

**ANTIGUA AND BARBUDA**



**CREDIT REPORTING BILL 2017**

**NO. OF 2017**



**ANTIGUA AND BARBUDA  
CREDIT REPORTING BILL 2017**

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**ANTIGUA AND BARBUDA**  
**CREDIT REPORTING BILL 2017**

NO. [ ] OF 2017

**AN ACT** to provide for a fair and an 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 safeguard for data protection for customers of credit providers; to provide for a single space in the regulation of credit reporting and for related matters.

**ENACTED** by the Parliament of Antigua and Barbuda as follows-

**PART I**  
**PRELIMINARY**

**1. Short title**

(1) This Act may be cited as the Credit Reporting Act 2017.

(2) This Act shall come into force on such a day as the Minister may, by Order published in the *Gazette*, appoint.

**2. Interpretation**

In this Act, –

“access log” means a record of every access gained to the credit information of data subject held by a credit bureau, other than access that is automatically generated by the credit bureau;

“adverse action” in relation to a data subject, means a decision based on data subject information that is obtained from a credit bureau –

(a) to charge a higher interest rate payable by the data subject in respect of a loan;

- (b) to deny the data subject a loan;
- (c) to cancel a loan made to the data subject; or
- (d) that otherwise negatively affects a transaction between the data subject and a credit provider;

"adverse action notice" means a written notice issued under section 28;

"applicant" means a person who makes an application, under section 5, for a licence;

"Central Bank" means the Eastern Caribbean Central Bank established under Article 3 of the Eastern Caribbean Central Bank Agreement;

"chief executive officer" means the most senior decision making officer in a credit bureau who is responsible for –

- (a) carrying out the policies of the board of directors; and
- (b) reporting to the board of directors,

whether or not that person is formally designated as the chief executive officer;

"credit bureau" means an entity incorporated under the Companies Act 1995 that –

- (a) is licensed under section 7 to carry out the activities listed in section 17; and
- (b) may operate for gain or profit or on a regular, cooperative, non-profit basis;

"credit file" means the information about the data subject's credit, identification and other information collected, kept, maintained or otherwise processed, in electronic form or otherwise, by a credit bureau, from which a credit report is generated;

"credit information" means any positive or negative information bearing on a data subject's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics or mode of living 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 person specified in section 27 that gives, to a credit bureau, credit information on a data subject;

"credit provider" includes –

- (a) a person that carries on a business involving –
  - (i) the provision of credit to another person; and
  - (ii) the selling of goods on hire purchase or credit sales under the Hire Purchase Act, Cap. 201
- (b) any other entity designated as a credit information provider under section 27(3);



“credit report” means a comprehensive account prepared by a credit bureau, in electronic or hard copy format, that includes personal identification and credit information on a data subject;

“credit reporting service” means any activity listed in section 17(2);

“credit score” means information processed by a credit bureau that is used for evaluating the probability of a data subject fulfilling its financial obligations associated with a loan;

“Currency Union” refers collectively to the territories of Anguilla, Antigua and Barbuda, The Commonwealth of Dominica, Grenada, Montserrat, Saint Christopher and Nevis, Saint Lucia and Saint Vincent and the Grenadines which use the Eastern Caribbean currency as their official currency;

“database” means a collection of data subject information compiled, maintained or otherwise processed by a credit bureau;

“data subject” includes any person –

(a) whose information has, or may have, been furnished to the credit bureau by reason of a contractual relationship with a credit provider, a loan application signed by the person, or any other legitimate purpose;

(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 specified public register, that may be processed under this Act or the Regulations;

“director” means a member of the board of directors of a credit bureau;

“Eastern Caribbean Central Bank Agreement” means the Agreement establishing the Eastern Caribbean Central Bank made on the 5th day of July 1983, the text of which is set out in the Schedule to the Eastern Caribbean Central Bank Act, Cap 142 and any revisions made thereto;

“entity” means a body corporate and any unincorporated association or organisation, but does not include an individual;

“law enforcement agency” means a legally authorised body with responsibility for the enforcement of any law;

“licence” means a licence granted under section 7;

“loan” includes –

(a) direct, indirect or contingent obligations incurred by a data subject with a third party;

(b) any discount, advance or overdraft;

(c) export bills purchased or other bills receivable purchased;

(d) import bills, data subjects' liability on off-balance sheet items; and

(e) any other credit facilities extended to a data subject by a credit provider;

“material change in circumstances” has the meaning assigned to it in section 14;

“Minister” means the Minister with responsibility for Finance;

“Monetary Council” means the Monetary Council established under Article 7 of the Eastern Caribbean Central Bank Agreement;

“negative information” in relation to the delinquent status of a credit transaction between a data subject and a credit provider, includes –

(a) credit defaults, collections and late payments;

(b) accounts compulsorily closed other than for administrative reasons;

(c) voluntary or mandatory surrender of assets;

(d) conviction for the offence of fraud or forgery;

(e) receiverships, bankruptcies and liquidations;

(f) liens, garnishment or judgments;

(g) cheque kiting activity;

(h) refusal to provide business financial statements; and

(i) any other act or information which could cause a credit application to be declined or restricted according to a credit provider'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” includes the chief executive officer, chief financial officer, treasurer and chief internal auditor of a credit bureau;

“operations system” includes the design of the data collection systems of an applicant;

“payment history” in relation to a data subject, means a detailed compilation of the past and current payment behaviour of the data subject;

“personal information” in relation to data subject, means –

(a) in the case of an individual –

- (i) the full name;
- (ii) an alias or previous name;
- (iii) the gender;
- (iv) the date of birth;
- (v) the Social Security number;
- (vi) the passport number;
- (vii) the driving licence number;
- (viii) past and current addresses; and
- (ix) any other contact information of the individual; and

(b) in the case of an entity –

- (i) the full business name;
- (ii) any previous business name;
- (iii) the registration number;
- (iv) the Social Security registration number;
- (v) the tax identification number, where relevant;
- (vi) the current registered address;
- (vii) the past registered address (if any);
- (viii) names of the directors and significant shareholders; and
- (ix) any other contact information of the entity;

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

- (a) the date on which an account was opened;
- (b) the amount of the loan;
- (c) the date of the last payment;
- (d) any outstanding credit;
- (e) any high credit approved;

- (f) the amount of payments;
- (g) the payment history;
- (h) the current balance;
- (i) the repayment patterns;
- (j) the utilization of credit; and
- (k) any collateral pledged;

“process” means to –

- (a) collect, keep, maintain, hold or store the credit information; or
- (b) carry out any operation or set of operations on the credit information, including –
  - (i) the organization or adaptation or use of the credit information;
  - (ii) the retrieval, consultation or use of the credit information;
  - (iii) the disclosure of the credit information by transmission, transfer or dissemination; and
  - (iv) the alignment, combination, correction, erasure or destruction of the credit information;

“record” means any book, paper or document, whether in electronic form or otherwise, that contains or may contain information regarding the finances or business of the credit bureau;

“Regulations” means regulations made under this Act;

“Review Commission” means the Review Commission appointed under section 41 of this Act;

“specified public register” means a public register kept and maintained in a public registry listed in Schedule 1;

“subscriber” means any person who is entitled

- (a) pursuant to a subscriber agreement; or
- (b) under this Act,

to receive, from a credit bureau, credit reports or value added products;

“subscriber agreement” means a written agreement that provides a credit information provider or a subscriber with the terms and conditions upon which data subject information may be disclosed to, or may be accessed from, a credit bureau;

“value added product” means a credit score or any other product that a credit bureau develops, within the limits imposed by this Act, to increase the value of the credit reporting services that the credit bureau provides;

“writing” includes communicating by facsimile transmission, electronic mail and any other mode of representing or reproducing words in visible form.

## **PART II**

### **ADMINISTRATION**

#### **3. Powers, duties and functions of Central Bank**

- (1) The Central Bank shall be responsible for-
  - (a) the overall management of this Act; and
  - (b) the day-to-day administration, supervision and implementation of this Act and the Regulations.
- (2) Without prejudice to the generality of subsection (1), the Central Bank shall –
  - (a) regulate and supervise the permissible activities of credit bureaus, credit information providers, subscribers and their agents in the Currency Union under this Act;
  - (b) issue standards and targets regarding the provision of credit reporting services under this Act and the Regulations;
  - (c) maintain proper standards of conduct and acceptable credit reporting practices;
  - (d) protect the integrity of the credit reporting system in Antigua and Barbuda against abuses; and
  - (e) take measures to protect the rights and interests of data subjects.
- (3) In the exercise of its duties and functions under subsections (1) and (2), the Central Bank may –
  - (a) grant licences to credit bureaus in the Currency Union;
  - (b) in accordance with this Act and the Regulations –
    - (i) evaluate every application for a licence to operate or carry on the business of a credit bureau;
    - (ii) issue guidelines for operating a credit bureau;
    - (iii) inspect the premises, systems and operations of a credit bureau;

- (c) impose any one penalty or combination of the penalties and sanctions set out in subsection (4) for contravention of this Act and the Regulations;
  - (d) undertake any other activity necessary or expedient to give full effect to the provisions of this Act; or
  - (e) exercise such other duties and functions as may be conferred upon or assigned to the Central Bank by or under this Act and the Regulations.
- (4) The penalties and sanctions referred to in subsection (3) (c) are –
- (a) a warning or reprimand to the credit bureau;
  - (b) a fixed penalty in accordance with section 51;
  - (c) any directive that the Central Bank considers appropriate;
  - (d) the suspension or revocation of the licence granted to the credit bureau in accordance with section 15.
- (5) The Central Bank shall make every decision respecting the exercise of its supervisory and regulatory responsibilities, powers, duties and functions under this Act in accordance with the principles of natural justice.

