

THE CREDIT REPORTING ACT, 2008

(Act of 2008)

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JAMAICAN BAR
ASSOCIATION

A BILL

ENTITLED

AN ACT to Provide for the sharing of credit information between specified bodies, the licensing of credit bureaus and for connected matters.

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BE IT ENACTED by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and House of Representatives of Jamaica, and by the authority of the same, as follows:—

1. This Act may be cited as the Credit Reporting Act, 2008, and shall come into operation on a day appointed by the Minister by notice published in the *Gazette*.

Short title and commencement.

2.—(1) In this Act—

“authorized officer” means an officer of the supervising authority, an officer of the Financial Investigation Division of the Ministry of Finance and the Public Service or a member of the Jamaica

Interpretation, objects and application.

Constabulary Force, and any person acting in aid of such officer or member;

“company” means a body corporate incorporated under the law of, and having its principal office in, Jamaica;

“connected person” has the meaning assigned to it by section 2 of the Income Tax Act;

“consumer” means any person or body, whether corporate or not;

“credit bureau” means a company duly licensed under this Act;

“credit information” means the information referred to in section 8(3);

“credit information provider” means a credit information provider referred to in section 8 (2);

“licence” means a licence granted under this Act to operate as a credit bureau;

“personal information” means any information about a consumer, other than—

- (a) credit information;
- (b) the consumer’s name, present and past addresses, taxpayer registration number or other numerical reference, cataloguing or reference scheme used for identification purposes; and
- (c) any other relevant information about the consumer which is reasonably required in order to enable the credit information to be utilized for the purposes of this Act;

“supervising authority” means the entity designated as such by the Minister by notice published in the *Gazette*.

(2) The object of this Act is to ensure that credit reporting is done through reasonable procedures that meet the needs of commerce for credit information in a manner that is fair and equitable to the consumer, having regard to the confidentiality, accuracy, relevance and

proper utilization of such information in accordance with the provisions of this Act.

(3) This Act applies to the disclosure—

- (a) of credit information by an entity in Jamaica to another entity in or outside Jamaica;
- (b) by any entity outside Jamaica, of credit information relating to any transaction that takes place, in whole or in part, in Jamaica.

(4) A company that discloses credit information in any other country, in return for monetary payment or other reward, shall, for the purposes of this Act, be deemed to have made such disclosure in Jamaica.

PART I. *Licensing of Credit Bureaus*

3.—(1) Except as provided in this section, a person who discloses credit information about a consumer in return for monetary payment or other reward commits an offence.

Restriction
on disclosure
of credit
information.

(2) Subsection (1) shall not apply to the disclosure of credit information—

- (a) by a credit bureau or credit information provider in accordance with the provisions of this Act;
- (b) by a credit information provider to another credit information provider, subject to the provisions of this Act;
- (c) by a company to another company that is—
 - (i) a holding company or subsidiary of the company making the disclosure; or
 - (ii) a subsidiary of the same holding company as the company making the disclosure,

if the credit information is in respect of a customer of either company.

(3) Where a Resident Magistrate is satisfied upon information given by an authorized officer that there are reasonable grounds for suspecting that an offence under subsection (1) has been, or is being, committed by any person and that evidence of the commission of the offence is to be found on any premises specified in the information, the Resident Magistrate may grant a search warrant to the authorized officer in accordance with subsection (4).

(4) The warrant referred to in subsection (3) shall permit the authorized officer—

- (a) to enter (with or without a constable) the premises named in the warrant for the purpose of inspecting and making copies of such books, accounts, records and other documents, cheques and securities (in this subsection referred to as the relevant documents) as may be found on those premises and which may reasonably constitute evidence of the commission of an offence under subsection (1); or
- (b) to seize and detain the relevant documents for a period not exceeding thirty days.

(5) An order under subsection (4)(b) shall not be made in respect of accounting records used in the ordinary business of banking (including ledgers, daybooks, cash books and account books).

(6) For the purposes of subsection (4), the relevant documents include documents that are stored electronically and are accessible from those premises.

(7) An authorized officer may make copies of any document seized under subsection (4)(b).

(8) Any person who hinders or obstructs an authorized officer in the performance of his duties under subsection (4) commits an offence.

(9) An authorized officer shall—

- (a) before entering any premises pursuant to a warrant under this section and if requested to do so by the owner or occupant of the premises, produce evidence of his authority to enter the premises and evidence of his identity; and

- (b) give a receipt for any item that the officer removes from the premises.

4.—(1) A company may apply for a licence under this Act by submitting an application to the Minister in such form as may be prescribed, along with the prescribed application fee and such other particulars as may be prescribed.

Licensing of
credit
bureaus.

(2) The Minister may, in his discretion, grant or refuse an application for a licence, and—

- (a) where the Minister thinks necessary, he may require an applicant for a licence to furnish additional information;
- (b) where the Minister intends to refuse an application, he shall first afford the applicant an opportunity to be heard; and
- (c) where the application is refused, the Minister shall notify the applicant in writing of the refusal and the reasons for the refusal.

(3) A licence shall not be granted to any company unless the supervising authority indicates in writing to the Minister that it is satisfied that—

- (a) the demand for credit information, by persons to whom credit bureaus are authorized to disclose credit information under this Act, is not being satisfied by existing credit bureaus;
- (b) every person who is a director of the company or who is to perform corporate management functions in the company or who is a shareholder holding (whether in his own right or when counted with the holding of a connected person) ten per cent or more of the voting shares of the company, is a fit and proper person for that purpose;
- (c) adequate systems and arrangements have been put in place by the company so as to ensure compliance with the provisions of this Act; and
- (d) the company meets such capital requirements as may be prescribed by the Minister on the recommendation of the supervising authority.

(4) For the purposes of subsection (3)(b), a person is a fit and proper person if—

- (a) he has not been convicted of an offence involving dishonesty;
- (b) he is not an undischarged bankrupt;
- (c) his employment record does not give the supervising authority reasonable cause to believe that the person has carried out any act involving dishonesty or any act involving impropriety in the handling of financial business;
- (d) in the opinion of the supervising authority, the person is able to exercise competence, diligence and sound judgment in fulfilling his responsibilities in relation to the credit bureau, and his relationship with the credit bureau will not threaten the interests of consumers; and
- (e) he is, in the opinion of the supervising authority, a person of sound probity and character.

