

BILL No. 37 of 2009

Thursday 22nd October, 2009

PARLIAMENT OFFICE
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Guyana.

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The following Bill which will be introduced in the National Assembly is published for general information.

S. E. Isaacs,
Clerk of the National Assembly.



GUYANA

BILL No. 37 of 2009

CREDIT REPORTING BILL 2009

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A BILL
Intituled

AN ACT to establish a credit reporting industry with the aim of enabling more reliable, competitive, and responsible credit lending while protecting borrowers' rights.

A.D. 2009 Enacting by the Parliament of Guyana:-

- PART 1
PRELIMINARY

Short title and commencement.

1. This Act may be cited as the Credit Reporting Act 2009 and shall come into operation on such date as the Minister may by order appoint.

Interpretation.

2. In this Act -

“adverse action” means any denial, cancellation or any unfavourable change in the terms and conditions of a transaction regarding a consumer based in whole or in part on information contained in a credit report;

“authorized person” means a person authorised by the credit bureau to access the data or information collected and processed by the credit bureau;

No. 19 of 1998

“the Bank” means the Bank of Guyana established under the Bank of Guyana Act 1998;

No. 29 of 1991

“Companies Act” means the Companies Act 1991;

“consumer” means any legal or natural person whose data has been included in a credit bureau;

“credit bureau” means a legal person licensed under this Act to engage in the practice of collecting and processing credit information or other related information for the purpose of furnishing credit reports and offering value added services;

“credit information” means the information referred to in section 12 (5);

“credit information provider” means any entity that furnishes credit information to a credit bureau;

“credit provider or lender” means an institution, part of whose activities is providing lending services to its clients;

“credit report” means information related to the economic obligations of a consumer, including the payment history of such obligations, guarantees, publicly available information and any other relevant data compiled by a credit bureau;

“credit-scoring” means a statistical formula that is used, usually with the help of computers, to estimate future performance of prospective borrowers and existing consumers;

“data available to the public” means any data subject to be disclosed to the general public according to the laws of Guyana;

“data processing” means any operation or set of operations or technical procedures, automated or not, which permits, within a data base, compiling, organising, storing, elaborating, selecting, extracting, comparing, sharing, communicating, transmitting or cancelling of data;

“data quality adequacy” means the adequacy of the data quality to the level prescribed by regulations;

“file” in relation to information on any consumer means, all of the information on that consumer recorded and retained by a credit bureau regardless of how the information is stored;

“format” means the standardised layout, agreed to by the credit information providers and the Bank, of data or information to be submitted to the credit bureau;

“negative credit information or data” means adverse information related to a consumer including but not limited to credit defaults or late payments to all types of lending facilities;

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

- (a) credit information;
- (b) the consumer's name, present and past addresses, national registration number or other numerical reference, 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 utilised for the purposes of this Act;

“positive credit information or data” means any consumer information including, but not limited to, a consumer's total credit exposures including loan sizes, maturity, terms and conditions, repayments and collateral;

“service provider or third party service provider” means a third party providing services of collecting, compiling, storing and processing data or information on behalf of the credit information provider or the credit bureau according to a specific agreement signed by the parties;

“source” the source means from where the information is originally obtained;

“user” means any person entitled under section 11 to access the data or information contained in the credit bureau;

“value added services” means any service based on the data or information provided by credit information providers and any other data lawfully obtained by the credit bureau which the credit bureau may, in addition to credit reporting, provide to increase the value of the service it offers including, but not limited to, alert, anti-fraud, credit scoring and identification theft prevention.

PART II LICENSING OF CREDIT BUREAUS

3. (1) A person shall not engage in credit bureau activities in Guyana without a licence under this Act.

Licence to carry on credit bureau activities.

No. 29 of 1991.

(2) A person shall not be licensed to carry on the business of a credit bureau unless that person is a body corporate incorporated under the Companies Act 1991, limited by shares and whose activities are restricted by its articles of incorporation to carrying on the business of a credit bureau.

(3) Any person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of one million dollars and imprisonment for one year and to a further fine of fifty thousand dollars for each day during which the offence continues after conviction.

(4) A credit bureau shall not carry on the business of a credit bureau unless it pays annually the fee as prescribed by the Bank.

