

BILL NO. 25 OF 2021

A BILL

FOR AN ACT TO AMEND THE FAIR REPORTING OF CREDIT ACT 2016

ENACTED by the Parliament of the Republic of Fiji—

Short title and commencement

1.—(1) This Act may be cited as the Fair Reporting of Credit (Budget Amendment) Act 2021.

(2) This Act comes into force on 1 August 2021.

(3) In this Act, the Fair Reporting of Credit Act 2016 is referred to as the “Principal Act”.

Section 2 amended

2. Section 2 of the Principal Act is amended by—

(a) deleting the definition of “credit information” and substituting the following—

““credit information” means—

(a) information on a person including positive information and negative information, in electronic or any other form submitted by a credit information provider and maintained, processed and reported on by a credit reporting agency; or

- (b) information on a customer of a utility provider including positive information and negative information, in electronic or any other form submitted by a credit information provider and maintained, processed and reported on by a credit reporting agency;”;
- (b) in the definition of “person”, deleting “and”;
- (c) in the definition of “prescribed”, deleting “.” and substituting “; and”; and
- (d) after the definition of “prescribed”, inserting the following new definition—
 - ““utility provider” means—
 - (a) Energy Fiji Limited;
 - (b) Water Authority of Fiji; or
 - (c) any other body corporate that provides a utility service and is approved by the Minister.”.

Section 4 amended

3. Section 4 of the Principal Act is amended by deleting subsection (2) and substituting the following—

“(2) A person who contravenes subsection (1) is liable to a fine as may be imposed by the Bank under section 18A(3).”.

Section 8 amended

4. Section 8 of the Principal Act is amended by deleting subsection (2) and substituting the following—

“(2) A person who contravenes subsection (1) is liable to a fine as may be imposed by the Bank under section 18A(3).”.

Section 13 amended

5. Section 13 of the Principal Act is amended by—

- (a) renumbering the provision as section 13(1); and
- (b) after subsection (1), inserting the following new subsections—
 - “(2) A credit reporting agency must retain records of credit information—
 - (a) in the case of positive information, for 2 years after the credit has been repaid; and
 - (b) in the case of negative information, for 2 years after the credit has been regularised or arrears paid.
- (3) Where the credit has not been regularised or arrears paid, the information must remain registered in the database of the credit reporting agency.

(4) Where the information has been expunged from the database of the credit reporting agency, the information must be retained for 7 years after being expunged and must only be made available to the Bank.”.

Section 15 amended

6. Section 15 of the Principal Act is amended by deleting subsection (2) and substituting the following—

“(2) A credit reporting agency that contravenes subsection (1) is liable to a fine as may be imposed by the Bank under section 18A(3).”.

Part 5 amended

7. Part 5 of the Principal Act is amended by—

(a) in the heading, deleting “OFFENCES” and substituting “ENFORCEMENT”;

(b) in section 16—

(i) in the heading, deleting “Offences relating to disclosure” and substituting “Disclosure”; and

(ii) deleting “commits an offence and is liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years, or to both” and substituting “is liable to a fine as may be imposed by the Bank under section 18A(3)”;

(c) in section 17—

(i) in the heading, deleting “Offence of providing” and substituting “Provision of”; and

(ii) in subsection (1), deleting “commits an offence and is liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years, or to both” and substituting “is liable to a fine as may be imposed by the Bank under section 18A(3)”;

(d) in section 18—

(i) in the heading, deleting “Other offences” and substituting “Non-compliance with other requirements”;

(ii) deleting “commits an offence and is liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years, or to both” wherever it appears and substituting “is liable to a fine as may be imposed by the Bank under section 18A(3)”;

(iii) deleting subsection (5) and substituting the following—

“(5) The Bank must make the final determination of the extent of liability of each director, executive officer or employee of the body corporate that contravenes any provision under this section.”; and

(e) after section 18, inserting the following new section—

“Administrative action

18A.—(1) The administrative action provided for in this section may be determined by the Bank.

(2) The administrative action must be based on the gravity of the violation, the effect of the violation on the credit reporting business, the stage at which the violation is detected, and the appropriate measure to remedy or terminate the violation.

(3) The Bank may take one or more of the following administrative actions, with respect to a credit reporting agency, credit information provider or credit report recipient, if the Bank determines the credit reporting agency, credit information provider or credit report recipient has committed any violation under this Act or any measure the Bank issued pursuant to this Act—

- (a) issue written warnings;
- (b) issue written directives to perform any such acts as are necessary to comply with the provisions of this Act or any measure issued by the Bank pursuant to this Act;
- (c) impose fines for each violation committed, in amounts as may be determined by the Bank to be appropriate, including an initial fine not exceeding \$250,000 and a further fine not exceeding 5% of the initial fine for each day the violation continues; and
- (d) institute civil proceedings for any matter under this Act.”.