(5) A licence may be granted subject to such terms and conditions as the Minister may specify in the licence and shall be issued to the applicant on payment of the prescribed licence fee.

(6) A person commits an offence if that person, in making any application under this section or in any information required to be furnished under subsection (2)—

- (a) supplies information, provides an explanation or makes a statement that he knows to be false in a material particular;
or
- (b) recklessly supplies information, provides an explanation or makes a statement which is false in a material particular.

(7) A person who commits an offence under subsection (6) shall be liable upon conviction before a Resident Magistrate to a fine not exceeding five hundred thousand dollars.

5.—(1) A credit bureau that breaches any term or condition of its licence commits an offence.

Responsibilities of credit bureaus *re* licence.

(2) A credit bureau shall, while its licence continues in force, annually on or before each anniversary of the grant of the licence, pay the prescribed licence fee to the supervising authority.

6.—(1) The Minister may, after consulting the supervising authority, act in accordance with subsection (2) or (4) if the Minister is satisfied that—

Suspension or revocation of licence.

- (a) a credit bureau has ceased to satisfy any of the requirements of section 4(3)(b) to (d);
- (b) a credit bureau was granted a licence as a result of a misleading or false representation or incorrect information, whether or not such representation or information was wilfully or knowingly given;
- (c) a credit bureau is insolvent;
- (d) a credit bureau is operating in a manner that contravenes any of the provisions of this Act or any regulations made hereunder, or constitutes an offence under this Act or a breach of any term or condition of its licence;
- (e) a credit bureau has not delivered to the supervising authority, within one hundred and twenty days after the end of a financial year, the credit bureau's annual report in respect of that financial year;
- (f) based on a report from the supervising authority made after conducting an investigation into the matter, a credit bureau is not providing accurate or reliable credit information and the continuation of its licence is not in the best interest of consumers; or
- (g) a credit bureau has ceased to operate as a supplier of credit information.

(2) After any consultation under subsection (1), the Minister may require the supervising authority to issue to a credit bureau to

which any of the matters referred to in subsections (1)(a) to (g) applies, such directions as the supervising authority considers appropriate to remedy the matter and ensure compliance with the provisions of this Act.

(3) The directions referred to in subsection (2) shall be in writing and shall specify a time within which the directions must be complied with.

(4) The Minister may suspend or revoke the licence of the credit bureau—

- (a) if the credit bureau has failed to comply with any direction given under subsection (2) within the time specified pursuant to subsection (3);
- (b) after the expiration of twenty-one days from the date of delivery to the credit bureau of a notice of the proposed suspension or revocation, as the case may be, unless within that time the credit bureau submits a request for a hearing; or
- (c) where the credit bureau submits a request for a hearing pursuant to paragraph (b), after conducting a hearing under subsection (8).

(5) The notice referred to in subsection (4) shall—

- (a) be in writing;
- (b) state the reasons for the proposed suspension or revocation, as the case may be; and
- (c) inform the credit bureau of its entitlement to a hearing.

(6) For the purposes of this section “a request for a hearing” means a request submitted in the manner set out in subsection (7).

(7) A request for a hearing shall—

- (a) be in writing;
- (b) be delivered to the Minister within twenty-one days after the credit bureau receives a notice under subsection (4), or such longer period as the Minister may allow; and

- (c) state the reasons why the licence should not be suspended or revoked, as the case may be.

(8) Where the Minister receives a request for a hearing, the Minister shall, before taking any decision as to whether to suspend or revoke the licence, conduct a hearing within forty-five days after receiving the request or such longer period, not exceeding ninety days, as the Minister thinks fit.

(9) The credit bureau is entitled to be represented at a hearing conducted under this section and to make representations through its officers or an attorney-at-law.

(10) If the hearing relates to a proposed revocation of a licence, the supervising authority shall be entitled to attend the hearing and to be represented by an attorney-at-law or any of its officers.

(11) The Minister may determine the form of the proceedings at a hearing, which may include the giving of evidence upon oath and the marshalling of evidence by an attorney-at-law.

(12) The Minister shall ensure that a copy of the reasons for his decision following a hearing is delivered to the person who requested the hearing and to the supervising authority.

(13) A suspension of a licence under this section shall be for such period, not exceeding one hundred and twenty days, as shall be specified by the Minister—

- (a) in a notice sent under subsection (4); or
- (b) where a hearing is conducted under this section, in the reasons for the decision delivered under subsection (12).

(14) If at the end of the period referred to in subsection (13), the Minister is satisfied that any of the grounds on which the licence was suspended still exist, the Minister may—

- (a) if the Minister thinks fit, suspend the licence for a further period not exceeding one hundred and twenty days; or
- (b) revoke the licence,

and the provisions of subsections (4) to (12) shall apply to such suspension or revocation.

(15) The revocation of a licence under the provisions of subsection (4) or (14) shall take effect upon the first date of publication of the notice referred to in subsection (17)(a).

(16) The Minister may revoke a licence upon the written request of the credit bureau, and such revocation shall take effect upon first publication of a notice under subsection (17)(a) in relation thereto.

(17) Where a licence is revoked or suspended under this section—

- (a) a notice of the revocation or suspension, as the case may be, shall be published on at least two separate dates in a daily newspaper in circulation in Jamaica;
- (b) the Minister shall give to the person whose licence is revoked or suspended, such directions as he thinks fit with a view to securing the confidentiality, preservation and storage of any credit information concerned;
- (c) the person shall act in accordance with the directions given by the Minister under paragraph (b), and no proceedings shall be taken against that person in respect of any action taken in accordance with such directions.

(18) A person who fails to comply with directions given under subsection (17)(b) commits an offence.

