



Institute of Chartered Accountants of Jamaica

**ROLE OF THE
ACCOUNTANCY PROFESSION
IN
MICROCREDIT REGULATION**

*Public Accountancy Board/
Institute of Chartered Accountants of Jamaica
Annual Webinar, 2022*

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INTEGRITY FIRST



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Disclaimer

This presentation is for information purposes. It does not, and is not intended to constitute professional legal advice nor does it seek to be an exhaustive statement of the law. You should obtain professional legal advice on any particular matter in, or arising from, the presentation which concerns you.

Objective

To share with Registrants developments in the area of microcredit regulation, and guide on the role of the accountancy profession in the process.

Background

Over the last two decades, there has been a proliferation of privately-owned money lending businesses which have sought to satisfy the demand for funding from individuals and MSMEs who may not otherwise have access to funding through the formal system.

With passage of time, there has been recognition of the need to regulate these privately-owned money lending businesses, and so the Microcredit Act was passed in January, 2021.

The Microcredit Act, 2021

The Microcredit Act (MCA, the Act), 2021 is an Act to license and regulate microcredit institutions that provide financing to individuals as well as, micro, small and medium sized enterprises (MSMEs).

PURPOSE:

- ✓ To protect consumers through provisions to dissuade improper/imprudent market practices
- ✓ To reduce the possibility of the industry being used as a conduit for money laundering
- ✓ To facilitate development of the sector, promote access to financing, and financial inclusion

COMMENCEMENT:

- ✓ The MCA came into effect 30 July 2021, with a 12-month transition period (to 30 July 2022)

The Microcredit Act, 2021

REGULATORY STAKEHOLDERS

1. BANK OF JAMAICA:

- ✓ Regulated Authority, with responsibility for general administration of the Act and supervision of microcredit institutions (MCIs)

2. CONSUMER AFFAIRS COMMISSION:

Stakeholder with responsibility for:

- ✓ Making and issuing code of conduct for licensees on consumer related matters
- ✓ The investigation of any complaint brought to it by a consumer of a microcredit service

3. MICROCREDIT APPEALS TRIBUNAL:

The matters which may be appealed are:

- ✓ any decision as to whether a person is a fit and proper person; and
- ✓ any objection as to whether an external auditor appointed under section 35 does not meet the criteria specified, or any decision for the removal of such an auditor

The Microcredit Act, 2021

WHERE ARE WE NOW?

- ✓ 118 applications to date
- ✓ Estimated market size (aggregate loan portfolio) of over J\$40 billion
- ✓ Currently processing applications and risk rating entities as part of implementing a risk-based framework
- ✓ As part of that risk-based approach, applicants are classified into two tiers, based of the value of gross loans:

CLASSIFICATION	VALUE OF GROSS LOAN PORTFOLIO
Tier 1	Under J\$75 million
Tier 2	J\$75 million and over

- ✓ Hence, a bifurcated approach to licensing and supervision (supervisory cycle commensurate with risk classification)

The Microcredit Act, 2021

LICENSING ASSESSMENT CRITERIA:

1. Ownership
2. Sources of Wealth and Funding
3. Corporate Governance and Oversight
4. Financial Health/Solvency
5. Other

Quick Reference

The Microcredit Act, 2021 may be accessed on Bank of Jamaica's website at the following link: [The-Microcredit-Act-2021.pdf \(exactdn.com\)](#)

MCA Section	
2	Interpretation
21	Duty of licensee to notify Supervisor of fraud, dismissal etc
31	Microcredit services not to be commingled with other business activities
32	Foreign currency transactions
33	Obligation of confidentiality
34	Records to be kept by licensee

Quick Reference

MCA Section	
35	Accounts and audit; appointment of external auditor
36	Power of supervisor to object to appointment of external auditor
37	Duty of external auditor to report to Supervisor on financial viability of licensee, etc.
38	Presentation of Financial Statements
39	Special audit or examination of microcredit institutions
40	Resignation, etc., of external auditor
Schedules	
Offences and Penalties	

The Microcredit Act, 2021

POTENTIAL LICENSEES

Companies which provide one or more of the following services to certain individuals or MSMEs or both:

- ✓ Granting of credit facilities, and
 - Provision of advisory services, or
 - Other activities designated by the Supervisor as a microcredit service, and approved by the Minister.

