



BANK OF JAMAICA

DIRECTIONS

(UNDER SECTION 22(4) OF THE CREDIT REPORTING ACT)

FOR CREDIT BUREAUS

AND

CREDIT INFORMATION PROVIDERS

**DIRECTION ON THE OPERATIONAL
FRAMEWORK FOR MANAGING THE
REQUIREMENT FOR CONSUMER
WRITTEN CONSENT**

UNDER SECTION 11 (3) OF THE CREDIT REPORTING ACT

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APPENDIX

A. Introduction

- A.1. Credit information sharing, that is the exchange of credit information amongst key stakeholders regarding the financial and payment history of consumers is critical to the success of Jamaica's credit reporting regime, and by extension the efficiency and stability of the financial system.
- A.2. The framework for facilitating such disclosure and sharing of information involves the participation of key stakeholders, that is, licensed credit bureaus and credit information providers ("CIPs"), who are charged with specific obligations under law, along with the consumer.
- A.3. A critical component of this framework is the consumer's signed written consent without which the sharing of that consumer's credit information by the credit bureau to a CIP is not legally permissible. Under the CRA, a consumer's written consent is required in relation to a request for credit information pertaining to that consumer from a credit bureau, whether the request relates to satisfying the consumer's own interests or to meeting a third party demand for credit information, for example, a CIP engaged in processing a loan or credit application for the consumer.
- A.4. Fundamental to this sharing of credit information is the key stakeholders' obligations under the CRA to preserve the right of the consumer to privacy concerning consumer credit and personal information. Mindful of these obligations as well as its own supervisory responsibility in developing this Direction, the Bank of Jamaica seeks to achieve a balance between both sets of interests, that is, achieving financial market efficiency and stability and protecting the consumer's credit information privacy rights under the Act.

B. Legal Effect of Directions of the Supervising Authority

B.1. The Credit Reporting Act 2010

Section 22(4) of the Act states that "*The Supervising Authority may, as it thinks fit from time to time, issue directions as to standards to be observed in relation to-*

(a) The operations of credit bureaus; and

(b) The provision of credit information by credit information providers,

including standards as to appropriate systems for assessing, measuring, monitoring and mitigating identified risks”

Non-compliance with directions issued under section 22(4) constitutes an offence which, a person on conviction before a Resident Magistrate, is liable to a fine not exceeding \$2 million and/or imprisonment for a term not exceeding one year.

C. Application

C.1 Section 11(3) of the Act

Section 11(3) of the Act states that “A *credit bureau shall not disclose credit information about a consumer to any person, unless that person furnishes to the credit bureau the consumer’s consent in writing to the disclosure*”.

Further, Section 11(6) of the Credit Reporting Act states that “A *credit bureau that wilfully discloses credit information in contravention of the provisions of this section commits an offence*”¹.

Based on section 11(3), the statutory obligations imposed on stakeholders involved with executing, collecting and managing the consumer consents can be summarized as follows:

Credit Bureau

- The credit bureau is required to obtain the consumer’s signed written consent prior to releasing the consumer’s credit information to the CIP.
- Implicit in this requirement is the need for the credit bureau to undertake some form of validation that the consent it receives has in fact been issued by the consumer that is the subject of the requested credit report.

Credit Information Provider (CIP)

- The CIP is required to furnish to the credit bureau the consumer’s signed written consent prior to receiving that consumer’s credit information.
- Implicit in this requirement is the need for the CIP to ensure that:
 - The consent is valid, (that is, properly obtained, evidenced in writing, properly executed by the consumer - i.e. duly signed or appropriate mark signifying the consumer’s signature) and appropriate verification of this is in place (for example, the signature or mark is duly witnessed); and
 - The consumer’s identity is verified before the executed consent is dispatched to the credit bureau.

¹ This offence attracts a penalty upon conviction of a fine not exceeding two million dollars (J\$2,000,000) or imprisonment for a term not exceeding one year, or both fine and imprisonment (Fifth Schedule of the Act).

- Also implicit in this requirement is that the CIP explains to the consumer the purposes for obtaining the consent and other aspects of the credit reporting process, including the fact that the CIP will provide this credit information to one or more credit bureau(s) as well as the consumer's legal right to challenge incorrect, incomplete or unreliable information should this issue arise.