(5) Any credit bureau which contravenes subsection (4) commits an offence and is liable on summary conviction to a fine of one million dollars.

Application for
licence.

4. (1) A person shall apply to the Bank in the prescribed form for a licence to carry on the business of a credit bureau.

(2) An applicant for a licence to carry on the business of a credit bureau shall submit a fee as prescribed by the Bank along with the application which shall include the following —

- (a) a statement which shall contain the name of the applicant, address of its registered office in Guyana, and the name, address and nationality of each director;
- (b) a certified copy of its articles of incorporation and certificate of incorporation;
- (c) a mission statement and goals;
- (d) operation manuals, including manuals on data loading, quality control, security policies, user manuals and procedures for processing requests from consumers;
- (e) a five year business plan, continuity plan, ownership, governance and management structure;

- (f) proposed pricing policy;
- (g) proposed format and layouts of information including mandatory fields and voluntary fields to be supplied by the credit information providers;
- (h) proof as may be required by the Bank that the company satisfies the minimum stated capital required by section 21; and
- (i) any other information as the Bank may reasonably require.

(3) The Bank may require the applicant to attest to the truth of the statements made in the application by submitting a duly notarised affidavit to that effect.

Evaluation of application.

5. For the purpose of evaluation of an application for a licence the Bank may require —

- (a) an audit;
- (b) further documents or information; or
- (c) personal interviews with the directors of the applicant.

Issuing of licence.

6. (1) The Bank may within sixty days of receipt of an application, grant or refuse to grant a licence.

(2) The Bank may refuse to accept an application which does not contain all of the information specified in section 4, by providing written notice to the applicant of such refusal.

(3) The Bank shall within fourteen days from the receipt of an application referred to in subsection (1) send the applicant a formal letter of acceptance or refusal of the application or a letter of deficiency which stipulates a deadline for the rectification of the deficiencies outlined.

(4) The Bank shall take no further action in the matter and the computation of the time under subsection (1) shall not commence unless the deficiencies are rectified within the time specified.

(5) The time limit provided in subsection (1) may be extended by the Bank for an additional period not exceeding thirty days upon written notice to the applicant stating that further information is needed to review the application.

(6) Upon determination that the applicant satisfies the requirements of this Act the Bank may, after consultation with the Minister, issue a licence.

(7) A licence shall be in the prescribed form and shall be valid unless it is revoked in accordance with section 7.

(8) A fee in an amount prescribed by the Bank shall be payable by the credit bureau to the Bank for the issue of the licence and after the issue of the licence the prescribed fee shall be paid not later than 1st February each year.

(9) A licence to carry on business as a credit bureau may contain such terms and conditions as may be specified by the Bank.

(10) The Bank shall publish in the *Gazette* and at least two daily newspapers of general circulation in Guyana notice of the issue of the licence.

(11) If the Bank determines that the applicant does not satisfy the requirements of this Act, the Bank shall inform the applicant in writing of its reasons for refusal to grant the licence.

Revocation of
licence.

7. (1) The Bank may, after consultation with the Minister, revoke a licence where —

- (a) the credit bureau has failed to comply with any term or condition specified in the licence;
- (b) the credit bureau has failed to comply with any of the provisions of this Act or any other law to which it is subject;
- (c) the credit bureau has failed to comply with any direction given under section 9 within the time specified;
- (d) the credit bureau has provided the Bank with false or inaccurate information;

- (e) the credit bureau does not commence operations within six months after the issuance of its licence;
- (f) the credit bureau is in breach of any duty or obligation imposed upon it by this Act;
- (g) the credit bureau has committed a misrepresentation, fraud or other dishonest act, or has demonstrated incompetence or untrustworthiness in the operation of its business;
- (h) consumers' rights and interests are threatened;
- (i) the carrying on of business by the credit bureau is no longer in the interest of the public.

(2) Before revoking a licence, the Bank shall –

- (a) give the credit bureau notice in writing of its intention to do so, specifying the grounds upon which it proposes to revoke the licence; and
- (b) inform the credit bureau of its entitlement to submit within a period specified by the Bank a written statement of reasons why the licence shall not be revoked.

(3) Where in relation to any statement delivered under subsection (2) (b) the Bank is of the opinion that the credit bureau has failed to give sufficient reason why the licence should not be revoked the notice of revocation shall become final and the licence of the credit bureau to which the notice was delivered shall be revoked by the Bank within such time as may be specified in the notice of its decision.

