various operators in Mauritius. The intricate fee structure, involving payments at multiple levels, often places a burden on merchants, who bear the cost of electronic transactions, and on consumers, who are impacted by unclear contracts and hidden charges.

The imposition of surcharge fees for use of credit cards is unregulated in Mauritius. Therefore, the Law Reform Commission has deemed it primordial to draft a Discussion Paper on the “Regulation of Surcharge Fee for use of Credit Cards in Mauritius”, since a lack of regulation of credit card surcharges could potentially lead to unfair trading practices. Hence, with the primary aim of ensuring consumer protection as well as seeking to safeguard merchants’ rights, the Commission has reviewed the regulation of transactions in Mauritius (Part I), has analysed how credit card surcharge fees are regulated in foreign jurisdictions, such as the United States, Australia, United Kingdom and Canada (Part II), and has assessed certain reform proposals that could be implemented in Mauritius (Part III).

The current Discussion Paper represents a significant and logical progression within the broader consumer protection initiatives of the Law Reform Commission. It builds directly upon the foundational principles enunciated in the earlier Discussion Paper titled “The Law Pertaining to Display of Price” [LRC_R&P 178, February 2024]. Together, these papers form a cohesive and strategic approach to addressing critical gaps in the legal framework governing consumer rights in Mauritius, particularly in the context of evolving market practices and the increasing digitisation of financial transactions.

Both papers are underpinned by a shared objective: to ensure transparency, fairness, and accountability in commercial dealings. They respond to the pressing need for legal mechanisms that safeguard consumers from opaque and potentially exploitative practices while fostering a marketplace that is equitable, efficient, and aligned with international standards. In doing so, they reflect the Commission’s commitment to strengthening the integrity of economic transactions and enhancing consumer confidence in the Mauritian economy.

INTRODUCTION

1. A credit card is a payment card, typically issued by a bank, that enables users to buy goods or services or withdraw cash on credit.¹ Aside from conventional banking facilities, new payment methods via credit cards have enabled its users to conveniently and easily effect payments without the need for carrying cash. Besides being a safer choice in comparison to other payment facilities, such as debit card payments, credit card transactions offer a variety of other advantages. When used responsibly, the latter facilitates online shopping, offers lifestyle privileges such as rewards and benefits, either structured as points' accumulation, cash backs or travel miles.
2. The first bank card, known as '*Charge-It*' was invented in 1946 by a Brooklyn Banker, John Biggins. This system enabled bank customers to make purchases from local merchants, who would then submit the sales slips to the bank.² Afterwards, the latter would compensate the merchants and issue bills to the customers. Subsequently, the first modern credit card; '*The Diners Club Card*', was launched in the 1950s by Frank McNamara and his business partner, Ralph Schneider.³
3. The idea of such an invention emerged following the former who had forgotten his wallet whilst out for dinner and deciding to invent a method for cashless transactions. Credit cards became popular and evolved, making banks issuing their own cards in the 1960s. However, unlike charge cards, the new credit card allowed for a system of revolving credit, meaning that balances accumulated from month to month. Nowadays, notable credit card networks include Visa and Mastercard, whose usage have spread universally.⁴

¹ Benton E. Gup, '*Banking and Financial Institutions*' (A Guide for Directors, Investors, and Counterparties, 2011) p. 324. <http://ndl.ethernet.edu.et/bitstream/123456789/26743/1/104.Benton%20E.%20Gup.pdf>

² S. Seaman, '*The History of the Credit Card*' (12 September 2024) <https://www.swipesum.com/insights/history-of-the-credit-card#:~:text=1946%3A%20First%20credit%20card...&text=John%20Biggins%2C%20a%20banker%20from,bank%20at%20a%20later%20time>.

³ R. Anderson, '*Charge it! A brief history of credit cards and other media*' (17 February 2018) <https://www.linkedin.com/pulse/charge-it-brief-history-cards-other-media-raymond-anderson/>

⁴ *ibid*.

4. The three customary payment methods remain by cash, credit and debit cards. However, these payment methods can incur additional costs for merchants. On the one hand, there are countries that strictly condemn surcharging practices as there exists a strong belief that consumers’ rights should be safeguarded, on the other hand, the surcharging of credit card transactions is permitted in certain countries. A payment surcharge is the practice of imposing an extra fee by the merchant with the aim of offsetting the costs of processing credit card transactions.⁵
5. The application of surcharges by merchants on credit card transactions remains entirely unregulated in Mauritius, creating a potential vacuum for the emergence of unfair trading practices. Recognising the need to address this pressing issue, the Law Reform Commission has taken the initiative to draft a Discussion Paper titled “Regulation of Surcharge Fee for Use of Credit Cards in Mauritius.” This initiative stems from the Commission’s commitment to fostering transparency, fairness, and accountability in commercial transactions while balancing the interests of both consumers and merchants. Thus, the Commission has undertaken a comprehensive review of the regulatory framework governing transactions in Mauritius (Part I), analysed how credit card surcharge fees are managed in various foreign jurisdictions to draw insights from international best practices (Part II), and evaluated reform proposals tailored to the Mauritian context that could be implemented to address the identified gaps and ensure a balanced approach to consumer protection and merchant rights (Part III).
6. The absence of regulation on credit card surcharge fees has significant implications. It can lead to practices where consumers are charged excessive or hidden fees, undermining their ability to make informed decisions and eroding trust in the marketplace. Simultaneously, merchants face challenges in navigating the operational costs of accepting credit card payments without clear legal guidelines. To address these dual concerns, the Discussion Paper serves as a platform to propose meaningful reforms aimed at safeguarding consumer rights and clarifying merchants’ obligations.

⁵ ‘Surcharge Fee: What Is It & How to Implement Them?’
<https://www.highradius.com/resources/Blog/complete-guide-to-surcharge-fee/#:~:text=Unique%20Cookie%20ID-,Key%20Takeaways,percentage%20capped%20by%20card%20brands.>

PART I: REGULATION OF TRANSACTIONS IN MAURITIUS

7. The card payment system in Mauritius involves five key parties, as outlined below:
- The Cardholder is the person holding the debit or credit card.
 - The Merchant offers goods and services to the cardholder and accepts the card as a payment method. The merchant pays a fee, referred to as the merchant fee, to the acquirer for processing card payments.
 - The Acquirer supplies the card acceptance device or Point of Sale (POS) system and has an agreement with the merchant to process payments.
 - The Card Issuer is the bank or company that provides the card to the cardholder.
 - Card schemes, such as Visa, MasterCard, UnionPay, American Express, and Diners Club, are organisations that oversee and regulate the operation and clearing of card payment transactions in accordance with their scheme rules. They facilitate the transfer of transaction details from the acquirer to the issuer and ensure payments are routed back to the acquirer, which then reimburses the merchant.⁶
8. The main steps involved in processing credit card payments in Mauritius have hereunder been explained, and a diagram has been annexed to this Discussion Paper.
- A cardholder uses their card to make a payment to the merchant.
 - The merchant processes the card through a POS device, enters the transaction amount, and submits an authorisation request to the acquirer.
 - In Mauritius, all acquirers also serve as card issuers. Consequently, the acquirer first verifies if the transaction involves a card it issued and, if so, authorises the payment. Otherwise, it electronically forwards the authorisation request to the relevant credit card network, such as Visa or MasterCard.
 - The credit card company processes the authorisation request and forwards it to the issuing bank for approval. In this process, even transactions conducted in Mauritian

⁶ ‘National Payment Switch’ (Bank of Mauritius, January 2016) p. 3. https://www.mcci.org/media/189040/nps-consultation_paper_website_0.pdf

Rupees are routed through the credit card company, which charges a fee for facilitating the authorisation.

- Once authorisation is approved, the transaction is completed. The customer is charged the full transaction amount, while the merchant receives payment equivalent to the transaction amount minus commissions. This commission, known as the merchant fee, is calculated as a percentage of the transaction value (the merchant discount rate) and varies based on the agreement between the merchant and the acquirer.⁷
9. The merchant discount rate has risen considerably in recent years, currently ranging from just under 2% to over 3% of the total transaction value. Approximately 35% of this fee is retained by the acquirer, 10% to 15% is allocated to the credit card company, and the largest share—50% to 60%—is paid to the card issuer as interchange. This interchange fee reimburses credit card issuers; typically, banks, for the costs and risks associated with providing credit card services.⁸ The current card-based payment system in Mauritius operates on a one-to-one direct relationship with payment processors, leading to multiple investments and increased processing costs.⁹
10. The merchant discount rate (MDR) is the fee that merchants pay for processing debit and credit card transactions. According to the Competition Commission of Mauritius, the MDR comprises three primary components: The Issuer Interchange Fee, network costs attributed to Visa and MasterCard, and the acquirer’s costs and markup. In a Discussion Paper conducted in 2008 by Arango and Taylor, data suggested that acquirers determine specific rates for merchants based on factors such as monthly sales volumes and risk assessments. Consequently, merchants with higher credit card sales

⁷ ‘National Payment Switch’ (Bank of Mauritius, January 2016) p. 4. https://www.mcci.org/media/189040/nps-consultation_paper_website_0.pdf

⁸ ‘National Payment Switch’ (Bank of Mauritius, January 2016) p. 5. https://www.mcci.org/media/189040/nps-consultation_paper_website_0.pdf

⁹ *ibid.*

typically benefit from lower rates to encourage economies of scale, whereas higher perceived risk leads to increased rates.¹⁰

11. In Mauritius, laws catering specifically for the regulation of credit card surcharge fees are non-existent. Nevertheless, such regulation of surcharge fees for the usage of credit cards falls within the wider scope of the National Payment Systems Act 2018 and the National Payment Systems (Authorisation and Licensing) Regulations 2021. Indeed, the National Payment Systems Act 2018 is divided into 13 Parts and typically deals with inter alia; the powers and duties of the Central Bank; authorisation and licensing of payment service providers; consumer protection; rules to regulate systems and the ongoing oversight and supervision of payment systems and payment service providers.
12. The Act interprets a “credit card” as meaning ‘a card which authorises the person named on it to charge goods or services to the account of the cardholder or to obtain cash advances on credit basis subject to repayment of the credit extended.’¹¹ By virtue of the same Act, the central bank; the Bank of Mauritius, is empowered to regulate, oversee and supervise the national payment systems¹² and payment systems¹³ being operated in Mauritius with the prime objective of ensuring their safe, secure, efficient and effective operation and accessibility to the public.¹⁴
13. Accordingly, with the aim of safeguarding consumers’ rights, the central bank may establish rules to ensure transparency of conditions and information requirements for

¹⁰ C. Arango & V. Taylor, ‘Merchant Acceptance, Costs, and Perceptions of Retail Payments: A Canadian Survey’ (Discussion Paper 2008-2012) p. 30. Merchant Acceptance, Costs, and Perceptions of Retail Payments: A Canadian Survey

¹¹ National Payment Systems Act 2018, Pt. I, s. 2.