### **PART III**

#### **LICENSING OF CREDIT BUREAUS**

##### **4. Requirement for licence**

- (1) No person or entity, other than an entity which is incorporated, registered or continued under the Companies Act 1995, and licensed under this Act shall –
- (a) operate or carry on the business of a credit bureau; or
  - (b) use a name or description implying that the person is a credit bureau.

(2) A person who contravenes subsection (1) commits an offence and is liable, on summary conviction, to a fine not exceeding one hundred thousand dollars, and in the case of a continuing offence, to an additional fine of five thousand dollars for each day during which the offence continues after conviction.

##### **5. Application for licence**

- (1) A person who wishes to obtain a licence to operate or carry on the business of a credit bureau shall –
- (a) apply to the Central Bank in the prescribed form;
  - (b) provide the Central Bank with –

- (i) an address for service in the Currency Union;
  - (ii) a statement of the address of its head office and the locations of the principal and other places of business where the applicant proposes to do business in the Currency Union;
  - (iii) information, to the satisfaction of the Central Bank, regarding the start-up capital of the credit bureau specified in section 9(2);
  - (iv) the prescribed particulars regarding the directors and officers of the applicant;
  - (v) the prescribed documents and information; and
- (c) submit to the Central Bank the prescribed non-refundable application processing fee.

(2) Where the Central Bank is not satisfied with the adequacy of any information submitted by the applicant for the purposes of processing an application, the Central Bank may request additional information before making a final determination.

## **6. Evaluation of application**

(1) When evaluating an application for a licence to operate or carry on business of a credit bureau in the Currency Union the Central Bank shall take into account all relevant matters within its discretion including –

- (a) the background, reputation, integrity, experience and capacity of the proposed directors, managers and other officers of the applicant as evidenced by, among other things, the curriculum vitae and professional qualifications of the proposed directors, managers and other officers of the applicant;
- (b) the business plan of the applicant, including a mechanism to integrate, gather, update and validate the data; and
- (c) the design of the data collection for data subject information and flexibility in structuring the information in accordance with the Act and Regulations.

(2) Without prejudice to the generality of subsection (1)(a), a person shall not be qualified to hold office as a director, a manager or an officer of a credit bureau if the person –

- (a) is a minor or is under a legal disability;
- (b) has been convicted of an offence involving theft, fraud, forgery, causing financial loss or perjury;
- (c) has been removed from an office of trust on account of misconduct, abuse of office, corruption or incompetence in the immediate preceding ten years from the date of the application; or

- (d) is an auditor of a credit bureau or any company associated with a credit bureau.
- (3) The Central Bank may, in accordance with the Act and the Regulations, require an applicant to provide evidence to its satisfaction regarding the professional and moral suitability of any proposed director, officer or significant shareholder of the applicant.
- (4) For the purpose of subsection (3), the Central Bank –
- (a) shall have regard to the following qualities, in so far as the qualities are reasonably determine –
    - (i) the generality probity of the proposed director, officer or significant shareholder of the applicant;
    - (ii) the competence and soundness of judgment of the proposed director, officer or significant shareholder of the applicant for the fulfilment of the responsibilities of the office in question; and
    - (iii) the diligence with which the proposed director, officer or significant shareholder of the applicant is likely to fulfil the responsibilities referred to in sub-paragraph (ii); and
  - (b) may have regard to the past conduct and activities of the proposed director, officer or significant shareholder of the applicant in the credit reporting business, and in particular, to any evidence that the person concerned -
    - (i) has been convicted of an offence of fraud or any other offence of which dishonesty is an element;
    - (ii) has contravened the provisions of any law designed for the protection of members of the public against financial loss due to the dishonesty or incompetence of, or malpractices by, persons engaged in the provision of banking, insurance, investment, money services, credit union or similar cooperative institution, micro-finance institution or other financial services;
    - (iii) was a director or an officer of a credit provider that has been liquidated or is under liquidation or statutory management;
    - (iv) has taken part in any business practices that in the opinion of the Central Bank were fraudulent, prejudicial or otherwise improper (whether unlawful or not) or which otherwise discredited his method of conducting business;
    - (v) has taken part in or has been associated with any other business practices as would cast doubt on his competence and soundness of judgment; or
    - (vi) has otherwise conducted himself in such a manner so as to cast doubt on his competences and soundness of judgment.



(5) Where the Central Bank has reason to believe that a person has relevant information on any proposed director, officer or significant shareholder of an applicant, the Central Bank may request the person having such information to furnish the information.

(6) In subsection (5), “relevant information” means information in respect of any proposed director, officer or significant shareholder of an applicant as may be necessary for the purposes of this section.

## **7. Grant of licence**

(1) Subject to section 8, the Central Bank may grant to an applicant a licence upon –

- (a) the evaluation of an application made under section 5; and
- (b) the inspection of premises and systems of the applicant in accordance with this Act and the Regulations.

(2) A licence granted under this Part is valid from the date of the grant of the licence unless it is suspended or revoked in accordance with section 14.

(3) An applicant granted a licence under this section shall pay the prescribed fee in the amount and within the time specified by the Central Bank.

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

(1) The Central Bank may refuse to grant a licence to an applicant if –

- (a) the application is not made in accordance with this Act and the Regulations;
- (b) the applicant fails to meet the capital requirements specified under section 9(2);
- (c) the Central Bank is not satisfied that –
  - (i) the applicant complied with the licensing requirements of this Act and the Regulations;
  - (ii) the applicant and its mode of operation are suitable and are in the best interest of the Currency Union; and
  - (iii) the applicant paid the prescribed fees; or
- (d) the Central Bank has reasonable grounds to believe that –
  - (i) based on the past conduct of the applicant, or any director, officer or representative of the applicant, the applicant is not likely to operate or carry on the business of a credit bureau with honesty and integrity and in accordance with this Act, the Regulations or any term or condition of the licence;

- (ii) the applicant made a false or misleading statement, with respect to any matter that the Central Bank considers material, in the application or in any of the information, particulars, declarations, documents or other materials submitted to the Central Bank in support of the application; or
- (iii) it is not in the public interest to grant the licence.

(2) Before the Central Bank refuses to grant a licence, the Central Bank shall –

- (a) provide a written notice to the applicant of its intention to refuse to grant the licence;
- (b) where applicable, give the applicant a reasonable opportunity to make representations; and
- (c) where the applicant makes representations under paragraph (b), take the representations into consideration before making the decision.

(3) Where the Central Bank refuses to grant a licence to an applicant, the Central Bank shall, in writing, promptly notify the applicant of –

- (a) the refusal and the reason for the refusal; and
- (b) the right of review of the applicant under Part VII and the right of appeal under Part VIII.

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

(1) Subject to sections 7, 11, 12 and 14, the Central Bank may at any time –

- (a) impose upon the licence such terms and conditions as the Central Bank sees fit; or
- (b) amend the terms and conditions referred to in paragraph (a).

(2) The Minister may, upon the recommendation of the Central Bank, prescribe the minimum start-up capital requirements for a credit bureau.

(3) A credit bureau shall –

- (a) adhere to the prescribed start-up capital requirements specified in subsection (2); and
- (b) notify the Central Bank of the fees respecting the provision of its credit reporting services including the value added products and any change in the fees.

(4) Where a credit information provider or a beneficial owner of a credit information provider, as the case may be, is permitted to acquire shares in a credit bureau, the credit bureau shall restrict the aggregate share ownership of the credit information provider or the beneficial owner of the credit information provider, as the case may be, to a

maximum of forty-nine percent of the shares in the credit bureau; but a single such shareholder shall not hold more than five percent of the shares of the credit bureau.

(5) Before the Central Bank amends the terms and conditions imposed in respect of a licence, the Central Bank shall –

- (a) not less than fourteen working days before the commencement date of the proposed amendment, provide a written notice to the credit bureau of its intention to amend the terms and conditions of the licence and the reason for the proposed amendment; and
- (b) give the credit bureau not less than seven days within which to make representations respecting the proposed amendment of the terms and conditions.

(6) A credit bureau shall comply with the terms and conditions of the licence granted to it by the Central Bank.

(7) A credit bureau which fails to comply with subsection (6) commits an offence and is liable, on summary conviction, to a fine of ten thousand dollars.

#### **10. Display of licence**

A copy of a licence granted under this Act shall be displayed conspicuously in the public part of any place of business of the licensed credit bureau.

#### **11. Restrictions on transfer of licence, etc.**

(1) A credit bureau shall not, without first obtaining the written approval of the Central Bank –

- (a) transfer any licence granted to the credit bureau or reinstated under this Part;  
or
- (b) sell, lease or transfer title of any of its credit files to another credit bureau licensed under this Act.

(2) A credit bureau that fails to comply with this section commits an offence and is liable, on summary conviction, to a fine of ten thousand dollars and in the case of a continuing offence is liable to a further fine of two thousand dollars for everyday that the failure to comply continues after conviction.

#### **12. Restrictions on employment of certain persons**

(1) A credit bureau shall not employ any person who –

- (a) is an undischarged bankrupt;
- (b) entered into a composition or scheme of arrangement with his creditor;
- (c) was convicted of an offence involving fraud or dishonesty; or
- (d) was removed from office under the provisions of this Act and the Regulations.

(2) Where a person referred to in subsection (1) is employed by a credit bureau, such a person –

- (a) is disqualified from holding any post in the credit bureau; and
- (b) shall be ineligible to hold office in, or continue in the employment of, any credit bureau.

(3) Where a credit bureau allows a disqualified person to continue acting as an officer or being in employment or is otherwise in breach of this section –

- (a) the credit bureau commits an offence and is liable, on summary conviction, to a fine of ten thousand dollars and in the case of a continuing offence is liable to a further fine of two thousand dollars for every day that the breach continues after conviction; and
- (b) the disqualified person acting as an officer or employee of the credit bureau commits an offence and is liable, on summary conviction, to a fine of ten thousand dollars or to imprisonment for a term of six months.

