



# MICROCREDIT INFORMATION SESSION

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## Understanding The Microcredit Act

*Bank of Jamaica  
February 23, 2022*

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# DISCLAIMER

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# BACKGROUND

- ✓ The Microcredit Act, 2021 is an Act to license and regulate microcredit institutions that provide financing to individuals as well as, micro, small and medium sized enterprises (MSMEs); and for connected matters.
  
- ✓ Passed January 2021
  
- ✓ Came into effect July 30, 2021
  
- ✓ Developed to:
  - Address market conduct considerations (consumer protection, lending practices, complaints handling), and
  
  - Reduce the possibility of the industry being used to facilitate money laundering and terrorist financing

# BENEFITS OF REGULATION

- ✓ Assist in formalizing the operations
- ✓ Improving the environment for the industry's development
- ✓ Providing measures for the protection of consumers
- ✓ Protecting the industry against the risk of money laundering
- ✓ Assist the industry in mobilizing resources for micro and small enterprises
- ✓ Create jobs and contribute to the economic growth of the country
- ✓ Assist the country with ease of doing business

# Overview

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# Layout

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## Parts 1-5

- Interpretations and the Functions of the Regulatory Authority
- Licensing and Regulation of Microcredit Institutions
- Governance of Licensees
- Limitation on Business Activities & Obligations of Licensees

## Parts 6-10

- Appeals
- Protection of Consumers
- Winding up of Licensee and Fixed Penalties
- Miscellaneous

## Schedules

- Calculation of Effective Annual Interest Rate and definition of MSMEs
- The constitution and Procedures for the Microcredit Appeals Tribunal
- Transactions, persons and entities not regulated by the MCA and definition of high net worth individuals.
- Offences, penalties and fixed penalties
- Amendment to Enactments

# Regulatory Stakeholders

<b>BOJ</b>	Regulated Authority, with responsibility for: <ul style="list-style-type: none"><li>✓ General administration of the Act and supervision of microcredit institutions</li></ul>
<b>Consumer Affairs Commission</b>	Stakeholder with responsibility for: <ul style="list-style-type: none"><li>✓ Making and issuing code of conduct for licensees on consumer related matters</li><li>✓ The investigation of any complaint brought to it by a consumer of a microcredit service</li></ul>
<b>Microcredit Appeals Tribunal (MAT)</b>	<p>A person aggrieved by a decision of the Supervisor may appeal to the Microcredit Appeals Tribunal, by way of a notice of appeal within thirty days of being advised of that decision.</p> <p>The matters which may be appealed are:</p> <ul style="list-style-type: none"><li>✓ any decision as to whether a person is a fit and proper person; and</li><li>✓ any objection as to whether an external auditor appointed under section 35 does not meet the criteria specified, or any decision for the removal of such an auditor.</li></ul>



# Section Highlights

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# Part 1: Clause 2 (1) – Interpretation

This clause sets out the definition of terms used in the Bill including definitions for important terms such as “**microcredit institution**” and “**microcredit service**”, as follows: -

“**microcredit institution**” means a company that is licensed under this Act to provide a microcredit service to individuals or MSMEs or both;

“**microcredit service**” means –

(a) any one or more of the following services provided by a microcredit institution-  
the granting of credit facilities to individuals or MSMEs or both; and

the provision of business advisory services (not including the advice relating to the financial services regulated by the Financial Services Commission) to individuals or MSMEs or both; or

(b) any other activity designated by the Supervisor as a microcredit service and approved by the Minister, by order, subject to affirmative resolution,

but does not include receiving deposits from the public or banking business, within the meaning of the Banking Services Act;

# HIGHLIGHT: Interpretation

<b>Microcredit Service</b>	<p>a. The granting of credit facilities to individuals or MSMEs or both; or</p> <p>b. The granting of credit facilities to individuals or MSMEs or both, <b>AND</b></p> <p>i. the provision of business advisory services (not including the advice relating to the financial services regulated by the Financial Services Commission) to individuals or MSMEs or both; or</p> <p>ii. any other activity designated by the Supervisor as a microcredit service and approved by the Minister, by order, subject to affirmative resolution,</p> <p>but does not include receiving deposits from the public or banking business, within the meaning of the Banking Services Act;</p>

# HIGHLIGHT:

## Interpretation

<b>Prospective Licensees</b>	<p>a. Companies which grant credit facilities to certain individuals or MSMEs or both, or</p> <p>b. Companies which grant credit facilities to certain individuals or MSMEs or both, <b>AND</b> provide one or more of the following services:</p> <ul style="list-style-type: none"><li>▪ Business advisory services, or</li><li>▪ Other activities designated by the Supervisor as a microcredit service</li></ul> <p><b>In any event,</b></p> <p><b>The activity of lending must be present</b> <b>Deposits should NOT be received from the public</b></p>

