

**BILL
ENTITLED**

AN ACT to License and regulate microcredit institutions that provide financing to individuals and micro, small and medium sized enterprises; and for connected matters.

BE IT ENACTED by The Queen’s Most Excellent Majesty, by and with the advice and consent of the Senate and House of Representatives of Jamaica, and by the authority of the same as follows:-

PART I. Preliminary

Short title and commencement.

1. This Act may be cited as the Microcredit Act, 2021, and shall come into operation on a day to be appointed by the Minister by notice published in the *Gazette*.

Interpretation.

2. – (1) In this Act –

“advertise” means to publish, display, present, disseminate or convey any invitation or solicitation by any medium including –

- (a) a sky sign, notice, handbill, brochure, pamphlet, placard, board, poster or other publication;
- (b) a circular;
- (c) an exhibition of photographs or cinematograph films;
- (d) a word, message on paper, message transmitted by way of electronic means, a social network or the Internet, or mobile message;
- (e) sound broadcasting;
- (f) programme, television or telephone communication or other form of communication,

but does not include a prospectus, as defined in the Companies Act, issued by a company;

“auditor” means a person who –

(a) is a registered public accountant as defined in section 2 of the Public Accountancy Act; and

(b) satisfies such requirements as may be prescribed, and includes a firm of such persons;

“authorized officer” means the Supervisor, Deputy Supervisor or any other person authorized to perform functions on behalf of the Supervisor or the Deputy Supervisor under the Bank of Jamaica Act or this Act;

“Bank” means the Bank of Jamaica established by section 3 of the Bank of Jamaica Act;

“branch” means an office or place of business (other than a principal office) where a microcredit institution carries on any microcredit service;

“commencement date” means the date on which this Act comes into operation;

“Commission” means the Consumer Affairs Commission established under section 5 of the Consumer Protection Act;

“connected person” shall be construed in accordance with subsection (4);

“consumer” has the meaning assigned to it in section 2 of the Consumer Protection Act;

“control” in relation to a licensee or any other company, means the power of a person (whether acting alone or jointly with another, who holds or is beneficially entitled to fifty percent or more of the votes in the licensee or other company) to secure by means of those voting rights that the affairs of the licensee or other company are conducted in accordance with the wishes of that

person;

“credit information” has the meaning assigned to it in section 2 of the
Credit Reporting Act;

“document” means, in addition to a document in writing, any thing in
which information of any description is recorded or stored;

“effective annual interest rate” means the rate used to determine the
actual annual rate that is to be paid on a loan if the stated annual
rate takes into account the effects of compounding and which is
calculated in accordance with the methodology specified in Part
A of the First Schedule;

“effective control” means the ability of a person (whether acting alone,
or jointly with another) to ensure that the affairs of the licensee or
other company are conducted in accordance with the wishes of
that person, whether or not the person has control of the licensee
or other company;

“financial group” has the meaning assigned to it in section 2 of the
Banking Services Act;

“financial services” has the meaning assigned to it in section 2 of the
Financial Services Commission Act;

“Financial Services Commission” means the body established under
section 3 of the Financial Services Commission Act;

“foreign regulator” means an authority in a country other than Jamaica
which has supervisory duties or responsibilities –

- (a) with respect to any individual who provides financial
services in that country;
- (b) with respect to a body that is incorporated or otherwise
established in, and provides financial services in that

Part A.
First Schedule.

country; and

- (c) which are similar to the duties or responsibilities of the
Bank or the Financial Services Commission;

“functions” includes powers and duties;

“group” in relation to a company, means that company and –

- (a) any other company that is its holding company;
- (b) any other company that is a subsidiary of the holding
company;
- (c) any company that directly or indirectly controls or is
controlled, directly or indirectly, by any company referred to
in paragraph (a) or (b);
- (d) any company that effectively controls or is effectively
controlled by any company referred to in paragraph (a) or
(b);
- (e) any company that is controlled by a person who directly or
indirectly controls a company referred to in paragraph (a),
(b) or (c);

“incorporating documents” means the statute, charter, memorandum of
association, articles of association, articles of incorporation, rules
and by-laws or other instruments, under or by which a licensee or
other body is established, its governing and administrative
structure and the scope of its functions and business are set out,
whether contained in one or more documents;

“immediate relative” in relation to any person, means the person’s
spouse, children (including step children) and their spouses,
parents, brothers or sisters;

“investigation” means an investigation by the Commission or the

Regulatory Authority, as the case may be, into a complaint, an occurrence or a matter carried out for the purposes of this Act;

“licence” means a licence granted under section 10;

“licensee” means a person licensed under this Act;

“local regulator” means the Bank, the Financial Services Commission, the Registrar of Friendly and Co-operative Societies or any authority in Jamaica which has supervisory duties or responsibilities –

- (a) with respect to an individual who provides financial services in Jamaica;
- (b) with respect to a body that is incorporated in, and provides financial services in Jamaica; and
- (c) which are similar to the duties or responsibilities of the Bank or the Financial Services Commission;

“Microcredit Appeals Tribunal” means the appeals tribunal established under section 41;

“microcredit institution” means a company that is licensed under this Act to provide a microcredit service to individuals or MSMEs or both;

“microcredit service” means –

- (a) any one or more of the following services provided by a microcredit institution –
 - (i) the granting of credit facilities to individuals or MSMEs or both; and
 - (ii) the provision of business advisory services (not including the advice relating to the financial services regulated by the Financial Services

Commission) to individuals or MSMEs or both;

or

- (b) any other activity designated by the Supervisor as a microcredit service and approved by the Minister, by order, subject to affirmative resolution,

but does not include receiving deposits from the public or banking business, within the meaning of the Banking Services Act;

“money laundering” shall be construed in accordance with Part V of the Proceeds of Crime Act;

**Part B.
First Schedule.**

“MSME” means a micro sized enterprise, a small sized enterprise and a medium sized enterprise as described in Part B the First Schedule;

“officer”, in relation to a microcredit institution, means a person who, in that institution –

- (a) is a director, president or vice-president (however designated), general manager, company secretary, financial controller or treasurer; or
- (b) performs functions similar to those normally performed by the holder of any position referred to in paragraph (a);

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

- (a) the consumer’s name, present and past addresses, tax payer registration number or other numerical reference, cataloguing or reference scheme, used for identification purposes; and
- (b) any other relevant information about the consumer which is reasonably required in order to enable the credit information to be utilized for the purposes of this Act;

“Regulatory Authority” means the Bank or any other entity or person as may be designated by the Minister by notice published in the *Gazette*;

“spouse” includes -

- (a) a single woman who has cohabited with a single man as if she were in law his wife, for a period of not less than five years; and
- (b) a single man who has cohabited with a single woman as if he were in law her husband, for a period of not less than five years,

at the date and for the purposes of a determination of a connection with a licensee, pursuant to subsection (4)(h);

“regulatory counterparts” has the meaning assigned to it in section 2 of the Bank of Jamaica Act;

“substantial shareholder” means a person who holds twenty percent or more of the shares of a licensee;

“Supervisor” has the meaning assigned to it in section 2 of the Banking Services Act;

“Supervisory Department” means the department in the Bank established under Part VA of the Bank of Jamaica Act;

“terrorist activity” shall be construed in accordance with the Terrorism Prevention Act;

“ultimate holding company” means the company under which the other companies within a group are held.

(2) For the purposes of sections 4(1)(b)(ii), 10(5)(b), 19(5)(c), 21(1)(b), 27(1)(d), 30(1), 41(4)(a) and paragraphs 3(2) and 6(4)(d) of the

- (a) he possesses the knowledge, skills and experience which are necessary for the intended functions to be carried out by that person;
- (b) he has not been convicted of an offence involving fraud or dishonesty, or an offence specified under the Proceeds of Crime Act, the Banking Services Act, the Securities Act, the Insurance Act, the Pensions (Superannuation Funds and Retirement Schemes) Act, the Terrorism Prevention Act or the United Nations Security Council Resolutions Implementation Act or an offence that is similar to any such offence in another jurisdiction;
- (c) he is not bankrupt within the meaning of the Insolvency Act;
- (d) his employment record does not give the Supervisor reasonable cause to believe that the person has carried out an act involving dishonesty or an act involving impropriety in the handling of financial business;
- (e) in the opinion of the Supervisor –
 - (i) he is a person of probity;
 - (ii) he is a person whose appointment to the board of, employment by, or ownership of, the licensee, as the case may be, will not result in a conflict of interest;
 - (iii) he is able to exhibit competence and exercise diligence and sound judgment in fulfilling his responsibilities in relation to a microcredit institution; and
 - (iv) the interests of consumers will not be threatened if the person assumes the office that he is likely to hold, or continues to hold the office that he currently holds.

(3) For the purposes of subsection (2), the Supervisor shall have regard to any evidence that the person has –

- (a) engaged in any business practices that appear to the Supervisor to be deceitful or oppressive or otherwise improper, and which reflect discredit to the person's method of conducting business;
- (b) contravened any provision of any enactment designed to protect the public against financial loss, due to –
 - (i) dishonesty, incompetence or malpractice, by persons concerned in the provision of banking, insurance, investment or other financial services, credit information or in the management of companies; or
 - (ii) bankruptcy or insolvency; and
- (c) contravened any provision of any enactment relating to financial services as defined in section 2 of the Banking Services Act.

(4) For the purposes of this Act, the following persons shall be treated as being connected with a given licensee ("L") and the licensee with them, and shall be so treated notwithstanding that at the relevant time any of the persons in question (not being individuals) had not yet come into existence or had ceased to exist –

- (a) a holding company or subsidiary of L;
- (b) a subsidiary of a holding company of L;
- (c) a holding company of a subsidiary of L;
- (d) a company of which L has control or effective control;
- (e) a company that, whether by itself or jointly with another, has control or effective control of L;
- (f) any company of which L and persons connected with L together have control or effective control;
- (g) any company that together with L constitute a group;
- (h) an individual who is a director, manager or a person who has control

of L or any partner or immediate relative of such director, manager or person;

- (i) the ultimate holding company of L;
- (j) substantial shareholders of L;
- (k) the ultimate beneficial owners of any substantial shareholding in L, whether under a trust or other legal arrangement or through any direct or indirect shareholding; and
- (l) any other person identified by the Supervisor to be a person who should be treated as connected to L by virtue of that person's relationship with L.

(5) A company is the holding company of a company that is its immediate, intermediate or ultimate subsidiary where the holding company holds that other company's share on trust or is the beneficial owner of the shares.

Non-application of Act.

Part A.

Part B.

Third

Schedule.

3. This Act shall not apply to the transactions, persons and entities specified in Part A and Part B of the Third Schedule.

PART II. *Functions of the Regulatory Authority, Etc.*

Functions of Regulatory Authority.

4. – (1) The Regulatory Authority shall be responsible for the general administration of this Act and for the supervision of microcredit institutions, and through the Supervisor and the Supervisory Department shall –

- (a) formulate procedures for the licensing and regulation of microcredit institutions;
- (b) develop standards of practice and codes of conduct and guidance for the general operation of licensees including –
 - (i) credit administration;

- (ii) addressing the fit and proper requirements specified in section 2(2);
 - (iii) transparent lending practices;
 - (iv) requirements to be met by external auditors;
 - (v) reporting requirements; and
 - (vi) such other matters as the Regulatory Authority considers necessary for the administration of this Act;
- (c) monitor licensees on an ongoing basis, by off-site and on-site examination, in such manner and with such frequency as the Regulatory Authority thinks necessary, according to the risk profile of the licensees, to determine whether the licensees are operating in compliance with this Act or any other enactment;
- (d) impose sanctions for the identified breaches of the provisions of this Act, and any regulations made under this Act;
- (e) according to the risk profile of a licensee, provide a comprehensive report to the board and management of the licensee on the results and findings, from ongoing monitoring of the licensee, including, where applicable, requirements for remedial action to be taken within given timelines;
- (f) prescribe the type of returns and other information that licensees are required to file with the Supervisor and the intervals for the filing of such returns and other information;
- (g) advise the Minister on matters of general policy relating to microcredit institutions; and
- (h) perform such other functions as may be assigned to the Regulatory Authority in relation to licensees, from time to time, by the Minister or by or under this Act or any other enactment.

(2) The Supervisor shall submit to Parliament, through the Minister, an annual report relating generally to the execution of the functions of the Supervisor under this Act.

(3) At least every three years, there shall be a review undertaken by qualified, independent experts of –

- (a) the effectiveness of the supervisory framework as set out under this Act;
- (b) the processes and procedures carried out in furtherance of the supervision mandate pursuant to this Act; and
- (c) the performance of the Supervisor in relation to the mandate of the Supervisor under this Act,

and the report of this review shall be provided to the Minister and the Supervisor.

Disclosure of interest of authorized officer or other person being considered for appointment.

5. – (1) Where –

- (a) an authorized officer; or
- (b) a person being considered for appointment pursuant to section 34B of the Bank of Jamaica Act,

is a shareholder (whether directly or indirectly) in any microcredit institution, the person shall notify the Supervisor thereof in writing, and the Supervisor shall notify the Board of the Bank.

(2) The Board of the Bank may, if it thinks fit, upon receipt of a notice referred to in subsection (1), in writing, require the authorized officer or a person being considered for appointment pursuant to section 34B of the Bank of Jamaica Act, to dispose of any of the shares held by that person in any licensee or of any interest in such shares within such time as the Board of the Bank may specify.

Secrecy of authorized

6. – (1) An authorized officer and any other person authorized to assist an

officer.

authorized officer shall not –

- (a) disclose information regarding the operations of a licensee to any person other than –
 - (i) the Minister or the nominee of the Minister;
 - (ii) the Governor, Senior Deputy Governor or Deputy Governors;
 - (iii) the Supervisor or Deputy Supervisor;
 - (iv) any officer of the Supervisory Department; or
 - (v) the head of a regulatory counterpart, the deputy of the head of a regulatory counterpart or a person formally nominated to receive information on behalf of such head;
- (b) subject to paragraph (c), disclose other than for the purposes of this Act, any information regarding the affairs of a customer of a licensee obtained in relation to the performance of their duties under this Act; or
- (c) disclose other than for the purposes of the investigation of a financial crime, or in relation to the contravention of a licensee's obligation under any other enactment, any information obtained in relation to the performance of their duties under this Act.