¹² According to the National Payment Systems Act 2018, Pt. I, s. 2, “national payment systems” means ‘all the services associated with sending, receiving and processing of transfer orders in domestic or foreign currencies; and includes – (i) the issuance and management of payment instruments; (ii) payment systems, clearing systems and settlement systems, including the processing securities and other financial instruments, arrangements and procedures associated to those systems and services; (iii) electronic money clearing and settlement; (iv) recording of monetary and other financial transactions; (v) payment service providers; (vi) mobile payment systems; and (vii) operators, participants and any third party acting on behalf of an operator or a participant, either as an agent or by way of outsourcing agreements, whether entirely or partially operating within Mauritius.’

¹³ According to the National Payment Systems Act 2018, Pt. I, s. 2, “payment systems” means ‘any system or arrangement for the processing, clearing or settlement of funds; and includes a mobile payment system.’

¹⁴ National Payment Systems Act 2018, Pt. II, s. 4 (1).

payment services.¹⁵ In so doing, the central bank possesses a discretionary power to regulate fees or charges where it deems that it is in the public interest to do so.¹⁶ The Act places a legal obligation upon payment service providers to remain transparent while imposing fees or charges on any customer while executing a payment service. Hence, customers have the right to be notified of the fact that a fee or charge is being imposed;¹⁷ and the amount of the fee or charge.¹⁸ In particular, a notice concerning any fee or charge must mandatorily be displayed in a clearly visible location where the customer initiates the payment order¹⁹ and the terms and conditions of a payment service must be disclosed at the time the customer contracts for a payment service.²⁰

14. The Competition Commission of Mauritius (CCM) has addressed concerns surrounding interchange fees charged by banks and payment service providers. These fees play a crucial role in determining the expenses merchants face when processing card payments, which can, in turn, influence their decisions on passing costs to consumers through surcharges. In 2019, the CCM found that Visa and MasterCard had misused their market position by setting interchange fees at 1%, accounting for up to 79% of the costs banks incur for offering card acceptance services to merchants. To address this, the Commission directed Visa and MasterCard to reduce their interchange fees to a maximum of 0.5% for both debit and credit card transactions.²¹

15. The investigation revealed that Visa and MasterCard determine the interchange fee through agreements with banks for utilising their networks. For local debit and credit card transactions, Visa and MasterCard have set the interchange fee at approximately 1%. As a result, merchants have been paying up to 3% in merchant commissions to their banks. While 13 banking and non-banking financial institutions issue Visa and

¹⁵ National Payment Systems Act 2018, Pt. III, s. 12 (1).

¹⁶ National Payment Systems Act 2018, Pt. III, s. 12 (3).

¹⁷ National Payment Systems Act 2018, Pt. III, s. 13 (1)(a).

¹⁸ National Payment Systems Act 2018, Pt. III, s. 13 (1)(b).

¹⁹ National Payment Systems Act 2018, Pt. III, s. 13 (2).

²⁰ National Payment Systems Act 2018, Pt. III, s. 14.

²¹ ‘Visa and Mastercard ordered to reduce Interchange Fees for debit and credit card payments’ (Media Release, Competition Commission Mauritius, INV020, 13 August 2019) p.1. [insert title of

MasterCard cards, only four of them offer merchants the facilities to accept card payments.²²

16. The investigation found that the level of interchange fee is set by VISA and MasterCard through agreements that they respectively sign with the banks for using their networks. VISA and MasterCard have set the interchange fee for local debit/credit card transactions at around 1%, and merchants were in turn paying up to 3% as merchant commission to their banks. There are 13 banking/non-banking financial institutions which issue VISA and MasterCard cards but only 4 of them provide facilities to merchants for accepting payments by cards.²³
17. Although the CCM focuses on promoting fair competition and preventing fees from excessively burdening merchants or consumers, Mauritius lacks specific laws regulating the amount or use of credit card surcharges by merchants. While the regulatory framework addresses payment systems and competition within the banking sector, the practice of merchants applying surcharges on credit card transactions remains unregulated.²⁴

Competition Act

18. Section 45 of the Competition Act deals with ‘Other vertical agreements’ and states the following:

“A vertical agreement that does not involve resale price maintenance may be reviewed where the Commission has reasonable grounds to believe that one or more parties to the agreement is or are in a monopoly situation that is subject to review under section 46.”

²² *ibid.*

²³ *ibid.*

²⁴ *ibid.*

19. In turn, section 46 of the same Act details two distinct instances, in relation to the supply of goods or services of any description which would amount to a monopoly situation:

“(1) A monopoly situation shall exist in relation to the supply of goods or services of any description where –

- (a) 30 per cent or more of those goods or services are supplied, or acquired on the market, by one enterprise; or*
- (b) 70 per cent or more of those goods or services are supplied, or acquired on the market, by 3 or fewer enterprises.*

(2) A monopoly situation shall be subject to review by the Commission where the Commission has reasonable grounds to believe that an enterprise in the monopoly situation is engaging in conduct that –

- (a) has the object or effect of preventing, restricting or distorting competition; or*
- (b) in any other way constitutes exploitation of the monopoly situation.*

(3) In reviewing a monopoly situation, the Commission shall take into account –

- (a) the extent to which an enterprise enjoys or a group of enterprises enjoy, such a position of dominance in the market as to make it possible for that enterprise or those enterprises to operate in that market, and to adjust prices or output, without effective constraint from competitors or potential competitors;*
- (b) the availability or non-availability of substitutable goods or services to consumers in the short term;*
- (c) the availability or non-availability of nearby competitors to whom consumers could turn in the short term; and*
- (d) evidence of actions or behaviour by an enterprise that is, or a group of enterprises that are, a party to the monopoly situation where such actions or behaviour that have or are likely to have an adverse effect on the efficiency, adaptability and competitiveness of the economy of Mauritius, or are or are likely to be detrimental to the interests of consumers.”*

Case Law

20. In *Absa Bank (Mauritius) Limited v Isa Travel and Tours Ltd*,²⁵ the plaintiff claimed the sum of Rs 18,388,100.00 together with interest and costs from the defendant. In essence, the defendant entered into a Merchant Agreement dated 25 January 2012 with the bank. An Indemnity Agreement was signed on behalf of the defendant by the co-defendant on 29 February 2012 in favour of the bank indemnifying the bank against all damages, costs, claims, demands, expenses and losses which the bank suffers or may suffer as a result of keyed in transactions. The defendant was granted a point-of-sale terminal (POS) by the bank in 2012 in order to allow him to accept credit and debit card payments from its clients for payment of travel services provided by the defendant to its own clients and which was enabled for keyed in transactions.²⁶

21. The plaintiff contended that in accordance with the agreements between the bank and the defendant, the latter had to reimburse all sums that the plaintiff has had to reimburse issuing banks following chargebacks²⁷ it had received as a result of the fraudulent use of credit cards processed through a point of sale provided to the defendant by the plaintiff. According to evidence adduced during the trial of this case, the defendant had processed 556 keyed in transactions between 27 September 2016 and 3 November 2016 with a total value of Rs 19,603,474, relating to a contract between the defendant and a football agency. The transactions were made on 94 credit cards issued by 7 banks and all the credit cards bore the name of “Arnaud A Schreiber” who apparently acted on behalf of the football agency and who dealt with the co-defendant. This case is concerned with the plaintiff claiming the sum of Rs 18 million as reimbursement from the defendant for the chargebacks it has had to pay to the issuing banks, arising from the fraudulent use of credit cards.²⁸

²⁵ *Absa Bank (Mauritius) Limited v Isa Travel and Tours Ltd* 2023 SCJ 221.

²⁶ Keyed in transactions are credit card transactions where a merchant, does not have the physical card and has to key in the card number and its expiration date.

²⁷ A chargeback request is a request for refund by an issuing bank in cases where the merchant cannot prove that the transaction was legitimate.

²⁸ The Honourable Judge found in favour of the plaintiff as the latter indeed had the obligation to pay the chargebacks and that the defendant ought to reimburse the plaintiff. The defendant was hence ordered to pay the sum of Rs 18,388,100.00 with interest and cost to the plaintiff.

PART II: REGULATION OF CREDIT CARD SURCHARGE FEES IN FOREIGN JURISDICTIONS

(a) UNITED STATES

22. Rules concerning credit card surcharge fees vary across the States in the United States. For instance, 41 States²⁹ have legalised the practice of imposing surcharges for processing credit card transactions, while 5 States and territories; Connecticut, Massachusetts, New York and Puerto Rico condemn such a practice. For the purpose of drafting this Discussion Paper, the Law Reform Commission has focused on the following 5 States in order to depict how the laws are nuanced with respect to credit card surcharge fees: Colorado; Massachusetts; New York; Maine and California.

Colorado

23. While Colorado’s Revised Statutes, 5-2-212 does not condemn the practice of sellers imposing surcharges on a buyer who chooses to pay using a credit card instead of cash, cheque, or similar payment methods,³⁰ surcharges are, however, capped at 2% or limited to the Merchant Discount Fee. This specific provision defines a “surcharge” as *‘any additional amount imposed at the time of the sales or lease transaction by the merchant, seller, or lessor that increases the charge to the buyer or lessee for the privilege of using a credit or charge card.’*³¹
24. As aforementioned, a seller may impose a surcharge either as an amount not to exceed two percent of the total cost to the buyer for the sales. a seller that imposes a surcharge

²⁹ G. Jhean, (LawPay, 01 March 2024) “Credit Card Surcharge Laws by State Explained” <<https://www.lawpay.com/about/blog/credit-card-surcharge-rules/>>, 41 States allowing credit card surcharge fees are as follows: - ‘Alabama, Alaska, Arizona, Arkansas, California, Colorado, DC, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri Tennessee, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, Wyoming.’