(4) Where the Bank decides to revoke a licence, the Bank shall give to the credit bureau a notice in writing of its decision and the Bank shall publish notification of the revocation in the *Gazette* and two daily newspapers of general circulation in Guyana.

(5) Where a licence is revoked under this section, the credit bureau shall cease to carry on the business of a credit bureau as of the date stated in the notice and the Bank shall give to the credit bureau such directions or notice as it thinks fit with a

view to securing the confidentiality, preservation and storage of any credit information concerned.

(6) A credit bureau which fails to comply with directions given under subsection (5) commits an offence and is liable on summary conviction to a fine of two million dollars and to a further fine of fifty thousand dollars for each day that the offence continues after conviction.

(7) The Bank shall revoke the licence of a credit bureau where the credit bureau —

- (a) merges or amalgamates with another company and the licence is no longer required;
- (b) goes into liquidation or is wound up or otherwise dissolved; or
- (c) ceases to carry on the business for which it was licensed.

Supervision of
credit bureau.

8. (1) The Bank shall have overall authority to —

- (a) issue a licence to any applicant for a licence to operate a credit bureau in Guyana; and
- (b) supervise the activities of a credit bureau.

(2) In the performance of his duties under this Act an authorised officer of the Bank shall be entitled at all reasonable times to —

- (a) conduct on-site inspections of the credit bureau's premises or every premises where the service is provided and the credit information is compiled, processed and stored, as often as the Bank shall deem necessary;
- (b) have access to all books, accounts, records, contracts, minutes of meetings, and any other documents, electronic data and any other relevant information in the possession or control of any director, officer or employee of any credit bureau;

- (c) require any director, officer, employee, or auditor of any credit bureau to furnish such information or to produce such books, records or documents as are in their possession or control that relate to the operations of the credit bureau;
- (d) summon any director, officer, employee, or auditor of any credit bureau to appear before a Committee appointed by the Bank to investigate or review any aspect of the credit bureau's operations.

(3) The Bank may appoint one or more persons whom it deems to be qualified to conduct on-site inspections at the credit bureau's premises or the premises where the service is provided.

(4) The Bank may in the case of an inspection conducted, charge the fees and costs of such inspection to the credit bureau being inspected and require payment of such fees and costs by the credit bureau.

(5) Any person summoned to attend or 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 summary conviction to a fine of five hundred thousand dollars.

Power to issue instructions.

9. Where in the opinion of the Bank, a credit bureau has failed to comply with this Act, any order, direction or notice imposed by the Bank or any condition in the licence, the Bank may instruct the credit bureau in writing to perform the acts as in the opinion of the Bank are necessary to rectify the situation and on failure of the credit bureau to do so the Bank may —

- (a) restrict the scope of its business in a particular way;
- (b) suspend the licence until it rectifies the situation;
- (c) order the suspension or removal from office of any director, officer, employee or other person of the credit bureau; or
- (d) take any other action that may be necessary.

10. (1) Every credit bureau shall with the approval of the Bank appoint annually an independent auditor to conduct an annual audit and compliance review of the credit bureau in accordance with this Act and applicable standards.

(2) The duties of an auditor appointed under this section shall include the following –

- (a) to make a full review of the credit bureau's records and accounts and to make to the shareholders of the credit bureau a report on the financial statements indicating whether in his opinion such statements are fair and properly drawn up, whether they exhibit a true and fair statement of the affairs of the credit bureau in accordance with applicable standards and requirements as to format and content specified by the Bank, and in any case in which the auditor has called for information or explanation from the directors, officers or agents of the institution, whether a satisfactory response was received;
- (b) to make a full review of the credit bureau's internal control and security structures, risk management controls and the credit bureau's procedures for compliance with the requirements of this Act and with any standards applicable to credit bureaus;
- (c) to prepare a full report of its findings which it shall submit to the credit bureau.

(3) Prior to making his reviews and reports under this section the auditor shall obtain from the credit bureau a copy of the most recent report of inspection of the credit bureau prepared by the Bank and any order, direction, notice or other action issued or taken by the Bank under this Act.