(2) A person who contravenes subsection (1), commits an offence and is liable, on conviction, to the penalty specified in the Fourth Schedule.

Fourth Schedule.

(3) No civil or criminal action, suit or other proceedings may be brought against an authorized officer and any other person authorized to assist an authorized officer under this section, who, in good faith, makes a disclosure pursuant to subsection (1).

Cooperation of Regulatory Authority with other

7. – (1) The Regulatory Authority may cooperate and collaborate with other local regulators, foreign regulators, local and foreign law enforcement

**regulators,
etc., and the
Commission.**

authorities and other regulatory counterparts to facilitate information sharing and other forms of cooperation and collaboration to enable –

- (a) the ongoing supervision of microcredit institutions;
- (b) the investigation of regulatory breaches;
- (c) the investigation of financial and other crimes and related enforcement action involving a microcredit institution; and
- (d) the resolution of a microcredit institution.

(2) The Regulatory Authority and the Commission shall cooperate and collaborate with each other in relation to the investigation of any apparent contravention of this Act and either body, aforementioned, may refer a complaint to the other body where the subject matter of the complaint indicates that it would be more appropriately dealt with by that other body.

(3) The Regulatory Authority shall determine the parameters of any cooperation and collaboration pursued under subsections (1) and (2), the duration of such cooperation and collaboration and any cost sharing and other matters related to the cooperation and collaboration.

**Ministerial
directions.**

8. The Minister may, after consultation with the Supervisor, give to the Regulatory Authority, directions of a general character, as to the policy to be followed by the Regulatory Authority in the performance of its functions under this Act, as appear to the Minister to be necessary in the public interest, and the Regulatory Authority shall give effect to the directions.

PART III. *Licensing and Regulation of Microcredit Institutions*

**Prohibition
against
operating a
microcredit
institution.**

9. – (1) A person who desires to provide a microcredit service shall be licensed as a microcredit institution under this Act.

(2) A person who contravenes subsection (1) commits an offence and is liable, on conviction, to the penalty specified in the Fourth Schedule.

**Fourth
Schedule.**

(3) A contract for the provision of a microcredit service shall be unenforceable if the contract is entered into by a person who is offering a microcredit service, but has not obtained a licence.

**Application
for and grant
of licence.**

10. – (1) An application to obtain a licence to operate a microcredit institution shall be made to the Supervisor, in accordance with the rules made under section 59 and accompanied by the following –

- (a) proof that the institution is registered as a company pursuant to the Companies Act, including a certified copy of the incorporating documents of the company; and
- (b) such other information, as may be specified in the rules made under section 59.

(2) The Supervisor may, upon receipt of an application under subsection (1), request the applicant to furnish such additional information and documents as the Supervisor may consider relevant.

(3) Subject to subsection (5), and upon consideration of an application made under this section, the Supervisor may –

- (a) subject to such terms and conditions as the Supervisor deems appropriate, and upon payment of the prescribed fee, grant a licence to the applicant and enter the particulars, in relation to the licence, in a register established by the Supervisor for this purpose; or
- (b) refuse to grant a licence to the applicant.

(4) Where the Supervisor refuses to grant a licence, the Supervisor shall –

- (a) notify the applicant in writing of the intention of the Supervisor to refuse to grant the licence and the reason for the intended refusal; and
- (b) afford the applicant an opportunity to be heard, within fourteen days

of the date of the notice of refusal.

(5) The Supervisor shall not grant a licence under this section, unless the Supervisor is satisfied that –

- (a) the systems and arrangements required by this Act have been put in place by the applicant so as to ensure compliance with the provisions of this Act; and
- (b) the substantial shareholders and officers of the company for whom an application is being made, are fit and proper persons.

Conditions of licence.

11. It shall be a condition of every licence that the licensee shall –
- (a) forthwith upon the grant of the licence and annually, on or before each anniversary of the grant of the licence, while the licence remains in effect, pay the prescribed licence fee to the Accountant-General; and
 - (b) commence operation pursuant to the licence within one year of the grant of the licence or such longer period as the Supervisor may allow.

Licence to be prominently displayed.

12. – (1) A licensee shall ensure that the licence or a certified copy thereof, is prominently displayed in a part of the principal office of the microcredit institution to which the public has access, and at each branch of the microcredit institution.

(2) A licensee who without lawful excuse, contravenes subsection (1) commits an offence and is liable, on summary conviction, to the penalty specified in the Fourth Schedule.

Fourth Schedule.

Non-transferability, etc., and publication of licence.

13. – (1) A licence granted under section 10 shall not be transferable or assignable.

(2) A licensee shall not cause or permit another person to use its

licence.

(3) The Supervisor may suspend a licence where the licensee causes or permits another person to use its licence in contravention of subsection (2), and the licensee shall be liable to pay a prescribed fee on the reinstatement of the licence.

(4) The Supervisor shall publish or cause to be published by notice in the *Gazette* –

- (a) the name of each person to whom a licence is granted;
- (b) the name of each person whose licence is revoked;
- (c) any change of name of a licensee; and
- (d) such other matters relating to the licensing of microcredit institutions as the Supervisor considers appropriate.

Lost, defaced or destroyed licence.

14. – (1) Where a licence is lost, defaced or destroyed, the licensee shall, promptly, after becoming aware that the licence is lost, defaced or destroyed, apply to the Supervisor to have the licence replaced.

(2) An application under subsection (1) shall –

- (a) be in writing;
- (b) outline the circumstances resulting in the licence being lost, defaced or destroyed; and
- (c) be accompanied by the prescribed fee associated with the replacement of the licence, which shall be made payable to the Accountant-General.

(3) Where the Supervisor is satisfied as to the loss, defacement or destruction of the licence, the Supervisor shall grant to the licensee a substitute licence.

(4) A licence that is substituted pursuant to subsection (1) shall –

- (a) reflect the information that was specified on the original licence; and

(b) be subject to publication in accordance with section 13(4) at the expense of the licensee.

Obtaining a licence by false representation.

15. – (1) A person shall not obtain a licence by false representation.

(2) A person who obtains a licence by false representation commits

Fourth Schedule.

an offence and is liable, on conviction, to the penalty specified in the Fourth Schedule.

False or misleading advertising.

16. – (1) A person shall not knowingly or recklessly advertise any information, which falsely implies or explicitly states that the person is licensed under this Act as a microcredit institution.

(2) A person who contravenes subsection (1) commits an offence and is liable, on conviction, to the penalty specified in the Fourth Schedule.

Prohibition on use of certain names, titles, words, etc.

17. – (1) Except with the approval, in writing, of the Supervisor, a person who is not licensed under this Act to provide a microcredit service shall not use any name, title, word, term or grammatical presentation that represents or implies that the person is licensed to provide a microcredit service.

(2) Subsection (1) shall not apply to an association formed by microcredit institutions for the purpose of representing the common interest of the members of the association or in any case where the name, title, word, term or grammatical presentation forms part of the name of an individual or place.

(3) Subject to subsection (4), the Supervisor may, in the public interest, by notice, in writing, revoke any approval given to any person under subsection (1) and that person shall comply with such notice within the period specified.

(4) Before an approval is revoked, the Supervisor shall give the person concerned, notice, in writing, of the intended revocation and shall afford that person an opportunity to submit to the Supervisor, within

fourteen days, a written statement of objection to the proposed revocation of approval.

(5) A person who contravenes subsection (1) commits an offence and is liable, on summary conviction, to the penalty specified in the Fourth Schedule.

**Fourth
Schedule.**

**Regulation of
mergers,
amalgamations
acquisitions
and transfers.**

18. – (1) If a licensee intends to –

- (a) merge or amalgamate its business with that of another licensee;
- (b) acquire the business of another licensee; or
- (c) transfer its business to another licensee,

the licensee shall apply to and obtain the approval of the Supervisor.

(2) An application to the Supervisor for approval under subsection (1) shall be in the form of a scheme and shall be regulated in accordance with such provisions as may be prescribed.

(3) Where a licensee engages in a merger, amalgamation, acquisition or transfer, as referred to in subsection (1), the licensee shall, within thirty days after such merger, amalgamation, acquisition or transfer, deposit with the Supervisor –

- (a) certified copies of the statements of the assets and liabilities of any new entity that is formed;
- (b) a certified copy of the agreement or deed under which the merger, amalgamation, acquisition or transfer was done;
- (c) a declaration signed by at least two officers of the licensee that to the best of their belief, all information in the possession of the licensee relating to the merger, amalgamation, acquisition or transfer has at all times been kept in accordance with this Act.

(4) A person who, in any statement, agreement, deed or declaration referred to in subsection (3), causes or permits the inclusion of any informa-

tion which that person knows to be false in a material particular or recklessly includes any information which is false in a material particular, commits an offence and is liable, on summary conviction, to the penalty specified in the Fourth Schedule.

**Fourth
Schedule.**

(5) A merger, an amalgamation, an acquisition or a transfer under this section, which is effected without the approval of the Supervisor, shall be void.

(6) Pursuant to section 13, a licence shall not be transferred to or assigned to a new entity that is formed from a merger, an amalgamation or an acquisition under this section, and any such new entity, shall apply for a licence to operate a microcredit institution under section 10.

**Regulation of
shareholding
in microcredit
institutions.**

19. – (1) Where a person proposes to enter into an agreement or an arrangement to acquire the shares of a licensee by virtue of which the person would, if the agreement or the arrangement is carried out, be a substantial shareholder of the licensee, that person shall, in writing, apply to and obtain the prior approval of the Supervisor in respect of the agreement or arrangement.

(2) An agreement or arrangement referred to in subsection (1) shall contain or be deemed to contain a clause which indicates that the agreement or arrangement is subject to the prior approval of the Supervisor.

(3) Where an application for approval is made under subsection (1), the Supervisor may –

- (a) give approval, subject to such conditions as the Supervisor considers necessary; or
- (b) refuse to give approval.

(4) For the purpose of approving an application made under subsection (1), the Supervisor may require the applicant to furnish the

Supervisor with such additional particulars or other information concerning the agreement or arrangement as the Supervisor may specify.

(5) In determining whether or not to approve an application made under subsection (1), the Supervisor shall take into account such matters as the Supervisor considers relevant to the application, including –

- (a) the nature, source and sufficiency of the applicant's financial resources;
- (b) the business record and experience of the applicant;
- (c) whether the applicant meets the fit and proper criteria specified in section 2(2);
- (d) whether there is any impediment to the Supervisor's receipt of information from or about the applicant;
- (e) where the applicant or any of the affiliates of the applicant is a licensee, the impact of the proposed acquisition on the market for microcredit services; and
- (f) the best interest of maintaining financial system stability in Jamaica.

(6) If the Supervisor refuses to approve an application made under subsection (1), the applicant shall be notified within ninety days of the date of refusal, and shall be given an opportunity to make written representations.

(7) The Supervisor shall, in respect of an application under subsection (1), give a decision within ninety days from the date on which the application and all relevant information and particulars required to be furnished under this section, from the applicant and external sources, are delivered to the Supervisor.

(8) For the purposes of this section a person holds an interest in a share if the person has any legal or equitable interest in that share.

(9) An acquisition of shares effected in contravention of this section is void.

(10) Where the Supervisor is satisfied that a person has acquired shares in a licensee (hereinafter referred to as the “acquirer”) in contravention of this section, the Supervisor shall serve on that person, a written notice, indicating that there is a breach, and that subsection (11) shall apply with respect to those shares.

(11) Where the circumstances in subsection (10) exist, the following shall apply –

- (a) the shares so acquired (hereinafter referred to as “specified shares”) shall be disposed of within such period as the notice may specify;
- (b) the Supervisor may direct the acquirer to transfer the specified shares to an escrow agent acceptable to the Supervisor to be held in escrow until disposed of, and the cost of such transfer and the escrow agent’s reasonable fees shall be borne by the acquirer;
- (c) otherwise than as provided in paragraph (b), any transfer of, or agreement to transfer, the specified shares, or any other transfer of or agreement to transfer the right to be issued the specified shares, without the prior approval of the Supervisor, shall be void;
- (d) the voting rights on the specified shares shall be suspended and no voting rights shall be exercisable in respect of the specified shares;
or
- (e) no further shares shall be issued in right of the specified shares or in pursuance of any offer made to their holder.

(12) A copy of the notice served on the person under subsection (10) shall also be served on the licensee, the Registrar of Companies, and where applicable, the person who is in charge of the relevant stock exchange on

which the shares are traded.

(13) A Judge of the Supreme Court may –

- (a) on the application of a licensee or the Supervisor, order the sale of any specified shares; and
- (b) make such further order relating to the sale or transfer of the specified shares as the Judge thinks fit.

(14) Where specified shares are disposed of by sale under subsection (11), the proceeds of sale, less the cost of making the application under subsection (13)(a) and the cost of the sale, shall be paid in the manner specified by the Court for the benefit of the persons beneficially interested in the specified shares.

(15) Any person who is aggrieved by a notice served under subsection (10) may within twenty-one days after receipt of the notice, appeal to the Supreme Court against the Supervisor's decision and the Court may make such order as it thinks fit.

Change in location of licensee; establishment of branch; surrender of licence, etc.

20. – (1) A licensee shall not change the location of its principal office unless the licensee, in writing, notifies the Supervisor of its intent and of the proposed new location, and furnishes to the Supervisor such information as may be specified, in writing.

(2) A licensee may proceed with a relocation referred to in subsection (1) if –

- (a) the Supervisor indicates, in writing, that the Supervisor does not object; or
- (b) the Supervisor does not object, within thirty days of the date on which the notification was made.

(3) A licensee shall not, whether in Jamaica, or outside of Jamaica –

- (a) establish a branch of its microcredit business; or

- (b) change the location of an existing branch of its microcredit business,

unless the licensee has provided at least thirty days notice, in writing, to the Supervisor of the intended establishment of the branch or change of location of an existing branch of its microcredit business.

