

FAIR REPORTING OF CREDIT ACT 2016
(ACT NO. 11 OF 2016)

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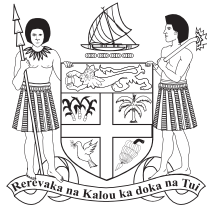
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ACT NO. 11 OF 2016

I assent.

J. K. KONROTE
President

[28 April 2016]

AN ACT

TO MAKE PROVISIONS FOR THE REGULATION, ADMINISTRATION AND LICENSING OF CREDIT REPORTING AGENCIES AND FOR RELATED MATTERS

ENACTED by the Parliament of the Republic of Fiji—

PART 1—PRELIMINARY*Short title and commencement*

- 1.**—(1) This Act may be cited as the Fair Reporting of Credit Act 2016.
(2) This Act comes into force on a date or dates appointed by the Minister by notice in the Gazette.

Interpretation

- 2.** In this Act, unless the context otherwise requires—

“Bank” means the Reserve Bank of Fiji;

“borrower” means a person whose credit information is submitted under this Act to a credit reporting agency and in relation to whom a credit report is issued by a credit reporting agency;

“company” has the same meaning given in the Companies Act 2015;

- “credit information” means information on borrowers in electronic or any other form submitted by a credit information provider and maintained, processed and reported on by a credit reporting agency;
- “credit information provider” means any person registered with the Bank to provide credit information for the purposes of this Act;
- “credit report” means a report issued by a credit reporting agency which contains a full or partial disclosure of credit information contained in its database in respect of a borrower;
- “credit report recipient” means a person who is eligible to receive a credit report under this Act on request from a credit reporting agency;
- “credit reporting agency” means an entity licensed under this Act and collects credit information or data pertaining to a person from a credit information provider and compiles such credit information in order to provide such information, on request, to a credit report recipient in the form of a credit report;
- “credit reporting system” means the collection of credit information by a credit reporting agency, the storage, management and processing of the credit information and the dissemination of credit information by a credit reporting agency under this Act;
- “knowingly” has the same meaning given in the Crimes Decree 2009;
- “lending institution” includes—
- (a) a licensed commercial bank;
 - (b) a finance company;
 - (c) a finance leasing establishment;
 - (d) any other institution, engaged in providing credit or goods and services on credit to the borrowers, declared by the Minister on the recommendation of the Reserve Bank having regard to the financial stability of that institution, by order published in the Gazette, to be a lending institution for the purposes of this Act;
- “Minister” means the Minister responsible for finance;
- “person” means a natural person or a company, association or body of persons, corporate or unincorporate; and
- “prescribed” means prescribed by regulations under this Act.

PART 2—REGULATORY ROLE OF THE RESERVE BANK OF FIJI

Regulatory role of the Bank

3.—(1) The Reserve Bank of Fiji has the overall supervisory and regulatory authority to—

- (a) register, license and regulate credit reporting agencies, credit information providers and credit report recipients; and
- (b) maintain proper standards of conduct and acceptable credit reporting practices.

(2) The Bank must consult the Minister on matters relating to fair credit reporting.

PART 3—LICENSING OF CREDIT REPORTING AGENCY OPERATIONS

Credit reporting agency licence

4.—(1) A person must not establish, operate or conduct business as a credit reporting agency unless that person has obtained a licence for that purpose from the Bank.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 5 years, or to both.

Application for licence

5.—(1) An application for a licence to carry on the business of a credit reporting agency must be made in writing to the Bank in the prescribed form.

(2) The application must be accompanied by the prescribed processing fee.

Licensing requirements

6.—(1) The Bank must not grant a licence to a person to carry on the business of a credit reporting agency unless the person—

- (a) is incorporated as a company under the Companies Act 2015 solely to carry out credit reporting agency activities;
- (b) has human, financial and operational resources sufficient for the agency to function efficiently and effectively in accordance with this Act;
- (c) presents a business plan that is satisfactory to the Bank.

(2) The Minister may by regulations prescribe the qualifications and other specifications to be satisfied by the directors and shareholders of the company referred to in subsection (1)(a).

Process of application

7.—(1) The Bank must acknowledge the receipt of an application for a credit reporting agency licence, as soon as the application is received.

(2) The Bank may upon satisfying itself that the applicant has paid the stipulated fees, and satisfied all other conditions, grant a licence to the applicant.

(3) Where an applicant fails to pay the stipulated fees or to satisfy any pre-condition for the grant of the licence, the Bank must refuse the application and notify the applicant of such refusal in writing.

(4) The Bank shall state the reasons for the refusal in the notice of refusal referred to in subsection (3).

Non-transferability of licence

8.—(1) A person must not transfer a licence granted by the Bank to another person.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 5 years, or to both.

Revocation and suspension of licence

9. The Bank may suspend or revoke a licence if the Bank is satisfied that the credit reporting agency—

- (a) has failed to comply with the terms and conditions of the licence;
- (b) has contravened the provisions of this Act;
- (c) has contravened the Rules made under this Act;
- (d) has ceased to satisfy the requirements for licensing and the renewal of a licence.

Register of licences

10. The Bank must maintain a register of licences which shall contain details of licences granted under this Act.

Display of licence

11. A credit reporting agency must display the credit reporting agency licence in a conspicuous place on its business premises for the information of the public.

Appeals

12. Any person aggrieved by any decision of the Bank under this Part of this Act may appeal against such decision to the Minister, whose decision shall be final and binding on all the parties.