EXCLUSIONS (THIRD SCHEDULE)

Does not cover:

- ✓ Loans by existing regulated entities (eg. Commercial Banks, Building Societies etc)
- ✓ Loans to high net worth individuals (net worth in excess of J\$50 million or income before taxes of J\$10 million for each of the last two calendar years)
- ✓ Loans to businesses which fall outside of the national definition of MSME (First Schedule, Part B)
- ✓ The provision of credit facilities by an employer to an employee or to a person in the full-time service of the employer.

The Microcredit Act, 2021

PROHIBITS

- ✓ Acceptance of deposits from the public or banking business, within the meaning of the Banking Services Act (section 2)
- ✓ Dealing in or lending in a foreign currency (section 32)

PRESCRIBES

That a licensee shall, in writing, forthwith, notify the Supervisor 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 (section 21)

Considerations

1. **Section 31:**

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 -

- ✓ the maintenance of separate accounting procedures and accounting records and other documents for the microcredit institution
- ✓ the keeping of separate bank accounts for the microcredit institution
- ✓ the creation of an environment for the microcredit institution that supports confidentially

[The Supervisor may suspend the licence of a licensee where the licensee is being operated in contravention of this subsection]

Considerations

2. **Section 33:** The obligation of confidentiality under the Act, extends to every officer, employee auditor or agent of a licensee who shall regard and deal as secret and confidential all information and documents pertaining to the customers of the licensee, obtained or accessed in the course of performing duties*

3. **Section 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*

4. **Section 34(3):** Records should be 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*

**Contravention is an offence liability to penalty*

Considerations

5. **Section 35(1):**

The accounts of a microcredit institution (MCI) must be **audited annually**, in accordance with established international accounting standards by an external auditor, who

- ✓ is a registered public accountant (defined by section 2 of the Public Accountancy Act)
- ✓ must not be an officer or an employee of the MCI

Considerations

6. Section 35(2):

Where the size of the operations of the MCI meets the description of a small company in accordance with the Companies Act, the accounts must be **prepared pursuant to the Seventh Schedule of the Companies Act**, by an external auditor, who

- ✓ is a registered public accountant (defined by section 2 of the Public Accountancy Act)
- ✓ must not be an officer or an employee of the MCI

The Seventh Schedule of the Companies Act defines a small company and provides the relevant guidelines, for e.g.

- ✓ Among other things, a company may be qualify as small if it meets two (2) or more of the following criteria for two consecutive years (one year for new businesses): Turnover: <J\$40 million; Total Assets J\$30 million; Number of employees <25
- ✓ A small company is not required to comply with generally accepted accounting principles, unless otherwise decided by the directors or certain other disqualifying conditions exist

Considerations

7. **Section 35(3):**

An auditor or a firm of auditors must 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 10% 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

Considerations

8. **Section 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 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 reasons and indicating a period (not less than 30 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)

9. **Section 36(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

Considerations

10. **Section 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 [*provision of information to the supervisor under this section does not constitute a breach of a duty of confidentiality*]

11. **Section 38(1):**

Accounts of the licensee prepared pursuant to subsection 35, are to be submitted to the Supervisor within 120 days of the financial year end [*the Supervisor may suspend a licence if the accounts are not submitted within the specified time*]

Considerations

12. **Section 39(1):** The Supervisor may appoint an external auditor or a firm of auditors for a special audit of a microcredit institution *[an external auditor or firm of auditors appointed under this subsection 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]*

13. **Section 39(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

14. **Section 39(3):** In the case of a special audit, the appointed external auditor or firm of auditors is required to carry out and report, in writing to the Supervisor on -
 - ✓ the examination of the licensee's operations and procedures as may be specified by the Supervisor;
 - ✓ any other examination of the operations of the licensee as, in the opinion of the Supervisor, is necessary in the public interest.

Considerations

15. **Section 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 [*contravention is an offence liability to penalty*].

Considerations

16. **Section 40(2):** 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 [*contravention is an offence liability to penalty*]

Expectations

QUITE SIMPLY,

1. Execute duties as you ordinarily would with the highest levels of integrity, objectivity, professional competence and due care, confidentiality, professional behavior and independence
2. Quickly become au fait with the relevant provisions of the MCA (in particular the sections highlighted today), and
3. Guide your clients accordingly

QUESTIONS/COMMENTS