

# CREDIT REPORTING BILL, 2017

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## **CREDIT REPORTING BILL, 2017**

**A BILL FOR AN ACT TO PROVIDE FOR A FAIR AND ACCURATE CREDIT REPORTING SYSTEM WITHIN THE FINANCIAL SYSTEM IN ORDER TO ASSURE OBJECTIVE CREDIT DECISIONS; TO ENABLE CREDIT INFORMATION SHARING AND REPORTING; TO PROVIDE FOR THE REGULATION OF THE CONDUCT OF CREDIT REPORTING AND CREDIT REPORTING SERVICES; TO PROVIDE SAFEGUARDS FOR DATA PROTECTION FOR CUSTOMERS OF CREDIT PROVIDERS AND FOR CONNECTED MATTERS**

**Enacted by the Parliament of The Bahamas**

### **PART I – PRELIMINARY**

**1. Short title and commencement.**

- (1) This Act may be cited as the Credit Reporting Act, 2017.
- (2) This Act shall come into force on such date as the Minister may, by notice published in the Gazette, appoint.

**2. Interpretation.**

In this Act, unless the context otherwise requires —

“**access log**” means a record of every access made to credit information held by a credit bureau;

“**applicant**” means the applicant for a licence pursuant to section 6;

“**Central Bank**” or “**Bank**” means the Central Bank of The Bahamas established pursuant to section 3 of the Central Bank of The Bahamas Act (*Ch. 351*);

“**Consumer Protection Commission**” means the Consumer Protection Commission established pursuant to section 3 of the Consumer Protection Act (*Ch. 337C*);

“**court**” means the magistrate's court, the Supreme Court or any other court of competent jurisdiction within The Bahamas;

“**credit**” includes —

- (a) the borrowing capacity provided to a person by a credit provider, in the form of a loan;
- (b) any promise or agreement regarding the buying, purchasing or obtaining of goods or services from a credit provider and the payment for such goods or services at some time after the date of such acquisition pursuant to designated terms and conditions;

“**credit bureau**” means a person granted a licence under section 7 of this Act to —

- (a) collect or otherwise process data subject information;
- (b) prepare, produce or provide credit reports on the basis of activities referred to in paragraph (a);
- (c) offer value added services for gain or profit or on a regular, co-operative and non-profit basis;

“**credit file**” means, in relation to a data subject, a file in electronic form or otherwise containing the data subject's information and other records collected, kept, maintained or otherwise processed by a credit bureau in respect of the data subject from which a credit report is prepared or produced;

“**credit information**” means any positive or negative information bearing on a data subject's credit worthiness, credit standing, or credit capacity, including but not limited to the history or profile of the data subject with regard to credit, assets or financial obligations;

“**credit information provider**” means a credit provider, public registry or other entity referred to in section 18 that furnishes data subject information to a credit bureau;

“**credit provider**” includes a person that carries on a business involving —

- (a) the provision of credit to another person;
- (b) the selling of goods in accordance with a hire purchase agreement, credit sale agreement, or conditional sale agreement, pursuant to the Hire Purchase Act (*Ch. 342*);

“**credit report**” means a communication by a credit bureau, in electronic form or otherwise, pertaining to the credit information, personal information, or both, of a data subject;

“**credit reporting system**” comprises all the institutions, individuals, rules, procedures, standards and technology that enable information flows relevant to making decisions for a permissible purpose pursuant to section 20;

“**database**” means a set of data subject information collected, managed, disseminated or otherwise processed by a credit bureau;

“**Data Protection Commissioner**” means the person appointed pursuant to section 14 of the Data Protection (Privacy of Personal Information) Act (*Ch. 324A*) to perform the functions pursuant to that Act;

“**data subject**” in relation to a credit bureau, includes any person —

- (a) whose information may be furnished to the credit bureau pursuant to a contractual relationship with a credit provider, a loan application signed by the person, or any other legitimate cause;
- (b) who is a guarantor of a person referred to in paragraph (a);

“**data subject information**” includes any information relating to the credit information or personal information of a data subject, whether such information is obtained from the data subject, a third party or a public registry, that may be processed pursuant to this Act or the regulations;

“**director**” means, in relation to a credit bureau, a member of the board of directors of the credit bureau;

“**Government**” means the Government of the Commonwealth of The Bahamas;

“**licence**” means a valid licence granted pursuant to section 7 to carry on business as a credit bureau;

“**loan**” includes —

- (a) direct, indirect or contingent obligations incurred by a person with a third party;
- (b) a discount, advance or overdraft;
- (c) export bills purchased or other bills receivable or purchased;
- (d) import bills, or data subjects’ liability on off-balance sheet items;
- (e) any other credit facilities extended to a data subject by a credit provider;

**“material change in circumstances”** means, in relation to a credit bureau, a change in circumstances as prescribed in the regulations;

**“Minister”** means the Minister with responsibility for Finance;

**“negative information”** in relation to a credit transaction between a data subject and a credit provider, includes —

- (a) credit defaults, collections, late payments;
- (b) accounts compulsorily closed other than for administrative reasons;
- (c) voluntary or mandatory surrender of assets;
- (d) convictions respecting the offence of fraud or forgery;
- (e) receiverships, bankruptcies and liquidations;
- (f) liens, garnishment or any other such judgements;
- (g) any other act or information which could cause a credit application to be declined or restricted according to a creditor's policy relating to the overdue, past due, charge off, or delinquent status of the credit transaction between the data subject and the credit provider;

**“officer”** in relation to a credit bureau, includes the chief executive officer, chief financial officer, treasurer, chief internal auditor and the manager of a significant unit of the credit bureau;

**“person”** includes a natural person or a legal person;

**“personal information”** means, in relation to a data subject, information about the data subject that may be used to identify the data subject;

**“information”** means information relating to the current or historical status of a credit transaction between a data subject and a credit provider including but not limited to —

- (a) date an account was opened;
- (b) date of the last payment;
- (c) credit approved;
- (d) payments made;
- (e) current balance;
- (f) repayment patterns;
- (g) utilization of credit;
- (h) any collateral pledged;

**“prescribed”** means prescribed by this Act or the regulations;

**“process”** means, in relation to data subject information —

- (a) to collect, record, hold or store data subject information;

- (b) to carry out an operation or set of operations on data subject information, including its —
  - (i) organization, adaptation or updating;
  - (ii) retrieval, consultation or use;
  - (iii) disclosure by transmission, transfer, dissemination or by otherwise making it available;
  - (iv) alignment, combination, correction, erasure or destruction;

**“public registry”** means an entity prescribed in regulations that collects from the public information that constitutes data subject information;

**“record”** means, in relation to a credit bureau, a book, paper, document, in electronic form or otherwise, that may contain information regarding the finances or business of the credit bureau;

**“regulations”** means regulations made by the Central Bank pursuant to this Act;

**“significant shareholder”** means a person who holds directly or indirectly, or otherwise has a beneficial interest in, more than ten percent of the share capital of a credit bureau and includes a person whom it is proposed shall hold such share capital or have such beneficial interest;

**“subscriber”** means a credit information provider that has entered into a subscriber agreement with a credit bureau to furnish data subject information to the credit bureau in an agreed format;

**“subscriber agreement”** means an agreement referred to in section 23(3) between a credit bureau and a credit information provider whereby the credit information provider furnishes data subject information to the credit bureau in an agreed format;

**“user”** means —

- (a) a subscriber;
- (b) a person, not being a subscriber, who has obtained the consent of a data subject to receive from a credit bureau the credit report of the data subject;

**“Utilities Regulation and Competition Authority”** means the Utilities Regulation and Competition Authority established pursuant to the Utilities Regulation and Competition Authority Act (*Ch. 306*);

**“value added product”** means a product or service that a credit bureau may develop, within the limits imposed by this Act, to increase the

value of the credit reporting services that the credit bureau provides to users; and

“**writing**” includes communicating by facsimile transmission, electronic mail, or any other mode of representing or reproducing words in visible form, and expressions referring to writing shall be construed accordingly.

## **PART II – ADMINISTRATION**

### **3. Supervisory and regulatory authority of the Central Bank.**

The Central Bank shall —

- (a) be the supervisory and regulatory authority of the credit reporting system of The Bahamas; and
- (b) have responsibility for the general administration, supervision and implementation of this Act and the regulations.