(19) Where the Minister decides to suspend or revoke a licence under this section, the credit bureau concerned may appeal to the Supreme Court against the decision—

- (a) within twenty-one days after the second publication of the notice under subsection (17)(a), in any case where the credit bureau does not request a hearing pursuant to subsection (4); or
- (b) within twenty-one days after receiving the reasons for the decision, in any case where a hearing is conducted pursuant to subsection (8).

(20) The form of proceedings on any appeal under subsection (19) shall be in accordance with rules of court made for that purpose, and the Court may, on application by the appellant, order that the Minister's decision to which the appeal relates shall not have effect until the appeal is determined.

7.—(1) A credit bureau shall—

Reports.

(a) within one hundred and twenty days after the end of each financial year, deliver to the supervising authority—

(i) an annual report completed in the form set out in the First Schedule;

First
Schedule.

(ii) a copy of the credit bureau's audited financial statements for that financial year and the auditor's report in relation thereto;

(iii) a copy of such auditor's report on the credit bureau's operations during that financial year, in such form as shall be prescribed;

(b) before appointing any person to a position referred to in section 4(3)(b), or before transferring any of its shares to any person in circumstances where that person would fall within section 4(3)(b) as a result of the transfer, deliver to the supervising authority—

(i) a copy of the person's résumé and a credit file on that person in such form as may be prescribed;

(ii) the details of any shares or other interest held by the person in a credit information provider or in a corporate body which is a connected person in relation to the credit information provider;

(iii) the details of any interest in, or position held with, any company whose licence has been suspended or revoked under this Act; and

- (iv) such other information as the supervising authority may reasonably require for the purpose of assessing whether the person is a fit and proper person within the meaning of section 4(4);
- (c) give written notice to the supervising authority of any change of—
 - (i) its address for service;
 - (ii) any of the persons referred to in section 4(3)(b), delivered to the supervising authority within five days after such change.

(2) In the circumstances referred to in subsection (1)(b), the person, shall not be appointed or the shares shall not be transferred, as the case may be—

- (a) if, within thirty days after the delivery of the information required under that subsection, the supervising authority notifies the credit bureau that the person is not a fit and proper person for the purposes of section 4(3)(b); or
- (b) if no such notification is received by the credit bureau, until after the expiration of that thirty day period.

(3) A credit bureau that fails to comply with this section commits an offence.

PART II. Obtaining and disclosing credit information

Credit
information
providers.

8.—(1) A credit bureau may obtain from any of the credit information providers referred to in subsection (2) the information referred to in subsection (3).

- (2) The credit information providers are—
 - (a) a bank licensed under the Banking Act;
 - (b) a financial institution licensed under the Financial Institutions Act;
 - (c) a building society licensed under the Building Societies Act;
 - (d) a society registered under the Co-operative Societies Act;

- (e) the Development Bank of Jamaica Limited;
 - (f) a dealer in securities who is licensed under the Securities Act;
 - (g) any person who carries on the business of selling goods under hire purchase, credit sale or conditional sale agreements, as defined by the Hire Purchase Act;
 - (h) a person who publishes information on suits and judgments for debt claims;
 - (i) a credit bureau;
 - (j) an insurance company registered under the Insurance Act;
 - (k) such other body, other than an individual, as the Minister may designate to be a credit information provider by notice published in the *Gazette* and in at least one daily newspaper in circulation throughout Jamaica.
- (3) The information referred to in this subsection is—
- (a) the amount and nature of loans or advances or other credit facilities granted by a credit information provider to any consumer;
 - (b) the nature of the security taken from any consumer in respect of credit facilities (including lease financing arrangements) granted to the consumer by a credit information provider;
 - (c) the nature of any guarantee or other non-fund based facility furnished to any consumer by the credit information provider;
 - (d) information about any consumer's financial means, creditworthiness or history of financial transactions (including antecedents and adverse court judgments), obtained by the credit information provider in relation to transactions involving the provider;
 - (e) any credit related information that the Minister specifies, in directions issued by the Minister by notice published in the *Gazette*, as appropriate to include as credit information for the purposes of this Act.

(4) Subject to subsection (5), a credit information provider may disclose to a credit bureau, in accordance with this Act, the information referred to in subsection (3).

(5) A credit information provider shall not disclose credit information pursuant to any provision of this Act unless the credit information provider is satisfied—

- (a) after undertaking all reasonable enquiries and investigations, that the information is reliable; and
- (b) in circumstances where the provider has a duty to the consumer not to disclose such information, that the consumer has, in writing, waived the duty for the purposes of enabling the provision of credit information as permitted by this Act.

(6) For the purposes of this Act, credit information is reliable if it—

- (a) is accurate in all material respects;
- (b) is presented in a fair and balanced manner; and
- (c) does not include the personal information of any consumer unless the consumer consents to the inclusion, in writing attached to the information.

(7) A credit information provider commits an offence if that provider—

- (a) without the written consent of a consumer, discloses personal information about that consumer in supplying information under this Act; or
- (b) contravenes subsection (5).

(8) A credit bureau commits an offence if that credit bureau discloses credit information obtained from a person other than a credit information provider.

9.—(1) Every credit bureau shall maintain an up to date register of credit information providers, in accordance with the provisions of this section. Register of credit information providers.

(2) The register shall state, in respect of each credit information provider from whom the credit bureau has requested or obtained credit information—

- (a) the name and address of the provider;
- (b) the number of instances in which—
 - (i) that provider provided credit information that was not reliable; or
 - (ii) the accuracy of credit information provided by that provider was disputed by a consumer; and
- (c) in respect of each instance specified under paragraph (b), whether or not the matter was resolved,

so, however, that nothing in the register shall disclose any credit information or personal information relating to any consumer.

(3) A copy of the register shall be kept at every office of the credit bureau and shall be open for inspection by the public free of charge during the credit bureau's normal hours of business.

(4) A credit bureau that contravenes any provision of this section commits an offence.

10.—(1) Where, after consulting the supervising authority, the Minister is satisfied that a credit information provider— Prohibition of provision of credit information.

- (a) has been convicted of an offence under section 8(7) (b) ; or
- (b) persistently provides credit information that is not reliable,

the Minister may act in accordance with subsection (2).