### **13. Payment of fees**

(1) A credit bureau shall pay a fee to the Central Bank in the amount prescribed by the Minister on the recommendation of the Central Bank –

- (a) upon the grant of a licence under section 7(2);
- (b) for the annual licence fee; or
- (c) the reinstatement of a licence under section 15 (5).

(2) The Minister may by order and on the recommendation of the Central Bank, vary

- (a) the application processing fee under section 5 (1)(c);
- (b) the fee payable upon the grant of a licence under section 7 (2);
- (c) the annual licence fee under subsection (1); or
- (d) the reinstatement fee under subsection 15(5).

(3) Where a licence is granted after the first quarter in any year, the fee payable upon the grant of the licence shall be calculated on a pro rata basis.

(4) The annual licence fee shall be paid before the 1st day of February in each year.

(5) Where a credit bureau fails to pay the annual licence fee before the 1st day of February in any year, the credit bureau shall pay double the annual licence fee if the payment of the annual licence fee is made before the 1st day of May in that year.

(6) If a credit bureau fails to pay the annual licence fee before the 1st day of May in any year in accordance with subsection (5), the Central Bank may, in accordance with section 15, suspend or revoke the licence of the credit bureau.

#### **14. Material change in circumstances affecting credit bureau, etc.**

(1) An applicant or a credit bureau shall first obtain the written approval of the Central Bank before the credit bureau or applicant implements or initiates any of the following material change in its circumstances –

- (a) merger or consolidation with another credit bureau;
- (b) a change of the name of the applicant or the credit bureau;
- (c) an amendment of the Articles of Association or any other constituent document under which the credit bureau is incorporated, registered or continued;
- (d) engaging in any business other than that of a credit bureau;
- (e) a change of majority shareholding or ownership;
- (f) a relocation;
- (g) any change in the system of the credit bureau that would –
  - (i) cause credit information providers to incur significant additional cost; or
  - (ii) put the security of data processed by the credit bureau at risk; and
- (h) a change in the directors; chief executive officer or manager.

(2) An applicant or, as the case may be, the credit bureau, shall in writing and within seven days of the occurrence of the change, notify the Central Bank of any of the following –

- (a) a change in the directors, chief executive officer or managers of the applicant or credit bureau due to any reason including death, retirement, resignation or termination; or
- (b) a change in circumstances affecting an applicant or a credit bureau due to the occurrence of an event over which an applicant or credit bureau has no control.

(3) Where an applicant or a credit bureau as the case may be fails to comply with subsection (1) or (2) the Central Bank may –

- (i) in accordance with section 8, refuse to grant a licence to an applicant or, to renew the licence of the credit bureau as the case may be;

- (ii) in accordance with section 9, amend the terms and conditions of the licence of the credit bureau; or
- (iii) suspend or revoke the licence of the credit bureau in accordance with section 15

(4) Where the Central Bank receives information that, by reason of death, retirement, resignation or termination, there has been a change in the directors, chief executive officer or managers of an applicant or credit bureau, the Central Bank may –

- (i) in accordance with section 8, refuse to grant a licence to an applicant or, to renew the licence of the credit bureau as the case may be;
- (ii) in accordance with section 9, amend the terms and conditions of the licence of the credit bureau; or
- (iii) suspend or revoke the licence of the credit bureau in accordance with section 15

(5) Where by reason of the act of a director, chief executive officer or a manager of a credit bureau –

- (i) the credit bureau engages in any business other than that of a credit bureau; or
- (ii) the security of data held and maintained by the credit bureau is put at risk,

the Central Bank may require the removal of the director, chief executive officer or manager, as the case may be.

### **15. Suspension and revocation of licence, etc.**

- (1) The Central Bank may suspend or revoke a licence granted to a credit bureau –
- (a) if the credit bureau –

- (i) provides the Central Bank with false or inaccurate information;
- (ii) does not commence operations within twelve months from the date of the grant of the licence, or a longer period as may be agreed between the Central Bank and the credit bureau;
- (iii) is in breach of any duty or obligation imposed upon it by this Act or the Regulations;
- (iv) has committed an offence of misrepresentation or fraud or other dishonest act in relation to business; or
- (v) demonstrates incompetence or untrustworthiness in the operation of its business,

(b) if the credit bureau fails to comply with –

- (i) any term or condition imposed on it in respect of the licence granted to it;
- (ii) any provision of this Act or any other law to which it is subject; or
- (iii) any direction issued under this Act or the Regulations within the time specified,

(c) if the Central Bank reasonably believes that –

- (i) the carrying on of business by the credit bureau is no longer in the interest of the public; or
- (ii) the rights and interests of the subscribers or the data subjects of the credit bureau are threatened; or

(d) on any ground on which the Central Bank might have refused to grant the licence under section 8.

(2) Before the Central Bank suspends or revokes a licence granted to a credit bureau, the Central Bank shall –

- (a) provide to the credit bureau a notice in the prescribed form of its intention to suspend or revoke the licence and the reason for the intended suspension or revocation; and
- (b) give the credit bureau a reasonable opportunity to make representation regarding the intended suspension or revocation of the licence.

(3) Where a credit bureau makes any representation under this section in respect of the intended suspension or revocation of its licence, the Central Bank shall –

- (a) upon consideration of the representation, make a decision; and
- (b) in accordance with subsection (4), notify the credit bureau of its decision.

(4) Where the Central Bank suspends or revokes a licence under this section –

- (a) the Central Bank shall give to the credit bureau a notice in writing of its decision –
  - (i) stating the reasons for the decision; and

(ii) informing the credit bureau of its right of review under Part VII and the right of appeal under Part VIII; and

(b) the credit bureau shall, as of the date of receipt of the notice referred to in paragraph (a), cease to carry on the business of a credit bureau.

(5) The Central Bank may –

(a) at any time after the period of suspension ends; and

(b) upon receipt of the prescribed reinstatement fee,

Reinstate a licence that was suspended if the Central Bank considers it appropriate to do so.

#### **16. Publication of grant of licences, etc.**

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

### **PART IV CREDIT REPORTING**

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

(1) A credit bureau shall not engage in activities other than activities specified in subsection (2) and the Regulations or as approved by the Central Bank in accordance with this Act.

(2) A credit bureau shall engage in the following activities—

(a) compile and maintain databases in respect of data subject information and generate reports from such databases;

(b) store, manage, evaluate, update and disseminate data subject information to subscribers in accordance with this Act and the Regulations;

(c) where applicable, provide a credit information provider a reasonable opportunity to correct any inaccurate, illegal, incomplete or otherwise deficient information contained in the credit file of a data subject kept and maintained by the credit information provider;



- (d) develop and make available to subscribers value added products in relation to credit reporting services;
- (e) carry out market and statistical research relating to matters set out under this Act and the Regulations;
- (f) provide, on a consistent basis, consultancy and training regarding credit reporting including the publication of educational material;
- (g) obtain or otherwise process credit information from any specified public register under Schedule 1; and
- (h) carry out such other activity as the Central Bank may, from time to time, approve in accordance with this Act and the Regulations.

(3) A credit bureau shall implement appropriate business continuity measures for the purpose of ensuring that its credit reporting services are available to its subscribers without any disruption that causes harm or is likely to cause harm to the rights or interests of its subscribers.

### **18. Requirement for consent**

(1) A person may not inquire on the credit information respecting any data subject without first obtaining the consent of the data subject.

(2) A credit information provider may disclose to a credit bureau both negative and positive credit information without first obtaining consent from a data subject if the credit information provider provides notice to the data subject that credit and personal information may be disclosed to a credit bureau.

(3) The notice in subsection (2) may be given by the credit information provider through posting a notice -

- (a) at its place of business;
- (b) on the website of the credit information provider;
- (c) or by any method that the credit information provider deems appropriate.

(4) Subject to subsection (8) and the Regulations, a person other than a data subject may, with the consent of the data subject, obtain a credit report in respect of the data subject for a permissible purpose referred to in section 20.

(5) The consent of the data subject—

- (a) may be obtained by electronic means or by any method that permits a subscriber to produce valid evidence respecting the consent of the data subject, including prominently displaying the information regarding the

consent in a clear and comprehensible manner in an application for credit, insurance, employment or tenancy or any other contract or agreement; and

- (b) expires when the contract respecting the credit relationship between the credit provider, subscriber or credit information provider and the data subject is terminated; but the credit information respecting the data subject shall remain in the database of the credit bureau in accordance with section 25.

(6) Subject to subsection (4) a credit bureau shall, in releasing or transmitting data subject information to a person,—

- (a) verify and validate the identity and consent of the data subject; and
- (b) use reasonable means of transmission that ensures that the data subject information is not altered, modified or corrupted during the transmission.

(7) Any person who obtains information regarding a data subject from a credit bureau under false pretences commits an offence and is liable, on summary conviction, to a fine not exceeding one hundred thousand dollars.

(8) Subsection (4) does not apply if the data subject information is required—

- (a) in response to an order of a court of competent jurisdiction;
- (b) to avoid prejudice to the administration of justice including the prevention, detection, investigation, prosecution or punishment of offences by any public sector agency;
- (c) to enable an insurer to investigate any allegation of insurance fraud;
- (d) for the enforcement of any law imposing a pecuniary penalty;
- (e) for the protection of the public revenue;
- (f) for the conduct of proceedings before any court or tribunal;
- (g) to be used in a form in which the identity of the data subject concerned is protected; or
- (h) for statistical or research purposes and is not to be published in a form that could reasonably be expected to identify the data subject concerned.

## **19. Credit reports**

(1) A person may—

- (a) request from a credit bureau a credit report or any value added product in respect of a data subject; or
- (b) inquire from a credit bureau credit information in respect of a data subject.

(2) Subject to subsection (3) and in accordance with the Regulations, every credit report in respect of a data subject issued by a credit bureau shall contain information that—

- (a) is processed from credit information furnished by the appropriate credit information providers in accordance with this Act; and
- (b) is valid, up-to-date, fit-for the purpose, accurate and relevant.