### **4. Powers, duties and functions of the Central Bank.**

(1) Without prejudice to the generality of section 3, the Central Bank —

- (a) may grant licences to credit bureaus in The Bahamas;
- (b) shall, in accordance with this Act and the regulations —
  - (i) evaluate every application made pursuant to section 6 for a licence to operate, or carry on the business of, a credit bureau;
  - (ii) issue guidelines regarding the operations of credit bureaus;
  - (iii) inspect the premises, systems and operations of applicants and credit bureaus;
  - (iv) regulate and supervise the activities of credit bureaus, credit information providers, users and their agents to the extent such activities are subject to the provisions of this Act;
- (c) shall issue standards and targets regarding the provision of credit reporting services pursuant to this Act and the regulations;
- (d) may issue directions to a credit bureau, credit information provider, or a user;
- (e) shall ensure that credit bureaus maintain proper standards of conduct and acceptable credit reporting practices;
- (f) shall protect the integrity of the credit reporting system against abuses;
- (g) shall take measures to protect the interests of data subjects;

- (h) may impose penalties for contravention of this Act and take any remedial action referred to in subsection (2) against a credit bureau, credit information provider, user, or their agents, found in breach of this Act or the regulations; and
  - (i) may undertake other activities necessary or expedient to give full effect to the provisions of this Act.
- (2) The Central Bank may, pursuant to paragraph (h) of subsection (1) —
    - (a) levy a fixed penalty, in accordance with section 50, on a credit bureau, credit information provider, user, or their agents;
    - (b) give to a credit bureau, credit information provider or user such directives as the Central Bank considers appropriate; or
    - (c) suspend or revoke the licence of a credit bureau.
  - (3) The Central Bank may prescribe in regulations criteria to determine whether an applicant, or any other person the Bank deems relevant, is at any time a fit and proper person.
  - (4) The Central Bank may in writing authorise any person to assist the Bank in the exercise and performance of its duties and functions under this Act.

## **PART III – LICENSING OF CREDIT BUREAUS**

### **5. Licence required.**

- (1) No person shall —
  - (a) operate as, or carry on the business of, a credit bureau in The Bahamas;
  - (b) use or continue to use words, implying that the person is a credit bureau, in the description or title pursuant to which such person is carrying on business from within The Bahamas, whether or not such business is carried on in The Bahamas,unless such person —
  - (i) is licensed pursuant to this Act; and
  - (ii) is a company, incorporated or registered pursuant to the Companies Act (*Ch. 308*).
- (2) A person who wilfully contravenes or fails to comply with a provision of subsection (1) commits an offence.
- (3) In the prosecution of a person for the offence under paragraph (a) of subsection (1), evidence that the accused person provided data subject information to another person is proof, in the absence of evidence to the

contrary, that the accused person operated as or carried on the business of a credit bureau.

## **6. Application for licence.**

- (1) An application for grant of a licence to operate, or carry on the business of a credit bureau in The Bahamas shall be submitted to the Central Bank in the form and manner prescribed by regulations.
- (2) An applicant shall comply with a request made by the Central Bank for the submission of any additional information or supporting document that the Bank may require in order to determine the eligibility of the applicant for the grant of a licence.

## **7. Grant of licence.**

- (1) The Central Bank shall, in considering an application made pursuant to section 6, have regard to the —
  - (a) incorporation and ownership structure of the applicant;
  - (b) nature and sufficiency of the financial resources of the applicant to provide continuing financial support for the credit bureau;
  - (c) soundness and feasibility of the business plan of the applicant;
  - (d) adequacy of the systems and arrangements that have been put in place by the applicant to ensure compliance with the provisions of this Act;
  - (e) qualities of the proposed directors, officers and significant shareholders and whether they are fit and proper persons to operate or, as the case may be, hold shares in the credit bureau; and
  - (f) best interests of the financial system in The Bahamas.
- (2) The Central Bank may, after consideration of an application made pursuant to section 6, grant a licence subject to such terms and conditions as the Bank thinks fit where —
  - (a) the Bank is satisfied with respect to the matters referred to in subsection (2) of section 8; and
  - (b) the applicant has paid the prescribed fees.
- (3) The Central Bank shall advise the Minister in writing of its decision to grant a licence under this section.

## **8. Refusal to grant licence.**

- (1) Subject to subsection (2), the Central Bank shall not grant a licence where —
  - (a) the application is not made in accordance with this Act and the regulations;

- (b) the Bank is of the opinion that —
  - (i) the applicant has, with respect to a matter that the Bank considers material, knowingly or intentionally made a false or misleading statement in the application or in the information, particulars, declarations, documents or other materials submitted to the Bank in support of the application; or
  - (ii) it is not in the public interest to grant the licence.
- (2) Without prejudice to subsection (1), the Central Bank shall not grant a licence unless the Bank is satisfied that —
  - (a) the applicant is a fit and proper person for that purpose;
  - (b) adequate systems and arrangements have been put in place by the applicant to ensure compliance with the provisions of this Act and the regulations; and
  - (c) the applicant meets such capital requirements as the Bank may prescribe.
- (3) The Central Bank shall, where the Bank refuses to grant a licence, notify the applicant in writing within seven days of making the decision of the Bank's refusal and advise the Minister of the Bank's decision.

## **9. Terms and conditions of a licence.**

- (1) Subject to subsection (6), the Central Bank may at any time amend or vary the terms and conditions of a licence granted pursuant to section 7.
- (2) A credit bureau shall —
  - (a) within thirty days of being granted a licence, submit to the Central Bank an irrevocable bank guarantee to the value of two hundred thousand dollars or such larger amount as the Bank may, from time to time, specify in writing;
  - (b) within six months of being granted a licence, or within such other period as the Central Bank may specify in writing, commence operations as a credit bureau;
  - (c) adhere to such capital requirements as may be specified by the Central Bank; and
  - (d) advise the Central Bank of the pricing for the provision of its services or any change in such pricing.
- (3) The irrevocable bank guarantee referred to in paragraph (a) of subsection (2) shall be —
  - (a) provided by an entity approved by the Central Bank; and

- (b) in a format acceptable to the Central Bank.
- (4) A credit bureau shall not execute an exclusive agreement with its subscribers.
- (5) Where credit information providers, or the beneficial owners of credit information providers, are permitted to acquire shares in a credit bureau —
  - (a) the credit bureau shall restrict the aggregate share ownership in the credit bureau by such credit information providers, and beneficial owners of credit information providers, to a maximum of forty-nine per cent; and
  - (b) a single credit information provider, or beneficial owner of such credit information provider, shall hold no more than five percent of the shares of the credit bureau.
- (6) The Central Bank shall, before the Bank amends or varies the terms and conditions imposed on a licence —
  - (a) give written notice to the credit bureau of its intention to amend or vary the terms and conditions and include in the notice the reason for the intended amendment or variation; and
  - (b) give the credit bureau, within such time as may be specified in the notice, an opportunity to make representation.
- (7) A credit bureau shall comply with such terms and conditions as the Central Bank may specify in a licence granted to the credit bureau.

#### **10. Restrictions on the transfer of licence, etc.**

- (1) A credit bureau shall not, without the prior written approval of the Central Bank —
  - (a) transfer a licence granted or reinstated pursuant to this Part; or
  - (b) sell, lease or transfer title to any of its credit files except to another credit bureau licensed pursuant to this Act.
- (2) A credit bureau which wilfully or intentionally contravenes or fails to comply with a provision of subsection (1) commits an offence.

#### **11. Duration of licence and payment of fees.**

- (1) A licence granted pursuant to this Part shall be valid from the date of the grant unless the licence is suspended or revoked in accordance with section 13.
- (2) The Central Bank may in regulations prescribe fees which are payable —
  - (a) for processing an application for the grant of a credit bureau licence;

- (b) for the grant of a credit bureau licence; and
  - (c) to reinstate a credit bureau licence.
- (3) A credit bureau that is licensed pursuant to this Act is subject to the Business Licence Act (*No. 25 of 2010*) and shall provide the Central Bank with proof of payment of its business licence tax on or before the 31<sup>st</sup> day of December in each year.
- (4) The Central Bank may, where a credit bureau fails to provide proof of payment of business licence tax in accordance with subsection (3), suspend or revoke the licence of the credit bureau in accordance with section 13.

## **12. Material change in circumstances affecting credit bureau.**

- (1) A credit bureau or an applicant for a licence under section 6 may, in accordance with the regulations, implement a material change in the circumstances affecting the credit bureau or the applicant.
- (2) A credit bureau shall immediately notify the Central Bank after the occurrence of —
- (a) an event that resulted in a compromise of the confidentiality, security or integrity of data subject information;
  - (b) any civil or criminal proceeding instituted against the credit bureau, whether in The Bahamas or elsewhere;
  - (c) an event or irregularity that impedes or prevents access to, or impairs the usual operations of, the credit bureau;
  - (d) the credit bureau becoming, or being likely to become, insolvent or unable to meet its financial, statutory, contractual or other obligations; or
  - (e) any other event that the Central Bank may, from time to time, prescribe in regulations or specify by notice in writing.

