



**CARIBBEAN COMMUNITY (CARICOM) POLICY ON
CREDIT REPORTING**

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For Finance and Planning
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CARRIBBEAN COMMUNITY (CARICOM) POLICY ON CREDIT REPORTING

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EXECUTIVE SUMMARY

The **Caribbean Community (CARICOM) Policy on Credit Reporting** promotes the establishment of a harmonised legal framework for regulating the credit reporting system in Member States and facilitating the cross-border exchange of credit information as an important component of the infrastructure for the effective functioning of the CARICOM Single Market and Economy (CSME). The Policy is aimed at promoting the modernization and efficient functioning of the credit market in Member States within an environment of optimal risk management and the protection of the rights of the consumer. An effective credit reporting system enables better risk management and credit decisions and incentivises borrowers to engage in better payment behaviour thereby contributing to financial inclusion and stability.

State of Play of Credit Reporting in CARICOM Member States. Credit reporting refers to the collection, collating, scoring and dissemination of credit information by credit bureaus and credit registries. Contemporary credit reporting systems are generally established under a facilitative legal and regulatory framework which is proportionate and predictable while promoting transparency, non-discrimination and the protection of consumer rights. However, regulated credit reporting systems in CARICOM are a relatively new feature of the financial landscape. Within the last three years, legislated credit reporting regimes, which had previously existed in only two (2) Member States, have emerged or are about to be established in all CARICOM Member States. Notwithstanding, these regimes are all operable within national boundaries (except the OECS which has a sub-regional framework) and do not allow for cross-border exchange of credit information.

Objectives of the CARICOM Policy. Against this background and within the context of Articles 44, 71 and 186 of the Revised Treaty of Chaguaramas, **the main objectives of the CARICOM Policy on Credit Reporting** are to -

- (i) Establish a modern credit reporting regime for regulating credit bureaus and matters relating to credit reporting as well as facilitating cross-border sharing of credit information;
- (ii) Improve practices regarding credit risk assessment towards more efficient and optimal credit allocation decisions;



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- (iii) Establish standard provisions for data privacy and protection¹ as they pertain to the use of personal, financial and other information for credit reporting purposes in accord with international standards and best practices; and
- (iv) Promote regulatory co-operation and coordination among the designated Supervisory Authorities in Member States, on matters relating to cross-border credit reporting.

The implementation of the CARICOM Policy on Credit Reporting will involve the design and adoption of an appropriate harmonised legal and regulatory framework for the functioning of the credit reporting system in Member States. The CARICOM credit reporting regime reflects international best practices and is informed by the general principles and international standards for credit reporting, data protection and privacy. Accordingly, the Policy sets out four (4) broad strategies for adoption and implementation by CARICOM Member States.

Establishing a Modern Credit Reporting Regime in CARICOM Member States. In accord with the general principles (**Annex II**), the CARICOM Policy advocates that all credit reporting activities will be regulated and supervised by each Member State in accord with applicable domestic law and, in this regard, a **CARICOM model law** will be formulated for adoption by Member States. The Model Law will, *inter alia*, set out the institutional requirements and procedures for regulation and supervision of the credit reporting system; prescribe the minimum requirements for the operation of credit bureaus as well as the roles and responsibilities of relevant market players. In addition, the Model Law will set out the procedures that will facilitate cross-border credit reporting via the four (4) possible modes that have been identified – *Direct Access, Indirect Access, Report Portability* and *Right of Access*. The CARICOM Policy proposes that market players may wish to initiate formal cross-border exchanging of credit information through the **portability** and **right of access modes** which could then evolve into the development of full-scale regional networks as the appropriate scale of demand materializes.

Improving Practices for Credit Risk Assessment towards more Efficient Credit Allocation in CARICOM States. A prerequisite for modern credit reporting systems is enabling the establishment and operation of credit bureaus as a key player in the financial sector risk architecture. All credit bureaus in CARICOM Member States must therefore be licensed and regulated by the supervisory authority and will be permitted to conduct only those credit

¹ These provisions are enshrined in the proposed CARICOM Model Legislation on Privacy and Data Protection (HIPCAR Project) which is based on international standards and best practices.