(4) The credit bureau shall within three months of the end of its financial year deliver the audit report to the Bank and which report it shall deliver to shareholders within two weeks of delivery of the report to the Bank.

(5) The credit bureau shall bear the cost of the annual audit and compliance review.

(6) An auditor performing his duties under this section shall not be liable to any person in any action in tort or contract for any act done or not done, or any statement or report made or not made, in good faith and in the exercise of his duties under this section and his reasonable professional judgment.

(7) If any credit bureau fails to comply with the requirements of subsection (4) it commits an offence and is liable on summary conviction to a fine of five hundred thousand dollars.

PART III CREDIT REPORTING

Permissible
purpose.

11. (1) A credit bureau shall not disclose credit information except —

- (a) to a credit information provider who it has reason to believe intends to use the information in connection with a credit transaction involving the consumer in respect of whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of the consumer;
- (b) to a credit information provider to evaluate the creditworthiness of a consumer;
- (c) to a third party service provider for the purpose of collecting, compiling, storing and processing data or information in accordance with the specific agreement signed by the parties;
- (d) to the consumer to whom the information pertains.
- (e) with written permission and instructions of the consumer to whom it relates, for the purposes of —
 - (i) purchasing or collecting of a debt of a consumer to whom the information pertains;
 - (ii) entering into a renewal of a tenancy agreement;
 - (iii) underwriting of insurance involving the consumer;

(iv) facilitating a financial or other commercial transaction involving the consumer;

(v) employment of the consumer.

(3) A credit bureau that willfully discloses credit information in contravention of the provisions of this section commits an offence and is liable on summary conviction to a fine of one million dollars.

Credit
information
providers.

12. (1) A credit bureau may obtain credit information as provided in subsection (5) from any of the credit information providers referred to in subsection (2).

(2) The credit information providers are –

No. 1 of 1995

(a) a bank licensed under the Financial Institutions Act 1995;

No. 1 of 1995

(b) a company other than a bank licensed to conduct financial business under the Financial Institutions Act 1995;

(c) any other entity the Bank may designate as a credit information provider by notice published in the *Gazette* and two daily newspapers of general circulation in Guyana.

(3) A credit information provider shall not provide credit information unless the credit information provider is satisfied after undertaking all reasonable enquiries and investigations, that the information is reliable.

(4) 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 in writing to the inclusion, and such consent is attached to the information.

(5) Subject to subsection (3), a credit information provider may disclose to a credit bureau, the following information –

- (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 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 a credit information provider;
- (d) information about any consumers' 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 Bank considers appropriate to include as credit information for the purposes of this Act and specifies by notice published in the *Gazette* and two daily newspapers of general circulation in Guyana.

(6) A credit information provider that contravenes subsection (3) commits an offence and is liable on summary conviction to a fine of one million dollars.

(7) The credit bureau may collect data or information from public sources, including -

- (a) data available to the general public;
- (b) court judgments;
- (c) immovable property registers;
- (d) company registries.

(8) A credit bureau commits an offence if that credit bureau discloses credit information obtained from a person other than a credit information provider or from a source referred to in subsection (7) and is liable on summary conviction to a fine of one million dollars.

Consent.

13. (1) A credit information provider shall not share with a credit bureau data or information including electronic data or information collected on a consumer without the consumer's prior consent.

(2) Consent may be recorded in any format and where it is electronically recorded it shall be accompanied by an electronic signature.

(3) Consent shall be included in the consumer's credit application.

(4) A credit information provider shall not share with a credit bureau personal information about a consumer unless the information is necessary for one or more of the credit reporting or credit risk appraisal functions or activities of the credit bureau and shall only be shared with the written consent of the consumer.

(5) A credit information provider that contravenes subsection (1) or (4) commits an offence and is liable upon summary conviction to a fine of one million dollars.

Data quality
and security.

14. (1) A credit bureau shall have in place operational guidelines and security systems and shall take all reasonable steps to ensure that credit information received from the credit information providers is accurately recorded, up to date and is protected against loss, unauthorized access or use, modification, or unauthorized disclosure.

(2) A credit bureau shall keep records of all incidents on data quality breaches held under its system.

(3) A credit bureau may refuse to create a file based on information received from credit information providers if it considers the information not to be reliable.

Confidentiality.