## **13. Suspension and revocation of licence.**

- (1) Subject to subsection (2), the Central Bank may suspend or revoke a licence granted to a credit bureau where —
- (a) the credit bureau has failed to comply with —
    - (i) a term or condition specified in the licence;
    - (ii) a provision of this Act, the regulations, or any other law to which it is subject;
    - (iii) a direction issued pursuant to this Act within the time specified;

- (b) the credit bureau —
    - (i) has provided the Bank with false or inaccurate information;
    - (ii) does not commence operations within six months after the issuance of its licence or within such further period as has been approved by the Central Bank;
    - (iii) becomes insolvent or makes an arrangement with its creditors;
    - (iv) is in breach of a duty or obligation imposed upon it by this Act or the regulations;
    - (v) has committed a misrepresentation, fraud or other dishonest act;
    - (vi) has demonstrated incompetence or untrustworthiness in the operation of its business;
  - (c) consumers' rights and interests in respect of their data are threatened; or
  - (d) the carrying on of business by a credit bureau is no longer in the interest of the public or the effective and efficient operation of the credit reporting system is at risk.
- (2) The Central Bank shall, before the Bank suspends or revokes a licence granted to a credit bureau —
- (a) give to the credit bureau written notice of its intention to suspend or revoke the licence and include in the notice the reason for the intended suspension or revocation; and
  - (b) give the credit bureau, within such time as may be specified in the notice, an opportunity to make representation.
- (3) The Central Bank shall, where a credit bureau is notified pursuant to subsection (2) of the intended suspension or revocation of its licence and makes representation to the Bank, within a reasonable period —
- (a) consider the representation submitted by the credit bureau;
  - (b) make a decision; and
  - (c) subject to subsection (4), notify the credit bureau of its decision in writing.
- (4) On the suspension or revocation of a licence pursuant to this section —
- (a) the Central Bank shall give to the credit bureau a notice in writing of the Bank's decision —
    - (i) stating the reasons for the decision; and
    - (ii) informing the credit bureau of the right of review pursuant to Part VII and the right of appeal pursuant to Part VIII; and

- (b) the credit bureau shall cease to carry on business as a credit bureau as of the date specified in the notice referred to in paragraph (a).
- (5) Notwithstanding the provisions of this section, the Central Bank may at any time revoke the licence granted to a credit bureau where the credit bureau ceases to operate or carry on business as a credit bureau.
- (6) The Central Bank may, where the Bank considers it appropriate to do so and upon receipt of the prescribed fee, reinstate a licence that has been suspended by the Bank pursuant to section 11(4).

**14. Surrender of licence.**

- (1) A credit bureau which, otherwise than as a consequence of actions taken by the Central Bank under section 13(1), has ceased to operate or carry on business as a credit bureau shall —
  - (a) apply to the Central Bank to surrender its licence; and
  - (b) in support of its application under paragraph (a), submit evidence that it has ceased to carry on business as a credit bureau or has been or is being wound up.
- (2) The Central Bank may, upon application made pursuant to subsection (1), approve the surrender of a licence upon such terms and conditions as the Bank considers appropriate.

**15. Publication by the Central Bank.**

The Central Bank shall cause every notice of the grant, surrender, suspension, revocation or reinstatement of a licence to be published in the Gazette.

**16. Auditors and annual reports.**

- (1) Subject to subsection (5), a credit bureau shall —
  - (a) appoint an independent auditor to conduct an annual audit and compliance review of the credit bureau in accordance with this Act and applicable best practice standards; and
  - (b) within fourteen days of the appointment referred to in paragraph (a), notify the Central Bank in writing of the appointment of the auditor.
- (2) An auditor appointed pursuant to subsection (1) shall, as part of the annual audit, obtain from the credit bureau —
  - (a) a copy of the most recent report of inspection of the credit bureau prepared by the Central Bank; and

- (b) any order, direction, notice or other action issued or taken by the Central Bank to verify the credit bureau's compliance with this Act, the regulations and best practice.
- (3) A credit bureau shall, within three months of the end of its financial year, deliver to the Central Bank a signed copy of —
  - (a) its audited financial statements, management letter and compliance report; and
  - (b) the list of shareholders of, and their shareholdings in, the credit bureau.
- (4) Without prejudice to subsection (3), a credit bureau which is a public issuer within the meaning of the Securities Industries Act (*No. 10 of 2011*) shall publish its audited financial statements in accordance with the provisions of that Act.
- (5) A person who is not a member of the Bahamas Institute of Chartered Accountants is not qualified to be appointed an auditor under this section.

## **PART IV – CREDIT REPORTING**

### **17. Activities of a credit bureau.**

- (1) A credit bureau shall not engage in activities other than activities —
  - (a) specified in this Act and the regulations; or
  - (b) approved by the Central Bank in accordance with this Act.
- (2) A credit bureau may, in accordance with this Act and the regulations —
  - (a) collect, store, manage, evaluate, update and disseminate data subject information to users;
  - (b) compile and maintain databases in respect of data subject information and generate reports from such databases;
  - (c) carry out market and statistical research;
  - (d) develop and make available to subscribers value added products;
  - (e) provide, on a continuous basis, consultancy and training regarding credit reporting including the publication of educational materials; and
  - (f) carry out such other activity as the Central Bank may from time to time prescribe in regulations.

**18. Credit information providers.**

- (1) For the purposes of this Act, the following credit providers providing credit to a data subject are credit information providers who shall also provide data subject information to a credit bureau —
  - (a) a bank licensed pursuant to the Banks and Trust Companies Regulation Act (*Ch. 316*);
  - (b) a person licensed pursuant to the Insurance Act (*Ch. 347*) provided such information is limited to information obtained by such person in their capacity as a credit provider within the meaning of section 2;
  - (c) a person licensed pursuant to the Financial and Corporate Service Providers Act (*Ch. 369*), provided such information is limited to information obtained by such person in their capacity as a credit provider within the meaning of section 2;
  - (d) a credit union registered pursuant to the Bahamas Co-operative Credit Unions Act (*No. 9 of 2015*);
  - (e) the Bahamas Mortgage Corporation or any other person licensed pursuant to any law to provide in The Bahamas mortgage services; or
  - (f) the Bahamas Development Bank.
- (2) Notwithstanding any other law, the Central Bank may by notice published in the *Gazette* designate as a credit information provider, where the Bank is of the opinion that such designation is in the public interest —
  - (a) a credit provider not referred to in subsection (1);
  - (b) a public registry;
  - (c) any person licensed by the Utilities Regulation and Competition Authority under Part IV of the Communications Act (*Ch. 304*);
  - (d) Bahamas Power and Light Company Ltd established pursuant to sections 11 and 12 of the Electricity Act (*No. 48 of 2015*);
  - (e) the Water and Sewerage Corporation established pursuant to section 4 of the Water and Sewerage Corporation Act (*Ch. 196*); and
  - (f) any person carrying on the business of selling goods pursuant to hire purchase, conditional sale agreements or credit sales pursuant to the Hire Purchase Act.

**19. Credit reports.**

- (1) Subject to subsection (2) and the regulations, a credit report issued by a credit bureau may contain positive information and negative information.

- (2) A credit bureau shall not include in a credit report information —
- (a) regarding a judgement against the data subject in relation to a judgement creditor unless the judgement creditor confirms in writing that the judgement debt remains outstanding in whole or in part and the credit file of the data subject contains the —
    - (i) confirmation by the judgement creditor that the debt remains outstanding;
    - (ii) date and amount of the judgement;
    - (iii) name and, where available, the address of the judgement creditor, or agent of the judgement creditor, at the date of entry of the judgement;
  - (b) regarding the race, creed, colour, medical information, ancestry, ethnic origin or political affiliation of a data subject or such other sensitive personal information; and
  - (c) retained in contravention of section 27.
- (3) A credit bureau shall not —
- (a) provide a credit report that lists all data subjects with good payment history unless there is a permissible purpose under section 20 regarding such listing; or
  - (b) wilfully or intentionally omit from a credit report of a data subject information that can impact the ability of the data subject to access credit.
- (4) A credit bureau which wilfully or intentionally contravenes or fails to comply with a provision of subsection (3) commits an offence.

## **20. Permissible purposes.**

- (1) Subject to subsection (3), a credit bureau shall not knowingly provide to a person information from the credit files of a data subject except for a permissible purpose specified in subsection (2).
- (2) Subject to section 25 and the regulations, a credit bureau may provide a credit report to a user for —
  - (a) the consideration of an application for credit or an offer by a person to act as a guarantor of an application for credit;
  - (b) use relating to or in connection with the —
    - (i) purchase or collection of a debt of the data subject;
    - (ii) entry into or renewal of a tenancy agreement with the data subject;
    - (iii) underwriting of insurance involving the data subject;

- (iv) pre-employment check of the data subject for a position involving significant financial risk;
  - (c) use in connection with a business or credit transaction involving the data subject;
  - (d) periodic portfolio monitoring and risk assessment purposes, collection and skip tracing; and
  - (e) any other permissible purpose as the Central Bank may, from time to time, specify in regulations.
- (3) Notwithstanding subsections (1) and (2), a credit bureau shall, in response to a court order, provide information from the credit file of a data subject.
- (4) A credit bureau that wilfully or intentionally discloses data subject information in contravention of a provision of this section commits an offence.