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reporting activities as specified in the law. In this regard, the CARICOM Policy disallows competition between credit bureaus and credit institutions or engaging in purpose creep. However, the Policy promotes the harmonisation of credit reporting frameworks in CARICOM Member States and encourages the standardisation, where possible, of processes and procedures in respect to the collection, processing and dissemination of credit information. The Policy also encourages the standardization of documentation and credit reporting scoring methodology as well as reporting obligations and requirements.

Establish Standard Provisions for Privacy and Data Protection with respect to the Acquisition and Use of Credit Information in CARICOM States. The transparency of information sharing practices for all market participants including the regulator is a key feature of well-functioning credit reporting systems. The CARICOM Policy therefore treats the data protection and privacy rights of the data subject as a matter of priority. Accordingly, the CARICOM Policy advocates for the adoption of the HIPCAR Policy Guidelines and Model Law on Privacy and Data Protection by Member States. These principles will be embedded in the CARICOM Model Law on Credit Reporting which will specify the retention period for data records; the requirement that the data-subject explicitly provides consent for the release of a credit report; the permissible purposes of credit reports; and the responsibilities of credit reporting providers regarding the confidentiality of data records.

Promote Regulatory Cooperation and Coordination among the Designated Supervisory Authority in Member States on Matters Relating to Cross-Border Credit Reporting. Effective credit reporting systems which permit the cross-border exchange of credit information will require appropriate regulatory and supervisory structures both at the national and regional level. The CARICOM Policy promotes the adoption of appropriate regulatory and supervisory arrangements to monitor and regulate the activities of credit bureaus domestically as well as to facilitate cross-border and functional cooperation among supervisory authorities. Specifically, the Policy sets out the broad conditions for cross-border credit information exchange and advocates for the establishment of a Regional Body of Credit Reporting Supervisors. This Body will serve as a coordinating mechanism to provide oversight of credit reporting matters and to advise the COFAP on developing efficient credit markets in the Community.

Supporting Measures and Impact Assessment. The implementation of a modern credit reporting regime would require CARICOM Member States to update their data protection and privacy laws, modernize their national bankruptcy, insolvency and dispute resolution regimes as well as pursue the strengthening of their supervisory authority, where necessary. Other



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supporting measures include the launching of a comprehensive public education programme and consideration of the options for the regional adoption of a Single Identification for CARICOM natural persons.

The adoption of a modern credit reporting framework that allows for domestic and cross-border issuance of credit reports in accord with international standards and best practices will lead to more transparent and efficient credit markets in the Community. The effective implementation of this framework provides opportunities for public private partnerships to reform the credit reporting environment in Member States and to establish the cross-border procedures for the exchange of credit reports. The CARICOM Policy on Credit Reporting will be reviewed periodically to ensure that it remains aligned with global developments, internationally agreed standards and best practices.



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1. PURPOSE

- 1.1 This document sets out the **CARICOM Policy on Credit Reporting** for the Caribbean Community (CARICOM) Member States. The Policy –
- (i) seeks to promote the efficient functioning of credit markets within an environment of optimal risk management and the protection of consumer rights in the Caribbean Community; and
 - (ii) represents one of the measures to facilitate the efficient functioning of the CARICOM Single Market and Economy (CSME), which were endorsed for elaboration² by the Thirty-Third Meeting of the Conference of Heads of Government of the Caribbean Community (*St Lucia, July 2012*).

2. INTRODUCTION

- 2.1 The CARICOM Single Market and Economy (CSME) is premised on five (5) fundamental pillars, namely – the free movement of people, goods and capital; the right of establishment and the provision of services. These pillars are set out in the Revised Treaty of Chaguaramas (2001) which underscores the importance of Member States adopting *measures to facilitate Establishment, Provision of Services and Movement of Capital* (Article 44). The Revised Treaty also identifies the areas for macroeconomic policy coordination and harmonisation which would be supportive of the functioning of the CSME. These areas include monetary policy cooperation (in respect to the free movement of capital), fiscal, financial and investment policy coordination and harmonisation as well as capital market integration. In particular, Article 71 mandates that the Council for Finance and Planning (COFAP) adopts measures for the establishment of supportive financial infrastructure³ in Member States. The Community's financial

² The endorsement was provided within the context of the Work Programme of areas for Regional Macroeconomic Policy Harmonisation and Coordination in support of the CSME.