**\*Exclusions  
(Third Schedule,  
Pg 68 of the  
MCA)**

Does not cover:

- ✓ Loans to high net worth individuals (net worth in excess of \$50 million or income before taxes of \$10 million for each of the last two calendar years)
- ✓ Loans by existing regulated entities (eg. Commercial Banks, Building Societies, Credit Unions etc)
- ✓ Loans to businesses which fall outside of the national definition of MSME (First Schedule, Part B, Pgs 61-62)
- ✓ Advice related financial services regulated by the FSC

# HIGHLIGHT:

## Fit and Proper Requirements

- |  | <ul style="list-style-type: none"><li>✓ Personal Questionnaires and documentation should be submitted for each Director, Substantial Shareholder (shareholding of 20% or more), Chief Executive Officer/President/Vice President, General Manager, Company Secretary, Financial Controller or Treasurer of the company, or anyone carrying out functions similar to those stated above</li><li>✓ Regardless of prior assessment by the Bank of Jamaica</li></ul> |
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# Part III

## Licensing and Regulation of Microcredit Institutions

# Clause 9 - Prohibition against operating a microcredit institution

- ✓ Clause 9 requires that a microcredit institution obtain a licence in order to provide microcredit service.
- ✓ Clause 9 also makes provision for a contract for the provision of a microcredit service by a person who is not licensed to be unenforceable.



# HIGHLIGHT:

## Clause 9

- ✓ Offence to offer microcredit service without a license after July 30, 2021
  - transitional clause 64: allows for pre-existing operators to submit their applications by July 30, 2022, or to cease operating
  
- ✓ Pre-existing operators: loans on the books before July 30, 2021 will be allowed to run-off, providing they submit an application by July 30, 2022 and are, thereafter, granted a licence
  
- ✓ New entrants **MUST** be issued with a licence before they can legally operate as a microcredit institution in Jamaica

# Clauses 26, 27 - suspension and revocation of a licence, respectively:

**Clause 26** sets out the circumstances for suspension of a licence including: -

- The licensee intends to suspend microcredit service for a period;
- A substantial shareholder or an officer has been charged with an offence involving fraud or dishonesty;
- the licensee is contravening the Act or regulations by
  - engaging in an activity which does not constitute a microcredit service, without instituting the differentiating measures referred to in section 31;
  - failing to keep accurate records in respect of the microcredit business;
  - failing or refusing to file the requisite returns;
  - causing or permitting another person to use its licence;
  - breaching a supervisory direction etc.

# HIGHLIGHT:

## Suspension of Licence

Action To Be Taken	Available Recourse
<p>The Supervisor will give written notice of the intention to suspend the licence.</p> <p>A person whose licence is suspended shall promptly surrender the licence and every copy thereof to the Supervisor, failing which, the Supervisor may revoke the licence.</p>	<p>Submit to the Supervisor a written statement of objections or make oral submissions to the Supervisor within the time specified by the Supervisor which will be no less than 30 days.</p> <p>Where the licensee provides evidence, in writing, satisfactory to the Supervisor, that the circumstances which led to the suspension of the licence no longer exist or have been remedied and upon payment of the prescribed licence reinstatement fee:</p> <ul style="list-style-type: none"><li>✓ The Supervisor shall cancel the suspension and return the licence and any copy thereof to the licensee.</li></ul>

The circumstances for revocation of a licence are set out in **clause 27** and include: -

- the licensee has operated or is operating in breach of its incorporating documents;
- the licensee has breached or is breaching a term or condition of its licence;
- the licensee has failed to commence operations within the period specified in its licence;
- proceedings have commenced for the voluntary or compulsory winding up of the licensee;
- the licensee has ceased to be viable etc

# HIGHLIGHT:

## Revocation of Licence

### Action to be taken

**The Supervisor:**

Give written notice of the intention of the Supervisor to revoke the licence.

Provide licensee with an opportunity to be heard in a period not less than thirty days.

Take any action necessary to safeguard the security and confidentiality of the credit and other personal information and documents in the possession and under the control of the licensee.

### Available recourse

The licensee may submit to the Supervisor a written statement of objections or make oral submissions to the Supervisor within the specified time.

The revocation of a licence under this Act does not relieve a person whose licence has been revoked of any obligation incurred or assumed by that person during the period of validity of the licence.

# HIGHLIGHT:

## Revocation of Licence

### Action to be taken

#### **The Licensee**

Immediately surrender the licence and every copy thereof to the Supervisor.

Do not:

- Engage in any new arrangement or contract;
- Vary any existing arrangement or contract;
- Engage in any activity which advertises or promotes the services of the microcredit institution;

Facilitate the orderly closure of the microcredit institution.

