

ESTABLISHMENT OF THE JAMAICAN CREDIT BUREAU

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Recent statements coming from the members of the Joint-Select committee reviewing the Credit Reporting Bill has placed the idea of the establishment of a credit bureau in the forefront of the minds of financial service providers and their customers. Therefore it is useful at this juncture for stakeholders to be made aware of the key provisions of this Bill.

What is a Credit Bureau?

Essentially the Bill deals with the licensing, operation and regulation of credit bureaus. The Bill unhelpfully describes a credit bureau as a company licensed under the act. However, based on their operations in other jurisdictions, a credit bureau can be defined as a company that compiles and stores data concerning the financial history of a consumer that relates to his/her creditworthiness. This data is then made available to banks and other financial institutions, usually for a fee, and is sought whenever the consumer comes to the financial institution in search of credit.

What kind of information would the Bureau store?

Credit information includes: information about the consumer's financial means, details of loans taken, details of securities such as guarantees and mortgages given to creditors, and a history of the consumer's financial transactions. The term 'consumer' in the Bill includes companies. Credit bureaus generally cannot receive negative information that is more than seven years old and cannot be given information on claims that are statute barred.

How does the Credit Bureau obtain credit information?

Under the Bill the companies that a credit bureau may obtain consumer's details from include banks, building societies, licensed financial institutions, co-operative societies, licensed securities dealers and insurance companies. They are collectively called credit information providers, interestingly no tax agency is listed as a provider. In addition, credit bureaus are prohibited from disclosing information that they receive from an unapproved source.

Is the information kept confidential?

The credit bureau is required to store the information in a 'secure' manner. Presumably it will be the regulator (recent media reports indicate that the regulator will be the Bank of Jamaica) that determines what passes for secure. Credit bureaus and credit information providers are also required to regard all documents and information disclosed to them as being 'secret and confidential'. Again these are words that are open to interpretation and

in this writer's view compliance will depend on the integrity of the bureaus and the financial institutions handling the information and the diligence of the regulator. Also the information held by a credit bureau must be stored in Jamaica. This is consistent with the other provisions of the Bill that stipulate that only Jamaican companies that have their principal office in Jamaica can become licensed credit bureaus.

Credit bureaus may disclose information to credit information providers, the regulator, and to other entities if permitted by statute or court order. However, in order for the banks and other credit information providers to obtain the consumer's information they must have the written consent of the consumer. Also, the consumer himself can request a copy of his credit report. It can be safely assumed that it will be the credit information providers that will be the main solicitors of credit reports therefore consumers should prepare themselves to be routinely asked to permit the disclosure of their credit details as a prerequisite to entering into any credit related transaction.

What if I don't want my information sent to Bureau?

Credit information providers can only disclose consumer information if it is reliable and where there is a duty of confidentiality to the consumer, such as the banker-client relationship, the consumer must consent to the disclosure in writing. If this provision remains then difficulties may arise as a new credit bureau attempt's to build a repository. This is because consumers may simply not want their banks to disclose their transaction details and then the banks will be constrained. In the absence of an amendment to this provision, it remains to be seen what incentive the credit bureau and or the banks can give consumers to encourage them to disclose their details to the bureau.

Can I get a copy and if necessary disputes sections of my credit report?

Under the proposed legislation consumers would get one free credit report a year. Subsequent reports are supplied at a charge. Credit bureaus are understandably barred from disclosing information which they know is misleading or false and therefore they are required to investigate claims of inaccuracy or incompleteness by the consumer. If the consumer is dissatisfied with the steps taken by the credit bureau to resolve their claims they can complain to the regulator. Either the credit bureau or the consumer can appeal the regulator's decision to an Appeal Tribunal. Undoubtedly, this process will be time consuming and expensive. As recent economic conditions have taught us a person's and a company's livelihood often turns on his/its ability to access credit. Therefore the regulator is encouraged to ensure that all disputes are resolved at the earliest possible juncture. As simple as it sounds no ones wants to spend considerable fees and time away from work, that your employer may be loathe to give, to prove that you did indeed finish paying for that fridge that was taken out on hire purchase 5 years ago.

Can anyone operate a Credit Bureau?

As explained earlier only Jamaican companies can apply to become licensed credit bureaus. An applicant's directors, managers and major shareholders must pass detailed

fit-and-proper tests and of course these persons must submit to credit checks by the regulator. The Bill also catches Jamaican companies that disclose credit details for a fee to persons outside of Jamaica and requires them to do it in accordance with the provisions of the proposed legislation. Therefore those persons involved in cross border transactions should be wary and seek legal counsel to ensure compliance.

The Bill is still in the discussion stage and therefore may be amended before it is put to the House for a vote however its current provisions appear to provide the framework by which scrupulous and well regulated entities can provide much needed credit reporting services to financial institutions and consumers alike.

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