³ The International Finance Corporation (IFC) categorizes financial infrastructure as constituting the underlying foundation for the financial system – including the institutions, information technologies, rules, and standards that enable financial intermediation. Credit bureaus, collateral registries, as well as payments, remittance, and securities settlement systems are all vital parts of a country's financial infrastructure.



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policy cooperation agenda has therefore prioritized, *inter alia*, the modernization and harmonization of the financial infrastructure in the Community of which the credit market is an integral component. Moreover, Article 186 of the Revised Treaty “*promotes the elaboration, publication and adoption of fair contract terms between suppliers and consumers of goods and services produced or traded in the CSME.*” Together these provisions, along with Articles 7 (*Non-Discrimination*) and 8 (*Most Favoured Nation Treatment*)⁴ establish the basic parameters for the CARICOM Policy on Credit Reporting.

- 2.2 As Member States work towards the establishment of the infrastructure and supporting policy framework for the CSME, it has become necessary to focus on creating more efficient domestic financial markets while strengthening financial systems to promote financial stability and inclusion. In this regard, the issue of access to financing for households and businesses⁵ has been prioritized within the context of increasing the efficiency of domestic credit markets and promoting economic growth. In addition, the policy agenda has been directed towards the establishment and/or regulation of credit bureaus and related credit reporting activities as part of the wider effort to develop the financial sector in CARICOM.
- 2.3 Credit markets enable individuals to supplement income, smooth consumption, finance education and business ventures, and engage in other investment activities. However, the absence of credit risk information on borrowers along with restrictions to the flow of information (referred to as information asymmetry) create market distortions, which lead to sub-optimal decisions in credit markets. Inefficient credit markets are characterised by higher borrowing costs, the over-reliance on the use of collateral, delayed credit approvals, reduced access to credit by individuals and businesses as well as credit rationing, which could result in quality projects being under-funded. The availability of information on the credit history of borrowers enables the efficient functioning of credit markets.

⁴ Article 7 (*Non-Discrimination*) states “*Within the scope of application of this Treaty and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality only shall be prohibited.* Also, Article 8 (*Most Favoured Nation Treatment*) states – “*Subject to the provisions of this Treaty, each Member State shall, with respect to any rights covered by this Treaty, accord to another Member State treatment no less favourable than that accorded to: (a) a third Member State; or (b) third States.*”

⁵ Particularly micro, small and medium-sized businesses.



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2.4 Against this background, it should be acknowledged that the measures to give effect to the provisions of the Revised Treaty, in respect to the free movement of capital were elaborated in the Draft CARICOM Financial Services Agreement (CFSA). This instrument, which is yet to be adopted by Member States, is representative of a blueprint for the development and orderly integration of the financial sector in CARICOM and identifies key reforms required to build out the regional financial architecture. Article 7 of the Revised Draft CFSA commits Member States to “*promote a coordinated approach to the regulation of credit reporting activities among them and the cross-border exchange of credit information to enhance market transparency and maintain the integrity of the financial services sector.*”⁶ Member States are also expected to implement measures to support the cross-border exchange of credit information. While a CARICOM-wide regional credit bureau is not contemplated at this time, this Policy advocates the adoption of a harmonised legal framework for credit reporting and cross-border exchange of credit information within the Community and specifically supports the initiatives by Member States to facilitate the establishment of credit bureaus in accord with international standards and best practice.

3. CONTEMPORARY CREDIT REPORTING SYSTEMS

3.1 **Credit reporting**, which is defined as the intermediation of information on borrowers, promotes the exchange of reliable credit information among market participants and is an important characteristic of the financial infrastructure in countries around the world. **Credit Reporting Systems** comprise the institutional arrangements, standards rules and procedures that enable information flows relevant to making decisions on credit and loan agreements. **Credit information** therefore comprises *any electronically stored or paper-based data referring to secured and unsecured loans, advances and other arrangements, whereby a customer of a bank, credit institution or an insurance company has access to funds or financial guarantees of the entity.*⁷ At their core, credit reporting systems consist of databases of information on debtors, together with the institutional, technological, and

⁶ Caribbean Community Secretariat (2021) – *CARICOM Financial Services Agreement (Draft)*.