³⁰ Colorado’s Revised Statutes, 5-2-212 (1)(a).

³¹ Colorado’s Revised Statutes, 5-2-212 (1)(b).

on credit card shall post signage at the seller's premises in a manner that is visible to customers or, for a sales transaction made online, display before an online customer's completion of the sales transaction in a manner that is visible to the online customer, the following language:

*"To cover the cost of processing a credit card transaction, and pursuant to section 5-2-212, Colorado Revised Statutes, a seller may impose a processing surcharge in an amount not to exceed 2% of the total payment made for goods or services purchased by use of a credit card, a seller shall not impose a processing surcharge on payments made by use of cash, a cheque, or a debit card or redemption of a gift card."*³²

25. Alternatively, a surcharge may be imposed as an amount not to exceed the Merchant Discount Fee³³ that the seller incurs in processing the sales transaction. The seller or the seller's service provider must calculate the surcharge at an amount not to exceed the actual amount paid to the processor or service provider to process the transaction.

26. Furthermore, the Statute also covers the requirement that sellers should post a signage at their premises, clearly indicating that a processing surcharge may be imposed, or with regards to online transactions, display before an online customer's completion of the sales transaction in a manner that is visible to the online customer, and which must be in the following language:

*"To cover the cost of processing a credit card transaction, and pursuant to section 5-2-212, Colorado Revised Statutes, a seller may impose a processing surcharge in an amount not to exceed the merchant discount fee that the seller incurs in processing the sales transaction. a seller shall not impose a processing surcharge on payments made by use of cash, a cheque, or a debit card or redemption of a gift card."*³⁴

³² Colorado's Revised Statutes, 5-2-212 (1)(c)(I).

³³ According to the Colorado's Revised Statutes, 5-2-212 (1)(b).

, "**Merchant Discount Fee**" means 'the actual fee, expressed as a percentage or fixed amount of the total transaction amount, that a seller pays its processor or service provider to process the transaction.'

³⁴ Colorado's Revised Statutes, 5-2-212 (1)(c)(II)(B).

Massachusetts

27. Massachusetts’ law concerning cardholder discounts, surcharges and finance charge, ensures that credit card issuers cannot restrict sellers from offering discounts to customers who choose to pay with methods other than a credit card, such as cash or cheques. An interpretation of section 28A suggests that card issuers cannot include clauses in contracts or enforce policies that prevent sellers from providing such discounts. Rather, sellers are allowed to incentivise customers to use payment methods that are cheaper for the seller, such as cash or cheques, by offering discounts.³⁵
28. Further, by virtue of section 28A (a)(2) of this specific law, sellers are statutorily restricted from adding surcharges to a credit card transaction instead of other alternative payment methods.³⁶ Comprehensively, this particular provision ascertains that customers are not penalised for using a credit card as their preferred payment method. It is noteworthy that this distinct prohibition forbids sellers from shifting the cost of credit card processing fees onto cardholders, hence inevitably ensuring transparency and fairness in pricing.
29. The last sub-section of the relevant law clearly mentions that sellers must mandatorily disclose in a clear and prominent way the availability of discounts for making use of alternative payment methods; without them being classified as finance charges under section four, provided that such discount is offered to all prospective buyers.³⁷

New York

30. A new consumer protection law has recently been introduced in New York by Governor Hochul, in an attempt to amend and clarify New York’s existing credit card surcharge law, stating that:

³⁵ Massachusetts M. G. L. c. 140D, § 28A (a)(1).

³⁶ Massachusetts M. G. L. c. 140D, § 28A (a)(2).

³⁷ Massachusetts M. G. L. c. 140D, § 28A (b).

“New Yorkers should never have to deal with hidden credit card costs, and this law will ensure individuals can trust that their purchases will not result in surprise surcharges. Transparency is crucial in building trust between businesses and communities and now patrons will be empowered to budget accordingly.”³⁸

31. Henceforth, according to New York’s General Business Law, section 518 on ‘*Credit card surcharge notice requirement*’, in any sales transaction where a seller imposes a surcharge on customers who choose to pay with a credit card instead of cash, cheque, or similar methods, the seller must clearly and prominently display the total price for credit card use, including the surcharge.³⁹
32. However, the surcharge cannot exceed the amount that the credit card company charges the business for processing the payment. The final sales price, including the surcharge, must not exceed the posted price for the transaction. Nonetheless, this provision does not prohibit merchants from implementing a two-tier pricing system; that is, displaying or tagging two separate prices: one for credit card payments including the surcharge and another for cash payments.⁴⁰
33. Also, the law provides that any seller who violates this section will be subject to a civil penalty, recoverable through legal action in a court of competent jurisdiction, with a maximum penalty of \$ 500 per violation. Enforcement of this provision may be carried out concurrently by the director or commissioner of a municipal consumer affairs office, the town attorney, city corporation counsel, or another authorised representative of a municipality or local government. All penalties collected under this provision will be retained by the respective municipality or local government.⁴¹

³⁸ ‘Governor Hochul Announces New Law to Clarify Disclosure of Credit Card Surcharges Goes Into Effect Sunday, February 11’ (Albany, New York, 6 February 2024) <https://www.governor.ny.gov/news/governor-hochul-announces-new-law-clarify-disclosure-credit-card-surcharges-goes-effect-sunday>

³⁹ New York Consolidated Laws, General Business Law - GBS, Ch. 20, Art. 29-A, § 518.1.

⁴⁰ *ibid.*

⁴¹ New York Consolidated Laws, General Business Law - GBS, Ch. 20, Art. 29-A, § 518.2.

Maine

34. The imposition of credit card surcharge fees has been banned under Maine’s Revised Statutes, Title 9 – A, known as the “Maine Consumer Credit Code” [2011]. This specific law places a surcharge ban upon sellers in a sales transaction from imposing a surcharge on a cardholder who elects to use a credit card or debit card in lieu of payment by cash, cheque or similar means.⁴² Briefly, the law ensures that customers are informed of the cost or price of a service or item in advance, before any discounts are applied to their purchases.⁴³
35. This law affords safeguards to consumers by putting an obligation upon sellers to remain transparent while disclosing the full price of goods or services upfront, before applying any discounts, thus ensuring that customers are aware of exactly what they are paying for without surprises and are protected from unexpected charges, such as additional fees added after viewing a lower advertised price.
36. In addition, despite the fact that a retailer displays a sign or notice that they charge a fee for credit card transactions, yet the latter would be in contravention of the law, since the regular price must be unambiguous from the beginning. Instead, retailers can display both the listed price for either credit or debit cards, as well as the discounted cash price. However, the listed price ought to be as noticeable or rather more noticeable than the discounted cash price. In so doing, retailers can lawfully label such discounted prices as “Cash” or “Cash Discount” and which may be presented as a percentage, either on the label, at the point of sale, or in another clearly visible location.
37. Moreover, retailers may offer discounts to encourage customers to use alternative payment methods rather than credit cards, such as providing a cash discount or

⁴² Title 9-A M.R.S. § 8-509 (Maine).

⁴³ ‘Credit and debit card surcharges’ (Department of Professional and Financial Regulation Consumer Credit Protection — State of Maine)
<https://www.maine.gov/pfr/consumercredit/consumer/surcharge.html#:~:text=What%20is%20Maine's%20%E2%80%9CNo%20surcharge,any%20discount%20on%20their%20purchases.>

promoting cheque payments. Nevertheless, the primary aim of this piece of legislation is to maintain transparency by clearly displaying the original price upfront.

California

38. A particular provision of the Californian Civil Code states that any agreement between a card issuer and a retailer that prevents the latter from offering price discounts or charging lower prices to customers who pay with cash instead of a credit card is invalid and unenforceable, as it goes against public policy. Thus, section 1748 of the Civil Code provides the following:

*"Any provision in a contract between a card issuer and a retailer which has the effect of prohibiting the retailer from offering price discounts or from charging a different and lower price to customers who pay for goods or services by cash instead of by credit card is contrary to public policy and void."*⁴⁴

39. Retailers are further prohibited from charging additional fees to consumers who choose to pay with a credit card instead of other payment methods, such as cash or cheques. However, retailers are allowed to encourage alternative payment methods by offering discounts, as hereunder specified under section 1748.1. of the Civil Code: -

*"No retailer in any sales, service, or lease transaction with a consumer may impose a surcharge on a cardholder who elects to use a credit card in lieu of payment by cash, check, or similar means. A retailer may, however, offer discounts for the purpose of inducing payment by cash, check, or other means not involving the use of a credit card, provided that the discount is offered to all prospective buyers."*⁴⁵

40. Upon analysing the above-mentioned sub-section, the Law Reform Commission concluded that a retailer would be in contravention of the former if he decides to impose a surcharge on a customer for using a credit card, such as adding an extra 2% fee for

⁴⁴ California Civil Code, Div. 3, Pt. 4, Tit. 1.3. § 1748.

⁴⁵ California Civil Code, Div. 3, Pt. 4, Tit. 1.3. § 1748.1. (a).

paying with a credit card instead of cash. Instead, providing a discount to incentivise payment by cash, cheque, or other non-credit card methods, would be lawful; for instance, offering a 5% discount on the price if the customer pays in cash.