(2) The Minister may—

- (a) issue to the credit information provider such directions as the Minister thinks appropriate to correct the matter, and shall therein specify a time within which the provider shall comply with such directions; and

- (b) if the credit information provider fails to comply with the directions within the time so specified, or such further period as the Minister may allow, prohibit the provider, by notice given in accordance with subsection (3), from providing credit information to credit bureaus.

(3) A notice under this section shall accord with the following procedures—

- (a) the notice shall be in writing and served on the credit information provider;
- (b) a copy of the notice shall be delivered to the supervising authority and to each credit bureau; and
- (c) the notice shall specify a date, not being more than fourteen days after which the credit information provider may apply to the Minister for permission to resume the provision of credit information.

(4) An application referred to in subsection (3)(c) shall be in writing and in such form as may be prescribed, and the Minister may—

- (a) approve the application and revoke the notice by order; or
- (b) refuse the application and confirm the notice, and may request such additional information as he may require for the purpose of this subsection.

(5) A copy of the order referred to in subsection (4)(a) shall be delivered to the supervising authority and to each credit bureau.

(6) A credit bureau commits an offence if that credit bureau obtains or discloses credit information from a credit information provider during any period when a notice under this section is in effect in respect of that provider.

(7) A credit information provider who contravenes a notice issued under this section commits an offence.

- 11.—(1)** No credit bureau shall disclose credit information, except—
- (a) in accordance with the order of a court;
 - (b) subject to subsection (2), to a credit information provider;
 - (c) to the supervising authority;
 - (d) to the consumer to whom the information pertains;
 - (e) information relating to the identification of any consumer, to a constable upon the production of a declaration in the form set out in the Second Schedule and sworn to by that constable;
 - (f) as provided under this Act or any other law; or
 - (g) in such other circumstances and to such other entities as the Minister may specify by order.

Disclosure
of credit
information.

Second
Schedule.

(2) For the purposes of subsection (1), information relating to the identification of any consumer means the consumer's name, present and past addresses, taxpayer registration number or other numerical reference, cataloguing or referencing scheme used for identification.

(3) A credit bureau shall not disclose credit information about a consumer to any person under subsection (1)(b), unless that person furnishes to the credit bureau the consumer's consent in writing to the disclosure.

(4) The provisions of section 8(5) to (8) shall apply, with the necessary modifications, to every disclosure made under this section, except a disclosure under subsection (1)(a).

(5) In providing credit information to any person, a credit bureau shall not disclose any credit information that the credit bureau knows to be false or misleading.

(6) A credit bureau that wilfully discloses credit information in contravention of the provisions of this section commits an offence.

(7) A credit information provider (other than a credit bureau) shall not use or disclose credit information obtained from a credit bureau, except—

- (a) in connection with the extension of credit to, a guarantee or other non-funds based facility for, or the purchase or collection of a debt incurred or guaranteed by, the consumer to whom the information pertains;
- (b) with the written permission of the consumer, for the purposes of—
 - (i) the employment of the consumer;
 - (ii) the underwriting of insurance involving the consumer;
 - (iii) facilitating a financial or other commercial transaction involving the consumer;
- (c) for the purposes of updating any credit information disclosed under paragraph (a) or (b); or
- (d) in accordance with the written directions of the consumer to whom the credit information pertains.

(8) A credit information provider who contravenes subsection (7) commits an offence.

(9) A credit information provider may, in accordance with the written request of a consumer, disclose personal information about the consumer with any credit information disclosed under this section about that consumer.

Form and
content of
credit
information.

12.—(1) A credit bureau shall ensure that all credit information in its custody, possession or control is stored—

- (a) in a secure manner;
- (b) in a form that is capable of being reproduced in intelligible form for the purposes of section 15; and

(c) in a repository located in Jamaica,
and shall not disclose any credit information that is not stored as required by paragraphs (b) and (c).

(2) Credit information provided to any person by a credit bureau under the provisions of this Act shall not include—

- (a) information as to any judgment against the consumer—
 - (i) given more than seven years before the date on which the information is provided, unless the judgment creditor confirms in writing that the judgment debt remains unpaid in whole or in part, and such confirmation is contained in the file referred to in subsection (3); and
 - (ii) unless such information includes the amount of the judgment debt and the name and, where available, the address of the judgment creditor as given at the date of the judgment;
- (b) information as to any order of discharge from bankruptcy made in respect of the consumer more than seven years before the date on which the information is provided, unless more than one order of discharge from bankruptcy has been made in respect of the consumer;
- (c) information as to any action or claim involving the consumer, for which proceedings appear to be barred by virtue of the Limitation of Actions Act or any other law, unless the file referred to in subsection (3) contains evidence that such proceedings are not so barred;
- (d) information as to the payment or non-payment of taxes incurred more than seven years before the date on which the information is provided;
- (e) information as to convictions for any offence in respect of which—
 - (i) an absolute discharge or full pardon has been granted by virtue of any law;

- (ii) the offender is released from imprisonment (whether or not such release is absolute or on conditions of parole) more than seven years before the date on which the information is provided; or
 - (iii) the offender is not sentenced to serve a term of imprisonment and the date of conviction is more than seven years before the date on which the information is provided;
 - (f) information as to any claim or action commenced more than—
 - (i) seven years before the date on which the information is provided; or
 - (ii) twelve months before the date on which the information is provided, unless accompanied by information as to the current status of the claim or action;
 - (g) information as to criminal charges that are, at the date on which the information is provided, dismissed, set aside or withdrawn;
 - (h) any information adverse to the consumer that has not been verified by the credit bureau at any time during a period of seven years immediately preceding the date on which the information is provided;
 - (i) any information provided orally to the credit bureau, unless such information is contained in a file referred to in subsection (3).
- (3) A credit bureau shall maintain in respect of each consumer about whom it has obtained credit information, a file—
 - (a) stored in a form that accords with subsection (1); and
 - (b) consisting of all the material and information that a consumer is entitled to have disclosed under section 15.

(4) A credit bureau that contravenes any provision of this section commits an offence.