## **21. Obligations of credit information providers.**

- (1) A credit information provider shall in accordance with this Act and any regulations made thereunder—
- (a) provide accurate information to a credit bureau;
  - (b) update and submit all data subject information to a credit bureau within such time as may be agreed between the credit bureau and the credit information provider; and
  - (c) ensure rigorous standards of security and reliability with respect to the data subject information of a data subject.
- (2) Subject to subsection (3) and the regulations, a credit information provider that furnishes data subject information to a credit bureau shall disclose —
- (a) the amount and nature of loans granted to the data subject by a credit provider;
  - (b) the nature of any security provided by the data subject in respect of loans granted to the data subject by a credit provider;
  - (c) the nature of any guarantee or other non-fund based facility furnished to the data subject by a credit provider;
  - (d) information in relation to transactions involving a credit provider relating to the data subject's income, creditworthiness or history of financial transactions, including antecedents and adverse court judgements, obtained by the credit information provider; and
  - (e) such other credit related information as the Central Bank —
    - (i) for the purposes of this Act and the regulations, considers appropriate to include as credit information; and

- (ii) specifies by notice published in the Gazette.
- (3) A credit information provider shall not provide credit information in respect of a data subject to a credit bureau unless the credit information provider is satisfied, after undertaking all reasonable enquiries and investigations, that such information is reliable.
- (4) For the purposes of this section, credit information is reliable where the credit information is —
  - (a) accurate in all material respects; and
  - (b) presented in a fair and balanced manner.
- (5) A credit information provider that contravenes subsection (3) commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars.

## **22. Data management and quality control.**

- (1) A credit bureau shall —
  - (a) implement procedures that ensure that the information registered or contained in its database is updated as frequently as needed or at least once a month;
  - (b) implement strict quality control procedures in order to ensure the maximum possible accuracy and completeness of its database;
  - (c) take all such steps as are reasonably necessary to ensure that data subject information maintained by the credit bureau is up to date, authentic, legitimate, reliable, accurate and comprehensive;
  - (d) maintain and keep all records prescribed by this Act and the regulations; and
  - (e) otherwise maintain reasonable procedures to —
    - (i) limit the furnishing of data subject credit reports to the permissible purposes referred to in section 20; and
    - (ii) promote compliance with this Act and the regulations.
- (2) Without limiting the generality of subsection (1), a credit bureau shall ensure that —
  - (a) the procedures and steps referred to in that subsection are lawful, fair, adequate, relevant and not excessive;
  - (b) data subject information is not —
    - (i) used or disclosed in a manner incompatible with any permissible purpose;
    - (ii) kept longer than is necessary for any permissible purpose except in the case of personal information kept for historical, statistical or research purposes; and

- (c) in accordance with section 23, appropriate security measures are taken against the unauthorized access to, alteration, disclosure, accidental loss or destruction of, data subject information.
- (3) A credit bureau that contravenes or fails to comply with a provision of subsection (1) or subsection (2) commits an offence.

**23. Security and control measures.**

- (1) A credit bureau shall in respect of data subject information kept and maintained by the credit bureau —
  - (a) take the necessary security and control measures in order to avoid —
    - (i) illegal interception or interruption of the data subject information during transmission;
    - (ii) accidental or unauthorised access to, loss, destruction, alteration, modification or disclosure of the data subject information;
    - (iii) other misuse regarding the data subject information, including misuse by anyone with authorised access to the data subject information;
  - (b) keep and maintain an access log regarding the data subject information, including procedures performed; and
  - (c) make available to the data subject the name of each user and the date on which the user obtained access to the data subject's information.
- (2) Without limiting paragraph (a) of subsection (1), a credit bureau shall, for the purpose of safeguarding and protecting the data subject information which it keeps and maintains —
  - (a) develop written policies and procedures to be followed by its employees, agents and contractors in relation to the provision of credit reporting services pursuant to this Act and the regulations;
  - (b) impose access authentication controls, including the use of passwords, credential tokens or other mechanisms;
  - (c) ensure that a subscriber agreement, as may be prescribed, is in place before disclosing information to a subscriber;
  - (d) provide information and training to ensure compliance with the policies and procedures referred to in paragraph (a);
  - (e) monitor usage of, and regularly check compliance with, the subscriber agreement, policies, procedures and controls pursuant to paragraphs (a), (b) and (c);

- (f) identify and investigate possible breaches of the —
    - (i) subscriber agreement, policies, procedures and controls pursuant to paragraphs (a), (b) and (c);
    - (ii) requirements of this Act and the regulations;
  - (g) take prompt and effective action in respect of any breach that is identified pursuant to paragraph (f); and
  - (h) systematically review the effectiveness of the policies, procedures and authentication controls pursuant to paragraphs (a) and (b) and, where applicable, promptly remedy any deficiencies observed or detected.
- (3) Subject to the approval of the Central Bank, a credit bureau and a credit information provider shall enter a subscriber agreement to provide for the receipt of data subject information by the credit bureau from the credit information provider, using such standard data format as the Central Bank may after consultation with the credit bureau approve.
- (4) Notwithstanding the termination of a subscriber agreement referred to in subsection (3), a credit information provider shall, for such time as the Central Bank may specify, continue to supply to the credit bureau credit and personal information regarding a data subject who was previously part of the periodic update pursuant to the terms and conditions of the agreement as if the agreement were not terminated.
- (5) A credit bureau commits an offence where the bureau contravenes or fails to comply with a provision of subsections (1), (2) or (4).

#### **24. Data subjects' rights of access and correction.**

- (1) A data subject is entitled to —
- (a) know what information in respect of the data subject was submitted to a credit bureau by a credit information provider;
  - (b) access data subject information relating to the data subject kept, maintained or otherwise processed by a credit bureau; and
  - (c) obtain annually from a credit bureau a copy of the data subject's credit report without cost to the data subject.
- (2) A credit bureau shall, where a data subject requests a credit report or information relating to that data subject, within five working days after receipt of such request furnish the credit report or information in accordance with this Act and the Regulations.
- (3) A credit bureau shall provide to a data subject detailed information regarding the procedures for accessing or correcting credit information and personal information kept, maintained or otherwise processed by such credit bureau in relation to the data subject.

- (4) Without prejudice to the generality of subsection (3), a data subject is entitled, whenever a credit bureau is required to correct any credit information or personal information kept, maintained or otherwise processed by the credit bureau in relation to the data subject, to a copy of the corrected credit report without cost to the data subject.
- (5) The Central Bank may make regulations to provide for the correction of incomplete, obsolete, misleading, erroneous or inaccurate credit information kept and maintained by a credit bureau in relation to a data subject.

**25. Consent requirements.**

- (1) Except with the consent of a data subject, a subscriber shall not request or obtain a credit report for a permissible purpose in respect of the data subject.
- (2) A credit bureau shall not release data subject information to a user that is not a party to a subscriber agreement unless the credit bureau —
  - (a) verifies the identities of the data subject and the user;
  - (b) verifies that the data subject has given consent for the release of the data subject information to the user; and
  - (c) uses reasonable means of transmission that ensures that the data subject's credit report is not altered, modified or corrupted during the transmission process.
- (3) For the purposes of this section, the consent of a data subject may be obtained by —
  - (a) electronic means;
  - (b) prominently displaying information regarding the consent in a clear and comprehensible manner in an application for credit, insurance, employment or tenancy; or
  - (c) any other method that enables the subscriber, other user or credit bureau to produce valid evidence that the data subject consented.
- (4) Subject to section 27, the consent of a data subject, where there is a contract respecting the credit relationship between the credit provider and the data subject, expires upon the termination of the contract.
- (5) A person who, using false pretences, intentionally and without authority, obtains information regarding a data subject from a credit bureau commits an offence.

**26. Denial of credit.**

- (1) Where a credit provider denies credit to a data subject as a result of negative information contained in a credit report regarding the data subject —
  - (a) the credit provider shall, within such time as may be prescribed by regulations, notify the data subject of the denial of the credit; and
  - (b) the data subject may, without cost to the data subject, request a copy of the credit report from the credit bureau.
- (2) The copy of the credit report referred to in paragraph (b) of subsection (1) is in addition to the copy of the credit report which a data subject is entitled to receive annually pursuant to section 24(1)(c).

**27. Restrictions regarding disclosure of data subject information.**

- (1) A credit bureau that obtains credit information in relation to credit extended to or in respect of a data subject shall not disclose such information for a period longer than five years after the date of termination or settlement of such credit.
- (2) A credit bureau that knowingly, negligently or willfully contravenes subsection (1) commits an offence.