41. The second sub-section states that any retailer who knowingly violates this rule by imposing a surcharge on a cardholder for using a credit card and fails to refund the amount within 30 days of receiving a written demand from the cardholder via certified mail will be liable for thrice the actual damages assessed. Additionally, the cardholder is entitled to recover reasonable attorney’s fees and court costs incurred in pursuing the claim.⁴⁶
42. The third provision clarifies that a consumer is not deemed to have chosen to use a credit card as an alternative payment method in situations where the retailer imposes limitations on payment options, specifically where the retailer solely accepts credit cards for orders placed via phone calls; the consumer has no other payment option for that transaction. Likewise, in the event that the retailer only accepts cash at its physical store or facility, the consumer is compelled to pay with cash for in-person transactions. In such cases, the consumer’s use of a payment option is dictated by the retailer’s policy rather than by his own choice.⁴⁷ Consequently, the protections and restrictions outlined in section 1748 of the Civil Code about surcharges for payment method choice would not apply, since the consumer was not provided with a genuine alternative.
43. Next, the aim of the fourth provision is to uphold transparency and fairness by preventing hidden or indirect charges that unfairly penalise credit card users. It clearly specifies that fees for third-party credit card guarantee services are considered surcharges under the law if they are added to the price that a retailer would charge for a cash payment.⁴⁸
44. Hence, even if these fees are paid directly to a third party or charged as a separate line item, they are treated as surcharges for they increase the total cost for customers using

⁴⁶ California Civil Code, Div. 3, Pt. 4, Tit. 1.3. § 1748.1. (b).

⁴⁷ California Civil Code, Div. 3, Pt. 4, Tit. 1.3. § 1748.1. (c).

⁴⁸ California Civil Code, Div. 3, Pt. 4, Tit. 1.3. § 1748.1. (d).

credit cards compared to those paying with cash. As a result, retailers are unable to circumvent surcharge regulations by classifying these additional costs as third-party fees or separating them from the main transaction. In furtherance, this rule aligns with the overall objective of regulating surcharges to ensure that consumers are not subjected to unjustified or unclear additional costs based on their choice of payment method.

45. The intention of the Legislature whilst drafting the fifth provision of the relevant section, with regards to banning credit card surcharges, is to firstly seek to prevent unfair price increases that disproportionately affect consumers using credit cards. Secondly, to encourage discounts for alternative payment methods, thus promoting flexibility and consumer choice while allowing businesses to reduce payment processing costs and finally, to ensure that the market operates effectively, allowing consumers to make informed choices without hidden fees or deceptive pricing practices.⁴⁹ Accordingly, this intent fosters transparency, fairness, and competition in the marketplace, benefiting both consumers and businesses.

(b) AUSTRALIA

46. The regulation of payment surcharges is governed by the Competition and Consumer Amendment (Payment Surcharges) Act 2016 in Australia. Particularly, the object of this legislation is to ensure that businesses do not apply excessive surcharges on card transactions⁵⁰ and that any fees charged, accurately reflect the merchant’s actual payment processing costs.⁵¹

47. In accordance with this Act, a “*payment surcharge*” means ‘*an amount charged, in addition to the price of goods or services, for processing payment for the goods or services; or an amount (however described) charged for using one payment method*

⁴⁹ California Civil Code, Div. 3, Pt. 4, Tit. 1.3. § 1748.1. (e).

⁵⁰ Competition and Consumer Amendment (Payment Surcharges) Act 2016 (No. 9, 2016) Sch. 1, Pt. IVC, Div. 1, s. 55 (a).

⁵¹ Competition and Consumer Amendment (Payment Surcharges) Act 2016 (No. 9, 2016) Sch. 1, Pt. IVC, Div. 1, s. 55 (b).

*rather than another.*⁵² Whilst, the expense incurred by a business for accepting each payment method is referred to as the “*cost of acceptance*” for that method.⁵³ A payment surcharge is deemed excessive if it surpasses the “*cost of acceptance*.”⁵⁴ For instance, if the cost of acceptance for Visa Credit is 1% then businesses can only surcharge 1% on Visa credit card payments.⁵⁵

The “*costs of acceptance*” is calculated as follows:

Costs of acceptance = Bank Fees (from merchant statement) + Additional permissible costs (payable to a third party) [Gateway fees, Terminal fees, Fraud prevention, Insurance].⁵⁶

48. The aforementioned law is applicable to surcharges on common card payment methods, such as Eftpos (debit and prepaid), MasterCard (credit, debit and prepaid), Visa (credit, debit and prepaid), and American Express companion cards (issued through an Australian financial service provider,⁵⁷ rather than directly through American Express).⁵⁸

49. In the event that a merchant decides to apply a payment surcharge to a payment method subject to the ban, then the surcharge amount must not exceed the “*cost of acceptance*” for that method, as explained in the above-mentioned paragraph. The latter is outlined in a statement from the merchant’s bank or payment facilitator, and which is usually presented as a percentage.

⁵² Competition and Consumer Amendment (Payment Surcharges) Act 2016 (No. 9, 2016) Sch. 1, Pt. IVC, Div. 1, s. 55A.

⁵³ ‘*Payment surcharges – only charge what it costs you*’ (Australian Competition & Consumer Commission, January 2018) p.1. https://www.accc.gov.au/system/files/1193_Payment%20surcharges_FA_web03.pdf

⁵⁴ *ibid.*

⁵⁵ *ibid.*

⁵⁶ https://www.accc.gov.au/system/files/1193_Payment%20surcharges_FA_web03.pdf

⁵⁷ American Express proprietary cards (issued directly by American Express) are not presently covered by the ban, as declared by the Australian Competition & Consumer Commission in its Payment Surcharges Guide in 2018.

⁵⁸ Following the 2019 - 21 Review of Retail Payments Regulation, the RBA revoked the designation of the American Express companion card system, because the four major banks had ceased offering companion cards. Also, it should be noted that the prepaid card systems of Eftpos, Mastercard and Visa are all subject to similar rules as for the debit cards of those systems. Merchants will receive statements of acceptance costs for debit and prepaid cards combined and so the maximum permitted surcharge for the two types of cards will be the same.

50. The Australian Competition & Consumer Commission (ACCC) publicised in its guide for business on '*Payment Surcharges – only charge what it costs you*' in 2018, that for most businesses, these costs include merchant service fees, fees for the rental and maintenance of payment card terminals, and other expenses associated with processing card transactions, such as cross-border transaction fees, switching fees, and fraud-related chargeback fees (excluding the cost of actual chargebacks).⁵⁹
51. Furthermore, additional permissible costs; such as: gateway fees paid to a payment service provider, costs for fraud prevention services provided by an external provider, fees for the rental or maintenance of card terminals if paid to a provider other than the merchant's bank or payment facilitator, and costs for insuring against forward delivery risk, may be included in a merchant's surcharge, but the allowable amount must be calculated by the latter himself.
52. Nevertheless, these costs must be supported by verifiable evidence, such as contracts, statements, or invoices. However, businesses are restricted from including their internal costs, such as labour or electricity expenses, when calculating surcharges.⁶⁰ The ACCC provides guidance with respect to the rules when imposing a surcharge, including whether a flat fee surcharge may be imposed.

i. The minimum surcharge

53. If a business chooses to apply the same surcharge across all payment types, then it must not exceed the minimum surcharge applicable to any single payment type.

Example: A business's average cost of acceptance is 1% for Visa debit and 1.5% for Visa credit. If the business wishes to apply the same surcharge across both payment systems, it must be set at 1%, the lower of the two. The business is not permitted to average the costs between them.

⁵⁹ '*Payment surcharges – only charge what it costs you*' (Australian Competition & Consumer Commission, January 2018) p.2. https://www.accc.gov.au/system/files/1193_Payment%20surcharges_FA_web03.pdf

⁶⁰ *ibid.*

ii. Flat fee surcharge

54. Businesses may apply a flat fee instead of a percentage-based surcharge, but it must be ensured that the surcharge does not exceed the actual cost of using that payment method. Additionally, businesses should exercise caution when applying a flat fee to low-value transactions.⁶¹

iii. Surcharges applied only to payments under a specified amount

55. Businesses are permitted to establish a minimum amount for card payments. Additionally, they may also apply a surcharge exclusively to card payments below a specified threshold. For instance, a business could impose a 50-cent surcharge on card payments under \$10. However, any surcharge set in this manner must comply with the Regulations and not exceed the permissible limits. Below is an example of how such a surcharge would differ if a flat fee surcharge was to be imposed.⁶²

Example: If a business’s cost for credit card payments is 1% and it applies a 1% surcharge, a customer purchasing a \$4 coffee would pay a surcharge of four cents. Yet, if the business imposes a flat 50-cent surcharge on all card payments for transactions under \$10, a customer buying a \$4 coffee would effectively pay a 12.5% surcharge. Hence, this would exceed the business’s cost of acceptance for that transaction.⁶³

iv. When payment without a surcharge is not an option

⁶¹ ‘Card surcharges’ (Australian Competition & Consumer Commission) <https://www.accc.gov.au/business/pricing/card-surcharges#toc-when-payment-without-a-surcharge-isn-t-an-option>

⁶² *ibid.*

⁶³ *ibid.*

56. In case, consumers have no option to pay without incurring a surcharge, the business must incorporate the minimum applicable surcharge into the displayed price of its products. Such a situation would likely arise when a business does not accept cash and applies a surcharge to all card payment methods. The following example illustrates how a price ought to be presented when payment without a surcharge is not an option:

Example: A business charges \$5 for a coffee, does not accept cash, and applies surcharges to all card payment methods. In this case, a consumer cannot purchase the coffee for the advertised \$5. For example, if the lowest surcharge is 15 cents for a debit card, the displayed price for the coffee must be \$5.15.⁶⁴

If the business chooses to display the \$5 price, it must also prominently display the full price of \$5.15. The \$5.15 price must be clear and equally noticeable to consumers as the \$5 price. The business cannot display the price as “\$5 (*payment surcharges apply*)” since this does not clearly inform consumers about the amount of the surcharge.

If the business opts to display prices without including the minimum surcharge, those prices must not be more prominent than the prices that include the surcharge.