(4) A notification under subsection (3) shall contain the following information –

- (a) the name of the licensee;
- (b) where applicable, the proposed location of the branch or the proposed change of location of an existing branch, as the case may be;
- (c) the number of persons projected to be employed at the branch;
- (d) an approximation of the population to be served by the branch;
- (e) the financial projections for the proposed branch;
- (f) details on how and from what source the establishment and operations of the branch will be funded; and
- (g) any other specified or prescribed information required by the Supervisor.

(5) Where a branch of the licensee is being established outside of Jamaica, or an existing branch of a licensee is being relocated outside of Jamaica, the notification under subsection (3) shall contain the following information –

- (a) how the licensee intends to address any regulatory requirements that may be applicable in the overseas jurisdiction;
- (b) any regulatory requirements in the overseas jurisdiction that may prevent or hinder the exchange of information between the proposed branch and the Supervisor, and how the licensee proposes to address

the matter;

- (c) how the licensee proposes to monitor and supervise the activities of the proposed branch including confirmation on –
 - (i) whether the regulatory regime in the jurisdiction to which the branch of the licensee is to be relocated, complies with generally recognized international standards; and
 - (ii) whether, where applicable, the regulatory authority in the jurisdiction to which the branch of the licensee is to be relocated, has given its consent, or has not objected to the establishment of the branch in that jurisdiction and has the ability to cooperate with the Regulatory Authority in accordance with section 7; and
- (d) any other specified or prescribed information required by the Supervisor.

(6) A licensee who intends to close the operations of the licensee or the operations of a branch of the licensee, or cease business operations for any reason other than that specified in section 26 or 27, or voluntarily surrender its licence, shall not do so unless the licensee has given the Supervisor at least thirty days notice, in writing, of its intention to do so.

(7) A licensee under subsection (6) who intends to voluntarily surrender its licence shall provide detailed information to the Supervisor on the following –

- (a) the steps being taken to protect the documents and other information that the licensee has in relation to its customers; and
- (b) any undertaking by the licensee to transfer the business of the licensee to another microcredit institution.

(8) A licensee under subsection (6) shall cause notice of a closure or

cessation referred to under that subsection, to be published on two occasions in a daily newspaper printed and circulated in Jamaica, the first of those publications being within thirty days of such closure or cessation.

(9) The Supervisor may suspend a licence under this section where –

- (a) a licensee fails to, in writing, notify the Supervisor of its intent to establish a branch of its microcredit business or change the location of an existing branch of its microcredit business, and proceeds with the establishment of a branch or the relocation of an existing branch;
- (b) a licensee fails, in accordance with subsection (4) or (5), to furnish the Supervisor with any specified or prescribed information required; or
- (c) a licensee who intends to close the operations of a branch of the licensee, fails to give the Supervisor at least thirty days notice, in writing, of its intention to do so,

and, where applicable, the licensee shall be liable to pay a prescribed fee where the Supervisor permits the reinstatement of the licence.

(10) Where a licensee closes the operations of a licensee or ceases the business operations of a licensee for any reason other than that specified in section 26(1)(a) and (c), without notifying the Supervisor, the Supervisor may treat the licence of the licensee as revoked in accordance with section 27.

Duty of licensee to notify Supervisor of fraud, dismissal, etc.

21. – (1) A licensee shall, in writing, forthwith, notify the Supervisor –
- (a) of any fraud or other criminal activity committed by or against the licensee or any other matter that could reasonably be viewed as adversely impacting the licensee’s reputation or status as a licensee;

- (b) of any circumstance which renders a substantial shareholder or officer of the licensee unfit to hold office or incapable of satisfying the requirements of a fit and proper person under section 2(2), and the action that is being taken with regard to such matter;
- (c) of any dismissal or resignation of an officer and the reasons for the dismissal or resignation;
- (d) if the licensee may not be able to properly conduct its business as a going concern including a circumstance where the licensee has suspended any payment to a creditor;
- (e) of any acquisition of ten percent or more of the issued voting share capital of a licensee and any subsequent incremental acquisition of five percent or more, whether alone or jointly with another; or
- (f) if proceedings for compulsory winding up of the licensee have commenced or the licensee has been served with a notice or otherwise becomes aware that an application has been made for the commencement of the compulsory winding up of its business.

(2) A licensee who contravenes subsection (1) commits an offence

**Fourth
Schedule.**

and is liable, on summary conviction, to the penalty specified in the Fourth Schedule.

**Restriction on
alteration of
incorporating
documents of
licensee.**

22. – (1) A licensee shall not make an alteration to any of its incorporating documents unless the licensee, in writing, informs the Supervisor of the proposed alteration and the Supervisor, in writing, does not, within thirty days of receipt of the notification, indicate to the licensee the objection of the Supervisor to the alteration.

(2) The Supervisor shall not object to an alteration to the incorporating documents of a licensee unless the alteration is, or is likely to –

- (a) result in a breach of a condition of the licence;

(b) result in a breach of the provisions of this Act or any regulations made under this Act; or

(c) be inconsistent with, or prejudicial to the good governance or prudent management or operation of the licensee.

(3) Any alteration made to the incorporating documents of the licensee that is incorporated in Jamaica in contravention of subsection (1) shall be void.

(4) Every licensee shall, within fourteen days of the date on which an alteration is made to its incorporating documents, notify the Supervisor of such alteration.

(5) A licensee who contravenes subsections (1) and (4) commits an offence and is liable, on summary conviction, to the penalty specified in the Fourth Schedule.

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Schedule.**

**Restriction on
change of
name of
licensee.**

23. – (1) A licensee shall not change its registered name unless the licensee, in writing, notifies the Supervisor, furnishing reasons for the proposed change and the Supervisor shall, in writing, within thirty days of receipt of the notification, indicate to the licensee that the Supervisor has no objection to the change in the registered name of the licensee.

(2) Where the Supervisor, under subsection (1), indicates that there is no objection to a change in the registered name of a licensee –

(a) the licensee shall –

(i) surrender the existing licence to the Supervisor; and

(ii) pay to the Accountant-General the prescribed fee for the change of name; and

(b) the Supervisor shall re-issue the licence in the new registered name of the licensee.

(3) A licensee who contravenes subsection (1) commits an offence and is liable, on summary conviction, to the penalty specified in the Fourth Schedule.

Duty to supply information and documents.

24. – (1) In performing the functions set out in section 4(1), (c), (d), (e) and (f) an authorized officer is entitled –

- (a) at all reasonable times and as may reasonably be required for the performance of the functions of the authorized officer, to have access to all documents in the possession or control of the licensee, or of any officer or employee of the licensee, and where applicable, take copies of such documents; and
- (b) to require any officer, employee or external auditor of the licensee to furnish such information or to produce such documents as are in the possession or control of that person, that relate to the operations of the licensee.

(2) A person who –

- (a) fails to produce such documents required under subsection (1) within the period specified;
- (b) wilfully misleads or makes any false statement with intent to mislead an authorized officer in the execution of the functions of the authorized officer under this Act; or
- (c) without lawful excuse or justification, obstructs or hinders an authorized officer in the execution of the functions of the authorized officer under this Act,

commits an offence and is liable, upon summary conviction, to the penalty specified in the Fourth Schedule.

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Supervisory measures.

25. – (1) Where the Supervisor is of the opinion that a licensee has

contravened or is contravening a provision of this Act or any other enactment under which it has an obligation or a direction, rule, order, requirement or standard made or imposed thereunder, the Supervisor may do any one or more of the following –

- (a) issue a warning to the licensee;
- (b) issue directions to the licensee;
- (c) suspend the licence in accordance with section 26; or
- (d) revoke the licence in accordance with section 27.

(2) A warning issued to the licensee shall refer to the likelihood of the sanctions which may be imposed, unless the contravention by the licensee is rectified.

(3) A direction issued to the licensee may require the licensee to –

- (a) cease a particular practice or behaviour;
- (b) forthwith or within such period as may be specified by the Supervisor, comply with the obligation, direction, rule, order, requirement or standard made or imposed under this Act or any other enactment, with which the licensee has failed to comply, and take the necessary action to correct the negative conditions resulting from such contravention;
- (c) remove from duty and from the board of the licensee, any officer of the licensee, within a specified period.

**Suspension
of licence.**

26. – (1) The Supervisor may suspend a licence granted under this Act, if any one or more of the following circumstances applies –

- (a) the licensee notifies the Supervisor, in writing, that it intends to suspend microcredit services for the period stated in the notice;
- (b) a substantial shareholder or an officer has been charged with an offence involving fraud or dishonesty; or

- (c) the licensee is contravening this Act or regulations made under this Act by –
- (i) engaging in an activity which does not constitute a microcredit service, without instituting the differentiating measures referred to in section 31;
 - (ii) failing to keep accurate records in respect of the micro-credit business;
 - (iii) failing or refusing to file the requisite returns with and furnish other information, required under this Act or any regulations made under this Act, to the Supervisor;
 - (iv) failing to retain the records of the microcredit institution for at least seven years;
 - (v) causing or permitting another person to use its licence in contravention of section 13(2);
 - (vi) failing to –
 - (A) notify the Supervisor prior to changing the location of its principal office;
 - (B) notify the Supervisor prior to establishing a branch of its microcredit business;
 - (C) notify the Supervisor prior to changing the location of an existing branch of its microcredit business (whether in Jamaica or outside of Jamaica);
 - (D) notify the Supervisor prior to the closure of a branch of its microcredit business; or
 - (E) furnish the Supervisor with the specified or prescribed information in relation to changing the

location of its principal office, establishing a branch of its microcredit business or changing the location of an existing branch of its microcredit business (whether in Jamaica or outside of Jamaica), in accordance with section 20; or

(vii) breaching a direction issued under section 25.

(2) Where the Supervisor intends to suspend a licence, the Supervisor may take such action as is necessary to safeguard the security and confidentiality of the credit and other personal information and documents in the possession and under the control of the licensee.

(3) Before suspending a licence under subsection (1), the Supervisor shall give written notice of the intention to suspend the licence concerned –

- (a) specifying the grounds on which the Supervisor intends to rely in relation to the suspension;
- (b) indicating a period (being not less than thirty days after the date of service of the notice) within which the licensee shall have an opportunity to be heard and in relation to which, the licensee may submit to the Supervisor a written statement of objections or make oral submissions to the Supervisor.

(4) Notwithstanding subsection (3), where the Supervisor considers it necessary in light of the circumstances, the Supervisor may suspend a licence without notice and with immediate effect.

(5) After a hearing is conducted by the Supervisor under subsection (3)(b), the Supervisor shall, within a reasonable time, advise the licensee of the decision by instrument in writing.

(6) A person whose licence is suspended shall promptly surrender the licence and every copy thereof to the Supervisor, failing which, the

Supervisor may revoke the licence.

(7) Where the licensee provides evidence, in writing, satisfactory to the Supervisor, that the circumstances which led to the suspension of its licence no longer exist or have been remedied, the Supervisor shall cancel the suspension and return the licence and any copy thereof to the licensee.

**Revocation
of licence.**

27. – (1) The Supervisor may revoke a licence if –

- (a) the licensee has operated or is operating or is causing the microcredit institution to be operated in breach of its incorporating documents;
- (b) the licensee has breached or is breaching a term or condition of its licence;
- (c) the licensee has failed to commence operations within the period specified in its licence;
- (d) a substantial shareholder or an officer is no longer a fit and proper person, and the licensee has refused or neglected to take the appropriate action;
- (e) a microcredit institution refuses or neglects to remedy the circumstances which led to the suspension of the licence of the microcredit institution, within the time specified by the Supervisor;
- (f) the licensee has closed the operations of the licensee or ceased the business operations of the licensee for any reason other than that specified in section 26(1)(a) or this section, without notifying the Supervisor;
- (g) a final judgement is obtained against the licensee in any court in Jamaica and remains unsatisfied for a period exceeding six months;
- (h) proceedings have commenced for the voluntary or compulsory winding up of the licensee;

- (i) the licence has not been surrendered following the winding up of a licensee;
- (j) the licensee has ceased to be viable; or
- (k) the licensee is contravening or has contravened this Act or any regulations made under this Act by –
 - (i) giving false or misleading information in its application for a licence;
 - (ii) giving false statements concerning its affairs to an authorized officer;
 - (iii) refusing to permit an inspection of the licensee by an authorized officer;
 - (iv) breaching a direction issued under section 25.

(2) Where the Supervisor intends to revoke a licence, the Supervisor may take such action as is necessary to safeguard the security and confidentiality of the credit and other personal information and documents in the possession and under the control of the licensee.

(3) Before revoking a licence under subsection (1), the Supervisor shall give written notice of the intention of the Supervisor to revoke the licence to the licensee concerned –

- (a) specifying the grounds on which the Supervisor intends to rely in relation to the revocation;
- (b) indicating a period (being not less than thirty days after the date of service of the notice) within which the licensee shall have an opportunity to be heard and in relation to which, the licensee may submit to the Supervisor a written statement of objections or make oral submissions to the Supervisor.

(4) Notwithstanding subsection (3), where the Supervisor considers

it necessary in light of the circumstances, the Supervisor may revoke a licence with immediate effect.

(5) After a hearing conducted by the Supervisor under subsection (3)(b), the Supervisor shall, within a reasonable time, advise the licensee of the decision in writing.

(6) A person whose licence is revoked shall immediately surrender the licence and every copy thereof to the Supervisor.

(7) A person who, without lawful excuse, contravenes subsection (6) commits an offence and is liable, on summary conviction, to the penalty specified in the Fourth Schedule.

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(8) A person whose licence is revoked under this section –

(a) shall not, in relation to the provision of any microcredit service –

(i) engage in any new arrangement or contract;

(ii) vary any existing arrangement or contract; or

(iii) engage in any activity which advertises or promotes the services of the microcredit institution; and

(b) shall facilitate the orderly closure of the microcredit institution.

(9) Subsection (8)(a)(ii) shall not apply to a loan sale, to facilitate the orderly winding up of the business of a microcredit institution.

(10) A person who contravenes subsection 8(a)(i) or 8(a)(iii) commits an offence and is liable, on summary conviction, to the penalty specified in the Fourth Schedule.

(11) A person who, without lawful excuse, contravenes subsection 8(a)(ii) commits an offence and is liable, on summary conviction, to the penalty specified in the Fourth Schedule.