**28. Supplying false information prohibited.**

- (1) No person shall knowingly, negligently or recklessly supply false or misleading information regarding a data subject to a credit bureau.
- (2) A person who knowingly, negligently or recklessly supplies false or misleading information regarding a data subject to a credit bureau commits an offence.

**29. Void agreements.**

A subscriber agreement or an agreement referred to in section 44, is void where such agreement states or implies that —

- (a) the provisions of this Act or the regulations do not apply to the agreement;
- (b) a right or remedy provided by or pursuant to this Act or the regulations —
  - (i) does not apply to the agreement; or
  - (ii) is in any way limited, modified or abrogated by the agreement.

**30. Resolution of disputes.**

- (1) The Central Bank may, by regulations made pursuant to section 54, provide for the investigation and resolution of disputes regarding credit bureaus, credit information providers, users and data subjects.
- (2) A data subject may, in the manner prescribed in regulations, dispute the accuracy of information produced in a credit report from data kept and maintained by a credit bureau regarding the data subject.
- (3) During an investigation of a dispute pursuant to this section, the credit bureau shall make in the credit report of the relevant data subject a notation that the credit information has been challenged.
- (4) The parties to a dispute may, in the resolution of a dispute pursuant to this section, utilise conciliation, mediation or other alternative dispute resolution techniques or processes.

**31. Cross-border data flow.**

- (1) Subject to subsection (2), a credit bureau may with the prior written approval of the Central Bank outsource or otherwise sub-contract the processing of data subject information in its possession or control to a person or entity based or operating outside The Bahamas.
- (2) The Central Bank may prohibit the transfer of data subject information from The Bahamas to a place outside The Bahamas where the Bank has reason to believe that the data subject information is not, or is not likely to be, protected in a like or similar manner as prescribed in this Act and the regulations.

## **PART V – SUPERVISION BY THE CENTRAL BANK**

**32. Information gathering powers of the Central Bank.**

- (1) The Central Bank may, as the Bank considers necessary for the proper discharge of its functions under this Act, require —
  - (a) by notice in writing, a relevant person to supply to the Bank information or documents in such form and at such times as may be specified in the notice;
  - (b) access to the information or documents of a relevant person referred to in paragraph (a).
- (2) The Central Bank may, where a relevant person fails without reasonable cause to comply with a requirement in a notice issued by the Central Bank

- under subsection (1), apply to a magistrate for an order requiring the person to comply with the requirement within a specified time.
- (3) A magistrate may, in an order made on application by the Central Bank pursuant to subsection (2), impose on the relevant person for non-compliance with the order without reasonable cause —
- (a) a fine not exceeding ten thousand dollars; and
  - (b) a further fine of two hundred and fifty dollars for each day the non-compliance continues.
- (4) The Central Bank may, where in connection with a requirement under subsection (1) the Bank considers it necessary for a relevant person to be examined on oath or by affirmation, apply to a magistrate for an order requiring —
- (a) the person to attend to be examined by the court; and
  - (b) the results of the examination to be provided to the Bank.
- (5) An application under subsection (4) shall be processed within seven days of its receipt by the court and the results of the examination provided to the Central Bank within fourteen days of completion of the examination.
- (6) Any document provided to the Central Bank under subsection (1) shall be the property of the Central Bank.
- (7) For the purposes of this section —
- “relevant person” means a credit bureau, a connected person, or a person reasonably believed to have the information or document relevant to an inquiry by the Central Bank; and
  - “connected person” means a person who is a significant shareholder, director, officer, employee, or agent of a credit bureau.
- (8) For the avoidance of doubt, nothing in this section or section 33 empowers or authorises the Central Bank to access the credit information of a data subject without —
- (a) the consent of the data subject; or
  - (b) an order of a court.

### **33. Inspections.**

- (1) The Central Bank, or its appointed agent, may conduct an inspection of a credit bureau —
- (a) prior to the grant of a licence pursuant to section 7; and
  - (b) from time to time as the Bank determines to be necessary or appropriate, for the purpose of being satisfied that the provisions of this Act and of any regulations made under this Act are being

complied with and that the credit bureau is in a sound financial position;

- (2) Where the Central Bank, or its appointed agent, on inspection of a credit bureau has reason to believe that the credit bureau is —
  - (a) conducting its business in an unlawful manner; or
  - (b) in a condition that endangers, or is likely to endanger, the credit worthiness, credit standing, credit capacity, character, general reputation or personal characteristics of data subjects,

the Bank may direct the credit bureau to take general or specific measures to rectify the situation within such time period as the Bank may specify in the direction.

- (3) The Central Bank may, in carrying out an inspection under subsection (1), inquire into and examine —
  - (a) the business affairs of the credit bureau with respect to which the inspection is being made;
  - (b) any record of the credit bureau with respect to which the inspection is being made including any payments to, by or on behalf of, in relation to or in connection with, the credit bureau;
  - (c) any property or assets of, or things owned, acquired or alienated in whole or in part by —
    - (i) the credit bureau with respect to which the inspection is being made; and
    - (ii) any person acting on behalf of, or as agent for, the credit bureau with respect to which the inspection is being made.
- (4) A credit bureau or any other person with respect to which an inspection under this section is being made shall comply, within the period specified by the Bank, with any direction or request made by the Bank under this section.
- (5) A credit bureau or other person that contravenes or fails to comply with subsection (4) commits an offence.

#### **34. Warrants.**

- (1) The Central Bank may, where a person required by the Bank pursuant to this Part to produce records fails or neglects to do so, apply *ex parte* to a magistrate for a warrant authorizing the Bank, or a person named in the warrant, to —
  - (a) enter and search premises named in the warrant for the records that the person failed or neglected to produce;
  - (b) seize and take possession of the records; and

- (c) where applicable, make copies of any records seized.
- (2) A magistrate may issue a warrant where, on oath or affirmation of a director, officer, employee or agent of the Central Bank, the magistrate is satisfied that —
  - (a) the Bank requires a person to produce records pursuant to this Act; and
  - (b) the person from whom the production of the records is required has failed or neglected to produce the records.

### **35. Costs of inspections.**

Where the Central Bank or an agent of the Bank conducts an inspection or inquiry into a credit bureau pursuant to this Part, the person with respect to whom the inspection or inquiry is made shall pay the fees and costs of the inspection or inquiry, including the costs of any travel undertaken in the course of the conduct of the inspection or inquiry.

### **36. Court order.**

- (1) The Central Bank may, where the Bank has reason to believe that a person has failed to comply with this Act, the regulations or an order, direction or notice of the Bank, apply to the Supreme Court for any or all of the following remedies —
  - (a) an order directing the person to comply with this Act, the regulations or the order, direction or notice of the Bank;
  - (b) an order restraining the person from contravening this Act, the regulations or the order, direction or notice of the Bank;
  - (c) in the case of a body corporate, an order —
    - (i) directing the directors and officers of the body corporate to comply with this Act, the regulations or the order, direction or notice of the Bank, or
    - (ii) restraining the directors and officers of the body corporate from contravening this Act, the regulations or the order, direction or notice of the Bank;
  - (d) any other order, relief or remedy that the Supreme Court may grant.
- (2) The Supreme Court may, on hearing an application pursuant to subsection (1), make such order as the Supreme Court considers appropriate.

## **PART VI – CIVIL LIABILITY**

### **37. Civil liability for grossly negligent non-compliance.**

- (1) A person who, due to gross negligence, fails to comply with a requirement imposed by this Act or the regulations shall be civilly liable to a data subject for any injury suffered by the data subject by reason of such failure.
- (2) A person found by a court to be liable to a data subject pursuant to subsection (1) is liable in an amount equal to the sum of—
  - (a) the actual damages sustained by the data subject by reason of the grossly negligent failure; and
  - (b) the costs of the action together with reasonable attorney's fees.

## **PART VII – CREDIT REPORTING REVIEW COMMISSION**

### **38. Right to review.**

- (1) Without prejudice to the provisions of Part VI—
  - (a) an aggrieved data subject may seek a review of the action, decision or conduct of a credit bureau where the credit bureau fails to issue a decision within the prescribed time for resolving a credit dispute or where the data subject is not satisfied with the decision of the credit bureau in relation to a credit dispute; and
  - (b) an aggrieved credit bureau may seek a review of the action or decision of the Central Bank.
- (2) An application for a review by an aggrieved person pursuant to subsection (1) shall—
  - (a) be filed in writing in the English language with the secretary to the Review Commission, within the time and in the manner prescribed in regulations;
  - (b) contain the reasons why the applicant is seeking the review;
  - (c) be accompanied by, where applicable—
    - (i) the prescribed documents in support of the application; and
    - (ii) payment of the prescribed deposit.
- (3) The deposit referred to in subsection (2) is liable to be forfeited where the Review Commission determines that the application for review is frivolous or irrelevant or is not made in good faith.