(3) A credit bureau shall not include, in a credit report—

- (a) information relating to any judgment against a data subject in relation to a judgment creditor unless mention is made of—

- (i) the amount of the judgment;
- (ii) the age of the judgment; and

- (iii) the name and, if available, the address of the judgment creditor or the agent of the judgment creditor at the date of entry of the judgment;

- (b) information regarding the race, religion, creed, colour, medical information, ancestry, ethnic origin or political affiliation of a data subject or any other sensitive or personal information of a data subject; or

- (c) information retained in contravention of section 25.

(4) A credit bureau shall not—

- (a) provide any report that lists all data subjects with good payment history unless there is a permissible purpose regarding such listing; or
- (b) omit from any credit report of a data subject any information that can impact the ability of the data subject to access credit.

(5) A credit bureau shall—

- (a) adopt all reasonable procedures to ensure that every credit report issued by that credit bureau is accurate, timely and sufficient; and
- (b) have rigorous standards of security and reliability regarding the credit report.

(6) A credit bureau commits an offence if the credit bureau fails to comply with subsection (3), (4) or (5) and is liable, on summary conviction, to a fine not exceeding one hundred thousand dollars.

**20. Permissible purposes**

(1) A credit bureau may not knowingly provide to any person any information from the credit files of a data subject except for a permissible purpose specified in subsection (2).

(2) A credit bureau may, with the consent of a data subject, provide to a subscriber a credit report or value added product in respect of the data subject, on the basis of information contained in the credit file of the data subject for –

- (a) the consideration of—
  - (i) an application for credit; or
  - (ii) an offer to act as a guarantor of an application for credit;
- (b) use in connection with—
  - (i) the purchase or collection of a debt of a data subject;
  - (ii) the entering into or renewal of a tenancy agreement with a data subject; or
  - (iii) the underwriting of insurance involving a data subject;
- (c) use relating to the pre-employment check of a data subject for a position that entails significant financial responsibilities;
- (d) periodic portfolio monitoring and risk assessment purposes, collection and skip tracing; or
- (e) any other permissible purpose as may be provided by Regulations.

(3) Where a person requires, from a credit bureau, data subject information for any permissible purpose under this Act—

- (a) the person shall
  - (i) submit sufficient information to the credit bureau to enable the credit bureau to confirm and validate the identity of the data subject and the identity of the person requesting the information;
  - (ii) submit evidence of data subject consent;
  - (iii) agree to properly dispose of data subject information so that the data subject information cannot reasonably be read or reconstructed; and
  - (iv) demonstrate adequate level of security and control in its systems to ensure that data received by it is protected;
- (b) the credit bureau shall, before releasing the information required—
  - (i) confirm that the consent of the data subject is obtained;
  - (ii) confirm and validate the identity of both the data subject and the person requiring the information; and
  - (iii) ensure that the integrity of the information provided is not altered during the transmission of the data subject information.

(4) A person who obtains data subject information under this section shall ensure that the information is used only for the purpose for which it was obtained.

(5) A credit bureau may provide a data subject with a copy of the data subject's own credit report, provided it confirms and validates the identity of the data subject prior to disclosing this information.

(6) A credit bureau commits an offence if the credit bureau wilfully discloses data subject information in contravention of the provisions of this section and is liable, on summary conviction, to a fine not exceeding one hundred thousand dollars.

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

(1) A credit bureau shall—

- (a) establish, implement and maintain protocols and procedures to ensure that the credit information registered in its database or otherwise processed by it is securely stored, complete and up to date at all times;
- (b) implement strict quality control procedures to ensure the maximum possible accuracy and completeness of its database;
- (c) take all such steps as are necessary to ensure that the data subject information that it processes is up to date, reliable, accurate and comprehensive;
- (d) implement any other procedures necessary to ensure compliance with this Act;
- (e) ensure that the measures, procedures, and steps taken under this subsection are fair, adequate, relevant, and reasonable; and
- (f) ensure that the data subject information is disclosed only in accordance with a permissible purpose provided for under section 20.

(2) A credit bureau that contravenes sub-section (1) commits an offence and is liable, on summary conviction, to a fine not exceeding one hundred thousand dollars.

## **22. Security and control measures**

(1) A credit bureau shall, in respect of data subject information processed by it, have in place the appropriate, technical, and institutional data security measures and safeguards to protect the data subject information in its custody or control.

(2) Without limiting the generality of subsection (1), a credit bureau shall, in respect of data subject information processed by it—

- (a) put in place suitable physical and electronic data security and control measures;

- (b) implement the necessary managerial procedures and commercially reasonable data security safeguards for the purpose of safeguarding the data subject information against—
  - (i) misuse or unauthorised access to, and disclosure of, the data subject information;
  - (ii) illegal interception or interruption of the data subject information during exchange or otherwise processing of the information;
  - (iii) loss, destruction, corruption, inappropriate alteration or modification, or inappropriate disclosure of the data subject information; or
  - (iv) other misuse regarding the data subject information, including misuse by anyone with authorised access to the data subject information;
- (c) keep and maintain or cause to be maintained an access log regarding—
  - (i) access by any person authorised to access the data subject information; and
  - (ii) every procedure performed by any person referred to in subparagraph (i); and
- (d) make available, upon request, to the data subject the name of every subscriber who obtains access to the data subject information and the date of access.

(3) In accordance with subsections (2)(a) and (b), every credit bureau shall, for the purpose of safeguarding the data subject information which it processes against misuse or unauthorised access—

- (a) develop written policies and procedures, to be followed by its employees, agents and contractors, respecting the provision of credit reporting services under this Act and the Regulations;
- (b) ensure that a person accesses data subject information processed by that credit bureau only by using a password, credential token or other access authentication control mechanism;
- (c) ensure that data subject information is disclosed to a subscriber only in accordance with this Act and the terms of a subscriber agreement;
- (d) provide training to its employees, agents and contractors so as to ensure compliance with the policies and procedures referred to in paragraph (a);
- (e) monitor usage of, and regularly check compliance with—
  - (i) the subscriber agreement, policies, procedures and control mechanisms under paragraphs (a), (b) and (c); and
  - (ii) the requirements of this Act and the Regulations
- (f) identify and investigate possible breaches of—

- (i) the subscriber agreement, policies, procedures and control mechanisms specified under paragraphs (a), (b) and (c); and
- (ii) the requirements of this Act and the Regulations;
- (g) take prompt and effective action in respect of any breach identified under paragraph (f); and
- (h) systematically review the effectiveness of the policies, procedures and authentication control mechanisms specified under paragraphs (a) and (b), and, where applicable, promptly remedy any deficiencies observed or detected.

(4) Subject to the approval of the Central Bank, every agreement between the credit bureau and a credit information provider or subscriber shall make provision with respect to—

- (a) the modalities for the submission of information by the credit information provider including the manner and form in which the information is submitted;
- (b) the delivery of credit reports and value added products by a credit bureau to a credit information provider or subscriber;
- (c) the type of information to be provided under section 27(9); and
- (d) the termination of the agreement.

(5) Notwithstanding the termination of an agreement referred to in subsection (4), the credit information provider shall, for such time as the Central Bank specifies but not to exceed one year, continue to supply to the credit bureau data subject information regarding any data subject who was previously part of the periodic update under the terms and conditions of the agreement as if the agreement were not terminated.

(6) A credit bureau commits an offence if it fails to adopt security and control measures that are necessary to prevent the unauthorised access to, or wrongful use or management of information by its staff, technology provider or contractors and is liable, on summary conviction, to a fine not exceeding one hundred thousand dollars.

(7) The Minister may, by Regulations, provide for the matters to be included in the provisions of a subscriber agreement.

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

- (1) A data subject is entitled—
  - (a) to be informed by a credit bureau of the type of information with respect to that data subject that a credit bureau supplies to a subscriber;

- (b) to challenge a credit bureau regarding any inaccurate data respecting the data subject held in the credit bureau database and request correction, by the credit bureau, of the inaccurate data; and
- (c) to receive from a credit bureau a copy of the credit report of the data subject held by that credit bureau, without cost to the data subject, once per year.

(2) Where a data subject requests from a credit bureau, a credit report or other data subject information processed in respect of a data subject under this Act, the credit bureau shall, promptly but no later than three days after receipt of the request, furnish to the data subject the credit report or other information in accordance with this Act and the Regulations.

(3) A credit bureau shall provide to every data subject detailed information regarding the rights of the data subject and the procedures for accessing or correcting data kept and maintained by that credit bureau in relation to the data subject.

(4) The Minister may, by Regulations, provide for the correction of incomplete, obsolete, misleading, erroneous or inaccurate credit information processed by a credit bureau in relation to data subjects.

#### **24. Duty to maintain records and credit information**

(1) A credit bureau shall ensure that it keeps and maintains complete and accurate records regarding the credit information required for the provision of—

- (a) credit reports under section 19; and
- (b) value added products under this Act.

(2) A credit bureau commits an offence if the credit bureau—

- (a) contravenes subsection (1); or
- (b) wrongfully or unlawfully alters, modifies, deletes or otherwise processes any data subject information or record in its database,

and is liable, on summary conviction, to a fine not exceeding one hundred thousand dollars

#### **25. Restrictions regarding disclosure of data subject information.**

(1) On the recommendation of the Central Bank, the Minister may, by Regulations, make provision with respect to the disclosure and protection of data subject information under this Act.



(2) Where a credit bureau obtains credit information regarding credit extended to or in respect of a data subject, the credit bureau shall not disclose such information for a period longer than seven years after the date of termination or settlement of such credit.

(3) Notwithstanding subsection (2) a credit bureau may, for historical, statistical or research purposes, retain data subject information for a period in excess of seven years.

(4) The Central Bank may issue guidelines with respect to the term of retention of negative information and the calculation of the period of retention.

(5) A credit bureau that contravenes sub-section (2) commits an offence and is liable on summary conviction to a fine not exceeding one hundred thousand dollars.