⁷ Jentzsch, Nicola (2015) - *Explanatory Notes to Draft (CARICOM) Model Law on Credit Reporting*, (page 10).



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*legal framework supporting the efficient functioning of these systems.*⁸ The key stakeholders in a credit reporting system are the regulators, financial supervisors, credit reporting service providers (namely: credit bureaus and credit registries), data providers,⁹ users of credit information, and the data-subjects. The credit reporting system is typically regulated by the central bank or other designated supervisory authority. However, some countries have vested this power in an independent body or another government agency.

3.2 **Credit Reporting Service Providers** include credit bureaus and credit registries. The main function of these entities is to collect and process information on the payment history of borrowers and to disseminate this information to credit institutions and other users. **Credit bureaus** *are privately owned commercial enterprises, which tend to cater to the information requirements of commercial lenders. Thus, they typically provide additional value-added services such as credit scores and collection services.*¹⁰ On the other hand, **credit registries** are usually established and managed by the central bank or another designated supervisory authority and serve to support the State's role as a supervisor of financial institutions. As such, there is usually a legal requirement for credit institutions to register loans above a stipulated threshold, with the national credit registry. The supervisory authority uses the data provided to the credit registry to inform macro-prudential regulation and oversight of financial institutions.

3.3 **Credit Information Providers** or Data Providers (as they are referred to in the laws of some Member States) are key participants in the credit reporting system. These entities include, *inter alia*, financial institutions, providers of utilities services (such as telecommunications, electricity, water), co-operatives, retailers, hire purchase companies and other credit institutions. Public registries may also be designated as credit information providers since they collect information that constitutes data subject information. In well-developed markets, credit information providers routinely report information on the credit history of their clients to credit bureaus.

⁸ World Bank, International Finance Corporation (2012) - *Credit Reporting Knowledge Guide*, Washington, D.C, World Bank, (page 5).

⁹ Data Providers are also referred to as Credit Information Providers in this Policy.

¹⁰ The World Bank Credit Reporting Guide for 2012 defines 'data providers' as creditors and other entities that proactively and in a structured fashion supply information to credit reporting service providers.



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- 3.4 Another important group of stakeholders in the credit reporting system are the users of credit bureau services. A **User** is an individual or business that requests credit reports, files or other related services from the credit bureau or credit registry. Users include subscribers of the credit bureau services and a person who is not a subscriber but who has received the consent of the Data Subject to access his/her credit report. A Subscriber is a credit information provider that has entered into a subscriber agreement with a credit bureau to furnish data subject information to the credit bureau in an agreed format. In this regard, credit information providers perform a dual function in the credit reporting system as they are subscribers as well as users of the services of credit bureaus. Other users of credit information include financial sector supervisors and central banks, which utilise this information for strengthening their surveillance of licensed institutions. In addition, employers, insurers and landlords may utilise credit reports as a screening mechanism, where such use is permitted in the jurisdiction's credit reporting law.
- 3.5 Data subjects (or consumers) are inarguably the most important stakeholders in the credit reporting system. A **Data Subject** is an individual or a business whose data could be collected, processed and disclosed to third parties through the credit reporting system.¹¹ The information on the data subject is analysed and a risk rating or **credit score** is assigned to each data subject. This credit score is then requested by credit institutions and is used as an input in the credit risk assessment process.
- 3.6 In general, a properly functioning and regulated credit reporting system promotes transparency, price efficiency and improved risk assessment. In particular, an effective credit reporting system enables credit institutions to better manage credit risk by improving the dissemination of information on the risks associated with specific borrowers. Additionally, an efficient credit reporting system incentivises borrowers to make timely repayments since late payments and defaults can reduce their reputational collateral. Good payment behaviour empowers individuals and builds a healthy attitude to managing debt, which in turn, contributes to financial stability.
- 3.7 The contemporary trend in the establishment of credit reporting systems is towards the creation of a facilitative legal and regulatory framework that promotes transparency and

¹¹ World Bank (2012) - International Finance Corporation - *Credit Reporting Knowledge Guide*, Washington D.C., World Bank



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which is “clear, predictable, non-discriminatory, proportionate and supportive of consumer rights (General Principle 4).”¹² Given this principle, the ideal “legal and regulatory framework should enable and promote the development of secure, efficient, and reliable credit reporting systems, while fostering competition in the credit market and protecting the rights of consumers with respect to their personal information.”¹³ Accordingly, the process of updating or enacting credit reporting laws has been underway in many countries and more than 33 new laws have been drafted in accord with these principles.