(12) The revocation of a licence under this Act shall not relieve a person whose licence has been revoked of any obligation incurred or

assumed by that person during the period of validity of the licence.

PART IV. *Governance of Licensees*

Board of directors.

28. Every licensee shall have a board of directors consisting of suitably qualified and competent persons who, collectively, possess the knowledge, skills and expertise that are required to provide effective –

- (a) oversight of the management and affairs of the operations of the licensee; and
- (b) leadership to ensure that the licensee operates in a prudent manner.

Responsibilities of board of directors.

29. Without limiting the provisions of section 28, the board of directors of a licensee shall be responsible for –

- (a) the good corporate governance and business performance of the licensee;
- (b) ensuring that the board is in full control of the affairs and business operations of the licensee; and
- (c) ensuring and reporting to the shareholders at the annual general meeting of the licensee that the internal controls and systems, and management information systems of the licensee –
 - (i) provide reasonable assurance as to the integrity and reliability of the financial statements of the licensee;
 - (ii) adequately verify, safeguard and maintain accountability of the assets of the licensee;
 - (iii) are based on established and written policies and procedures and are implemented by trained and skilled officers with an appropriate segregation of duties; and
 - (iv) are continuously monitored, reviewed and updated by the board of directors to guard against any material breakdown in the functioning of such controls, procedures and

systems.

Duty of licensee to undertake fit and proper assessments.

30. – (1) Every licensee shall ensure that each substantial shareholder and officer remains a fit and proper person.

(2) Subject to subsection (3), a licensee who contravenes subsection (1) commits an offence and is liable, on summary conviction, to the penalty specified in the Fourth Schedule.

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(3) It shall be a defence to a licensee charged under subsection (2) to prove that the licensee took all reasonable steps in the circumstances to prevent a contravention of subsection (1).

PART V. *Limitation on Business Activities of Licensees and Obligations of Licensees*

Microcredit services not to be commingled with other business activities.

31. – (1) Where a licensee is engaged in other business activities apart from the provision of a microcredit service, the licensee shall institute all measures necessary to clearly differentiate the business of the microcredit institution from the operation of any other business, including –

- (a) a clear demarcation of the area from which the microcredit service will be offered, from the other business activities undertaken at the location of operations of the microcredit institution, including the installation of clear signage;
- (b) a clear indication of the officers and employees authorized to provide the microcredit service;
- (c) the maintenance of separate accounting procedures and accounting records and other documents for the microcredit institution;
- (d) the keeping of separate bank accounts for the microcredit institution;
- (e) separately securing the personal and credit information of customers of the microcredit institution; and
- (f) the creation of an environment for the microcredit institution that

supports confidentiality.

(2) The Supervisor may suspend the licence of a licensee where the licensee is being operated in contravention of subsection (1).

**Foreign
currency
transactions.**

32. – (1) Nothing in this Act shall be interpreted as permitting a licensee to extend facilities in a foreign currency.

(2) Any dealings by a licensee in a foreign currency remain prohibited, unless the requisite exemption or authorization is obtained in accordance with the Bank of Jamaica Act.

**Obligation of
confidentiality.**

33. – (1) Every officer, employee, auditor or agent of a licensee shall regard and deal with as secret and confidential, all information and documents pertaining to the customers of the licensee, obtained or accessed in the course of the performance of the duties of the officer, employee, auditor or agent of the licensee, while that person's office, employment, or as the case may be, the professional relationship of that person with the licensee continues, or after the termination thereof.

(2) A person to whom information is communicated by a person in subsection (1) shall regard and deal with the information as secret and confidential.

(3) A person who knowingly or recklessly contravenes subsection (1) or (2) commits an offence and is liable, on conviction, to the penalty specified in the Fourth Schedule.

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(4) Notwithstanding subsection (1), a person may disclose information in any one of the following circumstances –

- (a) with the written consent of the person to whom the licensee provides a microcredit service;
- (b) pursuant to a court order; or
- (c) where such disclosure is permitted or required under any other

enactment.

(5) An officer, employee, auditor or agent of a licensee who is required to make any disclosure to the Regulatory Authority, the Supervisor or to a person appointed by the Regulatory Authority or the Supervisor, shall not, by the sole reason of making the disclosure, be regarded as being in breach of the duty of confidentiality.

Records and Accounts

Records to be kept by licensee.

34. – (1) A licensee shall keep or cause to be kept, accurate records in respect of the microcredit business, including business correspondence, accounting records and other records –

- (a) relating to borrowers that sufficiently explain the loan transactions and the nature of the loan agreements entered into by the licensee with the borrower or pertaining to the borrower;
- (b) which enable true and fair profit and loss accounts and balance sheets to be prepared, from time to time; and
- (c) which facilitate the convenient and proper auditing of the accounts and records of the licensee.

Fourth Schedule.

(2) A licensee who contravenes subsection (1) commits an offence and is liable, on summary conviction, to the penalty specified in the Fourth Schedule.

(3) A licensee shall ensure that the records made pursuant to subsection (1) are retained for at least seven years from the date of the making of the record, or from the date of the repayment of the loan, whichever event occurs later.

(4) A licensee who, without lawful excuse, contravenes subsection (3) commits an offence and is liable, on summary conviction, to the penalty specified in the Fourth Schedule.

(5) A licensee shall –

- (a) ensure that such records are furnished in such form and manner as may be prescribed, or as may be specified by the Supervisor, in writing; and
- (b) ensure that such information relating to the business of the licensee as the Supervisor may require, is furnished to the Supervisor.

(6) A licensee who, without lawful excuse, contravenes subsection (5), commits an offence and is liable, on summary conviction, to the penalty specified in the Fourth Schedule.

Accounts and audits; appointment of external auditor.

35. – (1) The accounts of every licensee shall be audited annually in accordance with established international accounting standards by an external auditor, appointed by the licensee, who shall not be an officer or an employee of the licensee and who is a registered public accountant as defined in section 2 of the Public Accountancy Act.

(2) Where the size of the operations of the licensee meets the description of a small company in accordance with the Companies Act, the accounts shall be prepared pursuant to the Seventh Schedule of the Companies Act by an external auditor, appointed by the licensee, who shall not be an employee or an officer of the licensee and who is a registered public accountant as defined in section 2 of the Public Accountancy Act.

(3) A licensee shall not knowingly appoint an auditor or firm of auditors as its external auditor and an auditor or a firm of auditors shall not consent to be appointed as the external auditor of the licensee, if the auditor or any of the partners or employees of the firm of auditors, who is involved in the audit of the licensee –

- (a) has any direct or indirect interest in that licensee, including an interest in ten percent or more of its shares or is not independent of

the licensee and parties connected with the licensee;

- (b) is connected with the licensee or any person who is connected with the licensee;
- (c) is a director or employee of that licensee; or
- (d) is in any business relationship with the licensee that in the opinion of the Supervisor, is not at arm's length or is likely to result in a conflict of interest.

(4) A person who, with intent to prevent, delay or obstruct the carrying out of an audit under this section, destroys or conceals or alters any document relating to the operations of a licensee, commits an offence and is liable, on conviction, to the penalty specified in the Fourth Schedule.

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**Power of
Supervisor
to object to
appointment
of external
auditor.**

36. – (1) Where, before or after the appointment of a person as an external auditor, the Supervisor becomes aware that the person does not meet the criteria specified in subsection (1) or (2) of section 35, as the case may be, the Supervisor may –

- (a) object to the appointment of the person and give the licensee or person concerned, notice, in writing, of the objection of the Supervisor to the appointment or continued appointment, specifying the reasons therefor and indicating a period (being not less than thirty days) within which the licensee or person concerned may submit to the Supervisor a written response or make representations by oral submissions (with or without the assistance of an attorney-at-law); and
- (b) if the licensee or person concerned has submitted a response or made representations within the period specified in paragraph (a), having considered the response or representations, either direct that

the person so appointed be removed, or may withdraw the objection.

(2) Where the Supervisor –

(a) objects to the appointment of a person as an external auditor; or

(b) directs that a person appointed as an external auditor be removed,

the licensee or the person may appeal against the objection or direction to the Microcredit Appeals Tribunal.

Duty of external auditor to report to Supervisor on financial viability of licensee, etc.

37. – (1) The Supervisor may require an external auditor, on the conduct of an audit or the preparation of the accounts of a licensee, to make disclosure to the Supervisor regarding the financial viability of the licensee and provide other information on the financial condition and performance of the licensee, as the Supervisor considers necessary.

(2) An external auditor or firm of auditors, under this section shall not be regarded as being in breach of a duty of confidentiality to the licensee in consequence of any disclosure or provision of information to the Supervisor in compliance with subsection (1).

Presentation of financial statements.

38. – (1) A licensee shall ensure that the accounts of the licensee prepared pursuant to subsection (1) or (2) of section 35, as the case may be, are submitted to the Supervisor, within one hundred and twenty days of the end of each financial year.

(2) The Supervisor may suspend a licence under subsection (1) if a licensee fails to submit to the Supervisor, within the specified time –

(a) audited accounts prepared pursuant to subsection (1) of section 35;

(b) accounts prepared pursuant to subsection (2) of section 35.

Special audit or examination of microcredit institutions.

39. – (1) Where in any particular case, the Supervisor has reasonable cause for believing that a special audit of a microcredit institution other than that required under section 35 should be conducted, the Supervisor may appoint an external auditor or a firm of auditors for that purpose.

(2) The officers and employees of a microcredit institution under subsection (1) shall ensure that an external auditor or a firm of auditors appointed under that subsection, has unimpeded access to the documents of the microcredit institution.

(3) Where an external auditor or a firm of auditors is appointed pursuant to subsection (1), the Supervisor shall require that the external auditor or firm of auditors carry out and report, in writing, to the Supervisor on –

- (a) such examination of the licensee's operations and procedures as the Supervisor may specify;
- (b) such other examination of the operations of the licensee as, in the opinion of the Supervisor, is necessary in the public interest.

(4) The expenses, as approved by the Supervisor, of any audit or examination carried out pursuant to subsection (1) shall be paid by the licensee and if in any case, the expenses are advanced by the Regulatory Authority, the amount so advanced –

- (a) shall be repaid to the Regulatory Authority by the licensee concerned; and
- (b) may be recovered by or on behalf of the Regulatory Authority, summarily in a Parish Court, without limit of amount, as a civil debt.

(5) An external auditor or firm of auditors appointed under subsection (1) shall not be regarded as being in breach of a duty of confidentiality to the licensee in consequence of any report made to the Supervisor in compliance with subsection (1).

**Resignation,
etc., of
external
auditor.**

40. – (1) Where an external auditor appointed by the licensee –
- (a) intends to resign at any time during the period of appointment;

(b) has given notice in writing to the licensee of an unwillingness to be considered for reappointment at the expiration of the period for which he was appointed; or

(c) has had the appointment of the external auditor terminated by the licensee,

the external auditor shall, forthwith, give notice, in writing, to the Supervisor accordingly and shall state the reasons for the resignation or unwillingness to be considered for reappointment, or termination of the appointment, as the case may be.

(2) An external auditor who contravenes subsection (1) commits an offence and is liable, on summary conviction, to the penalty specified in the Fourth Schedule.

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(3) Where –

(a) a licensee intends to terminate the appointment of the external auditor of the licensee; or

(b) a resolution has been passed at a general meeting of the licensee providing that the external auditor shall not be reappointed,

the licensee shall notify the Supervisor accordingly and shall state the reasons for the intention to terminate or for the passage of the resolution in the notification.

(4) A licensee who contravenes subsection (3) commits an offence and is liable, on summary conviction, to the penalty specified in the Fourth Schedule.

PART VI. Appeals

**Appeals to the
Microcredit
Appeals
Tribunal.
Second
Schedule.**

41. – (1) There is hereby established an appeals tribunal to be known as the Microcredit Appeals Tribunal.

(2) The provisions of the Second Schedule shall have effect as to the

constitution of the Microcredit Appeals Tribunal and otherwise in relation thereto.

(3) A person aggrieved by a decision of the Supervisor in relation to matters specified in subsection (4) may appeal to the Microcredit Appeals Tribunal, by way of a notice of appeal within thirty days of being advised of that decision.

(4) The matters referred to in subsection (3) are –

- (a) any decision as to whether a person is a fit and proper person; and
- (b) any objection as to whether an external auditor appointed under section 35 does not meet the criteria specified in subsection (1) or (2) of that section or any decision for the removal of such an auditor.

(5) A person referred to in subsection (3) shall ensure that the notice of appeal referred to in that subsection –

- (a) sets out clearly the grounds of appeal and is accompanied by copies of any document relevant to the appeal; and
- (b) is served on the Microcredit Appeals Tribunal together with any correspondence, statement or other document relevant to the appeal.

(6) The Microcredit Appeals Tribunal shall, within seven days of the receipt of a notice of appeal under subsection (3), request that the Supervisor furnish the Microcredit Appeals Tribunal and the aggrieved person, within twenty-one days, with a copy of the decision of the Supervisor and the reasons for the decision.

(7) The Microcredit Appeals Tribunal shall hear each matter brought before it and give its decision in writing regarding such matter, within ninety days, or within such longer period as may be determined by

some unforeseen or special circumstances, of the filing of the appeal and may confirm, vary or reverse the decision of the Supervisor.

(8) The Microcredit Appeals Tribunal shall forward a copy of its decision to the Supervisor and a copy to the appellant, together with a statement of the reasons for its decision.

(9) A decision of the Supervisor that is under appeal shall remain in effect until a decision has been rendered on appeal.

PART VII. *Protection of Consumers*

Power of Commission.

42. – (1) The Commission shall, in accordance with this Part and the Consumer Protection Act, be responsible for the investigation of any complaint brought to it by a consumer of a microcredit service.

(2) The Commission may, in investigating a complaint under subsection (1), consider the loan agreement between the parties and any action, conduct or decision which the consumer alleges has adversely affected the consumer.

Loan agreement.