(4) For the purposes of this Part —

“aggrieved credit bureau” means a credit bureau that claims to have suffered, or is likely to suffer, loss or injury by reason of an action or decision of the Central Bank pursuant to this Act or the regulations;

“aggrieved data subject” means a data subject who claims to have suffered, or is likely to suffer, loss or injury by reason of an action or decision of, or a breach of a duty imposed on, a credit bureau by or pursuant to this Act or the regulations; and

“aggrieved person” means an aggrieved credit bureau or an aggrieved data subject.

### **39. Review Commission.**

- (1) Subject to subsection (2), the Minister may, from time to time, appoint a Review Commission for the purposes of hearing and determining applications for review pursuant to this Part.
- (2) Subject to section 40, the *Schedule* shall have effect with regard to the constitution, operations and procedures of the Review Commission.

### **40. Review proceedings.**

- (1) Upon the filing in accordance with subsection (2) of section 38 of an application for review —
  - (a) the secretary to the Review Commission shall, within five days of the filing of the application, inform the credit bureau or the Central Bank, as the case may be; and
  - (b) any person whose interests are affected or likely to be affected by the review proceedings —
    - (i) has a right to participate in such proceedings; and
    - (ii) where such person fails to participate in such proceedings, is not entitled to file a subsequent application for review on the same facts and grounds in respect of the same matter.
- (2) The Review Commission —
  - (a) shall expeditiously consider any application submitted to it for review;
  - (b) in considering an application for review of an action or decision of the Central Bank or a credit bureau —
    - (i) shall consider the materials contained in the administrative record kept and maintained by the Bank or the credit bureau, as the case may be;

- (ii) may not consider information arising, or events that occurred, after the date on which the action or decision which is the subject of the application was taken or made; and
  - (c) may decide the matters upon which it shall hear oral evidence or arguments.
- (3) The Review Commission may, in accordance with the regulations, require any person to —
  - (a) attend before the Commission to give evidence under oath or on affirmation with respect to any matter related to a review;
  - (b) produce records regarding any matter referred to in paragraph (a);
  - (c) present to the Commission arguments or submissions respecting any matter related to a review, in person or in writing, within such time as may be specified in regulations.
- (4) The Review Commission may, where a person fails or refuses to comply with a requirement referred to in subsection (3), apply to the Supreme Court for an order requiring the person to comply with the requirement of the Commission.

#### **41. Decisions of the Review Commission.**

- (1) The Review Commission shall —
  - (a) within twenty-eight days of the date of filing of an application for review, issue a written decision concerning the application containing the reasons for the decision and the remedies granted, if any;
  - (b) no later than seven days from the date of a decision of the Commission, provide a copy of the written decision referred to in paragraph (a) —
    - (i) to the aggrieved person, together with a notification of the right of the aggrieved person to appeal the decision pursuant to Part VIII; and
    - (ii) to any other person who participated in the review proceedings.
- (2) The Review Commission may, after the Commission has complied with paragraph (b) of subsection (1), make a copy of the written decision available for inspection by members of the public provided such disclosure is —
  - (a) not contrary to law;
  - (b) in the public interest;

- (c) not likely to prejudice the legitimate commercial interests of the aggrieved credit bureau or aggrieved data subject which is a party to the review proceedings; and
  - (d) not likely to prejudice other interests of the aggrieved data subject.
- (3) The Review Commission may dismiss an application for review where the Commission is of the opinion that the application —
  - (a) is frivolous or irrelevant;
  - (b) was not made in good faith;
  - (c) is devoid of sufficient grounds for a hearing;
  - (d) is not supported by evidence of probative value; or
  - (e) does not pertain to a matter which the Commission is empowered to deal with pursuant to this Act or the regulations.
- (4) The Review Commission, after making or causing to be made such inquiry or investigation as it thinks necessary, may —
  - (a) dismiss the application in accordance with subsection (3); or
  - (b) grant, as appropriate, one or more of the following remedies —
    - (i) direct the Central Bank or the credit bureau to act or to proceed in a lawful manner or to reach a lawful decision;
    - (ii) annul, wholly or in part, an act or decision of the Central Bank or the credit bureau;
    - (iii) subject to subsection (5), reverse an unlawful decision of the Central Bank or the credit bureau;
    - (iv) substitute its own decision for an unlawful decision of the Central Bank or the credit bureau.
- (5) The Review Commission may reverse the decision of the Central Bank only where —
  - (a) the Bank failed to follow the prescribed procedure;
  - (b) the Bank's decision is contrary to law;
  - (c) there was no factual basis for the Bank's decision;
  - (d) based on a review of the records, the Bank —
    - (i) committed a manifest error in its assessment of facts; or
    - (ii) abused its discretion.
- (6) A decision of the Review Commission, except where appeal proceedings are instituted pursuant to Part VIII, is final and binding.

## **PART VIII – APPEALS**

### **42. Appeals to Supreme Court.**

- (1) A person who is the subject of a decision or order of the Review Commission may, within twenty-eight days of the date of receipt of the decision or order, appeal the decision or order to the Supreme Court.
- (2) An appellant shall serve a notice of appeal on the Review Commission and any other person that the Supreme Court may order.
- (3) On receipt of a notice of appeal pursuant to subsection (2), the Review Commission shall file with the court true copies of—
  - (a) all documents and materials that were before the Commission when the Commission made its decision or order;
  - (b) the decision or order appealed against; and
  - (c) the written reasons for the decision or order of the Commission, as applicable.
- (4) The Supreme Court may, on hearing an appeal pursuant to this section—
  - (a) dismiss the appeal;
  - (b) allow the appeal;
  - (c) allow the appeal subject to terms and conditions;
  - (d) vary the decision or order of the Review Commission;
  - (e) refer the matter back to the Review Commission for further consideration and a decision or an order; or
  - (f) make any other order that the Supreme Court considers appropriate.
- (5) The Supreme Court may make any order as to costs with respect to an appeal that the Supreme Court considers appropriate.
- (6) The commencement of an appeal pursuant to this section does not stay the effect of the decision or order appealed against, unless a judge of the Supreme Court orders otherwise.

### **43. Appeals to Court of Appeal.**

- (1) The Central Bank, a credit bureau, or a person who is the subject of a decision or order of the Supreme Court may, within six weeks of the date of the decision or order of the Supreme Court, appeal the decision or order to the Court of Appeal on a question of law only.
- (2) The commencement of an appeal pursuant to this section does not stay the effect of the decision or order appealed from, unless the Court of Appeal orders otherwise.

## PART IX – MISCELLANEOUS PROVISIONS

### 44. Agreements with other bodies.

- (1) The Central Bank may enter into an agreement with an overseas regulatory authority —
  - (a) for the purpose of administering or enforcing this Act; or
  - (b) for any other purpose respecting credit reporting services that the Central Bank believes is in the public interest.
- (2) For the purposes of subsection (1), an overseas regulatory authority is an authority which, in a country or territory outside The Bahamas, exercises functions corresponding to any of the functions of the Central Bank under this Act.

### 45. Confidentiality and restrictions regarding access to information.

- (1) Information obtained by the Central Bank as a result of an inspection, audit, investigation or inquiry under this Act, or pursuant to section 53(1) (b), shall not be available for access by any person except —
  - (a) directors, officers or employees of the Central Bank whose responsibilities require or allow them to have access to the information; or
  - (b) such persons as may be authorized in writing by the Central Bank to have access to such information.
- (2) An authorized person, director, officer or employee of the Central Bank shall not, unless authorized by this Act or another law or with the consent of the person to whom the information relates —
  - (a) communicate or allow to be communicated information obtained pursuant to this Act to a person who is not legally entitled to the information; or
  - (b) allow a person who is not legally entitled to information obtained pursuant to this Act to have access to such information.
- (3) No person who is given or permitted access to information pursuant to this section shall be compellable to give evidence concerning such information unless —
  - (a) the person to whom the information relates consents; or
  - (b) a court, on an application, orders the evidence to be given.
- (4) On an application for an order pursuant to paragraph (b) of subsection (3) —
  - (a) the Central Bank and the person to whom the information relates are entitled to appear before the court and to make submissions; and

- (b) the person seeking the order to compel the giving of the evidence must prove to the satisfaction of the court that it is in the public interest to make the order.
- (5) For the purposes of subsection (2), an authorised person is a person authorized by the Central Bank to inspect or have access to information obtained by the Bank as a result of —
  - (a) an inspection, audit, investigation or inquiry pursuant to this Act; or
  - (b) the transfer pursuant to section 53(1)(b) of a credit bureau's database to the Central Bank.

