

EASTERN CARIBBEAN CURRENCY UNION

**SUMMARY PROVISIONS OF THE DRAFT HARMONISED
CREDIT REPORTING BILL AND REGULATIONS**



**EASTERN CARIBBEAN CENTRAL BANK
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SUMMARY PROVISIONS OF THE DRAFT
HARMONISED CREDIT REPORTING BILL AND REGULATIONS

1.0 INTRODUCTION

The Eastern Caribbean Central Bank (ECCB) in collaboration with the International Finance Corporation (IFC), and with financing from the Canadian Department of Foreign Affairs, Trade and Development (DFATD), is working towards the establishment of a credit bureau for the Eastern Caribbean Currency Union (ECCU) region. The objective is for the IFC and the ECCB to collaborate on the establishment of the regulatory and supervisory framework to support an advanced credit reporting system in the ECCU. The ECCB is working towards the finalisation of the draft legislative package. This document provides a synopsis of the draft provisions of the Credit Reporting Bill and Regulations.

a) The Draft OECS Harmonised Credit Reporting Bill (the Bill), 2015:

- Provides for a fair and an accurate credit reporting system within the financial system in order to assure objective credit decisions;
- Enables credit information sharing and reporting;
- Provides for the regulation of the conduct of credit reporting and credit reporting services; and
- Provides safeguards for data protection for customers of credit providers and for related matters.

b) The Draft OECS Harmonised Credit Reporting Regulations (the Regulations) supplements the Bill and provides the following schedules:

- Subscriber Agreement;
- Application for License Form;
- Personal Declaration Form (for proposed Officers and Significant Shareholders of Credit Bureaus);
- Statutory Declaration;
- Fees Respecting Credit Bureau Licences; and

- Summary of Rights

2.0 SUMMARY PROVISIONS OF THE DRAFT CREDIT REPORTING BILL

a) The Bill is arranged in the following Parts:

- *Part I: Preliminary* (title and definitions);
- *Part II: Administration* (role of Minister and regulator/supervisor);
- *Part III: Licensing, Etc. of Credit Bureaus*;
- *Part IV: Credit Reporting* (providing for activities of credit bureau(s), including data providers, types of data that can be submitted, types of information that can be disclosed, permissible purpose, users of credit information data, and retention periods);
- *Part V: Supervision by the Central Bank* (including inspections, warrants, Central Bank orders, audits, and court orders);
- *Part VI: Civil Liability* (for negligent non-compliance);
- *Part VII: Credit Reporting Review Commission* (including its objectives and procedures for submitting an application to the Commission);
- *Part VIII: Appeals*; and
- *Part IX: Miscellaneous Provisions* (including establishment of offences, penalties, and immunity provisions,).

b) Table I summarises the key provisions of the draft Credit Reporting Bill. ***Kindly provide feedback or comments.***

Table I

Main Provisions of the Bill	Feedback / Comments
PART I PRELIMINARY	
<p>Key definitions</p> <p>1. “<i>credit</i>” includes—</p> <p style="padding-left: 40px;">(a) any money lent or made available to a person or a; and</p> <p style="padding-left: 40px;">(b) a contract, agreement or undertaking to provide before payment to a person money, a loan, property, or service;</p> <p>2. “<i>credit information</i>” means any positive or negative information bearing on a data subject’s credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics or mode of living including, but not limited to, the history or profile of the data subject with regard to credit, assets or financial obligations;</p> <p>3. “<i>credit information provider</i>” means [an entity] [a person] specified in section [] that gives, to a credit bureau, information on a data subject;</p> <p>4. “<i>credit provider</i>” includes [an entity] [a person] that carries on a business involving—</p>	

Main Provisions of the Bill	Feedback / Comments
<p>(a) the provision of credit to another person; and</p> <p>(b) the selling of goods under hire purchase or credit sales under the Hire Purchase Act [Sale of Goods Act];</p> <p>5. “<i>loan</i>” includes—</p> <p>(a) direct, indirect or contingent obligations incurred by a data subject with a third party;</p> <p>(b) any discount, advance or overdraft;</p> <p>(c) export bills purchased or other bills receivable or purchased;</p> <p>(d) import bills, or data subjects’ liability on off-balance sheet items; and</p> <p>(e) any other credit facilities extended to a data subject by a credit provider;</p> <p>6. “<i>negative information</i>”, in relation to a credit transaction between a data subject and a credit provider, includes—</p> <p>(a) credit defaults, collections and late payments;</p> <p>(b) accounts compulsorily closed other than for administrative reasons;</p> <p>(c) voluntary or mandatory surrender of assets;</p>	