- 3.8 In its Doing Business Report, the World Bank awards a higher score to countries, which have a functioning credit reporting system (including credit bureaus and public credit registries) given the critical role of such institutions in promoting access to financial services. In this regard, the 2019 Doing Business Survey reported that Jamaica, Trinidad and Tobago and Guyana were the top performers in CARICOM in the ‘Getting Credit category’ with a ranking of 12, 60 and 85¹⁴ respectively out of a total of 190 assessed countries. These rankings were reflective of Guyana and Jamaica having established a legal and regulatory framework for credit-reporting, while Trinidad and Tobago has a well-developed credit market and an unregulated credit bureau which has been in operation since 2004.
- 3.9 Notwithstanding the general trend, while there are a number of best practice guidelines and rules on credit reporting systems primarily promoted by international institutions,¹⁵ there is no clear-cut evidence on which systems are the best¹⁶ or guidance on the type of system which should be implemented. It is, however, expected that the credit reporting regime in Member States will evolve to reflect current realities, market developments and the prevailing business practices in each jurisdiction. The CARICOM Policy on Credit

¹² World Bank (2011) - *General Principles on Credit Reporting*, Washington, D.C., World Bank. Website: <http://documents.worldbank.org/curated/en/662161468147557554/General-principles-for-credit-reporting>

¹³ International Finance Corporation (2012) – *Credit Reporting Knowledge Guide* (page 37). **Annex II** summarizes other principles elaborated in this Guide which is intended to provide comprehensive guidance to countries implementing credit reporting legislation.

¹⁴ By 2020, the ranking for these Member States had slipped to 15, 67 and 94.

¹⁵ World Bank (2011); International Finance Corporation (2012); OECD Privacy Principles; United Nations Principles; European Union Data Protection Directive; and ISO/IEC Standards.

¹⁶ Jentsch, Nicola and Britton, Delia (2015) - *Final Report: Consultancy to Develop a Legal and Regulatory Framework to facilitate credit information sharing among CARICOM Member States*.



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Reporting therefore seeks to support the national initiatives to establish or reform the credit reporting system through the provision of a harmonised set of guiding principles, which should lead to the effective regulation of credit reporting within the domestic market and the cross-border exchange of credit information in the Community.

4. POLICY OVERVIEW

4.1 *Regional Context*

4.1.1 CARICOM Member States confront several development challenges including macroeconomic vulnerabilities and diseconomies of scale combined with capacity constraints.¹⁷ In addition, several Member States are caught in a vicious cycle of low growth and high public debt burden¹⁸ which significantly constrain their ability to make the economic and social investments that are necessary to stimulate dynamic growth and sustainable development. In the circumstances, almost all Member States had embarked on adjustment programmes to restructure and revitalise their economies which have now shifted to economic recovery mode given the impact of the COVID-19 Pandemic. Such programmes require considerable outlays of public and private investments in order to respectively incentivise the enabling environment and promote sustainable economic growth. The level of development of the financial sector and the credit market, in particular, has become increasingly important in facilitating access to credit by individuals and firms including micro, small and medium-sized enterprises as critical growth drivers in CARICOM economies.

4.1.2 However, notwithstanding the deepening of financial systems overtime across the Community, the majority of domestic credit markets in CARICOM remain relatively under-developed in that banks tend to lend less and charge more in comparison with other country groupings. The former characteristic is reflected in the share of domestic credit to Gross Domestic Product (GDP) averaging 45 percent in 2019 compared with 56 percent and 80 percent respectively for Latin America and the Caribbean and the Pacific Small

¹⁷ Jentsch, Nicola and Britton, Delia (2015) - Final Report of the Consultancy to Develop a Legal and Regulatory Framework for Credit Information Sharing among CARICOM Member States.

¹⁸ By 2019, the debt to Gross Domestic Product (GDP) ratio remained elevated and averaged 70 percent with the majority of Member States exceeding the internationally accepted standard of 60 percent of GDP.