#### **46. Evidence regarding certificate of Central Bank.**

A certificate of the Central Bank certifying that —

- (a) a person named in the certificate was licensed or was not licensed;
- (b) a licence was granted to a person on a date set out in the certificate; or
- (c) a licence granted to a person was suspended or revoked or made subject to terms and conditions,

is admissible in evidence as proof, in the absence of evidence to the contrary, of the facts stated in the certificate without proof of the signature or official position of the person purporting to have signed the certificate.

#### **47. General offences.**

A person commits an offence who wilfully —

- (a) makes a false or misleading statement in an application, proceeding, or in response to an inspection or audit pursuant to this Act or the regulations; or
- (b) fails to comply with an order, notice or direction made pursuant to this Act or the regulations.

#### **48. Offences by body corporate.**

- (1) Subject to subsection (2), every director, partner or other senior officer of a body corporate which commits an offence under this Act or the regulations shall be —
  - (a) proceeded against as if such director, partner or other senior officer committed the offence; and
  - (b) liable on summary conviction to a fine of ten thousand dollars whether or not an action has been instituted against the body corporate.

- (2) A director, partner or other senior officer of a body corporate does not commit an offence under subsection (1) where such director, partner or other senior officer is able to show that he neither knew of nor connived in the commission of the offence.

#### **49. General penalties.**

A person who commits an offence pursuant to this Act for which no penalty is specified or provided is liable, on summary conviction, to a minimum fine of ten thousand dollars and a maximum fine not exceeding one hundred thousand dollars.

#### **50. Fixed penalties.**

- (1) Notwithstanding section 49, the Central Bank may, where the Bank has reason to believe that a person has committed an offence pursuant to this Act or the regulations, issue to the person a notice in writing —
  - (a) specifying the offence against the Act or the regulations the Bank has reason to believe has been committed;
  - (b) offering the person the option to discharge any liability to prosecution and conviction in respect of the offence by payment of a fixed penalty of ten thousand dollars; and
  - (c) giving the person no less than seven days from the date of receipt of the notice to show cause why the fixed penalty should not be imposed.
- (2) A fixed penalty may be imposed, after the period referred to in paragraph (c) of subsection (1) has elapsed, by order of the Central Bank.
- (3) A fixed penalty payable under this Act or the regulations shall be paid to the Central Bank within ten days from the date of its imposition, unless otherwise stated.
- (4) Subject to subsection (6), the Central Bank may, where a credit bureau fails to pay a fixed penalty within such time as may be specified in a notice issued pursuant to subsection (1), recover the amount due on the fixed penalty from a bank guarantee provided under section 9.
- (5) The Central Bank shall, for the purpose of recovering from a bank guarantee the amount due on a fixed penalty payable by a credit bureau, issue an order to the bank issuing the guarantee —
  - (a) notifying the bank of the failure of the credit bureau to pay the amount due on the fixed penalty; and
  - (b) directing the bank to immediately pay up the amount to the Central Bank.

- (6) Where the amount due on a fixed penalty has been recovered from a bank guarantee in accordance with this section —
  - (a) the Central Bank shall by notice in writing inform the credit bureau of the recovery; and
  - (b) the credit bureau shall, within thirty days of being notified by the Central Bank of the recovery from the bank guarantee, furnish the Bank with a new irrevocable bank guarantee —
    - (i) in the amount required to be submitted pursuant to paragraph (a) of subsection (2) of section 9; and
    - (ii) in a format acceptable to the Central Bank.
- (7) Without prejudice to any action taken by the Central Bank pursuant to subsection (6)(a), the Central Bank may suspend or revoke the licence of a credit bureau which fails to comply with subsection (3) or with subsection (6)(b).

#### **51. Limitation on prosecution.**

No prosecution for an offence committed pursuant to this Act or the regulations shall be commenced after a period of more than two years from the date on which the offence is alleged to have been committed.

#### **52. Immunity.**

- (1) No action or proceeding lies or shall be commenced against the Central Bank, its directors, officers, employees or agents or an authorised person, for anything done, caused, permitted or authorized to be done, attempted to be done or omitted to be done in good faith by the Bank, its directors, officers, employees or agents or such authorised person —
  - (a) in the exercise or purported exercise of a power conferred by this Act or the regulations; or
  - (b) in the carrying out or purported carrying out of an order made pursuant to this Act or a duty imposed by this Act or the regulations.
- (2) The Central Bank shall indemnify its directors, officers, employees, agents and authorised persons against the cost of defending their actions while discharging their functions in good faith.

#### **53. Protection of databases upon liquidation.**

- (1) Notwithstanding any provision to the contrary contained in the Companies Act (*Ch. 308*)—

- (a) a credit bureau shall not pass a resolution for the suspension of its activity or the voluntary winding up of its business unless the credit bureau first obtains the approval in writing of the Central Bank;
  - (b) where a credit bureau is being wound up or liquidated —
    - (i) the database containing data subject information shall be transferred to the Central Bank; and
    - (ii) the Central Bank shall determine whether the credit reporting activities which were undertaken by the credit bureau shall be continued or whether the data subject information shall be destroyed or transferred to another licensed credit bureau, following a bidding process.
- (2) Notwithstanding the provisions of section 32(8) and subject to section 45(1), the Central Bank shall for a period not exceeding twelve months retain the right to use the credit bureau's platform until the evaluation and selection process to grant a new credit bureau licence is completed.
- (3) The Central Bank shall, where the Bank determines not to transfer data subject information to another licensed credit bureau, issue an order regarding the disposal or destruction of the data subject information held by the credit bureau that is being wound up or liquidated.

#### **54. Regulations.**

- (1) The Central Bank may make regulations —
- (a) prescribing the fees to be paid for the grant of licences, the continuation of licences, and the reinstatement of licences that have been suspended;
  - (b) prescribing any matter that is required or authorized by this Act to be prescribed; and
  - (c) respecting any matter that the Bank considers necessary to carry out the intent or purposes of this Act.
- (2) Regulations made pursuant to this Act may create offences and prescribe penalties for such offences not exceeding the limits provided in relation to a fixed penalty under section 50.

## **SCHEDULE (Section 39(2))**

### **CONSTITUTION, OPERATIONS AND PROCEDURES OF THE REVIEW COMMISSION**

#### **1. Constitution of Review Commission.**

A Review Commission shall consist of —

- (a) the Data Protection Commissioner who shall be the chairperson;
- (b) the Chairman of the Consumer Protection Commission; and
- (c) one person appointed by the Minister, on the recommendation of the Data Protection Commissioner, from among persons who have wide experience and qualifications in legal, administrative, economic or financial matters.

#### **2. Disqualification.**

A person is not qualified to be appointed, or to remain, a member of a Review Commission where such person —

- (a) is convicted of an offence involving dishonesty or an offence pursuant to this Act;
- (b) does not possess the experience and qualifications specified in paragraph 1(c) of this Schedule;
- (c) is a member of the Senate or the House of Assembly; or
- (d) is a director, an officer, an employee or an auditor of the Central Bank, a credit bureau or credit information provider.

#### **3. Secretary to Review Commission.**

- (1) The Minister shall appoint a suitably qualified person to act as secretary to the Review Commission.
- (2) The secretary shall provide administrative support to the Review Commission and is responsible for —
  - (a) preparing the agenda for each sitting of the Commission;
  - (b) giving notice of sittings which includes the agenda, day, time and place of such sittings to members and other persons whose attendance is necessary or advisable;
  - (c) recording the proceedings of the Commission;
  - (d) providing copies of the records of the proceedings to members;
  - (e) preparing the correspondence and reports of the Commission; and

- (f) carrying out such other tasks as are assigned to the secretary by the Commission.

#### **4. Decisions of Review Commission.**

- (1) Decisions of the Review Commission shall be by a majority of the members.
- (2) A decision of the majority of the members of the Review Commission is a decision of the Review Commission.

#### **5. Sittings of Review Commission.**

- (1) The Review Commission shall sit as often as may be necessary to perform its duties and exercise its powers in an expeditious manner.
- (2) A sitting of the Review Commission shall be held on the days and at the times as the chairperson determines.
- (3) Subject to this *Schedule* and section 40 of this Act, the Review Commission shall determine its own procedure but shall give full opportunity to the parties to present evidence and make representation.

#### **6. Notice of sittings.**

- (1) The chairperson shall cause written notice of the place, day and time of every sitting of the Review Commission to be given to the relevant parties, not less than seventy-two hours before the time scheduled for the sitting.
- (2) Notice of the sittings of a Review Commission shall be given to a relevant party by —
  - (a) in the case of an individual —
    - (i) handing a copy of the notice to the individual;
    - (ii) sending by facsimile transmission a copy of the notice to the individual at the fax number of the individual;
    - (iii) sending by electronic mail a copy of the notice to the individual at the electronic address of the individual;
  - (b) in the case of a credit bureau —
    - (i) leaving a copy with an employee at the office of the credit bureau;
    - (ii) sending by facsimile transmission a copy of the notice to the credit bureau at the fax number of the credit bureau;
    - (iii) sending by electronic mail a copy of the notice to the credit bureau at the e-mail address of the credit bureau; or

- (c) any other means approved by resolution of the Review Commission.