Main Provisions of the Bill	Feedback / Comments
<p>(d) conviction for the offence of fraud or forgery;</p> <p>(e) receiverships, bankruptcies and liquidations;</p> <p>(f) liens, garnishment or judgments; and</p> <p>(g) any other act or information which could cause a credit application to be declined or restricted according to a creditor's policy relating to the overdue, past due, charge off, or delinquent status of the credit transaction between the data subject and the credit provider;</p> <p>7. “<i>personal information</i>”, in relation to a data subject, means—</p> <p>(a) in the case of an individual—</p> <p>(i) the full name of the individual;</p> <p>(ii) an alias or previous name of the individual;</p> <p>(iii) the sex of the individual;</p> <p>(iv) the date of birth of the individual;</p> <p>(v) the Social Security number of the individual;</p> <p>(vi) the passport number of the individual;</p> <p>(vii) the driving licence number of the individual;</p>	

Main Provisions of the Bill	Feedback / Comments
<p>(viii) past and current addresses of the individual; and</p> <p>(ix) any other contact information of the individual; and</p> <p>(b) in the case of a legal person—</p> <p>(i) the full business name of the legal person;</p> <p>(ii) any previous business name of the legal person;</p> <p>(iii) the registration number of the legal person;</p> <p>(iv) the Social Security registration number of the legal person;</p> <p>(v) the current registered address of the legal person;</p> <p>(vi) the past registered addresses (if any) of the legal person; and</p> <p>(vii) any other contact information of the legal person;</p> <p>8. “<i>positive information</i>” means any information relating to the current or historical status of a credit transaction between a data subject and a credit provider including, but not limited to, the</p>	

Main Provisions of the Bill	Feedback / Comments
<p>date on which an account was opened, the date of the last payment, high credit approved, the amount of payments, the current balance, repayment patterns, the utilization of credit and any collateral pledged;</p>	
<p>PART II ADMINISTRATION</p>	
<p>Role of the Minister (of Finance)</p> <ol style="list-style-type: none"> 1. Overall Responsibility for management of the Act 2. Policy development through Monetary Council 3. Issuing Regulations 	
<ol style="list-style-type: none"> 1. Proposed regulator of credit reporting system: Eastern Caribbean Central Bank (ECCB or the Central Bank) 2. Powers, duties and functions of the Central Bank <ol style="list-style-type: none"> (i) Regulate/supervise credit bureau(s) (ii) Responsible for licensing of bureau(s) and revocation of licenses when necessary (iii) Regulate/supervise credit bureau(s), credit information providers and users of bureau(s) (iv) Issue guidelines, set standards and targets for bureau(s) (v) Administer penalties, issue directives, warnings/reprimand, revoke credit bureau(s) license if necessary 	

Main Provisions of the Bill	Feedback / Comments
PART III LICENSING, ETC. OF CREDIT BUREAUS	
<p>License requirements</p> <ol style="list-style-type: none"> 1. Applicants must : <ol style="list-style-type: none"> (i) Follow an application process and use prescribed forms (ii) Be registered under Companies Act (iii) Pay application processing fee 2. Licensing authority may grant or refuse to grant license after suitable evaluation. Reasons for refusal may include, but not limited to: failure to meet capital requirements, application not made in accordance with Act and Regulations, etc. 3. Applicants that are refused a license may be allowed to make suitable representation 4. Central Bank can revoke license if the bureau does not comply with the Act and Regulations. Bureau can make a representation in this case. 5. All credit bureau(s) must have a license to operate in the ECCU region. [While bill does not specify number of licenses that will be awarded, it is likely that only one bureau will be able to serve the market, given market size.] 	