Additionally, the business must clearly display any higher surcharges applicable to other card types. Therefore, if there is a 25-cent surcharge for credit card transactions, this must also be clearly communicated to consumers. The business can communicate this in several ways, such as clearly displaying:

- The full price of \$5.25 for a coffee purchased with a credit card.
- The 25-cent surcharge amount for credit card transactions.
- The 10-cent difference between the two surcharge levels.
- When payment without a surcharge is an option

⁶⁴ *ibid.*

57. If consumers have alternative payment options without a surcharge, businesses should nonetheless conspicuously display any applicable surcharges to ensure consumers are aware of the additional costs before making a payment.⁶⁵

58. Moreover, the Competition and Consumer Amendment (Payment Surcharges) Act 2016 empowers the ACCC, by virtue of section 55G,⁶⁶ to issue infringement notices where there are reasonable grounds to suspect that section 55B⁶⁷ of the Act, has been breached; that is; corporations charging excessive payment surcharges. Section 55J of the Act specifies the amounts of penalties that ought to be imposed:⁶⁸

*“if the person is a listed corporation--600 penalty units; or
if the person is a body corporate other than a listed corporation--60 penalty units; or
if the person is not a body corporate--12 penalty units.”*

(c) UNITED KINGDOM

59. In the United Kingdom, the Consumer Rights (Payment Surcharges) Regulations governs payment surcharges with the aim of ensuring fair trading practices and to protect consumers. In particular, regulation 4 explicitly forbids traders from imposing surcharges on consumers. The following paragraph of regulation 4 has been quoted below:

“A trader must not charge consumers, in respect of the use of a given means of payment, fees that exceed the cost borne by the trader for the use of that means.”

⁶⁵ *ibid.*

⁶⁶ Competition and Consumer Amendment (Payment Surcharges) Act 2016 (No. 9, 2016) Sch. 1, Pt. IVC, Div. 4, s. 55G (1).

⁶⁷ Competition and Consumer Amendment (Payment Surcharges) Act 2016 (No. 9, 2016) Sch. 1, Pt. IVC, Div. 2, s. 55B (1).

⁶⁸ Competition and Consumer Amendment (Payment Surcharges) Act 2016 (No. 9, 2016) Sch. 1, Pt. IVC, Div. 2, s. 55J (1).

60. Nonetheless, since no reference has been made to any particular method of payment, thus implying that the above-mentioned provision is applicable to any means of payment that a trader decides to accept in any specific transaction.⁶⁹ It is imperative that surcharges only include costs incurred by the payee or trader for using the specific payment method. For card payments, the government considers legitimate surcharges to encompass fees directly charged to the payee, such as:

- The Merchant Service Charge, which businesses pay to their payment service provider, includes several components: the interchange fee paid by the payment service provider to the card issuer, fees paid to the card scheme (e.g., Visa or Mastercard), and the margin retained by the payment service provider to cover its costs and profit; or
- The transaction or overhead fees that a company pays to intermediaries for certain merchant services typically handled by the payment service provider. In this arrangement, an intermediary, acts as the main contact for the company and liaises with the payment service provider, often adding a mark-up on the provider's fees for these services.⁷⁰

61. Regulation 4 restricts the application of surcharges in specific agreements between consumers and traders, encompassing both sales or service contracts and contracts for the supply of water, gas, electricity, district heating or digital content.⁷¹ However, certain contracts are excluded under regulation 4, and which have been set out under regulation 5 (2),⁷² including contracts relating to social services, health services, gambling, banking, immovable property and rental of residential property, timeshare,

⁶⁹ Guidance on the Consumer Rights (Payment Surcharges) Regulations 2012, Guidance Note 8.5, p. 7. <https://assets.publishing.service.gov.uk/media/5b2d09bae5274a55bb5790cb/payment-surcharges-guidance-update.pdf>

⁷⁰ Guidance on the Consumer Rights (Payment Surcharges) Regulations 2012, Guidance Note 9.2, p. 8. <https://assets.publishing.service.gov.uk/media/5b2d09bae5274a55bb5790cb/payment-surcharges-guidance-update.pdf>

⁷¹ Consumer Rights (Payment Surcharges) Regulations 2012, reg. 5 (1).

⁷² Consumer Rights (Payment Surcharges) Regulations 2012, reg. 5 (2).

foodstuffs and certain other goods for household consumption in specified circumstances.⁷³

62. Moreover, regulation 6A provides details of 3 instances where a payee⁷⁴ is legally restricted from charging a payer⁷⁵ any fee in respect of payment:⁷⁶

- firstly; by means of a payment instrument⁷⁷ which is a card-based payment instrument as defined in Article 2 (20) of Regulation (EU) 2015/751 of the European Parliament and of the Council of 29th April 2015 on interchange fees for card-based payment transactions;⁷⁸ and is not a commercial card as defined in Article 2 (6) of that Regulation;⁷⁹ or

⁷³ According to regulation 5 (2) of the Consumer Rights (Payment Surcharges) Regulations 2012, an “**excluded contract**” is a contract ‘for social services, including social housing, childcare and support of families and persons permanently or temporarily in need, including long-term care; for health services provided, whether or not via healthcare facilities, by health professionals to patients to assess, maintain or restore their state of health, including the prescription, dispensation and provision of medicinal products and medical devices (and “health professionals” has the meaning given by Article 3(f) of Directive 2011/24/EU of the European Parliament and of the Council on the application of patients’ rights in cross border healthcare) (as it had effect immediately before IP completion day); for gambling within the meaning of the Gambling Act 2005 (which includes gaming, betting and participating in a lottery); for services of a banking, credit, insurance, personal pension, investment or payment nature; for the creation of immovable property or of rights in immovable property; for rental of accommodation for residential purposes; for the construction of new buildings, or the construction of substantially new buildings by the conversion of existing buildings; which is a regulated contract within the meaning of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010); for the supply of foodstuffs, beverages or other goods intended for current consumption in the household, and which are supplied by a trader on frequent and regular rounds to the consumer’s home, residence or workplace; concluded by means of automatic vending machines or automated commercial premises; concluded with a telecommunications operator through a public telephone for the use of the telephone; concluded for the use of one single connection, by telephone, internet or fax, established by a consumer; under which goods are sold by way of execution or otherwise by authority of law.’

⁷⁴ According to Part 1, Regulation 2 of the Payment Services Regulations 2017, a “**payee**” means ‘a person who is the intended recipient of funds which have been the subject of a payment transaction.’

⁷⁵ According to Part 1, Regulation 2 of the Payment Services Regulations 2017, a “**payer**” means ‘a person who holds a payment account and initiates, or consents to the initiation of, a payment order from that payment account; or where there is no payment account, a person who gives a payment order.’

⁷⁶ Consumer Rights (Payment Surcharges) Regulations 2012, reg. 6A.

⁷⁷ According to Part 1, Regulation 2 of the Payment Services Regulations 2017, a “**payment instrument**” means ‘personalised device; or personalised set of procedures agreed between the payment service user and the payment service provider, used by the payment service user in order to initiate a payment order.’

⁷⁸ According to Article 2 (20) of Regulation (EU) 2015/751 of the European Parliament and of the Council of 29th April 2015 on interchange fees for card-based payment transactions, a “**card-based payment instrument**” as ‘any payment instrument, including a card, mobile phone, computer or any other technological device containing the appropriate payment application which enables the payer to initiate a card-based payment transaction which is not a credit transfer or a direct debit as defined by Article 2 of Regulation (EU) No 260/2012.’

⁷⁹ According to Article 2 (20) of Regulation (EU) 2015/751 of the European Parliament and of the Council of 29th April 2015 on interchange fees for card-based payment transactions, a “**commercial card**” means ‘any card-based payment instrument issued to undertakings or public sector entities or self-employed natural persons

- secondly, a payment instrument which is neither a card-based payment instrument nor a commercial card; or
- thirdly, a payment service to which Regulation (EU) 260/2012 of the European Parliament and of the Council of 14 March 2012 establishing technical and business requirements for credit transfers and direct debits in Euro applies.⁸⁰

63. Additionally, regulation 6A (2) clearly mentions that a payee who receives a payment by means of a payment instrument is prohibited from charging the payer, in respect of such payment, a fee which exceeds the costs borne by the payee for the use of that specific payment instrument.⁸¹ Therefore, this rule places a legal ban on businesses from charging excessive fees to customers whenever payments are made using specific payment instruments, such as credit cards. Accordingly, although a payee may add a surcharge to cover the costs of accepting a specific payment method, such a fee must be restricted to the actual expenses incurred.

64. The document concerning ‘*Guidance on Consumer Rights (Payment Surcharges) Regulations 2012*’ designates a specific section based on how the surcharge is calculated. Basically, since the amount of any surcharge must be restricted to a fee that does not exceed the costs borne by the payee for the specific payment instrument, as per regulation 6A (2), or the cost of the particular payment method, as per regulation 4, a payee or trader must be able to ascertain the costs directly associated with the payment service used. Consequently, the government intends that these costs should not be calculated as an average across multiple payment methods; for instance, combining

which is limited in use for business expenses where the payments made with such cards are charged directly to the account of the undertaking or public sector entity or self-employed natural person.’

⁸⁰ Regulation (EU) 260/2012 of the European Parliament and of the Council of 14th March 2012 establishing technical and business requirements for credit transfers and direct debits in euro applies, also known as Single Euro Payments Area (SEPA), refers to ‘*credit transfer and direct debit transactions denominated in euro within the Union where both the payer’s payment service provider and the payee’s payment service provider are located in the Union, or where the sole payment service provider (PSP) involved in the payment transaction is located in the Union.*’

⁸¹ Consumer Rights (Payment Surcharges) Regulations 2012, reg. 6A (2).

credit and debit card costs and then applied as a single flat fee across those payment types.⁸²

65. Nevertheless, recognising the challenge of calculating costs for individual transactions, the government deems it reasonable for a payee or trader to apply charges based on an average cost within a single payment method, rather than on a per-transaction basis. For instance, it is acceptable for a payee or trader to set a standard charge for credit card transactions, derived from the average cost of processing credit card payments.⁸³ Depending on the situation, it may be suitable for the payee or trader to apply the surcharge as either a flat fee or a percentage of the total price.⁸⁴

66. The government acknowledges that retailers who currently apply a surcharge for card payments may face some added costs due to this ban. How they choose to handle any increase in costs resulting from the ban is a business decision for retailers to make independently. Guidance note 12.3 of the relevant document sets out 4 potential ways regarding how retailers may manage the increased costs: to discontinue accepting a specific payment method; absorbing the costs; offsetting the costs by raising the overall price of the goods or services, affecting all customers; or, negotiating lower fees with their payment service provider.⁸⁵

67. While encouraging customers to use a specific payment method is permitted, it is essential that any discounts for using a particular payment type do not result in other payment methods effectively incurring a surcharge that violates the Regulations.⁸⁶