13.—(1) Subject to subsection (2), every credit bureau, credit information provider or other person concerned with the administration of this Act, shall regard as secret and confidential all documents or information disclosed to it in connection with the performance of any duty or function under this Act.

Confidentiality of credit information.

(2) A disclosure made in any of the following circumstances shall not be deemed inconsistent with any duty imposed by this section, being a disclosure—

- (a) permitted by the provisions of this Act;
- (b) made in any legal proceedings for an offence under this Act or the Perjury Act; or
- (c) which it is reasonable for the credit bureau, credit information provider or other person aforesaid, to make for the purpose of executing the provisions of section 9(2) (contents of register) or for the purposes of a hearing under section 6.

(3) A person who contravenes subsection (1) commits an offence.

(4) Every credit bureau shall take all reasonable steps to prevent unauthorized access to, or unauthorized use or disclosure of, credit information in its custody, possession or control.

14.—(1) A person who obtains from a credit bureau any credit information about any consumer shall, if so requested by that consumer—

Duty to disclose source of credit information.

- (a) confirm the receipt of such information; and
- (b) disclose to the consumer the name and address of the credit bureau that provided the information.

(2) Where a person denies any benefit to, or imposes any liability upon, a consumer based on any credit information provided by

a credit bureau, such person shall deliver to the consumer, at the time of communicating the denial or liability, a notice—

- (a) stating that the denial or the imposition of the liability is based on credit information provided by a credit bureau; and
- (b) advising the consumer of his right to request from that person, within thirty days after the receipt by the consumer of a notice under this subsection, the matters referred to in subsection (1) (b).

Duty of disclosure to consumer.

15.—(1) Subject to subsection (3), a credit bureau shall, upon the written request of a consumer, make to the consumer a clear and complete disclosure of—

- (a) the nature and substance of all information pertaining to that consumer in the credit bureau's custody, possession or control;
- (b) the sources of such information;
- (c) the name and address of every person to whom such information has been disclosed by or on behalf of the credit bureau during a period of six months immediately preceding the date of the consumer's request.

(2) In making a disclosure under this section, the credit bureau shall inform the consumer of the consumer's right to make a complaint under section 16.

(3) A disclosure under this section shall be made by the credit bureau to the consumer—

- (a) free of charge, in the case of the first request made by that consumer in each calendar year; and
- (b) on payment of a fee not exceeding the prescribed amount, in the case of a second or subsequent request by that consumer in that calendar year.

(4) A disclosure under this section shall be in writing delivered to the consumer within fourteen days after receiving the request.

(5) In subsection (3), the prescribed amount means such amount as may be prescribed by the Minister by order.

16.—(1) A consumer who disputes the accuracy or completeness of any information disclosed by a credit bureau in relation to that consumer may make a complaint in person or in writing to the credit bureau. Correction
of informa-
tion.

(2) Where a complaint is made under subsection (1), the credit bureau shall, as soon as is reasonably practicable, and in any event not later than fourteen days after the complaint is made—

- (a) take steps to confirm, correct or complete the information, as the case may require, in order to ensure the accuracy and completeness thereof;
- (b) ensure that any credit information about the consumer, disclosed by the credit bureau after receiving the complaint but before completing the steps required under paragraph (a), is accompanied by a copy of the complaint;
- (c) ensure that a written report of the complaint, and of the steps taken to resolve the complaint, is contained in the file referred to in section 12(3);
- (d) deliver a copy of the report referred to in paragraph (c) to the consumer;
- (e) where information is corrected or completed under paragraph (a), deliver a copy of such information to every person to whom the credit bureau disclosed the inaccurate or incomplete information.

(3) Where a consumer is dissatisfied with any step taken under subsection (2)(a)—

- (a) the consumer may complain in writing to the supervising authority within fourteen days after receiving the report referred to in subsection (2)(c); and
- (b) upon receiving a complaint under paragraph (a), the supervising authority shall act in accordance with

subsection (4), after giving the credit bureau a copy of the complaint and an opportunity to respond to the complaint in writing to the supervising authority within such period as the supervising authority may specify in writing.

(4) The supervising authority may—

- (a) dismiss the complaint; or
- (b) direct the credit bureau to take such steps as the supervising authority thinks necessary to—
 - (i) correct or complete the information;
 - (ii) restrict or prohibit the use of such information, in the interest of protecting the reliability of information disclosed pursuant to this Act;
 - (iii) notify persons to whom the inaccurate or incomplete information is disclosed by or on behalf of the credit bureau, of the correct or complete information, as the case may be,

and shall forthwith notify the consumer and the credit bureau of its decision in writing.

(5) A consumer who, or credit bureau which, is aggrieved by any decision or direction made by the supervising authority under subsection (4) may appeal in writing to the Appeal Tribunal.

(6) Upon receiving an appeal under subsection (5), the Appeal Tribunal may, after conducting a hearing of the matter—

- (a) confirm the directions;
- (b) amend the directions as the Appeal Tribunal considers appropriate; or
- (c) revoke the directions.

(7) At a hearing under subsection (6)—

- (a) the credit bureau, the consumer and the supervising authority shall, respectively, be entitled to attend the hearing and to be represented by an attorney-at-law or other person; and

- (b) the Appeal Tribunal may require the credit bureau to disclose the source of the inaccurate or incomplete information.

(8) A credit bureau that fails, without reasonable excuse, to comply with any direction given by the supervising authority under subsection (4) commits an offence and shall be liable upon conviction before a Resident Magistrate to a fine not exceeding two hundred and fifty thousand dollars.

(9) Subsection (8) shall not apply to any direction in respect of which an appeal is made under subsection (5), which has not been determined.

17.—(1) A person who alleges that he is adversely affected by the disclosure of any information by a credit bureau, in contravention of any provision of this Act, may make a complaint in writing to the supervising authority:

Investigation
of
complaints.

Provided that this section does not apply to any complaint that falls within section 16.

(2) The supervising authority—

- (a) shall ensure that its decision in resolution of any complaint made under this section is communicated by notice in writing to the person who made the complaint, the credit bureau concerned and the supervisory authority; and
- (b) may issue such directions as it thinks necessary to implement that decision.