## **26. Supplying false information prohibited**

(1) A person shall not supply false or misleading information regarding a data subject to any credit bureau.

(2) A person who contravenes subsection (1) commits an offence and is liable, on summary conviction, to a fine not exceeding one hundred thousand dollars.

## **27. Credit information providers**

(1) A credit information provider shall, upon providing credit to a data subject or entering into a credit or loan agreement with a data subject, furnish to a credit bureau, information with respect to the data subject—

- (a) from the date of the provision of the credit to the data subject; and
- (b) within the time specified in the subscriber agreement with the credit bureau.

(2) A credit information provider is any credit provider that is—

- (a) a bank or financial institution licensed under the Banking Act;
- (b) a money services business licensed under the Money Services Business Act;
- (c) a credit union or similar co-operative institution registered under the Co-operative Societies Act;
- (d) an insurance company licensed under the Insurance Act; or
- (e) a micro-finance institution

(3) The Central Bank may, by written notice published in the *Gazette*, designate any of the following entities as a credit information provider for the purposes of this Act if the Central Bank considers that it is in the public interest for the entity to be so designated-

- (a) a telecommunications provider licensed under the Telecommunications Act or any enactment replacing that Act;

- (b) the Public Utilities Authority
- (c) the Antigua and Barbuda Development Bank established under section 3 of the Antigua and Barbuda Development Bank Act, Cap. 24; or
- (d) a person carrying on the business of selling goods under hire purchase or credit sales under the Hire Purchase Act, Cap 210.

(4) An entity designated under subsection (3) may, with the consent of a data subject, furnish to a credit bureau the data subject information respecting the data subject within the time specified by the credit bureau.

(5) Before the Central Bank designates an entity under subsection (3) as a credit information provider for the purposes of this Act, the Central Bank shall consult the relevant Minister and the regulator of the entity.

(6) Where an entity designated as a credit information provider opts to furnish to a credit bureau credit information with respect to a data subject, the credit information provider shall enter into a subscriber agreement with the credit bureau.

(7) A credit information provider shall—

- (a) furnish to a credit bureau data subject information required to be furnished in the standard data format specified by the credit bureau after consultation with the Central Bank;
- (b) upon receipt of any new credit information about the data subject furnish the new information to the credit bureau within the time specified in the subscriber agreement with the credit bureau;
- (c) be responsible for providing to a credit bureau timely, sufficient and accurate credit information respecting data subjects;
- (d) be obligated to submit and update all data subject information to the credit bureau in accordance with this Act and the Regulations; and
- (e) comply with the security standards and measures prescribed in respect of the data credit information it keeps and maintains in respect of data subjects including taking all the necessary actions to safeguard the data subject information that it keeps and maintains in accordance with this Act and the Regulations.

(8) Notwithstanding subsection (7)(c), a credit information provider shall, on a monthly basis, provide information to a credit bureau on the status of performance of the obligations of the data subject under the credit or loan agreement.

(9) The information respecting a data subject that a credit information provider shall furnish to a credit bureau includes but is not limited to —

- (a) the personal information of the data subject;

- (b) in the case of a loan from a credit provider—
  - (i) the type, nature and amount of the loan or other facility granted to the data subject from the credit provider;
  - (ii) all outstanding loans including contingent liabilities extended to the data subject by the credit provider;
  - (iii) the date on which the loan account was opened and the dates for payment of the principal and the interest as agreed;
  - (iv) information on the composition and the types of collateral or security provided by any data subject which secured the debt obligation;
  - (v) the loan balance and the maximum balance on the loan;
  - (vi) the account status and the liability of the data subject on the account including the date of the last activity respecting the loan obligations; and
  - (vii) the nature of any guarantee or other non-fund based facility to any data subject by the provider.
- (c) in the case of an entity that sells goods or offers services on a credit basis or with delayed payment terms—
  - (i) the amount of the goods and services provided on a credit basis together with contingent and possible obligations;
  - (ii) the dates on which the goods or services were provided;
  - (iii) the agreed schedule of payment for the goods or services; and
  - (iv) information on the composition and the types of collateral that secured the payment obligations;
- (d) any comments made in respect of the loan obligations of the data subject;
- (e) the amount past due;
- (f) the minimum payment due;
- (g) the amount of the last payment;
- (h) credit information about any data subject's income, creditworthiness or history of financial transactions including antecedents and adverse court judgments obtained by the credit information provider in relation to transactions involving the credit provider;
- (i) other credit information required to be disclosed under this Act; or
- (j) any other credit information as the Central Bank—
  - (i) considers appropriate to include as credit information for the purposes of this Act and the Regulations; and
  - (ii.) specifies by notice published in the *Gazette* and one newspaper of general circulation in Antigua and Barbuda.

(10) Notwithstanding the provisions of this section, the Minister may, on the recommendation of the Central Bank by Regulations, provide for additional obligations of credit information providers.

## **28. Adverse actions against data subjects**

(1) Where, as a result of any data subject information contained in a credit report a credit provider-

- (a) takes any adverse action against the data subject;
- (b) denies credit to a data subject, in whole or in part; or
- (c) changes the terms and conditions of an existing credit with adverse impact on a data subject,

the credit provider shall, within thirty days after taking the action and in writing, provide an adverse action notice to the data subject.

(2) An adverse action notice under subsection (1) shall inform the data subject of the following—

- (a) the adverse action and the reasons for the action; and
- (b) the name, address and phone number of the credit bureau that provided the data subject information; and
- (c) the data subject's right—
  - (i) to dispute the data subject information with the credit bureau; and
  - (ii) if the data subject information is erroneous or outdated, to have the erroneous or outdated information corrected.

(3) A credit provider is deemed to have notified the data subject under subsection (1) if the credit provider sends the adverse action notice to the data subject's last known address by registered mail, certified mail or electronic means.

(4) Notwithstanding section 23(1)(c), a data subject is entitled to a copy of the credit report without cost to the data subject every time an adverse action is taken against the data subject by reason of negative information in a credit report.

## **29. Void agreements**

An agreement referred to in section 22(4) or 47 is void if the agreement states or implies that—

- (a) any provision of this Act or the Regulations or any right or remedy provided by or under this Act or the Regulations does not apply to the agreement; or
- (b) any right or remedy provided by or under this Act or the Regulations is in any way limited, modified or abrogated by the agreement.

**30. Resolution of disputes and complaints**

(1) On the recommendation of the Central Bank the Minister may, by Regulations, provide for the resolution of disputes or complaints regarding credit bureaus, subscribers and data subjects.

(2) In accordance with the Regulations referred to in subsection (1), a data subject may dispute the accuracy of information produced in a credit report regarding the data subject from data kept and maintained by the credit bureau.

(3) The Regulations referred to in subsection (1) may provide for the use of conciliation, mediation and other alternative dispute resolution techniques or processes by a credit bureau in resolving disputes and complaints made to it by data subjects.

(4) The Central Bank may apply conciliation, mediation or other alternative dispute resolution techniques or processes in resolving disputes or complaints.

(5) During an investigation of a dispute under this section, the credit bureau shall make a notation in the credit report or credit file of the relevant data subject that the credit information has been challenged or is being investigated.

**31. Cross-border data flow**

(1) With the approval of the Central Bank, a credit bureau may, in accordance with the Regulations, outsource or otherwise sub-contract the processing of credit information in its possession or control to an entity based or operating outside the Currency Union.

(2) The Central Bank shall not approve the transfer of personal data from the Currency Union to a place outside the Currency Union, if the Central Bank reasonably believes that the credit information is not protected or is not likely to be protected in a like or similar manner or an otherwise equivalent manner as provided under this Act.

**32. Periodic returns**

(1) Every credit bureau shall furnish the Central Bank with periodic returns regarding its business operations, in such form and time as may be prescribed by regulation.

(2) A credit bureau commits an offence if the credit bureau wilfully—

- (a) fails or refuses to comply with subsection (1); or
- (b) furnishes the Central Bank with an incomplete, inadequate, inaccurate or late periodic return.

(3) Where a credit bureau commits an offence under subsection (2), the credit bureau—

- (a) is liable, on summary conviction, to a fine not exceeding ten thousand dollars; and
- (b) in the case of a continuing offence, is liable to an additional fine of two thousand dollars for each day that the failure to comply continues after conviction.

## **PART V**

### **SUPERVISION BY THE CENTRAL BANK**

#### **33. Information gathering powers**

(1) For the purposes of carrying out any investigation or inquiry under this Act and the Regulations in respect of a credit bureau, the Central Bank—

- (a) may request from the credit bureau any information that the Central Bank may require in order to evaluate any matter arising—
  - (i) under this Act and the Regulations; or
  - (ii) from the operations of the credit bureau;
- (b) may issue such guidelines, rules or directives as the Central Bank considers appropriate;
- (c) may require access to the books, records, accounts, vouchers, minutes of meetings and any other document of the credit bureau;
- (d) may demand the production of, and inspect, any record of the credit bureau or a person with respect to whom an inspection or inquiry is being made or conducted under this Part; and
- (e) shall exercise such other information gathering and enforcement powers set out in this Part and the Regulations.

(2) Where the Central Bank demands the production of any record under subsection (1)(d), any person who has the custody, possession or control of the record referred to in that subsection shall produce such record and permit inspection of the record by the Central Bank.

(3) Every credit bureau shall comply with any guidelines, rules or directives issued by the Central Bank under this section.

(4) A credit bureau commits an offence if the credit bureau fails or refuses to comply with any guidelines, rules or directives issued by the Central Bank under subsection

(1)(b) and is liable, on summary conviction, to a fine not exceeding one hundred thousand dollars.

### **34. Inspections**

(1) To ensure compliance with this Act and the Regulations, the Central Bank may on its own initiative conduct inspections of a credit bureau and its operations.