⁸² Guidance on the Consumer Rights (Payment Surcharges) Regulations 2012, Guidance Note 10.2, p. 8. <https://assets.publishing.service.gov.uk/media/5b2d09bae5274a55bb5790cb/payment-surcharges-guidance-update.pdf>

⁸³ Guidance on the Consumer Rights (Payment Surcharges) Regulations 2012, Guidance Note 10.3, p. 8. <https://assets.publishing.service.gov.uk/media/5b2d09bae5274a55bb5790cb/payment-surcharges-guidance-update.pdf>

⁸⁴ Guidance on the Consumer Rights (Payment Surcharges) Regulations 2012, Guidance Note 10.4, p. 8. <https://assets.publishing.service.gov.uk/media/5b2d09bae5274a55bb5790cb/payment-surcharges-guidance-update.pdf>

⁸⁵ Guidance on the Consumer Rights (Payment Surcharges) Regulations 2012, Guidance Note 12.3, p. 9. <https://assets.publishing.service.gov.uk/media/5b2d09bae5274a55bb5790cb/payment-surcharges-guidance-update.pdf>

⁸⁶ Guidance on the Consumer Rights (Payment Surcharges) Regulations 2012, Guidance Note 13.2, p. 9. <https://assets.publishing.service.gov.uk/media/5b2d09bae5274a55bb5790cb/payment-surcharges-guidance-update.pdf>

Consequently, the government considers that if a discount is offered for using any payment method, irrespective of being covered by the Regulations or not, then:

- the same discount must be provided wherever regulation 6A (1) applies, ensuring no surcharge is imposed.
- in any case where regulation 4 or 6A (2) applies, the difference between the discounted and higher price must not exceed the actual cost the payee incurs to process the payment method in that context.⁸⁷

68. Furthermore, Regulation 10 provides consumers with a right of redress in case fees have been charged in contravention of the regulations.⁸⁸ Correspondingly, any requirement that the fee or the excess fee be paid, is unenforceable and therefore the customer is not under any obligation to pay it;⁸⁹ and where that fee or excess fee has already been paid, it is refundable.⁹⁰

69. Regulations 7 and 8 place a legal duty upon an enforcement authority to consider any complaint made to it about a contravention of regulation 4 or 6 A. Thus, the local authority; Trading Standards (or the Department for Enterprise, Trade and Investment in Northern Ireland), are responsible for addressing complaints about unlawful surcharges. They can apply to the court for an injunction or an interdict in Scotland in order to enforce compliance with the Regulations. Nevertheless, such a course of action is available only when a violation has actually occurred.⁹¹

⁸⁷ Guidance on the Consumer Rights (Payment Surcharges) Regulations 2012, Guidance Note 13.3, p. 9. <https://assets.publishing.service.gov.uk/media/5b2d09bae5274a55bb5790cb/payment-surcharges-guidance-update.pdf>

⁸⁸ Consumer Rights (Payment Surcharges) Regulations 2012, reg. 10.

⁸⁹ Consumer Rights (Payment Surcharges) Regulations 2012, reg. 10 (a).

⁹⁰ Guidance on the Consumer Rights (Payment Surcharges) Regulations 2012, Guidance Note 15.2, p. 10. <https://assets.publishing.service.gov.uk/media/5b2d09bae5274a55bb5790cb/payment-surcharges-guidance-update.pdf>

⁹¹ Guidance on the Consumer Rights (Payment Surcharges) Regulations 2012, Guidance Note 17.2, p. 10. <https://assets.publishing.service.gov.uk/media/5b2d09bae5274a55bb5790cb/payment-surcharges-guidance-update.pdf>

Enforcement Orders under Part 8 of the Enterprise Act 2002

70. Part 8 of the Enterprise Act empowers designated enforcement bodies to seek enforcement orders from the courts. These bodies include the Competition and Markets Authority (CMA), local trading standards or Department of Enterprise, Trade and Investment in Northern Ireland (DETI), and certain sector-specific regulators.⁹² An enforcement authority can petition the courts if it identifies that a trader has engaged, is engaging, or is likely to engage in actions that violate consumer legislation, particularly when such actions harm the collective interests of consumers.

71. Part 8 of the Enterprise Act 2002 applies to both the Directive and Regulations, due to the inclusion of the relevant Directive provision and the Consumer Rights Directive in Schedule 13 of the Enterprise Act 2002, as well as the designation of these Regulations in the Enterprise Act 2002 (Part 8 EU Infringements) Order 2014. If the enforcer successfully demonstrates collective harm and a violation or impending violation of the Regulations,⁹³ then the court may issue an enforcement order. Such an order would mandate that the trader ceases or refrains from repeating the conduct. Such orders are injunctive, focusing on preventing future breaches rather than penalising past ones.

Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013

72. Regulation 40 of the Consumer Contracts (Information, Cancellation, and Additional Charges) Regulations 2013, further prohibits additional charges that the consumer has not explicitly agreed to before entering the contract. In light of these Regulations, the Department for Business, Innovation and Skills (BIS) issued guidance on these regulations in December 2013, affirming such a restriction that:

“Traders will need the active consent of the consumer for all payments – pre-ticked boxes for additional payments, for instance, will no longer be permitted.

⁹² Enterprise Act 2002, (United Kingdom) Pt. 8, s. 213 (1).

⁹³ Consumer Rights (Payment Surcharges) Regulations 2012.

Consumers will not be liable for costs which they have not been told, pre-contract, that they must bear.”⁹⁴

Consumer Protection from Unfair Trading Regulations 2008

73. The Consumer Protection from Unfair Trading Regulations 2008 similarly pertain to the transparency and presentation of payment surcharges. These Regulations predominantly prohibit unfair commercial practices by traders that influence consumers’ transactional decisions, which can include decisions beyond simply purchasing.

74. In case a trader misleads consumers regarding a payment surcharge, for instance, by presenting a product’s price in a way that imprecisely indicates an added surcharge, then regulation 5 or 6 of the above-mentioned Regulations may likely be violated for misleading actions⁹⁵ or misleading omissions⁹⁶ respectively. Likewise, when a trader withholds or conceals information about a payment surcharge, this may breach Regulation 6 of the Regulations.

(d) CANADA REGION – MASTERCARD RULES

75. Credit cards that have been issued by either MasterCard are almost globally accepted, and possess their own set of guidelines which require the adherence of its participants; card issuers, card holders as well as merchants. For instance, the guidelines regarding surcharging practices as set forth in the Mastercard Rules Manual 2024, vary for the

⁹⁴ ‘Implementing Guidance’ on Consumer Contracts (Information, Cancellation and Additional Charges) Regulations (Department for Business Innovation and Skills, December 2013) p. 4. <https://assets.publishing.service.gov.uk/media/5a817b92ed915d74e33fe73a/bis-13-1368-consumer-contracts-information-cancellation-and-additional-payments-regulations-guidance.pdf>

⁹⁵ Consumer Protection from Unfair Trading Regulations 2008, Pt. 2, s. 5 (1).

⁹⁶ Consumer Protection from Unfair Trading Regulations 2008, Pt. 2, s. 5 (1).

“Asia/Pacific Region,” “Europe Region,” “Canada Region,” and “Additional U.S. Region and U.S. Territory Rules.”

76. Rule 5.12.2 deals with ‘Charges to Cardholders’ and outlines the prohibitions for merchants regarding additional charges to cardholders in Mastercard transactions,⁹⁷ as follows: -

“A Merchant must not directly or indirectly require any Cardholder to pay a surcharge⁹⁸ or any part of any Merchant discount⁹⁹ or any contemporaneous finance charge in connection with a Transaction.

A Merchant may provide a discount to its customers for cash payments. A Merchant is permitted to charge a fee (such as a bona fide commission, postage, expedited service or convenience fees, and the like) if the fee is imposed on all like transactions regardless of the form of payment used, or as the Corporation has expressly permitted in writing.”

77. However, the above-mentioned Rule has been modified in the Canada region as follows:

“The “Maximum Surcharge Cap” must be the lesser of 2.4% or 1% plus Mastercard’s average annual effective rate of interchange for credit card Transactions in Canada as set out in any voluntary or mandatory commitment to a Canadian governmental entity or otherwise reasonably determined by Mastercard if not so regulated, expressed as a percentage of Transaction value.”¹⁰⁰

78. Moreover, “surcharge” has been defined as ‘any fixed value or ad valorem fee charged by the Merchant for use of a Mastercard Credit Card. A Merchant located in the Canada Region may only require a Mastercard Credit Card Cardholder to pay a

⁹⁷ ‘Mastercard Rules’ (4 June 2024) p. 116, r. 5.12.2. [mastercard-rules.pdf](#)

⁹⁸ According to ‘Mastercard Rules’ (4 June 2024) p. 116, r. 5.12.2, a “**Surcharge**” is ‘any fee charged in connection with a Transaction that is not charged if another payment method is used.’

⁹⁹ According to ‘Mastercard Rules’ (4 June 2024) p. 116, r. 5.12.2, a “**Merchant Discount Fee**” is ‘any fee a Merchant pays to an Acquirer so that the Acquirer will acquire the Transactions of the Merchant.’