(3) For the purpose of investigating a complaint made under subsection (1), the supervising authority may—

- (a) in writing, advise the credit bureau concerned of the general nature of the complaint and direct the credit bureau to furnish the supervising authority with such information as it may require;
- (b) after giving the credit bureau reasonable notice, require a person appointed by the supervising authority for the

purposes of this section, to enter upon and carry out an inspection of any premises where the credit bureau carries on the business of providing credit information;

(c) appoint a person to carry out the investigation.

(4) Where a Resident Magistrate is satisfied upon information given by a person appointed under subsection (3)(c), that there are reasonable grounds for believing that there is at any premises any item relevant to the investigation, the Resident Magistrate may issue a warrant authorizing the person, together with a constable to enter and search such premises, if necessary by force, and to examine the item or remove the item for the purpose of making copies.

(5) Where a person or constable removes an item from any premises for the purpose of making copies under this section, the person or constable, as the case may be, shall give a receipt for the item to the occupant of the premises and shall ensure that the copies are made and the item returned to the premises as soon as is reasonably practicable, and in any event not later than thirty days after the removal.

(6) A copy of any item removed from premises under subsection (4) and certified to be a true copy by the person or constable who removed it, shall be admissible in evidence as if it were the original of such item.

(7) For the purposes of this section “item” means any book, document, electronic information or any object.

(8) A person commits an offence if that person, without lawful justification or excuse, obstructs, hinders, resists or fails to comply with the lawful direction of a person appointed under subsection (3) (c) or a constable, in the exercise of any function under this section.

PART III—*General*

18.—(1) There is hereby established for the purposes of this Act, an Appeal Tribunal, and the provisions of the Third Schedule shall have effect as to the constitution of the Appeal Tribunal and otherwise in relation thereto.

(2) The Appeal Tribunal shall have the functions conferred upon it under section 16(5) to (7) and this section.

(3) The complainant or credit bureau concerned may appeal to the Appeal Tribunal against a decision of the supervising authority in respect of any complaint made under section 17.

(4) An appeal under subsection (3) shall be made within twenty-one days after the complainant or credit bureau, as the case may be, receives written notice of the decision and the reasons therefor.

(5) On hearing an appeal under this section, the Appeal Tribunal may, subject to subsection (6)—

- (a) confirm, modify or reverse the decision of the supervising authority, or any part of that decision;
- (b) in writing, refer the decision back to the supervising authority for reconsideration by it, either generally or in relation to any matter specified by the Tribunal,

and the Tribunal shall, within thirty days thereof, state the reasons for so doing.

(6) The Appeal Tribunal may, on application by an appellant, order that the supervising authority's decision to which the appeal relates, and any directions issued by the supervising authority in connection therewith, shall not have effect until the appeal is determined.

(7) The Appeal Tribunal may dismiss an appeal if it is of the opinion that the appeal is frivolous, vexatious or not made in good faith.

(8) Where under subsection (7) the Appeal Tribunal dismisses an appeal, it shall in writing inform the appellant and the supervising authority, stating the reasons therefor.

(9) In making a decision, the Appeal Tribunal shall—

- (a) observe procedural fairness and the rules of natural justice; and
- (b) act in a timely fashion.

Regulations.

19.—(1) The Minister may make regulations generally for the purpose of giving effect to the provisions of this Act, and in particular may make regulations—

- (a) exempting any class of persons from any provision of this Act;
- (b) governing the form of, and procedure for, applications for the grant or renewal of licences;
- (c) prescribing terms or conditions to be included in licences;
- (d) for the payment of fees for such applications and the amount of such fees;
- (e) prescribing the books, accounts and records to be kept, and the returns to be made, by a credit bureau;
- (f) prescribing information to be included in the disclosure of any credit information.

(2) Regulations made under subsection (1) shall be subject to affirmative resolution.

(3) Regulations made under this section may provide for a penalty, on summary conviction in a Resident Magistrate's Court, of a fine not exceeding two hundred and fifty thousand dollars.

Offences.

Fourth
Schedule.

20.—(1) The penalties set out in column B of the Fourth Schedule shall apply to the offences specified in relation thereto in column A of that Schedule.

(2) Where a person commits an offence under this Act, for which no penalty is expressly provided, such person shall be liable to a fine not exceeding five hundred thousand dollars or to imprisonment for a term not exceeding six months, or to both such fine and imprisonment.

Liability of
directors, etc.

21.—(1) Where a credit bureau commits an offence under this Act—

- (a) with the knowledge and consent of any director of the credit bureau; or

- (b) due to the negligence, default, breach of duty or breach of trust, of any director of the credit bureau,

such director shall, notwithstanding any penalty imposed on the credit bureau for the offence, be liable to conviction for the offence.

(2) For the purposes of subsection (1), “director” includes a company secretary, a person who performs corporate management functions in relation to the credit bureau, and any person in accordance with whose directions or instructions the directors of the company are accustomed to act.

(3) No action shall lie against any officer, agent or employee of a credit bureau in respect of any act done in good faith and in accordance with the provisions of this Act.

22. Every entity having supervisory control over credit information providers shall co-operate with the supervising authority and grant to the supervising authority such assistance as it may reasonably require in the exercise of its functions under this Act. Co-operation with supervising authority.

23.—(1) The Supervising authority may, where it considers it expedient to do so, hold or cause to be held an investigation— Investigations.

- (a) to determine whether it should advise that any licence granted under this Act should be suspended, restored or revoked;
- (b) to determine whether a breach of any provision of this Act, any regulations made hereunder or the terms or conditions of any such licence has been committed, and the circumstances thereof; or
- (c) as respects any matter related to or connected with its functions so as to determine whether any of such functions should be exercised.