C.2 Application

- C.2.1. This Direction outlines the minimum standards in relation to both the credit bureau and the CIP in discharging their respective obligations under the Act as it relates to the obtaining of consumer consent for a credit report. These standards are premised on the existence of a mutually agreed Service Arrangement between the CIP and the credit bureau, in which a workable operational mechanism is featured with respect to the management of the consumers' consent process, that is, procedures for receipt, transmission, and safekeeping of executed consumer consents.
- C.2.2 The Direction also requires that internally, both the licensed credit bureau and the CIP ensure that their respective employees are properly trained and that the requisite controls are in place to handle the consumer consent process.

D. Operational Framework

- D.1. In practice, the collective efforts of the CIP and credit bureau are essential to managing the collection, validation and safekeeping of the consumers' consents. Operationally, the natural interface with the consumer resides with the CIP and it is therefore likely that the requisite identity verification will be undertaken with the assistance of the CIP.
- D.2. Given the above, the objective of this Direction is to ensure that both key stakeholders (that is, CIP and credit bureau) fully discharge their obligations under the Act without jeopardizing the benefits to be had from a credit reporting system, for example, real-time access to credit information in a cost effective fashion to support lending decisions.
- D.3. Accordingly, the agreed framework must be a documented feature of the key stakeholders' (credit bureaus, CIPs) respective Service Agreements as well as being sufficiently comprehensive in terms of detailing the procedural steps and administrative controls.
- D.4.A. The agreed framework must conform with the CRA and principles outlined in this Direction. Such framework or any material revisions thereto, should be notified to the Supervising Authority prior to implementation.

D.5. Minimum consumer information on the consent should include:

- i. In relation to a natural person:
 - Name of consumer
 - Consumer's Address
 - Consumer's TRN
 - Name of Requestor i.e. CIP
 - Signature of consumer or appropriate mark signifying the consumer's signature
 - Appropriate verification of signature or mark (i.e. evidence that signature is duly confirmed by an authorised representative of the CIP, Bank Manager, an Attorney-at-Law, Medical Doctor or Justice of the Peace, &/or via verification methods consistent with the Electronic Transactions Act).
 - Date of consent
 - Fact that CIP may disclose credit information on the consumer to one or more credit bureau(s)

- ii. In relation to consumers who are legal persons/arrangements (e.g. partnerships, joint ventures or unincorporated entities):
 - Name of organization
 - Address
 - TRN
 - Name of Requestor i.e. CIP
 - Signature of authorized signatory(ies)
 - Position/title of signatory(ies)
 - Appropriate verification of signature(s) and/or mark(s) (i.e. evidence that signature is duly confirmed by an authorised representative of the CIP, Bank Manager, an Attorney-at-Law, Medical Doctor or Justice of the Peace, &/or via verification methods consistent with the Electronic Transactions Act).
 - Date of consent
 - Fact that CIP may disclose credit information on the legal person/arrangement to one or more credit bureau(s)

- iii. It will be the CIP's obligation to ensure the authenticity of the consumer is in place by applying appropriate consumer identification procedures to satisfy the CIP that the consumer is who he/she/it claims to be. CIPs with KYC obligations under the AML/CFT laws will be expected to adhere to applicable KYC/CDD² measures.

² KYC/CDD – Know Your Customer/Customer Due Diligence

Directions for Credit Bureaus and Credit Information Providers:-

Direction on the Operational Framework for Managing the Requirements for Consumer Consent

- iv. A written consumer's consent should incorporate declarations to the effect that the consent was either read by or was read to the consumer, and its contents understood.
 - v. Where there is an intent to provide the consumer consent electronically to the credit bureau the consent should also contain a clause specifying that the consumer consents to the supply of his/her/its credit report by this medium.
 - vi. The consumer consent may take the form of:
 - a. A stand-alone document, or an inclusion in a document such as a loan application or agreement, customer terms and conditions agreement, which contains the required information indicated at D.5. i or ii and D.5. iii, iv, and v; or
 - b. An electronic document consistent with the Electronic Transaction and Evidence Acts, and which contains the required information indicated in D.5. i or ii, and D.5. iii, iv and v.
- D.6. It must be clear whether or not a consumer's consent covers initial and subsequent requests by the same CIP for credit information from a credit bureau.
- D.7. Duration of consent –
- i. A consent that is provided under the framework to a CIP is deemed to remain in effect until it is expressly revoked either at the end of a credit relationship with that CIP or at any other point thereafter. In other words, revocation of the consent is not permissible during an existing credit relationship with that CIP.
 - ii. A consent that is provided to a CIP under the framework will be deemed to be applicable to all credit applications made with that CIP which involves the consumer either as a borrower or surety/guarantor, inclusive of purpose of facilitating subsequent risk assessment for granting further extension of credit by that CIP in relation to existing facilities.
- D.8. Revocation of Consent –
- Subject to D.7 (i) above, where a consumer's consent is revoked:
- i. The CIP should not request, and the credit bureau should not disclose credit information in relation to that consumer.
 - ii. Notwithstanding item (i) above, information pertinent to the consumer which would have already been stored in the credit bureau's database may only be expunged in accordance with the CRA.