¹⁰⁰ ‘Mastercard Rules’ (4 June 2024) p. 231, r. 5.12.2(7). [mastercard-rules.pdf](#)

surcharge by choosing to apply either, but not both, of the following surcharge methods:

- *Brand-level Surcharge: The application of the same surcharge to all Mastercard Credit Card Transactions regardless of the Issuer.*
- *Product-level surcharge: The application of the same surcharge to all Mastercard Credit Card Transactions of the same product type regardless of the Issuer.*¹⁰¹

79. A Merchant that chooses to impose a surcharge at the brand level or at the product level must mandatorily comply with certain requirements. For instance, a Merchant intending to apply a surcharge to a Mastercard Credit Card Transaction is prohibited from imposing a surcharge at the Issuer level and in case the Credit Card Transaction already attracts convenience fees or service fees as permitted by Rule 5.12.2, then applying a surcharge is strictly prohibited.¹⁰²

80. Third party agents are restricted from surcharging Mastercard Credit Card Transactions. Also, a Merchant may not impose a surcharge on a Mastercard Credit Card Transaction (whether at the Brand-level or at the Product-level) at any higher percentage rate (or flat fee equivalent) than the Merchant imposes on transactions effected by use of any Competitive Credit Card Brands which Merchant accepts to effect payment. If the Merchant does not accept payment by any Competitive Payment Card Brand then this provision is not applicable to it unless or until the Merchant begins to accept payment by means of a Competitive Credit Card Brand.¹⁰³

81. In addition, Merchants who decide to impose a surcharge at the brand level, must apply the same surcharge to all Mastercard Credit Card Transactions after accounting for any discounts or rebates offered by the Merchant on Mastercard Credit Card Transactions at the Point of Interaction (POI). Nevertheless, a Merchant may choose to surcharge:

- all face-to-face Mastercard Credit Card Transactions, but not non-face-to-face Mastercard Credit Card Transactions, or

¹⁰¹ 'Mastercard Rules' (4 June 2024) p. 231, r. 5.12.2(8). mastercard-rules.pdf

¹⁰² 'Mastercard Rules' (4 June 2024) p. 231, r. 5.12.2. mastercard-rules.pdf

¹⁰³ *ibid.*

- all non-face-to-face Mastercard Credit Card Transactions, but not face-to-face Mastercard Credit Card Transactions, or
- all face-to-face and all non-face-to-face Mastercard Credit Card Transactions.¹⁰⁴

82. The surcharge assessed on a Mastercard Credit Card Transaction may not exceed the lesser of:

- The Merchant’s Mastercard Brand-level Surcharge Cap, or
- The Maximum Surcharge Cap, as published by Mastercard from time to time.¹⁰⁵

83. By contrast, with regards to the ‘*Product-level Surcharging*’, the “*Mastercard Product-level Surcharge Cap*” for a Mastercard Product Type¹⁰⁶ is the average Effective Merchant Discount Rate applicable to Mastercard Credit Card Transactions of that Product Type at the Merchant for the preceding one month or twelve months, at the Merchant’s option.¹⁰⁷

84. Thus, Merchants who choose to impose a surcharge at the product level, must apply the same surcharge to all Mastercard Credit Card Transactions of the same Product Type, after accounting for any discounts or rebates offered by the Merchant at the POI. Nonetheless, a Merchant may choose to surcharge:

- all face-to-face Mastercard Credit Card Transactions of the same Product Type, but not non-face-to-face Mastercard Credit Card Transactions of the Product Type, or
- all non-face-to-face Mastercard Credit Card Transactions of the same Product Type, but not face-to-face Mastercard Credit Card Transactions of the same Product Type, or
- all face-to-face and all non-face-to-face Mastercard Credit Card Transactions of the same Product Type.¹⁰⁸

¹⁰⁴ ‘Mastercard Rules’ (4 June 2024) p. 232, r. 5.12.2.1. mastercard-rules.pdf

¹⁰⁵ *ibid.*

¹⁰⁶ According to ‘Mastercard Rules’ (4 June 2024) p. 232, r. 5.12.2.2., “**Product Type**” ‘refers to Standard Mastercard, World Mastercard, World Elite Mastercard, Muse Mastercard and any potential similar future product Mastercard Credit Card constructs as defined by Mastercard from time to time.’

¹⁰⁷ ‘Mastercard Rules’ (4 June 2024) p. 232, r. 5.12.2.2. mastercard-rules.pdf

¹⁰⁸ ‘Mastercard Rules’ (4 June 2024) p. 233, r. 5.12.2.2(3) 1. mastercard-rules.pdf

85. The Surcharge assessed on a Mastercard Credit Card Transaction may not exceed the lesser of:

- The Merchant’s Mastercard Product-level Surcharge Cap for that Product Type, or
- The Maximum Surcharge Cap, as published by Mastercard from time to time.¹⁰⁹

86. Rule 5.12.2.3. of the Mastercard Rules Manual 2024, puts an obligation upon Merchants who choose to surcharge, either at the brand level or at the product level, to conspicuously display a clear disclosure of the Merchant’s Surcharge policy at all points of store entry, or when conducting an e-commerce Transaction, on the first page that references Credit Card brands. The disclosure should include a statement that the surcharge that the Merchant imposes is lesser than the Merchant’s Effective Merchant Discount Rate for Mastercard Credit Card Transactions.¹¹⁰

87. Furthermore, the Merchant needs to provide a disclosure of the Merchant’s Surcharging practices at the POI or point of sale and that disclosure must not disparage the brand, network, Issuer, or payment card product being used. However, a statement that the Merchant prefers or requests that a cardholder use a form of payment with lower acceptance costs does not constitute disparagement under this Rule. Such a disclosure must include:

- The surcharge percentage that is applied to Mastercard Credit Card Transactions;
- A statement that the surcharge is being imposed by the Merchant, not by Mastercard; and
- A statement that the surcharge is not greater than the applicable Merchant Discount Rate for Mastercard Credit Card Transactions at the Merchant.¹¹¹

¹⁰⁹ ‘Mastercard Rules’ (4 June 2024) p. 233, r. 5.12.2.2(3) 2. mastercard-rules.pdf

¹¹⁰ ‘Mastercard Rules’ (4 June 2024) p. 233, r. 5.12.2.3(1) mastercard-rules.pdf

¹¹¹ ‘Mastercard Rules’ (4 June 2024) p. 233, r. 5.12.2.3(2) mastercard-rules.pdf

PART III: REFORM PROPOSALS

88. One of the core objectives of economic modernisation is to increase digital payment usage, which not only contributes to transparency, but aids in reducing the risks associated with each transaction, such as theft and fraud. The practice of imposing surcharge fees desensitises consumers from opting for electronic payments, thus hindering progress toward a cashless society. By regulating these fees, the Government can support the transition to a digital economy and enhance the overall efficiency of financial transactions. Therefore, the Law Reform Commission proposes that consumers should mandatorily be made fully aware of the total cost of their purchases without facing hidden or surprise charges.
89. In cases where surcharges are arbitrarily added, there is inherently a lack of transparency, which in turn undermines consumers' trust. Hence, Regulation would ensure that such charges, if allowed at all, are clearly and unambiguously communicated and are consistent with consumer protection standards. Merchants who wish to impose a surcharge for credit card use must clearly disclose this fee to customers before the completion of a transaction. This disclosure should likely be displayed prominently at the point of sale, both physically, for instance; a signage, and digitally; online checkout pages, in order to avoid any ambiguity.
90. Moreover, the Law Reform Commission recommends that Regulations ought to be introduced with the aim of capping the maximum surcharge fee for processing credit card transactions. Such an approach would ascertain that surcharges are not used as a means of generating extra revenue but instead to reflect the actual cost of providing the payment facility.
91. Furthermore, the Commission proposes that merchants must apply surcharge fees uniformly and without discrimination across different card networks. Likewise, the Commission is also of the considered view that practices where higher surcharges are imposed on certain card types or networks could possibly be prohibited and that a particular clause might be inserted in the proposed Regulations with the objective of

preventing the selective penalisation of consumers based on the card they use, thus promoting equity in consumer choice.

92. It is also suggested that merchants who apply a surcharge fee, must mandatorily report such a practice to the Bank of Mauritius. Consequently, the monitoring of such practices would ensure compliance with established guidelines and safeguard consumers from unjust fees.

93. To ensure that the regulation of surcharge fees fosters a fair and equitable marketplace, it is essential to establish a balanced framework that respects the legitimate interests of both merchants and consumers. The following regulatory measures are thus proposed as foundational pillars for achieving this balance:

Mandatory Disclosure of Surcharge Fees

94. Transparency is the cornerstone of consumer protection. Merchants who intend to impose surcharge fees for credit card usage must provide clear, upfront disclosure of these fees before a transaction is completed. This requirement should apply universally, irrespective of the transaction medium—whether in physical stores or online platforms.

95. In physical stores, surcharge disclosures should be prominently displayed through signage placed at the point of sale, ensuring visibility to consumers before they commit to a purchase. For online transactions, surcharge fees should be presented clearly during the checkout process, accompanied by the total transaction amount inclusive of all charges. This eliminates ambiguity and allows consumers to make fully informed decisions.

96. Mandatory disclosure aligns with international best practices and strengthens consumer trust by addressing the opacity often associated with hidden or surprise fees. It also ensures that merchants are held accountable for maintaining transparency in their pricing strategies, fostering a competitive environment that benefits all stakeholders.

Limit on Surcharge Amount

97. To prevent the exploitation of surcharge fees as a source of unjustified revenue, regulations should impose a cap on the maximum surcharge amount that merchants can charge. This cap should ideally be set to reflect the actual costs incurred by merchants for processing credit card transactions, including fees such as interchange fees, network charges, and terminal costs.
98. By restricting surcharge amounts to the true cost of providing the payment facility, this measure ensures that fees remain fair and proportionate. It prevents consumers from being unfairly burdened while allowing merchants to recover their legitimate expenses. Furthermore, such a cap discourages arbitrary or excessive surcharges, promoting fairness and protecting consumer interests.

Prohibition on Discriminatory Practices

99. Equity in consumer choice is a fundamental principle that must underpin the regulation of surcharge fees. Merchants should be prohibited from imposing higher surcharges on specific card types, networks, or issuers, a practice that unfairly penalises certain consumers based on their choice of payment method.
100. Regulations should mandate the uniform application of surcharge fees across all accepted card networks. This uniformity eliminates the risk of discriminatory practices, ensuring that consumers are not disadvantaged based on their card type or issuer. By creating a level playing field, such measures promote fairness, enhance consumer confidence, and support equitable competition among payment networks.

Regular Reporting and Monitoring

101. To ensure compliance with regulatory guidelines, merchants who impose surcharge fees should be required to report these practices to a designated regulatory authority, such as the central bank or a competition oversight body. This reporting

obligation would facilitate ongoing monitoring and provide regulators with the data needed to identify and address potential violations or abuses.

102. Regular reporting enhances transparency and accountability, enabling regulators to assess whether surcharge fees align with established guidelines. It also provides a mechanism for resolving disputes and addressing consumer complaints related to surcharge practices. By maintaining oversight, regulatory authorities can safeguard consumers from unjust fees and ensure that merchants adhere to fair practices.