(2) With respect to any investigation under subsection (1), the following provisions shall have effect—

- (a) any person holding the investigation (hereinafter referred to as “the investigator”) shall do so in such manner and under such conditions as the investigator thinks fit;

- (b) the investigator shall have, for the purposes of the investigation, the power to—
 - (i) summon witnesses;
 - (ii) call for the production of books and documents;
and
 - (iii) examine on oath any witnesses and the parties concerned;
- (c) any person summoned to attend or to produce books or documents under this section who refuses or neglects to do so, or refuses to answer any question put to him by or with the concurrence of the investigator, commits an offence and is liable on conviction before a Resident Magistrate to a fine not exceeding five hundred thousand dollars;
- (d) any witness attending at the request of, or upon summons by, the investigator shall, subject to any order made by the supervising authority, be entitled to such allowances for expenses as may be prescribed.

FIRST SCHEDULE

(Section 7)

Form of Annual Report

1. Name of credit bureau: _____
2. Principal place of business: _____

3. List all other places of business:

4. List the names and addresses of all directors, managers and senior officers:

5. List all credit information providers on your register:
 - (1) _____
 - (2) _____
 - (3) _____
 - (4) _____

- (5) _____
- (6) _____
- (7) _____

Continue list on additional sheet, if necessary.

6. State the following:

- (1) Total number of credit reports provided during the year: _____
- (2) Percentage of total credit reports provided to:
 - (i) Banks _____
 - (ii) Licensed Financial Institutions _____
 - (iii) Building Societies _____
 - (iv) Credit Unions _____
 - (v) Development Bank of Jamaica _____
 - (vi) Hire Purchase Companies _____
 - (vii) Insurance Companies _____
 - (viii) Other credit bureau _____
 - (ix) Others _____

7. State:

- (1) The number of consumers requesting disclosure under section 15 _____
- (2) The number of complaints raised under section 16(1) _____
- (3) The number of corrections, supplements and deletions made under section 16(2) _____
- (4) The number of corrections ordered by the supervising authority under section 16(4) _____
- (5) The number of notifications ordered by the supervising authority under section 16(4) _____

8. List all appeals made by consumers to the Appeal Tribunal under subsection 16(5) and the outcome of all hearings:

- (1) _____
- (2) _____
- (3) _____
- (4) _____
- (5) _____
- (6) _____
- (7) _____

9. List all complaints in respect of which the supervising authority has required information under section 17:

- (1) _____
- (2) _____
- (3) _____
- (4) _____
- (5) _____
- (6) _____
- (7) _____

10. State whether any investigation has been undertaken by a person appointed by the supervising authority under section 17 and the outcome of such investigation:

11. List all lawsuits which have been filed or threatened by consumers arising out of any credit report:

- (1) _____
- (2) _____
- (3) _____
- (4) _____
- (5) _____
- (6) _____
- (7) _____

We, _____ and _____, being two directors of the above-mentioned credit bureau, hereby declare and confirm that the information stated above is accurate and complete in all material respects.

Signed: _____
Name of Director:

Signed: _____
Name of Director:

Dated this _____ day of _____, _____.

Note: Your audited financial statements for the relevant financial year should be provided with this annual report.

SECOND SCHEDULE

(Section 11)

Form of Statutory Declaration

STATUTORY DECLARATION

of

(here state name of declarant)

IN THE MATTER of section 11(1)(e)
of the Credit Reporting Act.

AND IN THE MATTER of

(here state name of the consumer).

I, _____
(here state name of declarant)

do solemnly and sincerely declare that:—

1. I reside and have my true place of abode at

(here state address of declarant)

in the Parish of _____,
Jamaica and I am a member of the Jamaica Constabulary Force holding the
rank of _____.
(here state rank)

I am duly authorized to make this Declaration on behalf of the Jamaica
Constabulary Force.

2. The Jamaica Constabulary Force is currently conducting certain
investigations and believes that

(here state name of consumer)

may be able to assist in such investigations.

3. In connection with the foregoing, the Jamaica Constabulary Force requires
identification information with respect to _____

(here state name of consumer)

Constitution and Procedure of Appeal Tribunal

- Constitution. 1.—(1) The Appeal Tribunal shall consist of at least three members appointed by the Minister as follows—
- (a) at least one member shall be an attorney-at-law who has practised for at least ten years; and
 - (b) the other members shall be selected from among persons who appear to the Minister to be qualified as having had experience of, and shown capacity in, matters relating to industry, finance, economics, accountancy, commerce or law.
- (2) If there are fewer than three members, but at least two members in office, the Tribunal shall be deemed to be properly constituted for a period not exceeding ninety days after the deficiency in the number of members first occurs.
- (3) During any period in which there is a deficiency in number, the Minister—
- (a) may by order appoint additional members to the Tribunal for a limited period and purpose; and
 - (b) shall in any such order, state that the member's participation is limited to specified matters or classes of matters within the jurisdiction of the Tribunal.
- (4) The Tribunal shall meet at such times as may be necessary for hearing appeals under this Act.
- Tenure of Office. 2. The members of the Tribunal shall, subject to the provisions of this Schedule, hold office for such period not exceeding two years as the Minister may determine and shall be eligible for reappointment.
- Disqualification from appointment. 3. No person shall be qualified for appointment as a member of the Tribunal who—
- (a) is a member of the Senate or the House of Representatives;
 - (b) is a director, officer, employee or auditor of a credit bureau or credit information provider; and
 - (c) has a direct or indirect proprietary interest in more than five percent of any class of the shares of any credit bureau or credit information provider.
- Chairman. 4.—(1) The Minister shall appoint one of the members of the Tribunal to be the chairman thereof.

(2) In the case of the absence or inability of the chairman to act at any sitting of the Tribunal, the members of the Tribunal present at that sitting shall elect one of their number to act as chairman at that sitting.

Hearing
panel.

5.—(1) A matter referred to the Tribunal shall be heard and determined by a panel consisting of three members of the Tribunal, one of whom shall be an Attorney-at-law, as assigned by the chairman of the Tribunal.

(2) In assigning members of the Tribunal to a panel, the chairman shall take into consideration the requirements, if any, for experience and expertise to enable the panel to decide the issues raised in any matter before the Tribunal.

(3) The Tribunal may co-opt to a panel such persons as, in its opinion, have the requisite expertise in any matter before that panel for the purpose of advising the panel on that matter.

Disclosure of
interest.