43. – (1) Where a licensee grants a loan to a consumer, the licensee shall provide the consumer with a loan agreement and the loan agreement between the parties shall be disclosed to the borrower prior to its signing and shall –

- (a) contain the particulars relating to –
 - (i) the name, occupation and place of residence and business of the parties;
 - (ii) the date on which the loan is made and disbursed;
 - (iii) the amount of the loan and the terms of its repayment, including –
 - (A) the rate of interest chargeable, and subject to section 46(3), expressed in terms of rate *per*

centum;

- (B) the period of time given for repayment;
 - (C) the date on which the repayment of the loan is due;
 - (D) the installments payable and, where the installments are weekly or monthly, they shall be expressed in both percentage rate of interest and dollar values;
 - (E) the full cost of the loan expressed in both percentage rate of interest and dollar values;
 - (F) the amount of interest and the penalty (if any) on default of payment;
 - (G) the terms and conditions for repayment of the loan ahead of the stipulated loan period; and
 - (H) how the interest on default payments is calculated;
- (iv) the property, if any, to be given as security for the performance by the borrower of his obligation;
 - (v) the fees or charges, if any, associated with the granting of the loan and with enforcing repayment obligations or the realization of collateral;
- (b) be made in accordance with any guidelines relating to sound business practices for microcredit institutions, that may be issued by the Supervisor, from time to time;
 - (c) clearly distinguish the terms and conditions of the services offered by the licensee from any promotional material; and
 - (d) include a factsheet containing key terms of the loan agreement.
- (2) Where pursuant to subsection (1)(a)(iv), property in the form of money is given as security for the performance by a borrower of his

obligation, the money shall remain the property of the borrower and shall be held in escrow by a deposit taking institution within the meaning of the Banking Services Act.

(3) A licensee shall ensure that the language in which the terms and conditions of a loan agreement is expressed, is clear and unambiguous and where technical language is unavoidably used, such language is accompanied by an explanation in simple language that is not false or misleading.

(4) A loan agreement between a licensee and its client shall become enforceable twenty-four hours after the loan agreement is executed, or within such shorter period as agreed, in writing, by the parties.

(5) Notwithstanding anything in subsection (1) or (3), a court may, upon application being made, and, if it considers it equitable to do so, declare the contract to be enforceable in the same manner and to the same extent as if the requirements of subsections (1) and (3) had been complied with.

Licensee to provide statement of account and confirmation of repayment of loan.

44. – (1) Where a licensee grants a loan to a person, it shall, at any time during the term of the loan agreement, at the request of the borrower or the guarantor, if any, make available to the borrower and to the guarantor, if any, a printed copy of a statement of accounts, or, at the option of either or both the borrower and the guarantor, the statement of accounts in electronic form, outlining –

- (a) the payments received, in principal and interest; and
- (b) the amount outstanding, in principal and interest.

(2) On the repayment of a loan, the licensee shall furnish the borrower with a receipt or other form of written confirmation of the repayment of the loan and the receipt or other form of confirmation, may, at

the option of the borrower, be presented in electronic form.

Obligation of borrower.

45. A person who applies for a loan shall provide evidence of that person's ability to repay the loan.

Interest rate.

46. – (1) A microcredit institution may impose interest on a loan calculated -

- (a) at a rate based on market forces; and
- (b) consequent on the assessment by the microcredit institution of the risks involved in providing the loan to the borrower.

(2) A licensee shall expressly state in writing to prospective clients, the rate of interest to be imposed on a loan and the method of calculation of the rate of interest to be imposed on the loan.

(3) Notwithstanding the method used to calculate the rate of interest on a loan, the rate of interest shall also be reflected as an effective annual interest rate and where interest rates are being advertised, the effective annual interest rate shall be the most prominent interest rate advertised.

(4) The interest and any penalty to be paid on default of payment of a loan shall be calculated on the outstanding balance of the loan and not on the original principal sum.

Cost, charge or expense of loan.

47. Notwithstanding any tax, duty or fee payable under the Stamp Duty Act, the Registration of Titles Act or the Conveyancing Act that may be payable as part of the cost of obtaining a loan, a licensee may impose such other reasonable and justifiable cost associated with the extension of the loan and with enforcing repayment obligations or realization of collateral.

Complaints.

48. – (1) Notwithstanding section 7(3) and (5) of the Consumer Protection Act, a complaint to the Commission under this Part shall be made in writing.

(2) In exercising its powers under this Part, the Commission –

- (a) shall ensure that its decision in resolution of any complaint made

under this Part is communicated by notice in writing to the person who made the complaint and the licensee concerned;

- (b) may issue such directions as it thinks necessary to implement that decision.

(3) A person who fails to comply with a direction issued by the Commission under subsection (2) commits an offence, and is liable on summary conviction, to the penalty specified in the Fourth Schedule.

**Fourth
Schedule.**

(4) For the purposes of investigating a complaint made under this Part the Commission may –

- (a) in writing, advise the licensee concerned of the general nature of the complaint and direct the licensee to furnish the Commission with such information as the Commission may require;
- (b) appoint a person to carry out the investigation; and
- (c) after giving the licensee reasonable notice and subject to subsection (7), require a person appointed by the Commission under paragraph (b), to enter upon any premises where the licensee carries on the business of providing microcredit services in order to conduct the investigation.

(5) Where the Commission determines that a licensee is in breach of a provision under this Part, the Commission shall give the licensee, by notice, in writing, an opportunity to remedy the breach within fourteen days of receipt of the notice.

(6) Where the licensee refuses or neglects to remedy the breach under subsection (5), the Commission shall exercise its powers in accordance with section 50.

(7) Where a Judge of a Parish Court is satisfied, upon information given by a person appointed under subsection (4)(b), that there are reasonable

grounds for believing that there is at any premises, any item relevant to the investigation, the Judge of the Parish Court may issue a warrant authorizing the person, together with a constable, to enter and search such premises, if necessary, by force, and to examine the item or remove the item for the purpose of making copies.

(8) Where a person appointed under subsection (4)(b) or a constable removes an item from any premises for the purpose of making copies under this section, the person or constable, as the case may be, shall give a receipt for the item to the occupant of the premises and shall ensure that the copies are made and the item returned to the premises as soon as is reasonably practicable, and in any event, not later than thirty days after the removal.

(9) A copy of any item removed from premises under subsection (7) and certified to be a true copy by the person appointed under subsection (4)(b) or the constable who removed it, shall be admissible in evidence as if it were the original of such item.

(10) A search and seizure warrant does not confer the right to seize any information or material that a person would be entitled to refuse to produce on the grounds of legal professional privilege.

(11) For the purposes of this section “item” means any document or object.

(12) A person commits an offence, and is liable, on summary conviction, to the penalty specified in the Fourth Schedule, if that person, without lawful justification or excuse, obstructs, hinders, resists or fails to comply with the lawful direction of a person appointed under subsection (4)(b), or a constable, in the exercise of any functions under this section.

**Fourth
Schedule.**

**Code of
conduct.**

49. – (1) Subject to subsection (2), the Commission shall, with the approval of the Minister, make and issue a code of conduct for licensees on

consumer related matters, and without prejudice to the generality of the foregoing, the code may provide for the following –

- (a) the obligation of licensees to keep the language in loan agreements with borrowers simple and clear, and to ensure that key terms, including but not limited to, rates, fees and payment dates, are clearly identified and defined for the borrower's attention;
 - (b) the obligation of the licensees to take all reasonable steps to verify that the borrowers have, or are likely to have, the means to repay a loan;
 - (c) the obligation of licensees to provide a copy of the proposed loan agreement to each borrower and the guarantor, if any;
 - (d) the establishment by licensees of effective mechanisms to address consumer complaints;
 - (e) the communication of consumer complaint mechanisms and procedures to borrowers by licensees;
 - (f) the reporting and record keeping obligations of licensees in relation to consumer complaints and resolutions within the times and in the formats specified by the Commission;
 - (g) the lawful methods of enforcement available where a borrower has breached the repayment terms of a loan agreement;
 - (h) the role of the bailiff as a part of the enforcement process and the duties and responsibilities of the bailiff to consumers in accordance with this Act;
 - (i) measures that will be taken to facilitate access to microcredit services for senior citizens and consumers with disabilities; and
 - (j) any other matter the Commission thinks necessary.
- (2) The code of conduct referred to in subsection (1), and any

amendment thereto, shall be formulated after consultation with the Supervisor or such other person as may, from time to time, be charged to carry out similar functions, and any other person, who in the opinion of the Commission, are relevant stakeholders.

(3) Where a licensee contravenes the code of conduct, the Commission may, in accordance with section 50, issue directions to that licensee.

(4) A licensee who fails to comply with a direction issued by the Commission commits an offence, and is liable, on summary conviction, to the penalty specified in the Fourth Schedule.

(5) A contravention of the code of conduct shall not invalidate a transaction.

(6) Subject to subsection (5), no proceedings or determination made under the code of conduct shall affect the rights of any party to enforce any claim under the contractual agreement between the parties.

**Fourth
Schedule.**

**Enforcement
measures
of the
Commission.**

50. – (1) Where the Commission is of the opinion that a licensee has
- (a) failed to provide a loan agreement to a consumer in conformity with section 43;
 - (b) failed to include in a loan agreement, the required particulars specified in section 43;
 - (c) failed to provide a statement of account or a receipt or other form of written confirmation of the repayment of a loan, in conformity with section 44;
 - (d) failed to provide the method of calculation of the rate of interest to be imposed on a loan, in conformity with section 46; or
 - (e) contravened or is contravening any other provision of this Part under which it has an obligation, a direction, rule, order, requirement or

standard made or imposed thereunder,

the Commission may do any one or more of the following –

- (i) issue a warning to the licensee of the likelihood of the sanctions which may be imposed, unless the breach by the licensee is rectified as directed by the Commission;
- (ii) direct the licensee to cease any such practice;
- (iii) direct the licensee to, forthwith or within such other period as may be specified by the Commission, comply with the provisions of this Part, or the direction, rule, order, requirement or standard made or imposed thereunder, with which the licensee has failed to comply; or
- (iv) direct the licensee to take necessary action to correct the necessary conditions resulting from such contravention.

(2) The Commission shall, within a reasonable time, inform the Supervisor of any contravention under subsection (1) and of any action being undertaken in relation thereto by the Commission.

False or misleading advertising by licensee in relation to the grant of a loan.

51. – (1) A licensee shall not knowingly or recklessly advertise any information relating to the terms and conditions for the grant of a loan, which contains any information which is false or misleading in a material particular.

(2) A licensee who contravenes subsection (1) commits an offence and is liable, on summary conviction, to the penalty specified in the Fourth Schedule.

Fourth Schedule.

Using misleading, false or deceptive information to induce a person to take a loan from a micro-credit

52. – (1) A licensee shall not –

- (a) by any statement, promise, forecast or projection which the licensee knows to be misleading, false or deceptive; or
- (b) by the reckless making of any statement, promise, forecast or projection which is misleading, false or deceptive,

institution. wilfully induce or attempt to induce a person to accept or take a loan (by whatever name called) with the licensee.

(2) A licensee who contravenes subsection (1) commits an offence and is liable, on conviction, to the penalty specified in the Fourth Schedule.

**Threatening,
etc., borrower.
Fourth
Schedule.**

53. – (1) A person commits an offence and is liable, on conviction, to the penalty specified in the Fourth Schedule, if the person, in an attempt to recover a debt owed to a licensee, uses any violence or threats of violence or other criminal means to harm the physical person or property of a borrower or the guarantor of that borrower.

PART VIII. *Winding up of Licensee*

**Winding up
of licensee.**

54. – (1) Subject to subsection (2), the winding up of a licensee shall be subject to the provisions of the Insolvency Act.

(2) Where a licensee is a part of a financial group under the Banking Services Act, the Insolvency Act shall not apply to the winding up of that licensee except with the written consent of the Supervisor.

(3) Where a licensee passes a resolution for voluntary winding up, the licensee shall forthwith, notify the Supervisor in writing, and shall, within fourteen days after the passing of the resolution, furnish to the Supervisor the following in relation to the licensee –

- (a) a declaration of solvency referred to in section 277 of the Companies Act;
- (b) a profit and loss account made up as to a date that is no more than ninety days prior to being furnished to the Supervisor;
- (c) a balance sheet as at the date to which the profit and loss account is made up; and
- (d) a report from the external auditor under section 35, in relation to such declaration of solvency and profit and loss account.

(4) For the purposes of this Act, a resolution for voluntary winding up of a licensee shall not be effective unless the Supervisor certifies that its realizable assets are such as to enable it to satisfy the claims of its creditors.

(5) Where a licensee passes a resolution for voluntary winding up, it shall, within fourteen days after the passing of the resolution, give notice of the resolution –

- (a) by causing a copy of the resolution to be published in the *Gazette* and in a daily newspaper circulated in Jamaica;
- (b) in writing to the Registrar of Companies; and
- (c) to its customers, in such form and containing such information as the Supervisor may approve,

and that licensee shall, from the commencement of the winding up, cease to carry on the business of a microcredit institution, in accordance with section 275 of the Companies Act.

(6) The corporate state and corporate powers of the licensee shall, notwithstanding anything to the contrary in its articles, continue until it is dissolved.

(7) Where proceedings for compulsory winding up of the licensee have commenced or the licensee has been served with a notice or otherwise becomes aware that an application has been made for the commencement of the compulsory winding up of its business, the licensee shall forthwith, notify the Supervisor, in writing.

(8) A licensee who contravenes subsection (3) or (7) commits an offence and is liable, on summary conviction, to the penalty specified in the Fourth Schedule.

**Fourth
Schedule.**

PART IX. *General*

**Offences and
penalties.**

55. The offence described in the first column of the Fourth Schedule shall,

**Fourth
Schedule.**

in respect of the section specified in the second column, incur the penalty set out in relation thereto in the third column.

**Fixed
penalties.
Fifth
Schedule.**

56. – (1) This section shall apply to an offence specified in the Fifth Schedule.

(2) The Regulatory Authority may give to any person which it has reason to believe has committed an offence to which this section applies, a notice in writing in the prescribed form, offering that person the opportunity to discharge any liability to conviction of that offence by payment of a fixed penalty under this section.

(3) A person shall not be liable to be convicted of the offence if the fixed penalty is paid in accordance with this section and the requirement in respect of which the offence was committed is complied with before the expiration of fifteen days following the date of the notice referred to in subsection (2), or such longer period (if any) as may be specified in that notice, or before the date on which the proceedings are begun, whichever event last occurs.