103. Thus, to incorporate provisions specifically addressing credit card surcharge fees, amendments to the National Payment Systems Act 2018 could be proposed:

- Insert a new subsection under **Section 13 (Transparency of Fees and Charges)** as follows:

“(6) A payment service provider or merchant that imposes a surcharge fee on credit card transactions shall:

 - (a) clearly disclose the surcharge fee amount prior to the completion of the transaction;
 - (b) ensure that the disclosure is displayed prominently:
 - (i) at the point of sale for physical transactions; and
 - (ii) on the checkout page for online transactions.
 - (c) obtain explicit consent from the customer before applying the surcharge fee.”
- Add a new section under **Part IV – Consumer Protection**, following Section 13:

“13A. Limitation on Surcharge Fees

 - (1) A surcharge fee for credit card transactions shall not exceed the direct cost incurred by the merchant for processing the payment.
 - (2) The Central Bank may prescribe, by regulation, the methodology for calculating the allowable surcharge fee.
 - (3) Any surcharge fee imposed in violation of this section shall be deemed null and void.”

- Add a new subsection to **Section 13 (Transparency of Fees and Charges)**:
“(7) A merchant or payment service provider shall not: (a) impose varying surcharge fees based on the type of credit card or payment network used by the customer; (b) discriminate against specific card issuers, card types, or payment networks by applying differential surcharge rates.”
- Insert a new section under **Part IV – Consumer Protection**, following the new Section 13A:
“13B. Reporting and Monitoring of Surcharge Practices
(1) Merchants or payment service providers that impose surcharge fees shall submit quarterly reports to the Central Bank, detailing:
(a) the amount and percentage of surcharge fees applied;
(b) the categories of transactions subject to surcharge fees; and
(c) any customer complaints received in relation to surcharge fees.
(2) The Central Bank shall periodically audit compliance with this Act concerning surcharge fees.
(3) The Central Bank may impose administrative penalties on merchants or payment service providers found to be in violation of the provisions of this Act relating to surcharge fees.”
- Add an enabling clause under **Section 12 (Powers of Central Bank with Respect to Consumer Protection)**:
“(4) The Central Bank may issue directives, guidelines, or regulations prescribing:
(a) the maximum allowable surcharge fees;
(b) the methods for disclosing surcharge fees to consumers;
(c) reporting formats and timelines for surcharge-related information; and
(d) penalties for non-compliance.”

104. The proposed amendments to the National Payment Systems Act 2018 seek to address a critical gap in the regulation of credit card surcharge fees. These amendments are driven by the overarching goals of promoting transparency, fairness, and

accountability in financial transactions while safeguarding consumer rights and fostering economic modernisation.

105. Jurisdictions that have regulated surcharge fees, such as Australia and the European Union, have demonstrated the benefits of such measures in promoting consumer protection and market efficiency. The proposed amendments align Mauritius’s legal framework with these international best practices, enhancing the country’s competitiveness and reinforcing its reputation as a jurisdiction committed to equitable economic policies.

106. The suggested regulatory measures - mandatory disclosure, capping surcharge amounts, prohibiting discriminatory practices, and instituting regular reporting - constitute a comprehensive framework aimed at balancing the interests of merchants and consumers. These measures not only protect consumers from hidden or excessive charges but also provide merchants with a clear and equitable structure for recovering legitimate costs. By implementing these regulations, Mauritius can foster a transparent, competitive, and fair marketplace that aligns with its broader goals of economic modernisation and consumer protection.

CONCLUSION

107. The Law Reform Commission has reviewed the National Payment Systems Act 2018 and noticed that aside from dealing with the powers and duties of the Bank of Mauritius; the authorisation and licensing of payment service providers, it, however, remains vague concerning the regulation of surcharge fees for use of credit cards, leading to the conclusion that the latter is unregulated in Mauritius.
108. Moreover, even the MasterCard Rules 2024 Manual does not explicitly refer to charging practices in the Middle East/Africa Region, leading to further uncertainties regarding the operability of surcharging practices. Therefore, the Commission has deemed it important that a Discussion Paper be drafted with the aim of regulating surcharge fees for use of credit cards in Mauritius.
109. In order to ensure fair trading strategies and to avoid consumers being faced with hidden charges, the Commission proposes that merchants need to conspicuously display the total prices inclusive of charges for processing credit cards at the point of sales. Additionally, the Commission is of the view that in order to ascertain that surcharges are not used as a means of generating extra revenue but instead reflect the actual cost of providing the payment facility, the maximum surcharge fee for processing credit card transactions could possibly be capped.
110. This Discussion Paper on the “Regulation of Surcharge Fee for Use of Credit Cards” marks a significant and logical step forward in the ongoing consumer protection initiatives spearheaded by the Law Reform Commission. It directly builds upon the foundational principles outlined in the earlier Discussion Paper titled “The Law Pertaining to Display of Price” [LRC_R&P 178, February 2024]. Together, these papers present a unified and strategic approach to addressing critical gaps in Mauritius’ legal framework for consumer rights, particularly in light of evolving commercial practices and the increasing digitisation of financial transactions.
111. At the core of both papers lies a shared objective: to uphold transparency, fairness, and accountability in commercial dealings. They address the urgent need for

legal mechanisms that shield consumers from opaque and potentially exploitative practices, while simultaneously fostering a marketplace that is efficient, equitable, and aligned with international standards. In doing so, they reaffirm the Commission’s dedication to bolstering the integrity of economic transactions and building consumer confidence in the Mauritian economy.

112. The earlier Discussion Paper on price display tackled the fundamental issue of ensuring that consumers are equipped with clear, accurate, and upfront information regarding the total cost of goods and services. It recognised that the absence of such transparency disadvantages consumers, preventing them from making informed purchasing decisions or evaluating the fairness of the terms offered. The present Discussion Paper extends this principle by focusing on a parallel but often overlooked issue: the imposition of surcharge fees for credit card use. When left unregulated, these fees obscure the true cost of transactions, erode consumer trust, and discourage the adoption of digital payment methods.

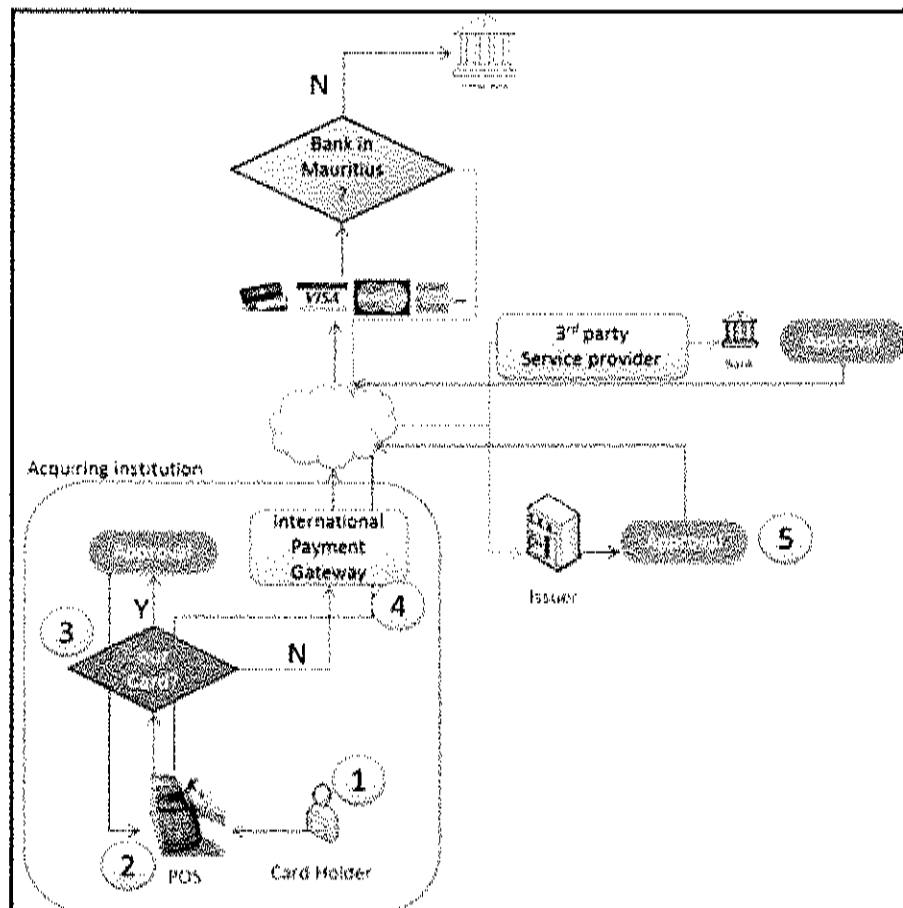
113. This Discussion Paper underscores the growing imperative of regulating financial practices in the digital era, where credit cards and electronic payment systems are indispensable tools for commerce. By tackling the issue of unregulated surcharge fees, it seeks to strike a balance between the legitimate interests of merchants—who bear processing costs for electronic transactions—and the rights of consumers, who are entitled to clarity and fairness in their financial interactions. The paper advocates for robust legal safeguards to prevent surcharge fees from becoming hidden revenue streams or arbitrary charges, emphasising that these fees must reflect only the actual costs incurred in processing payments.

114. Moreover, these Discussion Papers collectively advance the broader goal of modernising Mauritius’s legal framework to align with its aspirations for economic development. The regulation of surcharge fees complements the principles established in the earlier paper by extending consumer protection into the digital payment sphere. It reinforces the idea that transparency must encompass all facets of the transactional

process, from the initial display of prices to the disclosure and justification of ancillary charges.

115. Ultimately, the Discussion Paper on the “Regulation of Surcharge Fee for Use of Credit Cards” is not a stand-alone initiative but an integral component of a broader strategy to enhance consumer protection in Mauritius. Alongside the earlier Discussion Paper on price display, it reflects the Commission’s vision of a commercial environment where consumers are empowered with full knowledge of their rights, merchants operate with accountability, and economic activity thrives on the pillars of fairness and transparency. This alignment highlights the Commission’s overarching mission to ensure that Mauritian law remains dynamic and responsive to the evolving needs of its society, upholding the highest standards of equity, justice, and economic progress.

ANNEXE: The figure below illustrates the main steps in the processing of card payments in Mauritius.¹¹²



¹¹² https://www.mcci.org/media/189040/nps-_consultation_paper_website_0.pdf