15. (1) Subject to subsection (2) any person including credit information provider officials, credit bureau users and any other person who receives, compiles, processes or stores credit information or who is otherwise concerned with the administration of this Act, shall not disclose the contents of confidential documents or information received in connection with the performance of any duty or function under this Act.

(2) A disclosure shall not be deemed inconsistent with any duty imposed by this section, where it is a disclosure permitted under the provisions of this Act.

(3) A licensed financial institution that provides data to a credit bureau under this Act does not violate the provisions of –

No. 6 of 1986

(a) sections 49 and 63 of the off-shore Banking Act 1986 were it in force;

No. 1 of 1995

(b) section 63 of the Financial Institutions Act 1995;

No. 8 of 1976

(c) section 23 of the Co-operative Financial Institutions Act 1976;

No. 27 of 1990

(d) the Telecommunications Act 1990; and

(e) any other relevant law.

(4) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of one million dollars and imprisonment for six months.

Immunity.

16. The Bank, the credit bureau, any of their directors, officers or employees, or a credit information provider shall not be liable in damages for disclosing information in good faith in the performance of their duties under the provisions of this Act.

Retention period.

17. (1) A credit bureau shall maintain in respect of each consumer about whom it has obtained credit information, a file –

(a) stored in a secured manner;

(b) consisting of all the material and information that a consumer is entitled to have access to under section 27;

(c) for a period of seven years after the date of termination or settlement of the credit extended by the credit provider or lender.

(2) In a case where the contract between a credit information provider and a credit bureau is terminated the credit information provider shall continue to supply, to the credit bureau, data and information on those consumers who were previously part of the monthly update under the terms and conditions of the contract providing the contractual relation between the credit provider or lender and the consumer has not been terminated.

(3) A credit bureau that contravenes any of the provisions of this section commits an offence and is liable upon summary conviction to a fine of one million dollars.

Cross-border
data flows.

18. A credit bureau may store and keep in a different country data collected under this Act provided it is done with the approval of the Bank.

Security.

19. (1) The credit bureau shall take the necessary steps to protect the data or information in its custody, possession or control from misuse, loss, unauthorized access and modification or disclosure including the following –

- (a) preparation of operational guidelines and installation of security systems;
- (b) providing computer security programmes, access and data communication protocols to prevent unauthorized access to the computer system and database, or interception of communication between the credit bureau and its users;
- (c) maintenance of data access logs and audit trails to record all activity in the database and computer systems;
- (d) providing disciplinary and contractual procedures and penalties to apply in the case of any unauthorized or improper access, modification or deletion of any information held in the credit bureau's database or computer system, by any employee, agent or contractor to the credit bureau; and
- (e) conduct of workshops and preparation of training manuals for authorized personnel, covering the requirements of this Act.

(2) When disclosing data or information to a third party service provider additional measures shall be taken, such as –

- (a) the execution of an agreement between the credit bureau and the third party service provider containing the conditions of the service regarding the data or information;
- (b) documented security measures containing the specific steps to be taken by the users in order to ensure the protection and the integrity of the database.

(3) A credit bureau which contravenes any provision of this section commits an offence and is liable on summary conviction to a fine of one million dollars.

PART IV CREDIT BUREAU ACTIVITY

Governance.

20. (1) The credit bureau shall have a board of directors consisting of not less than five directors.

(2) A person may be appointed a director who is qualified in law, banking, finance, administration or accounting or any other fit and proper person.

(3) A person shall not be a director or officer or perform any corporate management functions of a credit bureau who –

(a) has been a director, chief executive officer or other officer of a company which has been wound up by a court or has been placed in receivership;

Cap. 12:21

(b) has been convicted by a court for an offence involving dishonesty;

(c) has been adjudged a bankrupt under the insolvency Act;

(d) in the opinion of the Bank is not a person of sound probity and character.

(4) Members of the board of directors shall ensure –

(a) ~~that~~ the activities conducted by the credit bureau are in full compliance with the Act and with any other law to which it is subject;

(b) that a specific unit is maintained to attend to the requests of the consumers under Part V;

(c) that competent and sufficient staff are employed to comply with the obligations according to this Act; and

- (d) that the credit bureau appoints an independent external auditor to undertake the annual audit and compliance review required by section 10.