(2) Where the Central Bank intends to conduct an inspection, the Central Bank shall—

- (a) appoint inspectors in that regard with the powers, functions and duties specified in this Part; and
- (b) require the credit bureau to give such information or assistance as may be necessary to permit the inspectors to exercise their powers, functions or duties under this Part.

(3) An inspector appointed under subsection (2) may, in the conduct of an inspection—

- (a) enter upon the premises of the credit bureau;
- (b) inspect the whole or part of the premises or the operations of the credit bureau;
- (c) conduct a review of the operations of the credit bureau;
- (d) where applicable, identify and record any operation of the credit bureau that is being conducted—
  - (i) in accordance with the provisions of this Act and the Regulations;
  - (ii) in an unlawful manner or in breach of this Act or the Regulations; or
  - (iii) in a manner that places, or is likely to place, the credit bureau in a condition that endangers or is likely to endanger the credit worthiness, credit standing, credit capacity, character, general reputation or personal characteristics of the data subject; and
- (e) do any or all such things as that inspector considers necessary for the conduct of the inspection.

(4) Where, upon an inspection of a credit bureau, the Central Bank reasonably believes that the credit bureau is—

- (a) conducting its business in an unlawful manner or in breach of this Act or the Regulations; 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 the data subject,

the Central Bank shall direct the credit bureau to take measures to rectify the situation, immediately or within such time as the Central Bank specifies.

- (5) The Central Bank may inquire into and examine—
- (a) the business affairs of the credit bureau with respect to whom the inspection is being made;
  - (b) any record of the credit bureau and any payments to, by or on behalf of, in relation to or in connection with that credit bureau; and
  - (c) any property or assets of, or things owned, acquired or alienated in whole or in part by the credit bureau or person acting on behalf of, or as agent of, the credit bureau.
- (6) Where the Central Bank requires—
- (a) at any reasonable time, access to the books, records, accounts, vouchers, minutes of meetings and any other document of any credit bureau; or
  - (b) a credit bureau to submit to the Central Bank such further information or material as the Central Bank may reasonably require for the purposes of this Act or the Regulations; or
  - (c) a credit bureau to provide verification, by affidavit or otherwise, of any information or material submitted to the Central Bank under paragraph (b) or subsection (5),

the credit bureau shall comply with that request within the period specified by the Central Bank.

(7) Where the Central Bank requires any director, auditor or other officer of a credit bureau to provide such information or explanation as the Central Bank may require for the purposes of this Act or the Regulations, the Central Bank shall give that director, auditor or other officer of a credit bureau a reasonable time to comply with the request and the director, auditor or other officer of the credit bureau shall comply with that request within the period specified by the Central Bank.

(8) A person who fails or refuses to comply with a request of the Central Bank under subsection (2)(b), (6) or (7) commits an offence and is liable on summary conviction to a fine of fifty thousand dollars or to a term of imprisonment of two years or to both such fine and imprisonment.

### **35. Entry and search of premises**

(1) Where a person fails or neglects to produce the records required to be produced under this Part to the Central Bank, the Central Bank may make an *ex parte* application



to the High Court for an order authorizing an officer of the Central Bank with a police officer, to—

- (a) enter and search any premises named in the order 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) The High Court may issue the order, if satisfied on oath of an officer of the Central Bank that—

- (a) the Central Bank requires a person to produce any records under this Act; and
- (b) the person from whom the production of the records is required has failed or neglected to produce the records.

### **36. Order by Central Bank**

(1) Where, as a result of an inquiry, the Central Bank reasonably believes that any information contained in a file of a credit bureau, a credit information provider or a subscriber is inaccurate, incomplete, or does not comply with this Act or the Regulations, the Central Bank may make an order—

- (a) directing the credit bureau, credit information provider or subscriber to amend or delete the information; or
- (b) restricting or prohibiting the credit bureau, credit information provider or subscriber from using the information.

(2) Every order made under subsection (1)—

- (a) shall specify the time within which the credit bureau, credit information provider or subscriber, as the case may be, shall take the action specified in that order; and
- (b) may provide for penalties, of ten thousand dollars, for failure to comply with the order.

(3) Where the Central Bank issues an order under subsection (1), the Central Bank may direct the credit bureau, credit information provider or subscriber, as the case may be, to submit, in writing, evidence respecting its compliance with the direction, restriction or prohibition made under subsection (1).

(4) Where a credit bureau is directed to submit evidence under subsection (3), the evidence submitted by the credit bureau shall include actions taken by any subscriber that

received a credit report from the credit bureau within three months immediately preceding the commencement of the inquiry.

### **37. Costs of inspections**

Where the Central Bank conducts an inspection or inquiry under this Part, the person on behalf of whom the inspection or inquiry is conducted shall pay all reasonable fees and costs for the inspection or inquiry, including all reasonable costs of any travel undertaken in the course of the conduct of the inspection or inquiry.

### **38. Auditors and annual reports**

(1) A credit bureau shall 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.

(2) The auditor shall, as part of the auditor's annual audit, obtain from the credit bureau a copy of—

- (a) the most recent report respecting the 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 under this Act or the Regulations to verify compliance.

(3) Every credit bureau shall, within three months of the end of its financial year, deliver to the Central Bank—

- (a) a signed copy of its audited financial statements;
- (b) a signed management letter;
- (c) a signed compliance report; and
- (d) a list of the shareholders of the credit bureau specifying the share holdings of each shareholder.

(4) A credit bureau shall, no later than three months after the end of its financial year, publish its audited financial statements in the *Gazette*, in a newspaper of general circulation in Antigua and Barbuda, and on its website.

### **39. Court order**

(1) The Central Bank may apply to the High Court for any order or all of the orders specified in subsection (2) if the Central Bank reasonably believes that a person has failed to comply with—

- (a) this Act or the Regulations; or
  - (b) an order, a direction or a notice of the Central Bank.
- (2) The orders referred to in subsection (1) are—
- (a) an order directing the person to comply with this Act, the Regulations or the order, direction or notice of the Central Bank;
  - (b) an order restraining the person from contravening this Act, the Regulations or the order, direction or notice of the Central Bank;
  - (c) in the case of an entity, an order—
    - (i) directing the directors and officers of the entity to comply with this Act, the Regulations or the order, direction or notice of the Central Bank, or
    - (ii) restraining the directors and officers of the entity from contravening this Act, the Regulations or the order, direction or notice of the Central Bank; and
  - (d) any other order, relief or remedy that the High Court may grant.
- (3) On hearing an application under subsection (1), the High Court may make such order as the High Court considers appropriate.

## **PART VI**

### **CIVIL LIABILITY**

#### **40. Civil liability for non-compliance**

(1) Where a data subject suffers injury by reason of the failure of a person to comply with any requirement imposed under this Act or the Regulations, the person is liable to the data subject in an amount equal to the sum of—

- (a) the actual damages sustained by the data subject by reason of the failure; and
- (b) in the case of a successful action to enforce liability under this section, the cost of the action as the High Court may determine.

(2) Where two or more directors or officers of a credit bureau or other entity are liable in respect of a failure under subsection (1), their liability shall be joint and several.

(3) In any civil proceeding under this Act against a credit bureau or a credit information provider in respect of an error respecting the credit information of a data subject, it shall be a defence for the credit bureau or, as the case may be, the credit information provider to show that the credit bureau or a credit information provider is not the source of the error.

## **PART VII**

### **CREDIT REPORTING REVIEW COMMISSION**

#### **41. Appointment of Review Commission**

(1) The Minister may, appoint a Review Commission for the purposes of hearing and determining applications for review under this Part.

(2) Subject to section 43, Schedule 2 shall have effect with regard to the constitution, operations and procedures of the Review Commission.

#### **42. Right to review**

(1) Without prejudice to the provisions of Part VI—

- (a) where a credit bureau does not issue a decision within the prescribed time for resolving a dispute respecting a data subject, the aggrieved data subject may seek a review of the action or conduct of the credit bureau;
- (b) where a data subject is not satisfied with the decision of a credit bureau in relation to a dispute under this Act, the aggrieved data subject may seek a review of a decision of the credit bureau; or
- (c) an aggrieved credit bureau may seek a review of the action or decision of the Central Bank.

(2) The aggrieved data subject or the aggrieved credit bureau seeking the review shall within twenty days of the date of failure to make the decision or, as the case may be, the receipt of the decision, file an application for review with the secretary to the Review Commission.

(3) Where payment of a deposit is required in respect of the application for review, the aggrieved data subject or, as the case may be, the aggrieved credit bureau shall make the payment to the Review Commission.

(4) The application for review shall be in the English language and shall be accompanied by—

- (a) the decision or conduct in respect of which the application is filed;
- (b) the written statement of the grounds for the review;
- (c) all documents and materials respecting the decision or conduct in respect of which the application is filed; and

(d) where applicable, documentary evidence with respect to payment of the deposit referred to in subsection (3).

(5) The deposit made under this section is liable to be forfeited if the Review Commission determines that the application for review is frivolous or irrelevant or is not made in good faith.

(6) For the purposes of this section—

**“aggrieved credit bureau”** means any credit bureau that claims to have suffered or is likely to suffer loss or injury by reason of a decision of the Central Bank under this Act or the Regulations; and

**“aggrieved data subject”** means any data subject that claims to have suffered or is likely to suffer loss or injury by reason of a decision or the conduct of, or a breach of a duty imposed on, a credit bureau by or under this Act or the Regulations.

### 43. Review proceedings

(1) Where an application for review is filed the secretary to the Review Commission shall, without delay, inform the credit bureau and, as the case may be, the Central Bank of that fact.

(2) The aggrieved credit bureau or as the case may be, the aggrieved data subject may cite a person whose interests are affected or are likely to be affected by the review proceedings as a party to the review proceedings; however that person shall not file a subsequent application for review on the same facts and grounds in respect of the same matter if the person is not cited as a party to the review proceedings.

(3) The Review Commission shall expeditiously consider every application for review submitted to it.