PART 4—RIGHTS, DUTIES AND OBLIGATIONS

Duties of a credit reporting agency

13. A credit reporting agency must comply with—

- (a) regulations and rules made under this Act;
- (b) directions given by the Bank; and
- (c) other duties imposed by a code of conduct issued by the Bank.

Right to access credit information

14. A person has the right to—

- (a) receive a copy of the information concerning such person held by a credit reporting agency;
- (b) require the credit information agency to correct the credit information referred to in paragraph (a); or
- (c) challenge the accuracy of information referred to in paragraph (a).

Minimum amount of credit information reporting

15.—(1) The Minister may by regulations prescribe the minimum amount of credit information—

- (a) that can be reported to a credit reporting agency by a credit information provider; and
- (b) that can be reported by a credit reporting agency to a credit report recipient, for the purposes of this Act.

(2) A credit reporting agency that stores and provides credit information in contravention of subsection (1) commits an offence and is liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years, or to both.

PART 5—OFFENCES

Offences relating to disclosure of information

16. Any person who—

- (a) obtains data or credit information concerning a person without obtaining the written consent of such person for the purpose of this Act;
- (b) obtains confidential information pertaining to a person in the course of performing the duties and functions under this Act; or
- (c) reveals or discloses any data or information which may come to such person’s knowledge in the course of performing the duties and functions under this Act, other than for purposes required or permitted under this Act or any other written law,

commits an offence and is liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years, or to both.

Offence of providing incorrect information

17.—(1) Any person who knowingly provides false, inaccurate or erroneous credit information or data pertaining to a borrower, in the course of performing duties and functions under this Act, commits an offence and is liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both.

(2) For the purposes of subsection (1), “person” includes a credit reporting agency, or a lending institution.

Other offences

18.—(1) A person who operates as a credit reporting agency when the licence to operate as a credit reporting agency has been revoked or suspended commits an offence and is liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both.

(2) A person who hinders, opposes, obstructs or unduly influences a person in the exercise of a power, performance of a delegated function, conferred or imposed duty under this Act, commits an offence and is liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both.

(3) Where a person other than the sender or the intended recipient of a transmitted message or data, steals, intercepts, interferes with, alters or modifies, diverts, unlawfully discloses, decodes or attempts to decode a transmitted message or data, or facilitates any act, that person commits an offence and is liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both.

(4) A person who contravenes or fails to comply with any other provision of this Act commits an offence and is liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both.

(5) Where an offence is committed under this Act by a body corporate, each director, executive officer, secretary or employee of the body corporate who was by act or omission, directly or indirectly concerned in or is a party to the commission of the offence shall also be guilty of the offence.

PART 6—TRANSITIONAL

Transitional

19.—(1) Any person, who operates a credit reporting agency or an entity that performs the functions similar to the business of a credit reporting agency in Fiji on the date of commencement of this Act must discontinue such operations immediately after this Act comes into force.

(2) For the purposes of subsection (1), the Minister may in consultation with the Bank, determine whether an entity performs the function of a credit reporting agency in the event of any doubt.

(3) The person referred to in subsection (1) must transmit all credit information or data collected by such person, to the Bank immediately after this Act comes into operation.

(4) The bank must confiscate the credit information or data transmitted under subsection (3).

(5) No person shall use the credit information referred to in this section for any purpose other than the purposes specified in subsections (3) and (4), after the commencement of this Act.

(6) On and after the date of commencement of this Act, no person shall use any credit information already provided to such person prior to the commencement of this Act by an unregistered credit reporting agency, to make a decision on loan or credit applications.

(7) The person referred to in subsection (1) may apply for a licence under this Act.

(8) Any person who contravenes subsections (1), (3), (4), (5) or (6), commits an offence and is liable upon conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 5 years, or to both.

PART 7—MISCELLANEOUS

Compliance report

20.—(1) A credit reporting agency must submit to the Bank an annual compliance report in addition to its audited financial statements.

(2) An annual compliance report shall be certified by an independent auditor who is certified by the Fiji Institute of Accountants.

(3) An annual compliance report shall address the following matters—

- (a) accuracy of credit information received and reported by the credit reporting agency;
- (b) incidence of complaints and complaint resolution; and
- (c) adequacy of procedures employed by the credit reporting agency to ensure that—
 - (i) data received and reported by it are accurate;
 - (ii) confidentiality of data is maintained; and
 - (iii) complaints are resolved promptly and satisfactorily.

(4) An annual compliance report shall deal with any other related matters prescribed by regulations.

Accounts and audit

21.—(1) The credit reporting agency must keep proper accounts and other records in respect of its operations.

(2) A credit reporting agency must submit a copy of its audited financial statements to the Bank within 3 months after the end of the financial year.

Registration of credit report recipients and credit information providers

22.—(1) Every person who wishes to function as a credit report recipient or credit information provider must register with the Bank for the respective purpose.

(2) The Minister may by regulations prescribe the qualifications and specifications that must be satisfied by a person to register as a credit report recipient or a credit information provider under this section.

(3) No person shall receive credit information without registering as a credit report recipient or provide credit information without registering as a credit information provider.

(4) Any person who contravenes this section commits an offence and is liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years, or to both.

Regulations

23. The Minister may, in consultation with the Bank, make regulations prescribing matters that are required or permitted by this Act to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to this Act and generally for achieving the purposes of this Act.

Application of other legislation

24. This Act is in addition to any other legislation related to confidentiality, privacy, right to information, data protection, electronic crime, economic crime, computer crime and other relevant matters and must not derogate from the provision of these laws.

Passed by the Parliament of the Republic of Fiji this 27th day of April 2016.