6.—(1) A member of the Tribunal who has any interest, directly or indirectly, in any matter brought before the Tribunal—

- (a) shall disclose the nature of the interest at a sitting of the Tribunal; and
- (b) shall not take part in any deliberation or decision of the Tribunal with respect to that matter.

(2) A notice given by a member at a sitting of the Tribunal to the effect that he is interested in any appeal before the Tribunal shall, for the purposes of sub-paragraph (1), be a sufficient disclosure of his interest in relation to any appeal.

(3) A member need not attend in person at a sitting of the Tribunal in order to make a disclosure which he is required to make under this paragraph if he takes reasonable steps to secure that the disclosure is made by notice which is taken into consideration and read at such a sitting.

Resignations.

7.—(1) Any member of the Tribunal, other than the chairman, may at any time resign his office by instrument in writing addressed to the Minister and transmitted through the chairman, and from the date of the receipt by the Minister of such instrument, that member shall cease to be a member of the Tribunal.

(2) The chairman may at any time resign his office by instrument in writing addressed to the Minister and such resignation shall take effect as from the date of receipt of that instrument by the Minister.

Revocation of appointment.	<p>8. The Minister may at any time revoke the appointment of any member of the Tribunal if such member—</p> <ul style="list-style-type: none"> (a) becomes of unsound mind or becomes permanently unable to perform his functions by reason of ill health; (b) becomes bankrupt or compounds with, or suspends payment to, his creditors; (c) is convicted and sentenced to a term of imprisonment or to death; (d) is convicted of an offence involving fraud, dishonesty or moral turpitude; (e) becomes disqualified for appointment by virtue of paragraph 3; (f) fails without reasonable excuse to carry out any of the functions conferred or imposed on him under this Act; or (g) engages in such activities as are reasonably considered prejudicial to the interest of the Tribunal.
Filling of vacancy.	<p>9. If any vacancy occurs in the membership of the Tribunal, such vacancy shall be filled by the appointment of another member thereof.</p>
Publication of membership.	<p>10. The names of all members of the Tribunal as first constituted and every change in the membership thereof shall be published in the <i>Gazette</i>.</p>
Remuneration of members.	<p>11. There shall be paid to the chairman and other members of the Tribunal in respect of each appeal, such remuneration, whether by way of honorarium, salary or fees, and such allowances as the Minister may determine.</p>
Voting.	<p>12. The decisions of the Tribunal shall be by a majority of votes of the members.</p>
Order.	<p>13.—(1) The Tribunal shall determine matters before it by order.</p> <p>(2) The Tribunal may make an order subject to the conditions that are set out in the order.</p>
Power over witnesses and evidence.	<p>14.—(1) The Tribunal shall have the power to summon and enforce the attendance of witnesses and to compel them to give evidence on oath or otherwise and to produce documents, records and things.</p>

(2) The Tribunal may require or permit persons to give evidence before it by affidavit.

Costs. 15.—(1) The Tribunal may order a party to a proceeding before it to pay the costs of another party and the Tribunal's costs of the proceedings.

(2) The Tribunal shall determine the amount of an order for costs in accordance with the rules of the Tribunal.

(3) Any costs of the Tribunal ordered to be paid pursuant to sub-paragraph (1) may be recovered in a Resident Magistrate's Court by or on behalf of the Tribunal as a civil debt due to the Crown notwithstanding any limitation as to amounts recoverable under the Judicature (Resident Magistrate's) Act.

Regulation of proceedings. 16. Subject to the provisions of this Schedule, the Tribunal shall regulate its own proceedings.

Office not public office. 17. The office of chairman or member of the Tribunal shall not be a public office for the purposes of Chapter V of the Constitution of Jamaica.

FOURTH SCHEDULE

(Section 20)

Offences and Penalties

Column A — Offences —	Column B — Penalties —
Section 3 (1)— Disclosure of credit information for monetary payment or reward.	} Upon conviction before a Resident Magistrate, a fine not exceeding two million dollars.
Section 6 (18)— Failure to comply with directions of Minister.	}
Section 8 (7)— Disclosure of unreliable, confidential or personal information.	}
Section 8 (8)— Disclosure of credit information obtained from person other than credit information provider.	}
Section 10 (6) and (7)— Obtaining or disclosing information while prohibition notice is in effect.	}
Section 11 (6)— Unlawful disclosure of credit information by credit bureau.	}
Section 11 (8)— Unlawful use of credit information.	}

Section 13 (3)—
Breach of confidentiality.

}

Section 3 (8)—
Obstruction of officer
executing warrant.

}

Upon conviction before a Resident Magistrate, a fine not exceeding five hundred thousand dollars.

Section 7 (3)—
Failure to give
notification of change in
particulars.

}

Upon conviction before a Resident Magistrate, a fine not exceeding two hundred and fifty thousand dollars.

Section 9 (4)—
Failure to maintain
register of credit
information providers.

}

MEMORANDUM OF OBJECTS AND REASONS

A decision has been taken to establish a credit reporting mechanism as part of the Financial Sector Reform Programme. Such a mechanism is a critical element in strengthening the regulatory and institutional framework of the financial sector, and is a pre-condition set by the World Bank for a second loan in support of the Financial Sector Reform Programme. A credit reporting system will serve to provide a credit history of borrowers in order to—

- (a) allow for better credit assessment, risk management and loan pricing;
- (b) facilitate the provision of credit facilities to a wider segment of the population.

This Bill seeks to give effect to that decision and provides, among other things, for—

- (a) the licensing of credit bureaus;
- (b) the provision of credit information to credit bureaus from reliable credit information providers;
- (c) limits on the disclosure of credit information about consumers and the protection of the confidentiality of such information;
- (d) the prohibition from disclosure of personal information about consumers;
- (e) the supervision of credit bureaus by a supervising authority appointed by the Minister responsible for finance.

AUDLEY SHAW
Minister of Finance and
the Public Service.

JAMAICAN BAR
ASSOCIATION

A BILL

ENTITLED

AN ACT to Provide for the sharing of credit information between specified bodies, the licensing of credit bureaus and for connected matters.

As introduced by the Honourable Minister of
Finance and the Public Service.

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