(4) In considering an application for review of a decision or the conduct of the Central Bank or a credit bureau, the Review Commission—

- (a) shall consider the materials contained in the administrative record kept and maintained by the Central Bank or credit bureau, as the case may be;
- (b) may not consider information 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 by notice, in writing, require any person—
  - (i) to attend before it to give, under oath or on affirmation, evidence with respect to any matter related to the review;
  - (ii) to produce any records regarding the matter referred to in subparagraph (i); and

- (iii) to present to it the arguments or submissions of the person in writing within such time as the Review Commission may specify in the notice.

(5) Where a person fails or refuses to comply with a notice under subsection 4(c), the High Court may, on the application of the Review Commission, issue an order requiring the person to attend before the Review Commission in compliance with the notice.

(6) Where a person fails or refuses—

- (a) to comply with an order issued under subsection (4);
- (b) to answer questions before the Review Commission under the notice; or
- (c) to produce any records referred to in the notice which are in the possession of the person,

the High Court may, on an application by the Review Commission, commit the person for contempt in accordance with the Civil Procedure Rules or any other enactment.

(7) Nothing in this Part shall be construed as limiting the power of the Review Commission to apply conciliation, mediation or other alternative dispute resolution technique or process in the exercise of its powers, duties and functions under this Part.

#### **44. Decisions of Review Commission**

(1) The Review Commission shall—

- (a) within twenty-eight days of the date of submission of an application for review, issue a written decision concerning the application, stating the reasons for the decision and the remedies granted, if any; and
- (b) no later than seven days from the date of the decision, give notice, in writing to—
  - (i) the applicant of the decision of the Review Commission, the reasons for the decision and the right of the applicant to appeal the decision under Part VIII; and
  - (ii) any other person who participated in the review proceedings of the decision of the Review Commission and the reasons for the decision.

(2) After giving notice under subsection (1), the Review Commission may make the decision and the reasons for the decision available for inspection by members of the public; but no information shall be disclosed if such disclosure—

- (a) is contrary to law;
- (b) is not in the public interest; or
- (c) is likely to prejudice the legitimate commercial interests of the credit bureau which is a party to the review proceedings.

(3) the Review Commission may, after making or causing to be made such inquiry or investigation as it thinks necessary, grant one or more of the following remedies—

- (a) direct the Central Bank or the credit bureau as the case may be, to act or to proceed in a lawful manner or to reach a lawful decision;
- (b) annul, in whole or in part, an unlawful act or decision of the Central Bank or credit bureau as the case may be;
- (c) subject to subsection (5), reverse an unlawful decision of the Central Bank or credit bureau as the case may be;
- (d) substitute its own decision for an unlawful decision of the Central Bank or credit bureau as the case may be.

(4) The Review Commission may dismiss the application if the Review 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 Review Commission is empowered to deal with under this Act or the Regulations.

(5) The Review Commission may annul, reverse or substitute the decision of the Central Bank only if—

- (a) the Central Bank failed to follow the prescribed procedure;
- (b) the Central Bank's decision is contrary to law;
- (c) there was no factual basis for the decision of the Central Bank; or
- (d) based on a review of the records, the Central Bank—
  - (i) committed a manifest error in its assessment of facts; or
  - (ii) abused its discretion.

(6) The Review Commission shall, in writing, promptly notify the parties to the review proceedings of the decision of the Review Commission and the reason for its decision.

(7) Unless appeal proceedings are instituted under Part VIII, the decision of the Review Commission is final and binding.

## **PART VIII**

### **APPEALS**

#### **45. Appeals to High Court**

(1) A person who is aggrieved by a decision or order of the Central Bank or Review Commission may, within twenty-eight days of the date of the decision or order, appeal the decision or order to the High Court.

(2) An appellant shall serve a notice of appeal on the Central Bank or Review Commission and any other person that the High Court may order.

(3) On receipt of a notice of appeal under subsection (2), the Central Bank or, as the case may be, the Review Commission shall file with the High Court true copies of—

- (a) all documents and materials respecting the decision or order appealed against that were before the Central Bank or Review Commission when the Central Bank or, as the case may be, Review 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 Central Bank or, as the case may be, the Review Commission.

(4) The commencement of an appeal under this section does not stay the effect of the decision or order appealed from, unless a judge of the High Court orders otherwise.

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

(1) The Central Bank, a Review Commission or a person who is the subject of a decision or order of the High Court may, in accordance with the Civil Procedure Rules, lodge an appeal from the decision or order of the High Court to the Court of Appeal on a question of law only.

(2) The commencement of an appeal under this section does not stay the effect of the decision or order appealed against, unless the Court of Appeal orders otherwise.



**PART IX**

**MISCELLANEOUS PROVISIONS**

**47. Agreements with other bodies, etc.**

(1) The Central Bank may enter into an agreement with any government, regulatory, law enforcement agency, investigative body or person inside or outside Antigua and Barbuda —

- (a) for the purpose of administering or enforcing this Act or any enactment of the other jurisdiction that is similar to 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) “agreement” shall be construed to include a reference to an agreement authorizing—

- (a) the Central Bank to perform responsibilities and exercise powers respecting credit reporting services on behalf of any government, regulatory authority, law enforcement agency, investigative body or person; and
- (b) any government, regulatory authority, law enforcement agency, investigative body or person to perform responsibilities and exercise powers respecting credit reporting services on behalf of the Central Bank.

**48. Confidentiality**

(1) Any information obtained by the Central Bank as a result of an inspection under this Act is not available for access to 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 authorised, in writing, by the Central Bank to have access to the information.

(2) Unless authorised by this Act or by any other law or with the consent of the data subject to whom any information relates, no authorised person or director, officer or employee of the Central Bank shall—

- (a) communicate or allow to be communicated any information obtained under this Act to any person who is not legally entitled to the information; or
- (b) allow any person referred to in paragraph (a) to have access to such information.

(3) Notwithstanding subsections (1) and (2), the Central Bank may authorize the release of, or access to, the information mentioned in those subsections to or by any person employed by a government agency, regulatory authority, law enforcement agency or investigative body inside or outside [Name of State or Territory] if—

- (a) the information is to be used solely for the purpose of administering or enforcing an enactment or other law of [Name of State or Territory] or of a foreign country; or
- (b) the release, inspection or access is—
  - (i) in accordance with an agreement made under section 47 or
  - (ii) in the public interest.

(4) A person who is given or permitted access to information under this section is not compellable to give evidence concerning that information unless—

- (a) the data subject to whom the information relates consents; or
- (b) a court, on an application, orders the evidence to be given.

(5) On an application for an order under subsection (4)(b)—

- (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.

(6) In this section, “authorised” means authorised by the Central Bank to inspect, or to have access to, information obtained by the Central Bank as a result of an inspection under this Act.

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

In a prosecution for an offence under this Act or the Regulations, a certificate of the Central Bank is admissible in evidence and, in the absence of evidence to the contrary, is prima facie evidence of the facts stated in it if it certifies that—

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

**50. General offences and penalties**

(1) A person commits an offence if the person—

- (a) makes a false or misleading statement in any application or in any proceeding or in response to any inspection under this Act or the Regulations; or
- (b) fails to comply with any order or direction made under this Act or the Regulations.

(2) Where a person commits an offence under this Act for which no penalty is specified or provided, the person is liable, on summary conviction, to a fine not exceeding one hundred thousand dollars.

**51. Fixed penalties**

(1) Notwithstanding section 50(2), if the Central Bank reasonably believes that a person has committed an offence under this Act or the Regulations, the Central Bank may issue to the person a notice, in the prescribed form informing the person of the option to discharge any liability to conviction in respect of the offence by payment of a fixed penalty of ten thousand dollars within ten working days from the date of receipt of the notice.

(2) A person is not liable to conviction for an offence if he pays the fixed penalty in accordance with subsection (1).

(3) If a person opts to pay a fixed penalty under this Act or the Regulations, the person shall pay the fixed penalty to the Accountant General within the period set out in the notice referred to in subsection (1).

(4) Where the person under subsection (1) is a credit bureau and it fails to comply with subsection (3), the Central Bank may revoke the licence of the credit bureau in accordance with section 15.

(5) In any proceedings in which the Accountant General issues a certificate indicating that a person paid, or did not pay, to the Accountant General the fixed penalty by the date specified, the certificate shall, in the absence of evidence to the contrary, be sufficient proof of the facts stated in the certificate.

(6) The Minister on the recommendation of the Central Bank may, by Order published in the *Gazette*, amend the fixed penalty set out under subsection (1).

(7) An Order made under subsection (6) is subject to negative resolution of the House of Representative.

## **52. Offences by credit bureau or other entity**

(1) Without prejudice to section 40 and any action which may be instituted under this Act, where a credit bureau or any other entity commits an offence under this Act, every director, partner or other senior officer of the credit bureau or other entity' who had knowledge of and consented to the commission of the offence, or who caused the commission of the offence by reason of his negligence, default, or breach of duty or trust-

- (a) shall, subject to subsection (2), be proceeded against as if the director, partner or other senior officer committed the offence; and
- (b) is liable, on summary conviction, to a fine of ten thousand dollars whether or not any action has been instituted against the credit bureau or other entity.

(2) A director, partner or other senior officer of a credit bureau or any other entity does not commit an offence under subsection (1) if the director, partner or other senior officer can show that he neither knew nor connived in the commission of the offence or that he exercised all due diligence to prevent the commission of the offence.

## **53. Defences in criminal proceedings**

(1) Subject to the provisions of subsection (2), in any criminal proceedings under this Act, it shall be a defence if the defendant establishes—

- (a) that the contravention in respect of which the proceedings are instituted was due to—
  - (i) a mistake;
  - (ii) an accident or some other cause beyond his control which accident or other cause may or may not involve another person; or
  - (iii) the act or default of another person; and
- (b) that he took reasonable precautions and exercised due diligence to avoid the contravention.