(4) Where a person is given notice under this section in respect of an offence, proceedings shall not be taken against the person for that offence until the end of fifteen days following the date of the notice, or such longer period (if any) as may have been specified therein.

(5) In subsections (3) and (4) “proceedings” means any criminal proceedings in respect of the act or omission constituting the offence specified in the notice under subsection (2) and “convicted” shall be construed in like manner.

(6) The payment of a fixed penalty under this section shall be made to the Collector of Taxes specified pursuant to subsection (7); and in any proceedings, a certificate that payment of a fixed penalty was made to the

Collector of Taxes, by a date specified in the certificate shall, if the certificate purports to be signed by the Collector of Taxes, be admissible as *prima facie* evidence of the facts stated therein.

(7) A notice under subsection (2) shall –

- (a) specify the offence alleged;
- (b) give such particulars of the offence as are necessary for giving reasonable information of the allegation;
- (c) state –
 - (i) the period (whether fifteen days or a longer period) during which, by virtue of subsection (4), proceedings will not be initiated for the offence; and
 - (ii) the amount of the fixed penalty and the Collector of Taxes to whom and the address at which it may be paid;
- (d) require the licensee, in the event that the fixed penalty is not paid within the period specified pursuant to paragraph (c), to attend before the court having jurisdiction to try the offence, to answer the charge, on such date as may be specified, being a date not earlier than ten days after the expiration of the period specified pursuant to paragraph (c), and that requirement shall constitute a summons for the licensee to attend court to answer the charge, if the fixed penalty is not paid within the period specified pursuant to paragraph (b).

**Fifth
Schedule.**

(8) The fixed penalty for the offences specified in the Fifth Schedule shall be the penalty specified therein in relation to such offences.

(9) In any proceedings for an offence to which this section applies, no reference shall be made after the conviction of the accused to the giving of any notice under this section or to the payment or non-payment of a fixed penalty under this section unless in the course of the proceedings or in some

document which is before the court in connection with the proceedings, reference has been made by or on behalf of the accused to the giving of such notice, or as the case may be, to such payment.

(10) The Minister may, by order, make provision as to any matter incidental to the operation of this section, and in particular, any such order may prescribe –

- (a) the form of notice under subsection (2);
- (b) the nature of the information to be furnished to the Collector of Taxes along with any payment; and
- (c) the arrangements for the Collector of Taxes to furnish to the Regulatory Authority, information with regard to any payment pursuant to a notice under this section.

Search warrant for contravention of this Act.

57. – (1) Where an authorized officer has reasonable grounds for suspecting that a person is committing or has committed an offence under this Act and that evidence of the commission of the offence is to be found on any premises specified in the information, the authorized officer may, for the purpose of carrying out an investigation in relation to the offence, apply, by information, under subsection (2), to a Justice of the Peace, for a warrant to search the premises.

(2) A warrant issued under subsection (1) shall empower the authorized officer named in the warrant, with such assistance as may be necessary and reasonable –

- (a) to enter the premises named in the warrant;
- (b) to search the premises for such documents, whether stored physically or electronically (in this section referred to as “relevant documents”); and
- (c) to seize and detain any relevant documents found in the course of the

search that, in the opinion of the authorized officer, is relevant to the investigation in respect of which the application is made.

(3) A search warrant shall not be issued under subsection (2) unless –

- (a) the applicant or some other person has given the Justice of the Peace, either orally or by affidavit, any further information that the Justice of the Peace requires concerning the grounds on which the warrant is sought; and
- (b) the Justice of the Peace is satisfied that there are reasonable grounds for issuing the warrant.

(4) A search warrant issued under subsection (2) shall state –

- (a) the purpose for which it is issued, including a reference to the offence that is being committed or has been committed;
- (b) whether entry is authorized to be made at any time of the day or night or during specified hours of the day or night;
- (c) a description of the kind of relevant documents authorized to be seized; and
- (d) that the warrant remains in force until –
 - (i) it ceases to be in force under subsection (8); or
 - (ii) it is varied or discharged by a Judge of a Parish Court pursuant to an application made under subsection (7).

(5) An authorized officer shall not seize any document which is subject to legal professional privilege.

(6) An authorized officer may, upon request, make copies of any relevant documents or take extracts therefrom at the expense of the person who is suspected of committing or having committed the offence.

(7) A person who is aggrieved by the issue of a warrant under this section, may apply to a Judge of a Parish Court to vary or discharge the

warrant and shall, within twenty-four hours after making the application, serve notice on an authorized officer to join in the proceedings.

(8) A warrant remains in force –

(a) until the earlier of –

(i) the end of the period for which it is to remain in force as stated in the warrant; or

(ii) fourteen days after the date on which the warrant is issued; or

(b) until it is varied or discharged by a Judge of a Parish Court pursuant to an application made under subsection (7).

(9) A Judge of a Parish Court may, on an *inter partes* application by an authorized officer –

(a) extend the period of operation of the warrant, for a period of sixty days, or such further period, to a maximum period of two years, as the court may specify;

(b) make such other order as the Court considers appropriate in relation to the operation of the warrant.

(10) A person who hinders or obstructs an authorized officer or any person acting in aid of such officer in the performance of the functions of the officer under subsection (2) commits an offence and is liable, on summary conviction, to the penalty specified in the Fourth Schedule.

**Fourth
Schedule.**

(11) In this section “premises” includes any place, building, receptacle or vehicle.

PART X. *Miscellaneous*

**Regulatory
Authority
may make
regulations.**

58. – (1) The Regulatory Authority may, with the approval of the Minister, in writing, make regulations providing for such matters as may be necessary or expedient for the purposes of this Act and, without limiting the generality of the foregoing, the regulations may make provision in relation to all or any

of the following –

- (a) the requirements for the grant of a licence under this Act;
- (b) licence fees and other matters in respect of which fees are to be payable and the amount of such fees;
- (c) mergers, amalgamations, acquisitions and transfers involving licensees and the sale of a licensee;
- (d) the establishment of a branch of a licensee; and
- (e) any other matter required to be prescribed under this Act.

(2) Notwithstanding section 29 of the Interpretation Act, regulations made under this Act may prescribe greater penalties than those specified in the Act, and the maximum penalty that may be so prescribed shall be a fine not exceeding two million dollars, and in default of payment of the fine, to imprisonment for a term not exceeding twelve months or such form of alternative sentence as specified in section 10 of the Criminal Justice (Reform) Act.

(3) Regulations made under this section shall be subject to affirmative resolution.

**Power of
Regulatory
Authority to
make rules.**

59. – (1) The Regulatory Authority may, with the approval of the Minister, make rules for the operation of microcredit institutions, in relation to –

- (a) the governance of licensees;
- (b) the form of applications and notices;
- (c) anti-money laundering, counter financing of terrorism and the prevention of the proliferation of weapons of mass destruction;
- (d) the preparation and presentation of returns and other reporting requirements and the manner of filing such returns and other information;
- (e) the outsourcing of key aspects of the operations of a licensee; and

(f) such other matters as the Regulatory Authority considers necessary for the administration of this Act.

(2) The powers conferred upon the Regulatory Authority by subsection (1) shall be exercised after consultation with licensees and persons who, in the opinion of the Regulatory Authority, are relevant stakeholders.

(3) Any rules made under subsection (1) shall be subject to affirmative resolution.

(4) Where a licensee contravenes any rules made under subsection (1), the Regulatory Authority may, pursuant to section 25, issue directions to that licensee.

(5) A licensee who fails to comply with a direction issued by a Regulatory Authority under subsection (4) commits an offence, and is liable, on summary conviction, to the penalty specified in the Fourth Schedule.

Fourth Schedule.

Power of Minister to amend monetary penalties and Schedules. First, Second, Third, Fourth and Fifth Schedules.

60. The Minister may, by order, subject to affirmative resolution, amend –

- (a) any monetary penalty imposed by this Act or the regulations;
- (b) the First, Second, Third, Fourth and Fifth Schedules to this Act

(other than the custodial sentences specified in the Fourth Schedule).

Immunity.

61. – (1) No action, suit or other proceedings may be brought or instituted personally against an authorized officer or any other person acting on behalf of the authorized officer where that person, in exercising a function conferred or imposed under this Act, or omitting to exercise such function, acted lawfully or in good faith.

(2) No action, suit or other proceedings may be brought or instituted personally against a member of the Commission or any person acting on

behalf of the Commission, where that person, in exercising a function conferred or imposed under this Act, or omitting to exercise such function, acted lawfully or in good faith.

Review of Act.

62. A review of this Act shall be conducted no later than five years after the commencement date by a committee of both Houses of Parliament appointed for the purpose.

Amendment of enactments. Sixth Schedule.

63. The enactments specified in column 1 of the Sixth Schedule are amended in the manner specified in relation thereto in column 2 thereof.

Transitional.

64. – (1) A person who, at the commencement date is operating a business which falls within the criteria set out in this Act for a microcredit institution or for the offering of a microcredit service, shall, within twelve months from the commencement date, or within such longer period as the Minister may by notice in the *Gazette* prescribe –

- (a) comply with the provisions of this Act and apply to the Supervisor for a licence to continue his business as a microcredit institution; or
- (b) cease to carry out such business.

(2) A person who, at the commencement date is operating a business (which falls within the criteria set out in this Act for a microcredit institution or for the offering of a microcredit service) together with another type of business, shall within twelve months from the commencement date, or within such longer period as the Minister may by notice in the *Gazette* prescribe –

- (a) separate the microcredit business from any other type of business being conducted; and
- (b) comply with the provisions of this Act and apply to the Supervisor for a licence to continue the business as a licensed microcredit institution; or

(c) cease to carry out such business.

Savings.

65. This Act shall not affect the enforceability of moneylending transactions, between a borrower and a lender, entered into before the commencement date.

FIRST SCHEDULE (Sections 2 and 60)

Part A

Methodology for Determining the Effective Annual Interest Rate

The effective annual interest rate (EAIR) reflects the actual interest rate to be paid on a loan when considering the effects of compounding and the interest charges and fees over the life of the loan. It is computed by expressing the dollar-value of interest charges and fees as a proportion of the loan principal as an annual percentage rate (APR) and then adjusting this rate for the effect of compounding. It is computed in two steps as follows:

1) Compute the Annual Percentage Rate (APR)

$$APR = ((\text{Fees and Interest Charges})/\text{Loan Principal})/n \times 365$$

where “Fees” are the dollar value of fees on the loan;

“Interest Charges” are the dollar value of interest costs over the life of the loan;

“Loan Principal” is the dollar value of the outstanding loan; and

“n” is the number of days for the life of the loan.

2) Compute the Effective Annual Interest Rate (EAIR)

$$EAIR = ((1+APR/m)^m) - 1$$

where “m” represents the number of compounding periods over a one-year period.

Example:

A 30-day loan has a stated interest charge of \$2,800.00 and fees of \$400.00 on a principal of \$100,000.00 compounded monthly. Applying the formula:

Step 1

$$\text{APR} = (\$2,800.00 + \$400.00) / \$100,000.00 / 30 \times 365 = 0.3893$$

Step 2

$$\text{EAIR} = ((1 + 0.3893/12)^{12}) - 1 = 0.4668 \text{ or } 46.68\%$$

Part B***MSME***

For the purposes of the definition of “MSME” –

- (a) “micro sized enterprise” means an enterprise with total annual sales not exceeding \$14,999,000.00;
- (b) “small sized enterprise” means an enterprise with total annual sales ranging between \$15,000,000.00 and less than \$74,999,000.00; and
- (c) “medium sized enterprise” means an enterprise with total annual sales ranging between \$75,000,000.00 and \$425,000,000.00.

SECOND SCHEDULE **(Sections 2(2), 41
and 60)**

*Constitution and Procedures of Microcredit
Appeals Tribunal*

**Constitution
of Micro-
credit Appeals
Tribunal.**

1. – (1) Subject to subparagraph (2), the Microcredit Appeals Tribunal shall consist of five members appointed by the Governor-General on the advice of the Minister.

(2) The Microcredit Appeals Tribunal shall be selected from persons appearing to the Minister to be knowledgeable and experienced in matters relating to law, banking, finance or the regulation of financial services and otherwise qualified for appointment to the

Microcredit Appeals Tribunal and of which at least one member shall be a retired Judge.

- Power of panel to hear appeal.** 2. – (1) For the hearing of an appeal under this Act, the Microcredit Appeals Tribunal may consist of a panel of three members, one of whom shall be a retired Judge.
- (2) In assigning members to the Microcredit Appeals Tribunal, the chairman shall take into consideration the requirements, if any, for experience and expertise to enable the panel to decide the issues raised in any matter before the Microcredit Appeals Tribunal.
- Disqualification.** 3. – (1) The following persons shall not be eligible for appointment to the Microcredit Appeals Tribunal –
- (a) members of the House of Representatives or the Senate;
 - (b) members of the Council of the Kingston and St. Andrew Municipal Corporation, or of any Municipal Corporation, City Municipality or Town Municipality;
 - (c) public officers;
 - (d) officers, employees or external auditors of a licensee or connected persons in relation to the licensee; and
 - (e) any person who has a direct or indirect proprietary interest in a licensee or in a connected person in relation to the licensee.
- (2) The appointment of a member of the Microcredit Appeals Tribunal shall not proceed unless the proposed appointee is determined to be a fit and proper person, in accordance with section 2(2), with the appropriate level of independence and a person whose appointment will not raise an issue of conflict of interest or undue influence from within the public or private sector.
- (3) The members of the Microcredit Appeals Tribunal shall appoint one of their number to be the chairman.
- (4) An appointment made in contravention of subparagraph (1) shall be void.
- Temporary appointment.** 4. If the chairman of the Microcredit Appeals Tribunal is absent or unable to act, the other sitting members may appoint one of their number to act as chairman for that meeting.