Main Provisions of the Bill	Feedback / Comments
<p>Licensee</p> <ol style="list-style-type: none"> 1. Required to provide irrevocable bank guarantee 2. Put up any start-up capital as specified by the Central Bank 3. Credit information providers may take shareholding in bureau(s) up to 5%, for a total of 49% 4. May not transfer the license, or sell, lease or transfer title to its credit files without prior permission from the Central bank 	
<p>Licensed Credit Bureaus</p> <p>Licensed credit bureau(s) can engage in the following activities:</p> <ol style="list-style-type: none"> 1. Allowed to collect, store, process and disseminate data subject information 2. Provide credit reports and value-added services to users 3. Conduct market research, provide statistical research 4. Allow credit information providers to correct information when necessary in data subject files 5. Provide consultancy, training on credit reporting and include education material 6. Obtain, process credit information from any specified public register, such as a Titles Registry, The Registry of Births and Deaths, Companies and Intellectual Property Registry, etc. 	
<p>PART IV CREDIT REPORTING</p>	
<p>Credit Information Providers (CIPs)</p> <ol style="list-style-type: none"> 1. Act mandates the following CIPs to provide information 	

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<p>to the bureau(s):</p> <ul style="list-style-type: none"> (i) a bank or financial institution licensed under the Banking Act, (ii) a money services business licensed under the Money Services Business Act, (iii) a credit union or similar co-operative institution registered under the Co-operative Societies Act, (iv) an insurance company licensed under the Insurance Act, (v) a micro-finance institution, (vi) a person that the Central Bank designates by notice published in the <i>Gazette</i>. <p>2. Act allows the following CIPs to voluntarily provide information, after obtaining data subject consent:</p> <ul style="list-style-type: none"> (i) a person carrying on the business of selling goods under hire purchase or credit sales under the Hire Purchase Act [or the Sale of Goods Act]; (ii) a telecommunications provider licensed under the Telecommunications Act or any enactment replacing that Act; (iii) the [Name of State or Territory] Electricity Services Company Limited and any other person licensed under [section 14] of the Electricity Supply Act or any other enactment; (iv) the [Name of State or Territory] Water and Sewerage Corporation established by section 3 of the Water and Sewerage Act or any other enactment; and (v) the [Name of State or Territory] Development Bank 	

Main Provisions of the Bill	Feedback / Comments
<p>established under section [xx] of the [Name of State or Territory] Development Bank Act.</p> <ol style="list-style-type: none"> 3. Bill allows Minister to designate additional credit information providers by order published in the Gazette. 4. Credit information to be provided to the bureau(s) in a standard data format that the bureau(s) will develop together with data providers and will be approved by the Central Bank. 	
<p>Credit information that can be disclosed</p> <ol style="list-style-type: none"> 1. Valid, up-to-date, accurate, relevant, information sourced from credit information providers and provided on a reciprocity basis 2. Judgment data with all particulars related to age, amount, name/address of judgment creditor or agent. 3. All negative and positive information, provided rules of reciprocity are followed. <p>Information that cannot be included in credit reports:</p> <ol style="list-style-type: none"> 1. race, creed, colour, medical information, ancestry, ethnic origin or political affiliation of a data subject or such other sensitive personal information of a data subject 2. Information retained seven years past settlement or termination of credit. 	

Main Provisions of the Bill	Feedback / Comments
<p>Consumer Rights</p> <p>1. Every data subject is entitled—</p> <p>(a) to know what information has been submitted to the credit bureau;</p> <p>(b) to access his/her/its credit information in the credit bureau</p> <p>(c) to challenge erroneous data held in the credit bureau database and request correction of the erroneous data; and</p> <p>(d) to a copy of the credit report of the data subject, without cost to the data subject, once a year.</p> <p>2. The Act provides timeframes under which the bureau must comply with a data subject’s request for access to its credit information.</p> <p>3. Bureaus must inform data subjects of their rights. Act provides a summary of data subject rights that can be adapted by the bureau(s), and CIPs for dissemination to data subjects.</p>	
<p>Consent</p> <p>1. Required for credit information providers that are not regulated by the ECCB, to share information with the credit bureau.</p> <p>2. Required for all users (whether subscribers or not) to inquire with the credit bureau</p>	