(5) The ownership of the credit bureau shall be restricted to a maximum of 49% of ownership by the credit information providers.

Capital
requirement.

21. A credit bureau shall be required to satisfy the minimum capital requirements specified by the Bank.

Permissible
activities.

22. (1) The credit bureau may engage in the following activities –

- (a) collect and store information to create credit histories;
- (b) process credit related data;
- (c) create credit reports and disseminate them among the users in exchange for the payment of a fee;
- (d) carry out statistical research;
- (e) provide value added services upon request from the users based on data stored in the credit bureau.

(2) The credit bureau shall not engage in activities different from those described under subsection (1).

(3) A credit bureau which contravenes the provisions of this section commits an offence and is liable on summary conviction to a fine of one million dollars.

Duties and
responsibilities.

23. (1) The credit bureau shall –

- (a) receive data or information from credit information providers and load such data or information into its systems;
- (b) provide the users with credit reports upon request in accordance with the provisions of this Act;

- (c) grant access to the consumer to the consumer's credit reports on proof of identify;
- (d) maintain the established level of data quality adequacy;
- (e) request credit information providers to correct information when there are sufficient grounds to do so;
- (f) comply with this Act, orders, directions, notices, instructions or conditions imposed by the Bank and any code of conduct on credit reporting;
- (g) maintain information in adequate systems and premises to avoid unauthorized access, loss, damage, modification or unauthorized disclosure;
- (h) maintain data for the period prescribed under section 17;
- (i) dedicate a specific unit with trained personnel to serve the requests of the consumers and provide sufficient protection to consumers regarding their data in compliance with this Act;
- (j) keep a log of all the enquiries or requests received from the users in a format that records the purpose for which the information was requested; and
- (k) report all breaches of data security promptly to the Bank.

(2) The credit bureau may charge a fee for its services according to the credit bureau's pricing policy.

(3) The credit bureau may use the data from credit information providers to build scoring models and value added services.

(4) The credit bureau and the credit information providers shall not use the credit information contained in the credit bureau for marketing purposes.

(5) A credit bureau which contravenes the provisions of subsections 1(g) and (h) and (4) commits an offence and is liable on summary conviction to a fine of one million dollars.

(6) A credit information provider which contravenes the provisions of subsection (4) commits an offence and is liable on summary conviction to a fine of one million dollars.

Liquidation of a
credit bureau.
No. 29 of 1991

24. (1) A credit bureau may be liquidated in accordance with the Companies Act 1991.

No. 29 of 1991

(2) Notwithstanding anything in the Companies Act 1991 a credit bureau shall not, except with the approval of the Bank, pass any resolution for the suspension of its activities or the voluntary winding up of its business.

(3) Where the credit bureau is to be liquidated under subsection (1) or action is taken under subsection (2) the database containing information related to the credit history of the consumers shall be transferred to the Bank to decide if the credit bureau activities can be continued, or whether the data shall –

- (a) destroyed;
- (b) returned to each credit information provider; or
- (c) transferred to another licensed credit bureau by a bidding process.

PART V RIGHTS OF THE CONSUMER

Right to
information by
the consumer.

25. (1) Credit information providers shall inform consumers of –

- (a) the name, address and telephone number of the credit bureau that will collect, process and disseminate information about consumers;
- (b) the purpose of the collection, processing and dissemination of the information; and
- (c) their rights to check their own credit history as well as to correct erroneous information.

(2) The credit bureau shall provide detailed information regarding how to access or correct data.

Notification.

26. (1) Where a credit provider takes adverse action against a consumer based in whole or in part on a consumer report received from a credit bureau the credit provider shall inform the consumer of the action taken.

(2) The credit provider shall supply the name and address of the credit bureau making the report together with a notice that the consumer may obtain from the credit bureau a free copy of the consumer report upon which the adverse action was taken.

Access to information or data.

27. (1) A consumer has the right to receive a copy of all the information maintained by a credit bureau on his own credit history, in the form of a credit report, which shall include -

- (a) a list of users that have accessed his data during the previous six months;
- (b) detailed information on the description of any codes used in the report so the consumer can clearly understand the report; and
- (c) the source of the data or information.

(2) A consumer shall have the right to obtain a credit report free of charge in the following circumstances.