- Vacancy.** 5. Where a vacancy occurs in the membership of the Microcredit Appeals Tribunal it shall be filled by the appointment of another member, who shall, in accordance with this Schedule, hold the office for the remainder of the period for which the previous member was appointed, however, the appointment shall be made in the same manner and from the same category of persons as the appointment of the previous member.
- Tenure of office.** 6. – (1) The appointment of every member of the Microcredit Appeals Tribunal shall be evidenced by instrument in writing and shall be for a period not exceeding two years.
- (2) Every member of the Microcredit Appeals Tribunal shall be eligible for reappointment.
- (3) Subject to subparagraph (4), the Governor-General, on the advice of the Minister may, at any time, revoke the appointment of a member of the Microcredit Appeals Tribunal.
- (4) The appointment of a member of the Microcredit Appeals Tribunal may be revoked for –
- (a) physical or mental infirmity;
 - (b) bankruptcy within the meaning of the Insolvency Act;
 - (c) being charged with or convicted for an offence involving dishonesty or any one or more of the offences specified under the Proceeds of Crime Act;
 - (d) no longer meeting the requirement of being a fit and proper person, in accordance with section 2(2);
 - (e) engaging in activities that can be reasonably considered prejudicial to the interest of the Microcredit Appeals Tribunal.
- (5) If a person ceases to be eligible for appointment to the Microcredit Appeals Tribunal, the appointment of that person shall be revoked from the date on which the person ceased to be eligible.
- Resignation.** 7. – (1) The chairman may, at any time, resign from office, by instrument, in writing, addressed to the Governor-General and such resignation shall take effect as from the date of the receipt of such instrument by the Governor-General.

- (2) Any member of the Microcredit Appeals Tribunal, other than the chairman, may, at any time, resign from office, by instrument, in writing, addressed to the Governor-General and transmitted through the chairman and the Minister; and from the date of the receipt by the Governor-General of the instrument, the member shall cease to be a member of the Microcredit Appeals Tribunal.
- Publication of membership.** 8. The names of the members of the Microcredit Appeals Tribunal, as first constituted and every change in membership thereof, shall be published in the *Gazette*.
- Authentication of documents.** 9. All documents made by, and all decisions of, the Microcredit Appeals Tribunal may be signed under the hand of the chairman or any member of the Microcredit Appeals Tribunal authorized in writing, to act on behalf of the chairman.
- Procedure of Appeals.** 10. – (1) The Microcredit Appeals Tribunal shall meet at such times as may be necessary or expedient for the transaction of business, and meetings (whether in person or virtually) shall be held at the places and times and on the days as the Microcredit Appeals Tribunal may determine.
- (2) The chairman or any other person appointed to act temporarily as chairman shall preside at meetings of the Microcredit Appeals Tribunal.
- (3) Subject to paragraph 1(1), the decisions of the Microcredit Appeals Tribunal shall be by a majority of votes of the members hearing the appeal; and in addition to an original vote, the chairman shall have a casting vote in any case in which the voting is equal.
- (4) The Microcredit Appeals Tribunal, may make rules to regulate its proceedings.
- (5) Proper records of all proceedings of the Microcredit Appeals Tribunal shall be kept by the Tribunal.
- Validity of proceedings.** 11. The validity of any proceedings of the Microcredit Appeals Tribunal shall not be affected by –
- (a) any vacancy among the members;
 - (b) any defect in the appointment of a member;
 - (c) any failure on the part of a member to disclose that member's interest in a relevant matter; or

- (d) any irregularity in the decision making procedure of the Microcredit Appeals Tribunal, as far as that irregularity did not affect the merits of the decision made.

Remuneration of members.

12. There shall be paid to the chairman and other members of the Microcredit Appeals Tribunal, such remuneration (whether by way of honorarium, salary or fees) and such allowances, as the Minister responsible for finance may determine.

Protection of members.

13. No action, suit, prosecution or other proceedings shall be brought or instituted personally against any member of the Microcredit Appeals Tribunal, in respect of an act done by the member *bona fide* in pursuance or execution or intended execution of the provisions of this Act.

Disclosure of interest.

14. – (1) Any member of the Microcredit Appeals Tribunal who has any interest, directly or indirectly, in any matter brought before the Microcredit Appeals Tribunal –

- (a) shall disclose the nature of the interest to the Microcredit Appeals Tribunal;
- (b) shall not take part in any deliberations or decisions of the Microcredit Appeals Tribunal with respect to that matter.

(2) A notice given by a member at a sitting of the Microcredit Appeals Tribunal to the effect that the member is interested in any appeal before the Tribunal shall, for the purposes of subparagraph (1), be a sufficient disclosure of the interest of that member in relation to an appeal.

(3) A member need not attend in person at the sitting of the Microcredit Appeals Tribunal in order to make a disclosure which the member is required to make under this paragraph if the member takes reasonable steps to ensure that the disclosure is made by notice, which is taken into consideration and read at such sitting.

(4) Where the Governor-General, on the advice of the Minister, is satisfied that a member of the Microcredit Appeals Tribunal is unable to properly and effectively carry out the duties of that member because of any conflict of interest in a matter before the Microcredit Appeals Tribunal, the Governor-General, on the advice of the Minister, may replace the member or direct that member to abstain from taking part in any proceedings relating to any matter affected by the conflict of interest

or potential conflict of interest.

- Tribunal co-opt persons.** 15. For the purpose of hearing an appeal, the Microcredit Appeals Tribunal may co-opt any person appearing to it to have the requisite expertise to advise the Tribunal, once the Tribunal is satisfied that the person has no pecuniary or non-pecuniary interest in the matter being considered by the Tribunal.
- Witnesses.** 16. The Microcredit Appeals Tribunal shall have power to summon witnesses and compel their attendance and such witnesses, if the Microcredit Appeals Tribunal agrees, may give their evidence by affidavit.
- Costs.** 17. The Microcredit Appeals Tribunal may order one party to any appeal proceedings to pay the costs of the other party as well as those of the Microcredit Appeals Tribunal as determined by the Microcredit Appeals Tribunal and the cost if not paid by the party as ordered, may be recovered by suit brought in a Parish Court as a civil debt due to the party in whose favour the Microcredit Appeals Tribunal has ruled, notwithstanding any limit set on the sums that may be claimed in a Parish Court.
- Office of member not a public office.** 18. The office of the chairman and member of the Microcredit Appeals Tribunal shall not be a public office for the purposes of Chapter V of the Constitution.”.

THIRD SCHEDULE (Sections 3 and 46)

Transactions, Persons and Entities Not Regulated by this Act

Part A

This Act shall not apply to the following –

1. occasional loans extended on a non-commercial basis between private parties or such other money lending that is subject to the Money Lending Act;

2. any Friendly Society registered under the Friendly Societies Act, or any enactment amending or substituting for the same, or to any loans made by any Friendly Society;
3. any Building Society licensed under the Banking Services Act;
4. any Society registered under the Industrial and Provident Societies Act or any enactment amending or substituting for the same, or to any loans made by any such Society;
5. any Society registered under the Co-operative Societies Act or any enactment amending or substituting for the same, or to any loans made by any such Society;
6. any specified financial institution as defined in section 2 of the Bank of Jamaica Act declared so to be by the Minister, by notice in the *Gazette* for the purposes of the Bank of Jamaica Act, or any other enactment amending or substituting for the same, or any loans made by any such institution;
7. any body corporate, incorporated or empowered by an enactment of Parliament to lend money in accordance with the enactment;
8. any company licensed under the Banking Services Act as a merchant bank;
9. any company licensed under the Banking Services Act as a bank;
10. any loan to or contract or security for the payment of money lent to a body corporate incorporated in Jamaica by or under any enactment or by Royal Charter;
11. any insurance company registered under the Insurance Act, in the course of whose business and for the purposes whereof it lends money;
12. any entity that extends credit to its customers for the supply of goods

and services;

13. a licensee as defined under section 2 of the Securities Act;
14. an entity –
 - (a) which is established by a statutory body or authority; and
 - (b) the primary purpose of which is to lend money;
15. any superannuation fund or retirement scheme approved and registered under the Pensions (Superannuation Funds and Retirement Schemes) Act; and
16. any other transaction, person or entity specified by the Minister by order in the *Gazette*.

Part B

1. The provision of a credit facility to a high net worth individual does not constitute a microcredit service.
2. In this Part “high net worth individual” means –
 - (a) an individual whose net worth exceeds \$50,000,000.00; or
 - (b) an individual who has had an income, before taxes, in excess of \$10,000,000.00, for each of the two most recent calendar years.

FOURTH SCHEDULE

(Sections 6(2), 9(2), 12(2), 15(2), 16(2), 17(5), 18(4), 21(2), 22(5), 23(3), 24(2)(a), 24(2)(b), 24(2)(c), 27(7), 27(10), 27(11), 30(2), 33(3), 34(2), 34(4), 34(6), 35(4), 40(2), 40(4), 48(3), 48(12), 49(4), 51(2), 52(2), 53, 54(8), 55, 57(10), 59(5) and 60

Offences and Penalties

First Column	Second Column	Third Column
_____	_____	_____
Brief Description of Offence	Relevant Section	Penalty
_____	_____	_____
Offence of –		
(a) disclosing information regarding the operations of a licensee to a person who is not specified in section 6(1);	6(2)	On summary conviction in a Parish Court, to a fine not exceeding two million dollars, or to imprisonment for a term not exceeding one year, or to both such fine and imprisonment.
(b) disclosing information regarding the affairs of a customer of a licensee obtained in consequence of the performance of duties under this Act; or		On conviction in the Supreme Court, to a fine or imprisonment for a term not exceeding two years.
(c) disclosing information other than for the purposes of the investigation of a financial crime or the contravention of a licensee's obligation under another enactment		
Offence of providing a microcredit service without being licensed as a microcredit institution	9(2)	On summary conviction in a Parish Court – (a) in the case of a person other than an individual, to

		a fine not exceeding one million dollars;
		(b) in the case of an individual, to a fine not exceeding five hundred thousand dollars, or to imprisonment for a term not exceeding six months, or to both such fine and imprisonment.
		On conviction in the Supreme Court, to a fine or imprisonment for a term not exceeding one year.
Failure to prominently display licence at principal office and at each branch of microcredit institution	12(2)	On summary conviction in a Parish Court, to a fine not exceeding one million five hundred thousand dollars.
Obtaining a licence by false representation	15(2)	On summary conviction in a Parish Court –
		(a) in the case of a person other than an individual, to a fine not exceeding three million dollars;
		(b) in the case of an individual, to a fine not exceeding two million dollars, or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment.
		On conviction in the Supreme Court, to a fine or imprisonment for a term not exceeding five years.
Person not licensed under this Act as a microcredit institution, who knowingly or recklessly advertises information, which falsely implies or explicitly states that the person is licensed under this Act as a microcredit institution	16(2)	On summary conviction in a Parish Court –
		(a) in the case of a person other than an individual, to a fine not exceeding one million dollars; or
		(b) in the case of an individual, to a fine not exceeding five hundred thousand dollars, or to imprisonment for a term not exceeding six

		months, or to both such fine and imprisonment.
		On conviction in the Supreme Court, to a fine or imprisonment for a term not exceeding one year.
Use of name, title, word, term or grammatical presentation that falsely represents or implies that the person is licensed as a microcredit institution	17(5)	On summary conviction in a Parish Court – <ul style="list-style-type: none"> (a) in the case of a person other than an individual, to a fine not exceeding one hundred thousand dollars; or (b) in the case of an individual, to a fine not exceeding fifty thousand dollars, or to imprisonment for a term not exceeding one month, or to both such fine and imprisonment.
Offence of knowingly or recklessly depositing with the Supervisor, a statement, agreement, deed or declaration with information which is false in a material particular	18(4)	On summary conviction in a Parish Court – <ul style="list-style-type: none"> (a) in the case of a person other than an individual, to a fine not exceeding one million dollars; (b) in the case of an individual, to a fine not exceeding five hundred thousand dollars, or to imprisonment for a term not exceeding three months, or to both such fine and imprisonment.
Failure to notify the Supervisor in respect of fraud, dismissal, <i>etc.</i>	21(2)	On summary conviction in a Parish Court, to a fine not exceeding one million dollars.
Offence of altering incorporating documents in contravention of an objection of the Supervisor to the proposed alteration	22(5)	On summary conviction in a Parish Court, to a fine not exceeding two hundred and fifty thousand dollars.
Failure of licensee to, within fourteen days of the date on which an alteration is made to the	22(5)	On summary conviction in a Parish Court, to a fine not exceeding two hundred and fifty thousand dollars.

incorporating documents,
notify the Supervisor of
such alteration

Offence of changing the
registered name of a
licensee, without, in
writing, notifying the
Supervisor and furnishing
reasons for the proposed
change and requesting
approval for the proposed
change

23(3)

On summary conviction in a
Parish Court, to a fine not
exceeding two hundred and fifty
thousand dollars.

Failure to produce
documents required
within the period
specified

24(2)(a)

On summary conviction in a
Parish Court –

- (a) in the case of a person
other than an individual,
to a fine not exceeding
two hundred and fifty
thousand dollars;
- (b) in the case of an
individual, to a fine not
exceeding one hundred
and fifty thousand dollars,
or to imprisonment for a
term not exceeding two
months, or both such fine
and imprisonment.

Wilfully misleads or makes
a false statement with
intent to mislead an
authorized officer in the
execution of the functions
of the authorized officer
under this Act

24(2)(b)

On summary conviction in a
Parish Court –

- (a) in the case of a person
other than an individual, to
a fine not exceeding one
million dollars;
- (b) in the case of an individual,
to a fine not exceeding five
hundred thousand dollars,
or to imprisonment for a
term not exceeding three
months, or to both such fine
and imprisonment.