Main Provisions of the Bill	Feedback / Comments
<ol style="list-style-type: none"> 3. Can be in electronic format 4. Must be stored as evidence for a certain number of years according to the bill and regulations 5. Expires when the contract between a credit provider and data subject terminates, but the data will continue to be reported by the bureau for seven years post termination. 6. Consent may not be required in a number of instances, like in response to a court order, to assist with investigations/prosecution/punishment of offences by public sector, to aid in tracking insurance fraud, etc. 7. In addition consent is not required when the data is used in a form in which the identity of the data subject is not disclosed, or for statistical/research purposes. 	
<p>Credit Information Providers Obligations</p> <ol style="list-style-type: none"> 1. Submit accurate data in a timely manner to bureau; 2. Adhere to security standards as prescribed by the bill and regulations in the storage/transmission/maintenance of data subject information. <p>Data the CIPs must submit</p> <ol style="list-style-type: none"> 1. the amount and nature of loans granted by the credit provider to any data subject; 2. the nature of the security provided by any data subject in respect of any loan granted to the data subject by the credit provider; 3. the nature of any guarantee or other non-fund based 	

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<p>facility furnished to any data subject by the credit provider;</p> <ol style="list-style-type: none"> 4. credit information about any data subject’s income, creditworthiness or history of financial transactions including antecedents and adverse court judgments, obtained by the credit information provider in relation to transactions involving the credit provider; 5. other credit information required to be disclosed under the Act; 6. or 7. such other credit information as the Central Bank— <ol style="list-style-type: none"> (a) considers appropriate to include as credit information for the purposes of the Act and these Regulations; and (b) specifies by notice published in the <i>Gazette</i> and one weekly newspaper of general circulation in [name of state or territory]. <p>Duties to correct/report inaccuracies</p> <ol style="list-style-type: none"> 1. (On identifying inaccuracy in submitted data subject information, CIPs must, within 5 working days, <ol style="list-style-type: none"> (a) inform the credit bureau and the data subject of the inaccuracy; and (b) furnish the credit bureau with the accurate information and a notice instructing the credit bureau to— 	

Main Provisions of the Bill	Feedback / Comments
<p>(c) delete the inaccurate information; and</p> <p>(d) replace the inaccurate information with the accurate information.</p> <p>2. Failure to comply – summary conviction and fine up to \$10,000.</p> <p>3. 5. CIP must take steps to resolve any complaints/disputes raised by data subject. To do this, must appoint someone to handle disputes, track disputes and status, apply mediation where necessary, ensure accuracy of information.</p>	
<p>Subscribers</p> <p>1. A subscriber shall not—</p> <p>(a) use information received from a credit bureau for any purpose other than for reaching decisions on the business of the subscriber in the ordinary course of such business; or</p> <p>(b) release information received from a credit bureau to any third party other than the subscriber’s appointed agent for the purpose of assisting the subscriber in the recovery of any of its debts.</p> <p>Failure to comply – summary conviction and fine up to \$10,000.</p> <p>2. Subscribers/users are also subject to the same requirements as credit information providers (for the most part they will also be CIPs), in terms of ensuring security of data and systems,</p>	

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<p>training employees, agents, to use credit information data and dispose of records in an appropriate manner, etc.</p>	
<p>1. Dispute resolution process</p> <ul style="list-style-type: none"> (i) Data subject to submit notice of dispute to bureau (with information on what is being disputed, what change is being requested, identification details, etc.) (ii) Within five days bureau to attach note to the data subject's file regarding disputed information, contact CIP to verify completeness, accuracy etc. of data (iii) Within 10 days of receiving dispute notice, CIP to investigate and determine whether data is inaccurate, needs to be corrected or not, provide notice of resolution to bureau including what action needs to be taken (iv) Within five days, bureau to make necessary change if any, provide notice of change to all subscribers that have received a report on that data subject within the past 12 months (v) If data subject is not satisfied with results, can request bureau to attach a statement of not more than 100 words to his/her file stating his or her claim about data accuracy. (vi) Where bureau receives notice of dispute, it must investigate within fifteen days, or inform data subject if more time is needed; attach copy of dispute notice to the file while investigation is ongoing; inform data subject of the outcome. If the bureau believes that the information contained in its file is correct, data 	

