

KEY RESPONSIBILITIES OF CREDIT INFORMATION PROVIDERS UNDER THE CREDIT REPORTING ACT, 2010

A. Introduction

The objectives of The Credit Reporting Act (the Act) as stated in Section 2(2) are 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 the Act.

In this regard the Act imposes obligations on key stakeholders most notably, credit bureaus that are licensed under the Act, and credit information providers who are permitted to provide credit data to, and access credit information from credit bureaus.

B. Who is a Credit Information Provider

The Act specifies the persons eligible to participate in the credit reporting system as a credit information provider. Pursuant to Section 8(2) of the Act, such persons are:

- ✓ Commercial banks
- ✓ Merchant banks
- ✓ Building societies
- ✓ Co-operative societies (including credit unions)
- ✓ Development Bank of Jamaica Limited
- ✓ Securities dealers
- ✓ Persons who carry on the business of selling goods as defined by the Hire Purchase Act
- ✓ Persons who publish information on suits and judgments for debt claims
- ✓ Credit bureaus
- ✓ Insurance companies
- ✓ National Housing Trust
- ✓ Student Loan Bureau
- ✓ Entities exempted from the provisions of Section 13 of the Moneylending Act

Additionally, Section 8(n) of the Act allows the Minister of Finance (The Minister) to designate other credit information providers. In this regard, the following entities have been so designated by the Minister.

- ✓ Persons exempt from the provisions of Section 14(1)(b) of the Moneylending Act e.g. micro-finance or other lending entities who have applied for and received this exemption from the Ministry of Finance

- ✓ Jamaica Public Service Company Limited
- ✓ National Water Commission
- ✓ Entities licensed under the Telecommunications Act to provide telecommunication services
- ✓ Entities whose main business is not the extension of credit, but who extend credit solely incidental to the conduct of such business. This includes for example, trade and retail creditors.

C. Key Responsibilities of Credit Information Providers

Under the Act, a Credit Information Provider is required to:

- ❖ At least 7 days prior to commencement of the provision of credit information to credit bureaus, publish its intent to do so in a daily newspaper. In this regard, the Bank of Jamaica as the Supervising Authority under the Act, has developed a template which may be used for this purposes. See Appendix.
Section 8(10)(a)
- ❖ Provide credit applicants with written advice indicating that it may disclose its customers' credit information to credit bureaus.
Section 8(10)(b)
- ❖ Treat all credit information as confidential and disclose information only as permitted by the Act (e.g. to the Supervising Authority, for legal proceedings etc.) This requirement applies also to present and past employees of the credit information provider.
Section 13 (1) – (2)
- ❖ Ensure as far as is possible, that information being shared with credit bureaus is reliable and not misleading.
Sections 8 (5)
- ❖ Notify the Supervising Authority, consumer and credit bureau of any subsequent discovery that information previously provided to a credit bureau is unreliable, as well as provide those persons with the reliable information.
Sections 8(9); 10(1)(b); (2).
- ❖ Not disclose personal information on a consumer along with credit information except with the written consent of the consumer.
Section 11(9)
- ❖ Not use or disclose credit information received from a credit bureau except:
 - a. in connection with the extension of credit facilities, collection of debt incurred/guaranteed by the consumer
 - b. with consumer consent, for the purpose of
 - i. employment of consumer

- ii. underwriting insurance
- iii. facilitating other financial or commercial transactions
- c. for purposes of updating information previously provided as [per (a) and (b) above]
Section 11(7)

❖ Where a consumer provides written notice that his/her credit information may have been affected by fraud committed by another person, provide such notice to each person to whom the credit information was delivered until the notice has been rescinded in writing by the consumer.

Sections 11(10)

❖ If requested by the consumer, confirm the receipt of credit report obtained from a credit bureau about the consumer and the name and address of the credit bureau providing the report.

Section 14(1)

❖ Where a benefit is denied or a liability imposed as a result of information provided in a credit report, provide the consumer with a notice indicating that the denial or liability imposed is based on the credit report and advising of the consumer's right to request from the credit information provider within 30 days, particulars as to the name and address of the credit bureau that provided the information.

Section 14(2)

❖ Comply with Directions issued by the Supervising Authority to furnish to the credit bureau, the consumer's signed written consent prior to receiving the consumer's credit information. Ensure that consent is valid and consumer's identity is verified.

Refer Section 22(4)(b) and "Directions on the Operational Framework for Managing the Requirement for Consumers' Written Consent".

Note that, 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*". Operationally, the credit information provider, as the defacto agent of the credit bureau (as required per Service Agreement between the credit bureau and credit information provider), obtains and validates the consumer's written consent to satisfy Section 11(3) of the Act. The statutory obligations imposed on a credit information provider involved with executing, collecting and managing the consumers' consents are detailed in Directions issued by the Supervising Authority, "*Directions on the Operational Framework for Managing the Requirement for Consumers' Written Consent*" which may be found on Bank of Jamaica's website at:

<http://boj.org.jm/pdf/Direction%20on%20the%20Operational%20Framework%20for%20Managing%20the%20Requirement%20for%20Consumer%20Written%20Consent.pdf>

D. Other Important Information

It is important that Credit Information Providers are aware of actions which if taken by them are deemed offences under the Act. These include:

- Disclosure of unreliable, confidential or personal information, or failure to correct unreliable information.
Section 8(7)
- Obtaining or disclosing information while a prohibition notice issued by the Supervising Authority restricting the provision of credit information to credit bureaus is in effect.
Section 10(6) and (7)
- Unlawful use of credit information (i.e. contravention of Section 8(7) or 8(13).
Section 11(8)
- Breach of confidentiality in relation to credit information.
Section 13(3)
- Knowingly using or disclosing credit information obtained in contravention of Act.
Section 13 (5)

Further, Section 20(2) states that where a person commits an offence under the CRA for which no penalty is expressly provided, such persons shall be liable to a fine not exceeding five hundred thousand dollars or to imprisonment for a term not exceeding six months or both such fine and imprisonment.

Penalties for offences are specified in the Fifth Schedule to the Act.

Important Note:

The above highlights of the Credit Reporting Act is not a substitute for reading the law.

Appendix
Guidance for Form of Notice
[Pursuant to Section 8(10)(a) of the Credit Reporting Act (the “Act”)]

Section 8(10) (a) of the Act states that “ *A credit information provider shall at least seven days before first commencing the provision of any credit information, publish in a daily newspaper in circulation in Jamaica, a notice stating its intention to provide credit information*”

In fulfillment of obligations under Section 8 (10) (a) of the Act, information for the Notice to be published in a daily newspaper circulating in Jamaica should at minimum include:

- Name of the Credit Information Provider (CIP)
- Effective date of commencement of the provision of credit information to credit bureaus (which must be at least seven days after the notice appears)

A suggested format is represented below for the guidance of credit information providers.

<p>NOTICE</p> <p>PURSUANT TO SECTION 8(10)(a) OF THE CREDIT REPORTING ACT, 2010 (the “Act”)</p> <p>This serves to advise the public in general that effective</p> <p style="text-align: center;">_____</p> <p style="text-align: center;">(day/month/year)</p> <p style="text-align: center;">_____</p> <p style="text-align: center;">A Credit Information Provider under Section 8(2) of the Act</p> <p>Will be providing credit information on its customers, as permitted under Section 8(1) of the said Act, to one or more credit bureaus licensed under Section 4(3) of the Act</p>

Where a CIP intends to utilize real customer data in its testing exercises, it may wish to consider whether it wishes to indicate this fact (of test exercises) in the Notice in which case, the CIP would need to issue another Notice prior to going live.