Section 19 amended

8. Section 19 of the Principal Act is amended by—

- (a) in subsection (4), deleting “bank” and substituting “Bank”; and
- (b) in subsection (8)—
 - (i) deleting “(4),”; and
 - (ii) deleting “commits an offence and is liable upon conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 5 years, or to both” and substituting “is liable to a fine as may be imposed by the Bank under section 18A(3).”.

Section 22 amended

9. Section 22 of the Principal Act is amended by—

(a) after subsection (1), inserting the following new subsection—

“(1A) Every utility provider must register as a credit information provider and credit report recipient with the Bank.”; and

- (b) in subsection (4), deleting “commits an offence and is liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years, or to both” and substituting “is liable to a fine as may be imposed by the Bank under section 18A(3).”.

Section 22A inserted

10. The Principal Act is amended after section 22 by inserting the following new section—

“Exclusion from liability

22A. The Bank, its directors, officers and employees are not liable in any manner whatsoever for anything done or omitted to be done in good faith in the discharge or purported discharge of the functions and duties of the Bank under this Act.”.

July 2021

FAIR REPORTING OF CREDIT (BUDGET AMENDMENT) BILL 2021

EXPLANATORY NOTE

(This note is not part of the Bill and is intended only to indicate its general effect)

1.0 BACKGROUND

- 1.1 The Fair Reporting of Credit Act 2016 (**‘Act’**) provides for the regulation, administration and licensing of credit reporting agencies.
- 1.2 The credit reporting sector in Fiji was not regulated before the coming into force of the Act. The challenges faced by customers in seeking to ensure that accurate information about their credit standing were made available to lenders, led to the necessary reform undertaken to bring the sector under the supervision of the Reserve Bank of Fiji (**‘RBF’**).
- 1.3 The Fijian Government in 2020 prioritised the undertaking of reform actions to meet the Ease of Doing Business (**‘EoDB’**) recommendations made by the World Bank. In line with the recommendation under the category of Getting Credit, the review of the Act was carried out, aimed at enhancing the needed work to progress the development of Fiji’s credit reporting industry that would positively impact on Fiji’s EoDB ranking.
- 1.4 The Fair Reporting of Credit (Budget Amendment) Bill 2021 (**‘Bill’**) thus seeks to amend the Act to address issues raised by industry stakeholders and to reflect the objectives of the EoDB reforms being undertaken, in order to enable the necessary progress of the credit reporting industry.

2.0 CLAUSES

- 2.1 Clause 1 of the Bill provides for the short title and commencement. If passed by Parliament, the amending legislation will come into force on 1 August 2021.
- 2.2 Clause 2 of the Bill amends section 2 of the Act by substituting the definition for the term “credit information” and inserting a new definition for the term “utility provider”.

- 2.3 Clauses 3 and 4 of the Bill amend sections 4 and 8 of the Act respectively to provide for an administrative penalty that the RBF may impose for a breach of these sections.
- 2.4 Clause 5 of the Bill amends section 13 of the Act to require a credit reporting agency to retain credit information for specified periods of time.
- 2.5 Clause 6 of the Bill amends section 15 of the Act to provide for an administrative penalty that the RBF may impose for a breach of section 15.
- 2.6 Clause 7 of the Bill amends Part 5 of the Act to provide for the enforcement of the provisions of the Act including the imposition of an administrative penalty that the RBF may impose for a breach of section 16, 17 or 18 of the Act. Clause 7 of the Bill also provides that the RBF will make the final determination of the extent of liability of a director, executive officer or employee of a body corporate in breach of section 18.
- 2.7 Clause 7 of the Bill further inserts a new section 18A on administrative actions that the RBF may take under the Act for *inter alia*, breaches of the Act which include the imposition of administrative penalties as well as the ability to initiate civil proceedings for matters under the Act.
- 2.8 Clause 8 of the Bill amends section 19 of the Act to provide for an administrative penalty that the RBF may impose for a breach of section 19 and corrects a grammatical and referencing error.
- 2.9 Clause 9 of the Bill amends section 22 of the Act to require every utility provider to register as a credit information provider and credit report recipient with the RBF. Clause 9 of the Bill also amends section 22 of the Act to provide for an administrative penalty that the RBF may impose for a breach of section 22.
- 2.10 Clause 10 of the Bill amends the Act by inserting a new section 22A to exclude the RBF, its directors, officers and employees from liability for any act carried out or omitted to be done in good faith for the purposes of discharging the functions and duties of the RBF under the Act.
- 3.0 MINISTERIAL RESPONSIBILITY**
- 3.1 The Act comes under the responsibility of the Minister responsible for finance.

A. SAYED-KHAIYUM
Attorney-General