Without lawful excuse or
justification, obstructs or
hinders an authorized
officer in the execution
of the functions of the
authorized officer under

24(2)(c)

On summary conviction in a
Parish Court, to a fine not
exceeding two hundred thousand
dollars, or to imprisonment for a
term not exceeding three months,
or to both such fine and

this Act	imprisonment.
Failure by a person whose licence has been revoked to surrender the licence and copies thereof	27(7) On summary conviction in a Parish Court, to a fine not exceeding five hundred thousand dollars, or to imprisonment for a term not exceeding one month, or to both such fine and imprisonment.
Failure by a person whose licence has been revoked to comply with the prohibition against –	27(10) or 27(11) On summary conviction in a Parish Court – <ul style="list-style-type: none"> <li data-bbox="1049 801 1541 967">(a) in the case of a person other than an individual, to a fine not exceeding one million dollars; <li data-bbox="1049 1016 1541 1311">(b) in the case of an individual, to a fine not exceeding five hundred thousand dollars, or to imprisonment for a term not exceeding three months, or to both such fine and imprisonment.
<ul style="list-style-type: none"> <li data-bbox="427 889 792 1010">(a) engaging in any new arrangement or contract; <li data-bbox="427 1059 792 1180">(b) varying any existing arrangement or contract; or <li data-bbox="427 1228 792 1481">(c) engaging in any activity which advertises or promotes the services of the licensee 	
Failure by licensee to ensure that each substantial shareholder and officer of the licensee remains a fit and proper person	30(2) On summary conviction in a Parish Court – <ul style="list-style-type: none"> <li data-bbox="1049 1661 1541 1825">(a) in the case of a person other than an individual, to a fine not exceeding one million dollars; and <li data-bbox="1049 1873 1541 2037">(b) in the case of an individual, to a fine not exceeding five hundred thousand dollars.
Breach of obligation to keep secret and confidential, information and documents pertaining to customers of a licensee	33(3) On summary conviction in a Parish Court – <ul style="list-style-type: none"> <li data-bbox="1049 2217 1541 2381">(a) in the case of a person other than an individual, to a fine not exceeding one million dollars; or <li data-bbox="1049 2429 1541 2507">(b) in the case of an individual, to a fine not exceeding five

		<p>hundred thousand dollars, or to imprisonment for a term not exceeding three months, or to both such fine and imprisonment.</p> <p>On conviction in the Supreme Court, to a fine or imprisonment for a term not exceeding six months.</p>
<p>Failure by licensee to keep or cause to be kept accurate records in respect of a microcredit business</p>	34(2)	<p>On summary conviction in a Parish Court –</p> <p>(a) in the case of a person other than an individual, to a fine not exceeding one million dollars;</p> <p>(b) in the case of an individual, to a fine not exceeding five hundred thousand dollars, or to imprisonment for a term not exceeding two months, or to both such fine and imprisonment.</p>
<p>Failure by licensee to retain records of the business for at least seven years</p>	34(4)	<p>On summary conviction in a Parish Court –</p> <p>(a) in the case of a person other than an individual, to a fine not exceeding one million dollars;</p> <p>(b) in the case of an individual, to a fine not exceeding five hundred thousand dollars, or to imprisonment for a term not exceeding two months, or to both such fine and imprisonment.</p>
<p>Failure by licensee to –</p> <p>(a) furnish records required by the Supervisor; or</p> <p>(b) furnish information relating to its business to the Supervisor</p>	34(6)	<p>On summary conviction in a Parish Court –</p> <p>(a) in the case of a person other than an individual, to a fine not exceeding one million dollars; or</p> <p>(b) in the case of an individual, to a fine not exceeding five hundred thousand dollars.</p>

<p>With intent to prevent, delay or obstruct the carrying out of an audit, destroys or conceals or alters any document relating to the operations of a licensee</p>	35(4)	<p>On summary conviction in a Parish Court, to a fine not exceeding one million dollars, or to imprisonment for a term not exceeding three months, or to both such fine and imprisonment.</p> <p>On conviction in the Supreme Court, to a fine or imprisonment for a term not exceeding six months, or to both such fine and imprisonment.</p>
<p>Failure by external auditor appointed by the licensee to forthwith give written notice, with reasons, to the Supervisor regarding –</p> <ul style="list-style-type: none"> (a) the intention of the external auditor to resign during the period of appointment; (b) the unwillingness of the external auditor to be considered for reappointment at the expiration of the period for which the external auditor was appointed; or (c) the termination of the appointment of the external auditor by the licensee 	40(2)	<p>On summary conviction in a Parish Court, to a fine not exceeding two hundred and fifty thousand dollars or to imprisonment for a term not exceeding one month, or to both such fine and imprisonment.</p>
<p>Failure by a licensee to, with reasons, notify the Supervisor regarding –</p> <ul style="list-style-type: none"> (a) its intention to terminate the appointment of the external auditor of the licensee; or (b) the passing of a resolution at a 	40(4)	<p>On summary conviction in a Parish Court, to a fine not exceeding two hundred and fifty thousand dollars or to imprisonment for a term not exceeding one month, or to both such fine and imprisonment.</p>

<p>general meeting of the licensee, providing that the external auditor shall not be reappointed</p>	48(3)	<p>On summary conviction in a Parish Court –</p>
<p>Failure to comply with a direction of the Commission under section 48(2)(b)</p>	<p>(a) in the case of a person other than an individual, to a fine not exceeding one million dollars;</p> <p>(b) in the case of an individual, to a fine not exceeding five hundred thousand dollars, or to imprisonment for a term not exceeding two months, or to both such fine and imprisonment.</p>	
<p>Without lawful justification or excuse, obstructs, hinders, resists or fails to comply with the lawful direction of a person appointed under section 48(4)(b) or a constable, in the exercise of any functions related to an investigation by the Commission</p>	48(12)	<p>On summary conviction in a Parish Court, to a fine not exceeding five hundred thousand dollars, or to imprisonment for a term not exceeding two months, or to both such fine and imprisonment.</p>
<p>Failure to comply with a direction of the Commission under section 49(3)</p>	49(4)	<p>On summary conviction in a Parish Court –</p> <p>(a) in the case of a person other than an individual, to a fine not exceeding one million dollars;</p> <p>(b) in the case of an individual, to a fine not exceeding five hundred thousand dollars, or to imprisonment for a term not exceeding two months, or to both such fine and imprisonment.</p>
<p>Licensee who knowingly or recklessly advertises information relating to the</p>	51(2)	<p>On summary conviction in a Parish Court, to a fine not exceeding one million dollars.</p>

terms and conditions for the grant of a loan, which contains information which is false or misleading in a material particular

Use by a licensee of misleading, false or deceptive information to willfully induce a person to take a loan from a microcredit institution

52(2) On summary conviction in a Parish Court, to a fine not exceeding one million dollars.

On conviction in the Supreme Court to a fine.

Offence of using any violence or threats of violence or other criminal means to harm the physical person or property of a borrower or the guarantor of that borrower

53 On summary conviction in a Parish Court –

(a) in the case of a person other than an individual, to a fine not exceeding one million dollars; or

(b) in the case of an individual, to a fine not exceeding five hundred thousand dollars, or to imprisonment for a term not exceeding two months, or to both such fine and imprisonment.

On conviction in the Supreme Court, to a fine or imprisonment for a term not exceeding six months, or to both such fine and imprisonment.

Failure of a licensee to notify the Supervisor of –

- (a) a resolution to voluntarily wind up the licensee; or
- (b) proceedings for the compulsory winding up of the licensee, a notice of an application for the commencement of the compulsory winding up of the business of the licensee, or an application for the commencement of the compulsory winding up of the business of the licensee

54(8) On summary conviction in a Parish Court, to a fine not exceeding one million dollars or to imprisonment for a term not exceeding one year, or to both such fine and imprisonment.

Offence of hindering or obstructing an authorized officer or any person acting in aid of such officer in the performance of the functions of the authorized officer under section 57(2)	57(10)	On summary conviction in a Parish Court – (a) in the case of a person other than an individual, to a fine not exceeding one million dollars; (b) in the case of an individual, to a fine not exceeding five hundred thousand dollars or to imprisonment for a term not exceeding two months or to both such fine and imprisonment.
Failure to comply with the direction of the Regulatory Authority under section 59(4)	59(5)	On summary conviction in a Parish Court, to a fine not exceeding two hundred and fifty thousand dollars or to imprisonment for a term not exceeding one month, or to both such fine and imprisonment.

FIFTH SCHEDULE **(Section 56)**

Offences in respect of which liability to conviction may be discharged by payment of a fixed penalty

First Column	Second Column	Third Column
_____	_____	_____
Brief Description of Offence	Relevant Section	Penalty
_____	_____	_____
Failure to prominently display licence at principal office and at each branch of microcredit institution	12(2)	One million dollars (\$1,000,000.00)
Offence of changing the registered name of a licensee, without, in writing, notifying the Supervisor and furnishing reasons for the proposed change and requesting approval for the proposed change	23(3)	One hundred and fifty thousand dollars (\$150,000.00)

Failure by a person whose licence has been revoked to surrender the licence and copies thereof	27(7)	Two hundred and fifty thousand dollars (\$250,000.00).
Failure by the licensee to keep or cause to be kept accurate records in respect of a microcredit business	34(2)	(a) in the case of a person other than an individual, five hundred thousand dollars (\$500,000.00); (b) in the case of an individual, two hundred and fifty thousand dollars (\$250,000.00).
Failure by licensee to –	34(6)	(a) in the case of a person other than an individual, five hundred thousand dollars (\$500,000.00); (b) in the case of an individual, two hundred and fifty thousand dollars (\$250,000.00);
(a) furnish records required by the Supervisor; or		
(b) furnish information relating to its business to the Supervisor		
Failure by external auditor appointed by the licensee to forthwith give written notice, with reasons, to the Supervisor regarding –	40(2)	One hundred and fifty thousand dollars (\$150,000.00).
(a) the intention of the external auditor to resign during the period of the appointment;		
(b) the unwillingness of the external auditor to be considered for reappointment at the expiration of the period for which the external auditor was appointed; or		
(c) the termination of the appointment of the external auditor by the licensee		

<p>Failure by a licensee to, with reasons, notify the Supervisor regarding –</p> <p>(a) its intention to terminate the appointment of the external auditor of the licensee; or</p> <p>(b) the passing of a resolution at a general meeting of the licensee, providing that the external auditor shall not be reappointed</p>	<p>40(4) One hundred and fifty thousand dollars (\$150,000.00).</p>
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SIXTH SCHEDULE (Section 63)

Amendment of Enactments

Act	Amendment
—	—
Credit Reporting Act	<p>In section 8(2), re-letter paragraphs (m) and (n) as paragraphs (n) and (o) and insert next after paragraph (l) the following as paragraph (m) –</p> <p style="padding-left: 40px;">“(m) a microcredit institution licensed under the Microcredit Act ;”.</p>
Moneylending Act	<p>1. In section 13 –</p> <p style="padding-left: 20px;">(a) delete paragraph (h);</p> <p style="padding-left: 20px;">(b) delete paragraph (i); and</p> <p style="padding-left: 20px;">(c) insert next after paragraph (k) the following as paragraph (l) –</p> <p style="padding-left: 40px;">“(l) a microcredit institution licensed under the Microcredit Act or any enactment amending or substituting for the same, or to any loans made by any such institution.”.</p> <p>2. Delete section 14.</p>

Proceeds of Crime Act	In section 2, in the definition of “financial institution”, re-letter paragraph (i) as paragraph (j) and insert next after paragraph (h) the following as paragraph (i) – “(i) a microcredit institution licensed under the Microcredit Act;”.
Terrorism Prevention Act	In section 2(1), in the definition of “financial institution”, re-letter paragraph (i) as paragraph (j) and insert next after paragraph (h) the following as paragraph (i) – “(i) a microcredit institution licensed under the Microcredit Act;”.
United Nations Security Council Resolutions Implementation Act	In section 2, in the definition of “financial institution”, re-letter paragraph (i) as paragraph (j) and insert next after paragraph (h) the following as paragraph (i) – “(i) a microcredit institution licensed under the Microcredit Act;”.

MEMORANDUM OF OBJECTS AND REASONS

Over the last two decades, there has been a proliferation of privately-owned money lending institutions which have sought to satisfy the demand for funding of micro, small and medium sized enterprises.

The Government appreciates the importance of these institutions, as having access to financing is critical to alleviating poverty and facilitating growth in the economy.

However, the significant increase in these institutions has presented new challenges to conventional regulation especially due to their lending modalities which do not easily fit into existing legal and company structures.

Also, there has been a steady increase in requests from these institutions for exemption from the provisions of the Moneylending Act which provides some protection and recourse for borrowers.

Therefore, over time, issues have emerged which have led to the recognition that there is a need for the introduction of a regime to regulate privately-owned money lending institutions (“microcredit institutions”) which provide funding for micro, small and medium sized enterprises.

The Government not only recognizes the need to protect consumers by bringing order to the operations of microcredit institutions, but also recognizes the need to ensure that these institutions are not used to facilitate money laundering and terrorist financing.

Therefore, this Bill seeks to regulate the persons who provide microcredit services, ensuring that such persons are licensed by the Regulatory Authority and required to keep proper accounting and other records and make reports to the Regulatory Authority on a timely basis.

The Bill seeks to regulate the provision of microcredit services offered by microcredit institutions, in order to ensure that –

- (a) microcredit services may be utilized by micro, small and medium sized enterprises and individuals to facilitate their financial or economic advancement;
- (b) the sustainable growth of micro, small and medium sized enterprises may be facilitated;
- (c) a transparent, fair and competitive landscape is created for microcredit institutions which will minimize asymmetric information and promote best practices; and
- (d) microcredit institutions are not used to facilitate money laundering activities and the financing of terrorist activities.

Additionally, the Bill –

- (a) prohibits false and misleading advertising by microcredit institutions; and

- (b) makes it an offence for microcredit institutions to use threats and violence in the process of collecting a debt.

The Bill identifies the Consumer Affairs Commission as the body responsible for accepting complaints against microcredit institutions, investigating complaints against microcredit institutions and formulating a code of conduct for microcredit institutions on consumer related matters.

The Bill seeks further to amend –

- (a) the Credit Reporting Act, to designate companies licensed under the Microcredit Act to be credit information providers;
- (b) the Moneylending Act, to exempt any company licensed under the Microcredit Act from the provisions of the Moneylending Act;
- (c) the Proceeds of Crime Act, to designate a company licensed under the Microcredit Act as a financial institution;
- (d) the Terrorism Prevention Act, to designate a company licensed under the Microcredit Act as a financial institution; and
- (e) the United Nations Security Council Resolutions Implementation Act, to designate a company licensed under the Microcredit Act as a financial institution.

Nigel Clarke
Minister of Finance and the Public Service