### Available recourse

# Part V

## Limitation on Business Activities of Licensees and Obligations of Licensees

## **Clause 35 - Accounts and audits; appointment of external auditor**

This clause requires a licensee to be audited annually by an external auditor, who is a registered Public Accountant. However, where a licensee meets the description of a small company under the Companies Act, it shall have its accounts prepared pursuant to the Companies Act by an external auditor, who is a registered Public Accountant.

## **Clause 38 – Presentation of financial statements**

The Bill that was tabled in February 2019 required microcredit institutions in accordance with section 35 to submit audited financial statements or accounts prepared pursuant to the Companies Act within 90 days of the end of each financial year. Consequent on concerns raised by the industry, the Bill was revised to increase the timeline to 120 days.



# HIGHLIGHT:

## Accounts and Audits

- ✓ Registered Public Accountants:  
Public Accountancy Board (<https://www.pab.gov.jm>)
- ✓ Small Companies - must meet two (2) or more of the following:
  - Turnover: <\$40 million
  - Total Assets: <\$30 million
  - No. of Employees: <25

# Part VII

## Consumer Protection Matters

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# HIGHLIGHT:

## Interest Rates

- ✓ The Microcredit Act does not impose a limit on interest rates
- ✓ Clause 46 requires institutions to provide their customers with information on the “**effective annual interest rate – EAIR**” (see First Schedule for calculation)
- ✓ Where interest rates are being advertised, the effective annual interest rate shall be the most prominent interest rate advertised

## **Clause 48 – Complaints**

- This clause sets out the procedures for the making and resolving of consumer-related complaints relating to consumer protection under the Microcredit Act and the responsibilities and powers of the Consumer Affairs Commission in investigating and resolving such complaints. Clause 48 supplements the relevant sections of the Consumer Protection Act.

# HIGHLIGHT:

## Code of Conduct

- ✓ In progress
- ✓ Industry must be consulted

# Part X

## Miscellaneous Matters

# HIGHLIGHT:

## Rules/Regulations

- ✓ Additional Rules, Regulations and Guidance Notes will come as the framework develops
- ✓ Elements may be outsourced but not the core business of lending.
- ✓ No provision for an agent arrangement under the Microcredit Act

# Schedules

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Schedules	Description
<b>Sixth Schedule</b>	<ul style="list-style-type: none"><li data-bbox="588 201 2491 535">▪ The <b>Sixth Schedule</b> lists consequential amendments to various Acts including the Credit Reporting Act; Moneylending Act; Proceeds of Crime Act (POCA); Terrorism Prevention Act (TPA) and the United Nations Security Council Resolutions Implementation Act (UNSCRIA).</li><li data-bbox="588 606 2491 935">▪ The amendment of the POCA and the TPA will ensure that licensed microcredit institutions under the Microcredit Act are recognised as “financial institutions”. This will, in effect, subject the microcredit institutions to the AML/CFT requirements under the POCA and the TPA.</li><li data-bbox="588 1006 2491 1332">▪ It is important to note that the Moneylending Act will continue to exist and will apply to unregulated loans offered on a non-commercial basis such as money lending transactions between persons who do not lend on a day to day basis to the public or to persons who lend incidentally to their main business.</li></ul>

# SUMMARY

# Approval

Approval is required under the following circumstances:

- ✓ If a person who is not licensed under the Act wishes to use any name, title, word, term or grammatical presentation that represents or implies that that person is licensed to provide a microcredit service
- ✓ Mergers, Amalgamation, Acquisition and Transfers
- ✓ Proposed acquisition of shares in the licensee which would result in the acquirer becoming a substantial shareholder

# No Objection

The licensee can expect written “no-objection” responses from the Supervisor under the following circumstances, after notifying the supervisor in writing:

- ✓ Change in the location of its principal office
- ✓ Change of registered name
- ✓ Alteration of incorporation documents

# Notification

The following are some situations in which the licensee is obligated to notify to the Supervisor, without the expectation of a non-objection response:

- ✓ Any matter that could adversely affect it, such as:
  - a) any fraud or other criminal activity committed by or against the licensee;
  - b) any dismissal or resignation of an officer;
  - c) any circumstance which renders a substantial shareholder or officer of the licensee incapable of satisfying the requirements of a fit and proper person;
  - d) any acquisition of ten percent or more of the issued voting share capital of a licensee;
  - e) if proceedings for compulsory winding up of the licensee have commenced or the licensee has been served with a notice for the commencement of compulsory winding up of its business etc.