(2) Where a defendant relies on any defence under subsection (1)(a)(ii) or if applicable under subsection (1)(a)(iii) the defendant shall first obtain leave of the court in order to rely on the defence, unless before the day on which the hearing of the proceedings commences, the defendant serves on the person who instituted the proceedings a notice in writing giving such information, as was then in his possession, that would identify or assist in the identification of the other person.

**54. Immunity**

(1) No action or proceeding lies or shall be commenced against the [State] [Crown], the Minister or any authorised person for anything done, caused or permitted or authorised to be done, attempted to be done or omitted to be done in good faith under this Act or the Regulations by that person unless that person is grossly negligent or reckless—

- (a) in the exercise or purported exercise of any power conferred by this Act or the Regulations; or
- (b) in the carrying out or purported carrying out of any order made under this Act or any duty imposed by this Act or the Regulations.

(2) In this section, “authorised person” means a person acting under the authority of this Act or the Regulations.

**55. Protection of databases upon liquidation**

(1) Notwithstanding anything to the contrary in the Companies Act 1995 —

- (a) where a credit bureau is being wound up or liquidated—
  - (i) the database of the credit bureau containing data subject information related to the credit history of the data subjects shall be transferred to the Central Bank;
  - (ii) the Central Bank shall determine whether the credit bureau’s activities are to continue; and
  - (iii) for a period not exceeding twelve months, the Central Bank shall 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;
- (b) a credit bureau shall not, except with the approval of the Central Bank, pass any resolution for the suspension of its activity or the voluntary winding up of its business; and
- (c) the Central Bank shall take measures to properly dispose of or destroy the database where no new license is issued.

(2) Where the database of the credit bureau is transferred to the Central Bank under subsection (1)(a), the Central Bank shall employ such data security measures and safeguards as it considers reasonable to protect the database.

(3) Notwithstanding section 12(1), where a credit bureau ceases to operate or carry on business of a credit bureau, the Central Bank shall revoke the licence granted to the credit bureau.

## 56. Regulations

(1) The Minister on the recommendation of the Central Bank may make Regulations—

- (a) for the purpose of implementing the provisions of this Act; or
- (b) respecting any other matter that the Minister considers necessary to carry out the intent or purposes of this Act.

(2) Without limiting the generality of subsection (1), the Minister on the recommendation of the Central Bank may make Regulations prescribing—

- (a) the fees to be paid for the grant of licences, the continuation of licences and the reinstatement of licences that have been suspended;
- (b) the requirements regarding applicants for licences including qualification of directors and officers of the applicants;
- (c) the obligations and duties of credit bureaus including disclosure of information to data subjects and submission of periodic returns to the Central Bank;
- (d) the obligations of credit information providers and subscribers;
- (e) the procedures for the resolution of complaints and disputes respecting data subjects and breaches of this Act and the Regulations;
- (f) for the purposes of section 21(1), prescribing the records to be kept and maintained; or
- (g) any other matter that is required or authorised by this Act to be prescribed.

(3) The Minister on the recommendation of the Central Bank may, by Regulations, provide for offences and prescribe for such offences penalties not exceeding ten thousand dollars.

(4) Regulations made under this Act are subject to negative resolution of the House of Representatives.

## 57. Amendment of Schedules

The Minister, on the recommendation of the Central Bank, may amend the Schedules by Order published in the *Gazette*.

**SCHEDULE 1**

*(Section 2(2))*

**PUBLIC REGISTRIES**

1. Antigua and Barbuda Social Security Scheme Registry
2. Antigua and Barbuda Intellectual Property and Commerce Registry
3. The Land Registry
4. The Registry for Births and Deaths

## **SCHEDULE 2**

(Section 41(2))

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

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

A Review Commission shall consist of three members appointed by the Minister as follows —

- (a) a chairperson who shall be an attorney-at-law of not less than seven years standing; and
- (b) two other members from among persons who appear to the Minister to have wide experience in legal, administrative, economic or financial matters.

#### **2. Terms of office for Review Commission**

The members of the Review Commission shall hold office for a period not exceeding three years as specified in the instrument of appointment and are eligible for re-appointment.

#### **3. Disqualification**

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

- (a) has a direct or indirect personal interest in a matter being considered or to be considered by the Review Commission;
- (b) is convicted of an offence involving dishonesty or an offence under this Act;
- (c) does not possess the experience and qualifications specified in paragraph 1(b) of this Schedule;



- (d) is a member of the Senate or the House of Representative; or
- (e) is a director, an officer, an employee or an auditor of a credit bureau or credit information provider.

#### **4. 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 Review Commission;
- (b) giving notice of sittings which includes the agenda, the day, time and place of such sittings to members and other persons whose attendance is necessary or advisable;
- (c) recording the proceedings of the Review Commission;
- (d) providing copies of the records of the proceedings to members;
- (e) preparing the correspondence and reports of the Review Commission; and
- (f) carrying out such other tasks as are assigned to the secretary by the Review Commission.

#### **5. Decision of Review Commission**

(1) Decisions of the Review Commission shall be by a majority of the members present and voting, and in the event of an equality of votes, the chairperson has a second or casting vote.

(2) A decision of the majority of the members of the Review Commission is a decision of the Review Commission.

## **6. 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 section 41 of this Act, the Review Commission shall determine its own procedure; but the Review Commission shall give full opportunity to the parties to present evidence and make representations.

## **7. 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 member or 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; or
- (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; or
- (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.

## **8. Resignations**

(1) Any member of the Review Commission other than the Chairperson may at any time resign his office by instrument in writing addressed to the Minister] and transmitted through the Chairperson, and from the date of the receipt by the Minister of the instrument that member shall cease to be a member of the Review Commission.

(2) The Chairperson of the Review Commission may, at any time, resign his office by instrument in writing addressed to the Minister and the resignation shall take effect one month after the date of the receipt by the Minister of the instrument.

## **9. 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 thereof.

## **10. Remuneration**

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

## **11. 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 Review 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 Review 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 any 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 Review Commission while that matter is being dealt with by the Review Commission; and

(b) take part in any deliberations or vote relating to the matter.

**12. General authority of Chairperson**

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

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

Passed by the House of Representatives  
on the \_\_\_\_\_, 2017.

Passed by the Senate on the  
\_\_\_\_\_, 2017.

.....  
*Speaker.*

.....  
*President.*

.....  
*Clerk to the House of Representatives.*

.....  
*Clerk to the Senate.*

**EXPLANATORY MEMORANDUM**

The Credit Reporting Bill 2017 ('the Bill') seeks to establish the legal framework for credit reporting in the Currency Union through reasonable procedures that meet the needs of commerce for credit information in a manner that is fair and equitable to the data subjects (borrowers, whether actual or potential). The Bill seeks to promote fairness, accuracy, and privacy of information in the files of credit bureaus and in the practice of credit reporting.

The Bill also seeks to improve credit assessment processes and to facilitate enhanced risk management and loan pricing strategies throughout the financial sector. The credit assessment processes include assembling and evaluating data subject credit and other information on data subjects such as the credit worthiness, payment habits, credit standing, credit capacity, character, and general reputation of data subjects. The data subject information will be reflected in the credit reports generated by the credit bureau.

Moreover, the Bill seeks to enable banks and other financial institutions and other business entities providing loans to data subjects to better assess the credit worthiness of data subjects and to offer more competitively priced credit facilities with more efficient processing times. The principles regarding confidentiality, accuracy, relevance and proper utilization of credit information are reflected in the provisions of the Bill.

In short, the objects of this Bill are to—

- enable credit information sharing and reporting;
- provide for the regulation of the conduct of credit reporting and credit reporting services;
- provide safeguards for data protection for customers of credit providers; and
- provide for matters connected with, or incidental to, the foregoing.

The credit reporting system in the Currency Union will allow credit providers, for example, banks to better understand their customers (data subjects) in order to price their

loans to reflect the risks associated with the individual customer. Consequently such an understanding is expected to have the effect of differential interest rates reflecting the credit ratings of a loan applicant. Data subjects will also know how they are rated and will be able to monitor the information held about them. Further, the data subjects will be able to take the appropriate steps to improve their ratings, where necessary.

Credit information will only be sourced and used from specified credit information providers. Eligible credit information providers will include commercial banks, merchant banks, building societies, credit unions, insurance companies, persons selling goods under hire purchase arrangements and other specified credit providers. In addition the credit bureau may collect relevant identification information from specified public registers.

Additionally, the Bill seeks to impose a licensing system on credit bureaus, that is to say, persons who offer credit reporting services. The reporting processes will also be outlined in the proposed legislative framework to ensure objective and standardized reporting of credit information. Applications for a licence to operate or carry on business as a credit bureau are to be made to the Eastern Caribbean Central Bank.

Only entities licensed under the legislation can offer credit reporting services. The credit bureaus are empowered to carry out a vital role in assembling and evaluating data subject credit and other information on data subjects. The responsibilities of the credit bureaus will be vital as well as grave.

In this regard, credit bureaus will be subject to regulation by the designated supervising authority under the Act. The Eastern Caribbean Central Bank is the supervisory and regulatory authority for credit reporting services in Antigua and Barbuda and the rest of the Currency Union. The functions and statutory powers of the Central Bank include, among other things—

- reviewing applications for licensing and making the appropriate decision regarding the grant or refusal of the licence;
- ensuring that credit bureaus exercise their responsibilities with fairness, impartiality, and a respect for the data subject's right to privacy;

- maintaining general supervisory oversight of the operations of credit bureaus; and
- imposing fines and other sanctions for breaches of the legislation.

In summary, the Bill requires credit bureaus to adopt reasonable procedures for meeting the needs of commerce including data subject credit, personnel, insurance, and other information in a manner which is fair and equitable to the data subject, having regard to the confidentiality, accuracy, relevancy, and proper utilization of such information in accordance with the requirements of the law.

*Hon. Gaston Browne*  
*Prime Minister*  
*Minister of Finance and Corporate Governance*