- (i) once a year upon his request; and
- (ii) where arising from an investigation under section 28 any data or information error is attributable to the credit information provider or the credit bureau.

(3) The fee for further access to information or data shall be reasonable according to administrative costs borne by the credit bureau.

(4) A consumer has the right to obtain a copy of the credit report from the credit bureau in any of the following forms -

- (a) in person;
- (b) in writing upon receipt of sufficient proof of identity; or

- (c) on-line if adequate measures are in place to avoid unauthorized access.

(5) A credit bureau shall respond within fourteen days of receipt of the consumer's request for a copy of his credit report.

Challenging
data.

28. (1) If the information contained in his credit report is disputed by a consumer, as being illegal, inaccurate, erroneous or outdated the consumer shall notify the credit bureau in writing of the dispute and shall provide sufficient evidence including documents to support his request for the resolution of the dispute.

(2) The credit bureau shall investigate and resolve the matter within thirty days of receipt of the consumer's request, and may -

- (a) if the inaccuracy is attributable to a public source, notify the source and request that accurate information is provided;
- (b) if the inaccuracy is attributable to the credit information provider, inform the credit information provider and follow the procedures established for consumer's rights.

(3) During the investigation the credit bureau shall make a note in the consumer's report that it has been challenged and inform the users of such investigation.

(4) The credit bureau shall notify the consumer of the results of the investigation and may -

- (a) delete the data or information if on investigation it is found to be illegal, inaccurate, erroneous or outdated;
- (b) modify the data in the terms contained in the request submitted by the consumer;
- (c) if the investigation does not resolve the dispute notify the consumer of his right to file a brief statement setting forth the nature of the dispute, provided that -

- i) the statement shall, as far as practicable, not exceed one hundred words; and
- ii) it shall be the duty of the credit bureau if requested by the consumer, to provide the consumer with competent assistance in writing a clear summary of the nature of the dispute.

(5) Where a statement of a dispute is filed under subsection (4)(c), the credit bureau shall, in any subsequent credit report containing the information in question, clearly note that it is disputed by the consumer and provide either the consumer's statement or a clear and accurate summary of the statement.

(6) Following any deletion or modification of information which is found to be illegal, inaccurate, erroneous or outdated or any notation as to disputed information, the credit bureau shall furnish -

- (a) notification that the item has been deleted or modified as the case may be; or
- (b) notification of the statement or summary filed or provided pursuant to subsection (4) or (5),

to any person who has within two years prior to the deletion, modification or notation received a consumer report which contained the challenged data.

(7) Credit information providers and the credit bureau shall issue adequate guidelines to ensure compliance with the preceding subsections.

Dispute
resolution.

29. (1) A consumer who is dissatisfied with the action taken under section 28 or who believes the credit bureau or credit information provider has contravened this Act with respect to information affecting the consumer, may make a complaint of the matter in writing to the entity or person designated by the Minister to hear the matters.

(2) The entity or person designated by the Minister under subsection (1) shall investigate the matter and determine it within thirty days of the commencement of the investigation.

(3) A consumer who is dissatisfied with a decision of the entity or person designated by the Minister may appeal to the High Court.

Legal action.

30. Notwithstanding anything in this Act, a consumer is entitled to commence legal action against the credit information provider, or the credit bureau where the consumer has suffered damages as a result of the misuse or inaccuracy of the data.

PART VI MISCELLANEOUS

Civil Liability
for willful or
negligent non-
compliance.

31. (1) Any credit bureau, credit information provider or user of the consumer information which willfully fails to comply with any requirement imposed under this Act with respect to any consumer is liable to that consumer in an amount equal to the sum of—

- (a) any actual damages sustained by the consumer as a result of the failure;
- (b) such amount of punitive damages as the High Court may allow; and
- (c) in the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney's fees as determined by the High Court.

(2) Any person who is negligent in failing to comply with any requirement imposed under this Act with respect to any consumer is liable to that consumer in an amount equal to the sum of—

- (a) any actual damages sustained by the consumer as a result of the failure;
- (b) in the case of any successful action to enforce liability under this section, the costs of the action together with reasonable attorney's fees as determined by the High Court.

Unlawful
disclosure.

32. (1) An authorised person who intentionally provides information concerning a consumer from the credit bureau's files to an unauthorised person shall be liable on summary conviction to a fine of one million dollars and to imprisonment for six months.