- iii. Revocation of consent must occur in writing and must be directed to the CIP to whom consent was provided and should contain the same minimum consumer information that was provided in the written consent, for example, name, address etc. (refer D.5. above). Revocation communicated electronically should, in addition to the foregoing, also meet the Electronic Transaction Act and the Evidence Act requirements.

Where a consumer wishes to reinstate his/her/its consent that consumer would be required to provide a new written consent.

D.9.A. The storage of consents should be done in a manner mutually agreed between the CIP and the credit bureau and must at a minimum ensure:-

- i. The consents can be readily accessed on demand or request or as needed, in the manner and form demanded or needed; and
- ii. Storage occurs in accordance with the manner described at sections 12(1)(a)(b) and (c) of the CRA.

D.9.B. The storage of revocations should be similarly treated as in D.9A above.

D.10. The Bank of Jamaica will conduct its own review process pursuant to its functions as supervising authority under section 22 (2) and (3) of the CRA to ensure proper operation of and compliance with the CRA. Accordingly, from the approach utilised to comply with section 11(3) of the CRA, it must be evident that –

- i. The credit bureau either has direct receipt of the consent; or has control of the consent through a person acting on behalf of the credit bureau and in that regard the credit bureau understands that the obligation rests with the credit bureau to ensure the consent exists and is valid;
- ii. The credit bureau either has direct sight of the consumer's written consent or has the ability to readily access such written consent;
- iii. The audit systems and/or mechanisms which the credit bureau has in place and utilizes include a specific review of the credit bureau's compliance with section 11(3) of the CRA.

E. Role of the Board of Directors

The Board of Directors of each key stakeholder (i.e. credit bureau and CIP) is ultimately responsible for the integrity of the framework/system established in relation to the

disclosure of consumer credit information, including the management of consumers' consents. In discharging its responsibility, the Board of Directors should charge management with developing and implementing the requisite procedures for managing and controlling the collection, validation and safekeeping of consumers' written consents in conformity with the requirements of the Act.

The credit bureau's Board of Directors needs to have a means of ensuring compliance with the approved operational/administrative functions and controls in relation to the management of consumers' written consents. At the minimum, the Board of Directors should:

- Approve the overarching Service Agreement, including the consumer consent procedures recommended by the entity's management;
- Approve recommendations in relation to the performance of an internal audit review of the back office operations to assess compliance with established procedures and controls and compliance with section 11(3) of the CRA;
- Require (format, content, frequency) and review management reports to the Board in relation to obligations under the Act which would include the consumer consent framework.

The CIP's Board of Directors must have a means of ensuring compliance with the approved operational/administrative functions and controls in relation to the management of consumers' consents. At a minimum, the CIP's Board of Directors should:

- Approve management's recommendation regarding the Service Agreement/consumer consent procedures to be agreed with the relevant credit bureau(s);
- Approve framework for the management of consumers' consents i.e. collection, validation, and safekeeping of records as part of the CIP's credit administration process.

F. Role of Management

The management of each key stakeholder (i.e. credit bureau and CIP) is responsible for implementing the administrative and procedural requirements in relation to managing the disclosure of consumer credit information, including the effective management of consumers' written consents.

In this regard, the credit bureau's management is responsible for:

- developing and recommending the overarching Service Agreement, including the consumer consent procedures;

- ensuring the development and implementation of an appropriate credit reporting framework, including the management of consumers' consents, performing regular reviews and making relevant recommendation/effecting measures aimed at ensuring the privacy of credit information, enhancing administrative efficiency and strengthening controls;
- providing periodic management reports to the Board in relation to responsibilities under the CRA;
- facilitating the internal audit function in periodic reviews and assessing the back office operations to determine compliance with established policies and procedures.

The CIP's management is responsible for:

- Assessing the terms and conditions of the Service Agreement and consumer consent procedures prepared by the credit bureau and making appropriate recommendations to its Board of Directors;
- Ensuring the establishment of administrative procedures and controls for collecting, validating, and transmitting the consumer consents, including ensuring the proper safekeeping of documents in accordance with these Directions.

Supervisory Directions - Consumer Consent
Bank of Jamaica
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