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<p>subject may attach a comment to their file regarding his/her claim on accuracy of information.</p> <p>2. Every credit bureau must have</p> <ol style="list-style-type: none"> 1. Have persons trained to discuss content of credit reports with data subjects 2. Internal review procedures and persons to handle consumer disputes expeditiously. 	
<p>Cross-border data flows</p> <ol style="list-style-type: none"> 1. Bureau must request permission from regulator to host data off-shore or to outsource/sub-contract processing of data to an organization outside the ECCU region. 2. Host country must provide similar or greater level of protection for data than home country. 	
<p>SUPERVISION BY THE CENTRAL BANK</p>	
<p>Inspections</p> <ol style="list-style-type: none"> 1. Central Bank can conduct inspections of the bureau, including on-site inspections. 2. Central Bank can conduct inquiries into bureau(s) and CIPs in case of inaccurate information 3. Costs of inquiries and inspections to be borne by subjects of inquiries and inspections. 4. Bureau to provide independently audited reports to regulator at end of each financial year. 5. Regulator can apply to courts in case any of its orders are not complied with. 	

Main Provisions of the Bill	Feedback / Comments
<p>6. Act provides for civil liabilities in case of negligent non-compliance resulting in suffering by data subjects, amounting to actual damages and any liability awarded by courts in case of successful litigation.</p>	
<p>PART VII CREDIT REPORTING COMMISSION</p>	
<p>Credit Reporting Review Commission</p> <ol style="list-style-type: none"> 1. Act provides for creation of a credit reporting review commission to handle grievances of data subjects as it relates to disputes filed with the bureau and grievances of the bureau(s) as it relates to any action or decision of the regulator. 2. Act provides constitution of the Review Commission and guidelines for the process of filing with the Commission. 3. Act provides for appeals process for subjects of the Review Commission's decision. 	

3.0 SUMMARY PROVISIONS OF THE DRAFT CREDIT REPORTING REGULATIONS

a) The draft Credit Reporting Regulations are divided into the following sections:

- *Part I: Preliminary* (including title and definitions);
- *Part II: Licensing of Credit Bureaus* (this part provides more details on licensing applications, including relevant forms and Schedules S);
- *Part III: Credit Reporting Business* (includes specifics on nature of information shared, obligations of credit information providers, disclosure rules, limits to disclosure, and the need for bureau(s) to file periodic returns);
- *Part IV: Complaints and Dispute Resolution Process* (this part alludes to the process for filing complaints and disputes by data subjects and the procedures for credit bureau(s) and credit information providers to address these complaints/disputes); and
- *Part V: Miscellaneous Provisions* (includes start-up capital requirements, restrictions on bureau(s) staff, cross-border data flows, credit bureau fees and fixed penalties), and Schedules.

b) Table II summarises the key provisions of the draft Credit Reporting Bill. *Kindly provide feedback or comments.*

Table II

Main Provisions of the Regulations	Feedback / Comments
<p>Licensing requirement for bureau</p> <ol style="list-style-type: none">1. An application for a licence to operate, or carry on the business of, a credit bureau shall be made to the Central Bank.2. The application shall be accompanied by the following information and supporting documents:<ol style="list-style-type: none">(a) a certified copy of the applicant’s Certificate of Incorporation, [and Memorandum] and Articles of Incorporation;(b) a business proposal by the applicant, covering, among other things, the following aspects:<ol style="list-style-type: none">(i) market analysis;(ii) proposed ownership structure;(iii) governance and management structure;(iv) business plan;(v) business continuity plan; and(vi) examples of operations manuals containing information and guidelines respecting the best procedures and practices in relation to the processing of data subject information;(c) a statutory declaration of the proposed chief	

Main Provisions of the Regulations	Feedback / Comments
<p>executive officer;</p> <p>(d) a statutory declaration of the proposed directors, officers and significant shareholders</p> <p>(e) the documentary evidence respecting:</p> <p>(i) the administrative policies of the credit bureau;</p> <p>(ii) the development schedule of the software required for the operations of the credit bureau;</p> <p>(iii) the description of the products and services intended to be provided to subscribers;</p> <p>(iv) the policy and procedures manual in relation to the supply of credit reporting services; and</p> <p>(v) the proposed security and control measures aimed at preventing misuse or improper management of data subject information;</p> <p>(f) an overview of the operations systems of the applicant including the unique identification systems in relation to the collection and processing of data;</p> <p>(g) a description of the applicant's premises and the security measures to be adopted in respect of the premises;</p>	