(2) An unauthorised person who intentionally obtains information regarding a consumer from a credit bureau or credit information provider under false pretences commits an offence and is liable on summary conviction to a fine of one million dollars and to imprisonment for six months.

(3) Where a person commits an offence under this Act, for which no penalty is expressly provided, the person is liable on summary conviction to a fine of five hundred thousand dollars.

Power to make regulations.

33. (1) The Bank may make such subsidiary legislation, and issue such notices or directions or make guidelines as may be required for the carrying out of the purposes of this Act.

(2) Without prejudice to the generality of the provisions of subsection (1), the regulations, notices and guidelines may in particular provide for all or any of the following matters –

- (a) the form of an application for a licence and of a licence;
- (b) the fees payable along with the application for a licence and for the grant of a licence;
- (c) the scope and procedure for the conduct of the annual audit and compliance review;
- (d) the procedure and security mechanisms for the cross-border transfer of data;
- (e) prescribing the particulars and the form of the books, accounts and records to be kept by the credit bureau and the returns to be made by a credit bureau;
- (f) prescribing the level of data quality adequacy;
- (g) prescribing the capital requirements of a credit bureau;
- (h) any other matter that is required to be or may be prescribed by or under this Act.

(3) Regulations made under this section may provide for a penalty, on summary conviction of a fine not exceeding one million dollars.

Cooperation
with
supervisory
authority.

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

EXPLANATORY MEMORANDUM

This Bill seeks to provide for the establishment of a credit reporting industry which will facilitate the provision of information about potential debtors to creditors from a credible source. The aim of the legislation is to enable more reliable, competitive and responsible credit lending while protecting borrowers' rights.

Part II of the Bill provides for the licensing of credit bureaus by the Bank. It stipulates that only a locally incorporated company limited by shares, whose activities are restricted by its articles of incorporation to carrying on the business of a credit bureau would be eligible to conduct the business of a credit bureau. It sets out the licensing procedures and establishes specific criteria governing the form and content of an application for a licence and the factors to be considered by the Bank when evaluating an application for a licence. Provision is also made for the circumstances in which a licence could be revoked and the procedure for giving the licensee an opportunity to respond prior to revocation. It provides for the supervision of the credit bureau by the Bank and details enforcement measures which may be adopted by the Bank. Provision is also made in this part for the conduct of an annual audit and compliance interview and for the submission of this report to the Bank and shareholders.

Part III deals with the principles for credit reporting. It provides for sharing of credit information by credit information providers and specifies who is considered a credit information provider, the standard of reliability of the information to be satisfied prior to transmission to the credit bureau and the prohibition of the sharing of such data without the consent of the consumer. It specifies the purposes for which a credit bureau may furnish consumer information and the persons to whom it may be furnished. Special provisions to safeguard the confidentiality and integrity of the information during transmission, transcription and storage are also included.

Part IV provides for the administration and responsibility of a credit bureau. It requires that the Directors of the credit bureau ensure that its activities are conducted in full compliance with the Act. The permissible activities, duties and responsibilities of the credit bureau are specified along with the capital requirement which it is required to satisfy. Provision is also made for the suspension and liquidation of a credit bureau and how the information collected should be dealt with in these circumstances.

Part V deals with the rights of the consumer. The consumer has a right to receive copies of all the information in the consumer's file at the credit bureau, all the sources of such information and a list of the users who have accessed it during the six month period prior to the provision of the information. It also provides the consumer with the right to challenge the information on the grounds that it is illegal, erroneous or outdated and places a duty on a credit bureau to investigate the disputed facts. Provision is made for the modification or deletion of the information in the file depending on the outcome of the investigation. A procedure for the resolution of disputes is also detailed.

Part VI provides that the unauthorised disclosure of credit information, the obtaining of credit information under false pretences and other breaches of the provisions of the Bill are offences. This part also confers on the Bank the broad authority to prescribe regulations and issue such notices or guidelines including the form of an application for and of a licence, the scope and procedure for the conduct of the annual audit and compliance review, the books, accounts and records to be kept by the credit bureau, the level of data adequacy and any other matter as may be required for the carrying out of the purposes of the Bill.



Minister of Finance