# Notification (cont'd)

- ✓ Intention to suspend the microcredit service
- ✓ Prior to establishing a branch of its microcredit business; (S26)
- ✓ Change location of an existing branch of the microcredit business (whether in Jamaica or outside Jamaica)
- ✓ Prior to the closure of a branch of its microcredit business; (S26)

# Notification (cont'd)

Notification is to be provided to the Supervisor by the **external auditor** upon:

- ✓ Intention to resign
- ✓ Giving written notice to the licensee of unwillingness to be considered for reappointment at the expiration of the appointment period
- ✓ Termination of appointment

# Hearings

- ✓ Where the Supervisor refuses to grant a licence
- ✓ Before suspending or revoking a licence –
  - Notwithstanding the Supervisor may suspend or revoke a licence without notice and with immediate effect.



# Appeals

- ✓ By way of a notice of appeal to the Microcredit Appeals Tribunal within thirty days of being advised of decision on matters of:
  - Any decision as to whether a person is a fit and proper person; and
  - Any objection as to whether an external auditor appointed under section 35 does not meet the criteria specified in subsection (1) or (2) of that section or any decision for the removal of such an auditor.

# 44 HIGHLIGHTS: Offences

Offence	Penalty
<b>Providing a microcredit service without being licensed as a Microcredit Institution</b>	<p>On summary conviction in a Parish Court –</p> <ul style="list-style-type: none"><li>(a) in the case of a person other than an individual, to <b>a fine not exceeding two million dollars;</b></li><li>(b) in the case of an individual, to <b>a fine not exceeding one million dollars,</b> or to imprisonment for a term not exceeding six months, or to both such fine and imprisonment.</li></ul> <p>On conviction in the Supreme Court to a fine or imprisonment for a term not exceeding one year.</p>

# 45 HIGHLIGHTS: Offences

Offence	Penalty
<b>Breach of obligation to keep secret and confidential, information and documents pertaining to customers of a licensee</b>	<p>On summary conviction in a Parish Court –</p> <ul style="list-style-type: none"><li>(a) in the case of a person other than an individual, to a fine not exceeding one million dollars; or</li><li>(b) in the case of an individual, to a fine not exceeding five hundred thousand dollars, or to imprisonment for a term not exceeding three months, or to both such fine and imprisonment.</li></ul> <p>On conviction in the Supreme Court to a fine or imprisonment for a term not exceeding six months</p>

# 46 HIGHLIGHTS: Offences

Offence	Penalty
<b>Failure by licensee to ensure that each substantial shareholder and officer of the licensee remains a fit and proper person</b>	On summary conviction in a parish court –  (a) in the case of a person other than an individual, to a fine not exceeding one million dollars; and  (b) in the case of an individual, to a fine not exceeding five hundred thousand dollars.

# HIGHLIGHTS:

## Offences

Offences for which liability to conviction may be discharged by payment of a fixed penalty:

Offence	Penalty
Failure to prominently display licence at principal office and at each branch of microcredit institution	\$1,000,000
Changing the registered name of a licensee, without notifying the Supervisor in writing	\$150,000
Failure by the licensee to keep, or cause to be kept, accurate records in respect of a micro-credit business	<p>In the case of a person other than an individual - Five hundred thousand (\$500,000)</p> <p>In the case of an individual - Two Hundred and Fifty Thousand (\$250,000)</p>

# Do:

1. Submit application for microcredit licensing
2. Prominently display a certified copy of your licence in each location
3. Ensure that each substantial shareholder and officer remains a fit and proper person
4. Maintain accurate records in respect of the microcredit business
5. Audit accounts annually in accordance with the guidelines, and submit to the Supervisor, within 120 days of the end of each financial year

# Do:

- ✓ Notify the supervisor of any:
  - Fraud or other criminal activity committed by or against the licensee
  - Matters that can adversely impact the licensee's reputation or status
  - Circumstance which renders a substantial shareholder or officer of the licensee unfit to hold office or incapable of satisfying the requirements of a fit and proper person
- ✓ Notify the Supervisor prior to the close of operation

# Do Not

- ✓ Provide microcredit services unless you are licensed to do so
- ✓ Allow/permit another person to use your licence
- ✓ Comingle microcredit services with other business activities
- ✓ Lend in foreign currency
- ✓ Collect deposits from the public



# Fees

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# MICROCREDIT FEES

## Fees (Regulations)

### ✓ **Licensing Fee**

- \$10,000 for the first \$10 million of the fee base (gross loans as at FYE), plus \$1,000 for each additional \$10 million or part thereof
- Flat fee of \$10,000 for start-ups

### ✓ **Annual Fee**

- Same as the licensing fee
- (\$10,000 for the first \$10 million of the fee base (gross loans as at FYE), plus \$1,000 for each additional \$10 million or part thereof)

### ✓ **Reinstatement Fee**

- 50% of licensing fee

### ✓ **Replacement Fee** for lost, defaced or destroyed licence

- 10% of licensing fee, with a minimum of \$5,000

### ✓ **Fee for change** of registered name of licensee

- Flat fee of \$5,000

THANK YOU

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QUESTIONS/COMMENTS