Main Provisions of the Regulations	Feedback / Comments
<p>(h) the suitability of the applicant’s premises for the supply of credit reporting services;</p> <p>(i) the draft proposal respecting fees for services;</p> <p>(j) a prototype of the final product that demonstrates the principal features and functions of the operations systems;</p> <p>(k) the documentary evidence regarding the payment to the Central Bank of the non-refundable application processing fee; and</p> <p>(l) any other information as the Central Bank considers necessary or may require.</p>	
<p>License/renewal fees to be paid by bureau</p> <p>1. A non-refundable application processing fee and Credit Bureau Licence fee (new licence, annual renewal of licence and Variation of licence) are payable by –</p> <p>(a) every applicant in respect of an application for a credit bureau licence; and</p> <p>(b) a credit bureau for renewal of a credit bureau licence.</p>	

Main Provisions of the Regulations	Feedback / Comments
<p>Fit an proper test for bureau executives and qualification criteria for employees</p> <ol style="list-style-type: none"> 1. When evaluating an application for a licence to operate, or carry on the business of, a credit bureau the Central Bank shall take into account all relevant matters within its discretion including: <ol style="list-style-type: none"> (a) the background, reputation, integrity, experience and capacity of the proposed directors, managers and other officers of the applicant as evidenced by, among other things, the curriculum vitae and professional qualifications of the proposed directors, managers and other officers of the applicant; (b) the business plan of the applicant, including a mechanism to integrate, gather, update and validate the data; and (c) the design of data collection for data subject information and flexibility in structuring the information in accordance with the Act and these Regulations. 2. A person shall not be qualified to hold office as a director, a manager or an officer of a credit bureau if the person— <ol style="list-style-type: none"> (a) is a minor or is under a legal disability; (b) has been convicted of an offence involving theft, fraud, forgery, causing financial loss or perjury; 	

Main Provisions of the Regulations	Feedback / Comments
<p>(c) has been removed from an office of trust on account of misconduct, abuse of office, corruption or incompetence in the immediate preceding ten years from the date of the application; or</p> <p>(d) is an auditor of a credit bureau or any company associated with a credit bureau.</p>	
<p>Ability of credit bureau(s) to charge fees for its products and services</p> <ol style="list-style-type: none"> 1. Subject to the approval of the Central Bank, a credit bureau may charge fees for the provision of the services under the Act and these regulations. 2. The credit bureau shall submit to the Central Bank a proposal respecting the fees it intends to charge for the provision of credit reporting services under the Act and Regulations. 	
<p>Imposition of administrative penalties or fixed penalties</p> <ol style="list-style-type: none"> 1. The Central Bank may proceed against a credit bureau in breach of the provisions of these Regulations under the fixed penalty procedure of the Act, if the credit bureau exercises the option to settle the matter under that procedure. 	
<p>Summary of data subject rights</p> <ol style="list-style-type: none"> 1. A credit information provider shall not provide credit information in respect of a data subject to any other person unless the credit information provider is satisfied, 	

Main Provisions of the Regulations	Feedback / Comments
<p>after undertaking all reasonable enquiries and investigations, that the information meets the requirements of the Act.</p> <p>2. Where a credit information provider becomes aware that data subject information which it has provided to a credit bureau was inaccurate at the time such information was provided, the credit information provider shall, within five working days from the day on which the credit information provider becomes aware of the inaccuracy:</p> <p style="padding-left: 40px;">(a) inform the credit bureau and the data subject of the inaccuracy</p> <p style="padding-left: 40px;">(b) furnish the credit bureau with the accurate information issue a notice instructing the credit bureau to delete the inaccurate information; and replace the inaccurate information with the accurate information.</p> <p>3. A credit bureau shall, on receipt of the accurate information promptly:</p> <p style="padding-left: 40px;">(a) make the necessary correction or change to the credit information; and</p> <p style="padding-left: 40px;">(b) inform the credit information provider and the data subject of the correction or change.</p> <p>4. A subscriber shall not:</p>	

Main Provisions of the Regulations	Feedback / Comments
<p>(a) use information received from a credit bureau for any purpose other than for reaching decisions on the business of the subscriber in the ordinary course of such business; or</p> <p>(b) release information received from a credit bureau to any third party other than the subscriber's appointed agent for the purpose of assisting the subscriber in the recovery of any of its debts.</p>	