## **7. Resignations.**

A member of the Review Commission, other than the chairperson, may at any time resign his or her office by instrument in writing addressed to the Minister and transmitted through the chairperson and, from the date of receipt by the Minister of such instrument, such member shall cease to be a member of the Commission.

## **8. Publication of membership**

The Minister shall cause to be published in the *Gazette* the names of all members of the Review Commission as first constituted and every change in membership thereafter.

## **9. Remuneration.**

Subject to the approval of the Minister, the members of a Review Commission are entitled to remuneration in respect of a review, whether by way of honorarium, salaries, fees or allowances.

## **10. Disclosure of personal interest.**

- (1) A member of the Review Commission who has a direct or indirect personal interest in a matter being considered or to be considered by the Commission shall, as soon as reasonably practicable after the relevant facts concerning the matter come to his knowledge, disclose the nature of his interest to the Commission.
- (2) A disclosure of interest in a matter shall be noted in the relevant records of the proceedings of the Review Commission.
- (3) Where a member discloses a personal interest in a matter being considered or to be considered by the Review Commission, the member shall not —
  - (a) be present at the sitting of the Commission while that matter is being dealt with by the Commission; and
  - (b) take part in any deliberations or vote relating to the matter.

## **11. General authority of chairperson.**

- (1) Where any doubt, dispute or difference arises with respect to the interpretation of a provision of this *Schedule*, the decision of the chairperson of the Review Commission shall be final and binding.

- (2) Subject to Part VII of this Act, the chairperson of the Review Commission has the power and authority to regulate the conduct of the proceedings of the Commission to which the provisions of this Schedule apply in all matters not provided for in this Schedule.

### **OBJECTS AND REASONS**

The purpose of the Bill is to introduce for the first time a legal system of credit reporting within the financial system in The Bahamas to enable credit information sharing and reporting and thereby facilitate objective credit decisions by financial institutions and other credit providers. The Bill provides for the regulation of the conduct of credit reporting and credit reporting services, including the licensing by the Central Bank of credit bureaus, and institutes safeguards for the protection of the data of customers of credit providers.

Clause 1 of the Bill provides for the short title and empowers the Minister to appoint a date for the Bill to come into operation after enactment.

Clause 2 defines key words and phrases used in the Bill.

Clause 3 appoints the Central Bank as the supervisory and regulatory authority of the credit reporting system with responsibility for the general administration, supervision and implementation of the Act and regulations.

Clause 4 provides for the powers, functions and duties of the Central Bank.

Clauses 5 and 6 provide for the requirements of a licence to operate as a credit bureau and for application to be made to the Central Bank for such licence.

Clauses 7 to 10 empower the Central Bank to grant or refuse the grant of a licence, impose terms and conditions on the grant of a licence and approve the transfer of a licence.

Clause 11 provides for the duration of a credit bureau licence and the payment of fees.

Clause 12 empowers a credit bureau or an applicant for a licence in accordance with the regulations to implement a material change in circumstances affecting the application or the credit bureau.

Clause 13 provides for the circumstances in which the Central Bank may suspend or revoke a licence.

Clause 14 provides for the circumstances in which a credit bureau may apply to the Central Bank to surrender, and the Bank may approve the surrender of, a credit bureau licence.

Clause 15 mandates the Central Bank to publish in the *Gazette* every notice of a grant, suspension, revocation or reinstatement of a licence.

Clause 16 provides for the appointment annually of an independent auditor by a credit bureau and obligates a credit bureau to, *inter alia*, deliver annually to the Central Bank audited financial statements and a compliance report.

Clause 17 provides for the activities a credit bureau is permitted to engage in.

Clause 18 makes it mandatory for certain credit providers to provide data subject information to a credit bureau.

Clause 19 provides for the nature and accuracy of the information that may be contained in a credit report issued by a credit bureau.

Clause 20 provides for the permissible purposes for which a credit bureau may provide or disclose to a person the credit information of a data subject.

Clause 21 provides for the obligations of credit information providers and sets out the nature of the information they are required to disclose to a credit bureau, the duty to disclose only reliable information and to correct any inaccurate information disclosed.

Clauses 22 to 23 provide for data management and quality control of credit information by a credit bureau and for establishment and maintenance of security and control systems in relation to data subject information.

Clause 24 provides for the rights of a data subject to access and to request the correction of data subject information and a copy of any corrected credit report or information.

Clause 25 provides for a data subject's credit information not to be requested, obtained or provided by a user, credit bureau or credit information provider without the prior consent of the data subject.

Clause 26 obligates a credit provider to notify a data subject where there is a denial of credit as a result of a negative credit report and entitles the data subject to receive a copy of the credit report without cost to the data subject.

Clause 27 mandates a credit bureau not to disclose data subject information after a period of five years has elapsed since the termination or settlement of the credit extended or in relation to the data subject.

Clause 28 prohibits the supply of false or misleading information on a data subject to a credit bureau.

Clause 29 prohibits certain agreements, including subscriber and credit information provider agreements, from ousting the provisions of and rights and remedies afforded by the Act and regulations.

Clause 30 empowers the Central Bank to make regulations for the investigation and resolution of disputes regarding credit bureaus, users and data subjects.

Clause 31 provides for a credit bureau, with the approval of the Central Bank, to outsource or subcontract the processing of data subject information to an organisation based or operating outside The Bahamas.

Clause 32 authorizes the Central Bank to request information and documents which the Bank considers necessary for the proper discharge of its functions under the Act, from a credit bureau or other persons whom the Bank reasonably believes to have such information or documents. Clause 32 prohibits the Bank from accessing data subject information without a data subject's consent or a court order.

Clause 33 provides for the conduct of inspections of credit bureaus by the Central Bank.

Clause 34 empowers the Central Bank, where a person requested fails to produce records, to apply to a magistrate for a warrant authorising the entry and search of premises and seizure of such records.

Clause 35 provides for the fees and costs of an inspection or inquiry by the Central Bank into a credit bureau to be borne by the person with respect to whom such inspection or inquiry is made.

Clause 36 provides for the Central Bank to apply to the Supreme Court for such order, relief or remedy of the Court as appropriate to ensure compliance with the Act and regulations, and the directions and notices of the Bank.

Clause 37 provides for the civil liability of a person who, through gross negligence, fails to comply with the Act and regulations thereby causing injury to a data subject.

Clause 38 provides for the right of an aggrieved data subject to seek a review of the action, decision or conduct of a credit bureau and for an aggrieved credit bureau to seek a review of the action or decision of the Central Bank.

Clause 39 provides for the appointment by the Minister from time to time of a Review Commission and the constitution, operations and procedures of the Review Commission.

Clauses 40 to 41 provide for the proceedings and decisions of the Review Commission.

Clause 42 provides for an appeal from a decision or order of the Central Bank or Review Commission to the Supreme Court.

Clause 43 provides for an appeal to the Court of Appeal by the Central Bank or Review Commission on a matter of law only.

Clause 44 empowers the Central Bank to enter into agreements for mutual assistance with a government, regulatory authority, law enforcement agency, investigative body or person inside or outside The Bahamas.

Clause 45 provides for confidentiality and limitations on the access, provision and use of information obtained by the Central Bank as a result of an inspection, inquiry, investigation or audit of a credit bureau.

Clause 46 provides for a certificate of the Central Bank to be admitted in evidence in a court as presumptive proof of the facts stated therein.

Clause 47 provides for general offences in relation to the making of false or misleading statements, and for the failure to comply with an order, notice or direction, under the Act or the regulations.

Clause 48 provides for offences by a body corporate to be deemed to have been committed by every director, partner or senior officer of the body corporate.

Clause 49 provides for a general penalty in relation to offences for which no penalty is specified in the Act or regulations of a minimum fine of ten thousand dollars and a maximum fine not exceeding one hundred thousand dollars.

Clause 50 empowers the Central Bank to impose a fixed penalty of ten thousand dollars for offences against the Act and the regulations.

Clause 51 prohibits commencement of a prosecution for an offence under the Act or regulations after a period of more than two years from the date on which the offence is alleged to have been committed.

Clause 52 provides for the immunity from any action or proceeding of the Central Bank and authorized persons in respect of the good faith exercise of a power, duty or function pursuant to the Act or the regulations.

Clause 53 provides for the protection by the Central Bank of the data base of a credit bureau that is being wound up or liquidated.

Clause 54 empowers the Central Bank to make regulations prescribing fees and any other matter required or authorised to be prescribed by, or necessary for the carrying out of the intents and purposes of, the Act.