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States.¹⁹ Additionally, credit markets in CARICOM are characterized by high borrowing costs and huge dependence on collateralization. Further, CARICOM central banks had noted in 2015 that credit risk continued to be a major financial stability issue in Member States which usually manifests itself in three ways - through the incidence of non-performing loans,²⁰ rapid credit growth and credit concentration.²¹ Consequently, there had been a greater allocation of resources to loss provisioning by financial institutions operating in Member States. However, the Central Banks have since reported that credit risks appeared to be broadly subdued by 2019 although concerns about credit concentration remain.

- 4.1.3 Moreover, it has been argued that the performance of domestic credit markets in CARICOM reflect the lack of transparency in the credit allocation process as well as weak credit risk administration and monitoring practices. Other factors impacting the performance of domestic credit markets in CARICOM include the significant size of the informal sector, the conservative risk appetite of banks and inhibitors to financial inclusion such as de-risking and the consequential enhanced due diligence procedures. Therefore, a credit reporting regime which promotes transparency should result in more efficient credit-allocation decisions, greater discipline among borrowers in servicing their debt and foster financial inclusion. Further, in acknowledgement of the lessons from the 2008/9 global financial and economic crisis, a buoyant credit market is considered as an essential driver of economic growth in developing economies.
- 4.1.4 Notwithstanding the acknowledgement of the role of credit reporting in fostering the growth and development of credit markets, there is a great variance in the architecture of credit reporting systems worldwide. In some countries, credit reporting is seen as an integral part of the Central Bank's function (serving the public interest) and all supervised institutions report to the public registry. In other countries, credit reporting is regarded as a primarily self-organised private-sector activity conducted by credit bureaus which may or may not be regulated by the Central Bank. In this case, many different entities

¹⁹ World Bank website - <https://data.worldbank.org/indicator/fs.ast.prvt.gd.zs>. In developed countries, domestic credit to GDP often exceeds 100 percent. For example, this measure averages 200 percent in the United States and 100% in Singapore.

²⁰ The incidence of non-performing loans in the commercial banking sector rose dramatically during the period 2009-2014 and were estimated at about 60% greater than in the pre-crisis period 2006-2008.

²¹ Caribbean Centre for Money and Finance (2016 and 2019) - *Caribbean Regional Financial Stability Report*, University of the West Indies, St. Augustine, Trinidad and Tobago.



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provide credit information to the credit bureaus under a contractual arrangement. However, credit reporting systems in CARICOM are now emerging as a regulated activity under the purview of the Central Banks.

4.1.5 The choice of architecture for the credit reporting systems in CARICOM becomes somewhat more complex when cross-border reporting is envisioned in an environment where each Member State is pursuing the installation of a national regime or a sub-regional regime in the case of the Organisation of Eastern Caribbean States (OECS). In addition, the exchange of information across Member States would constitute international data traffic which raises concerns about the security of cross-border data flows and the issue of reciprocity regarding the exchange of credit information. The use of the CSME as a platform for growth and development is premised on the ability of CARICOM Nationals being able to freely move and secure access to credit anywhere within the Community. The CARICOM architecture for credit reporting must therefore permit the monitoring of a borrower's credit profile from multiple markets.

4.2 **National Context**

4.2.1 In general, regulated credit reporting systems in CARICOM Member States are a relatively new feature of the financial landscape. Some Member States have embarked on financial sector reforms to *inter alia* create the legislative and regulatory framework for credit reporting²² and the establishment of credit bureaus. Until recently, Guyana and Jamaica were the only two countries to have enacted Credit Reporting legislation and have credit bureaus regulated by the central bank. An evaluation of these laws which were enacted in 2010 indicates that they are in compliance with international standards and best practices²³ as they relate to the purposes of the data collection and sharing. However, there are important differences between the laws with respect to the storage of data in a different country, treatment of consent, treatment of disputed data, special restrictions on sensitive data and timeliness of data.

4.2.2 In 2018, the Bahamas and the Eastern Caribbean Member States enacted credit reporting legislation which was followed by the issuance of a request for proposals inviting bids for

²² Some Member States have received technical assistance from the World Bank / International Finance Corporation (IFC).

²³ OECD Privacy Principles are part of the OECD Guidelines on the Protection of Privacy and Trans-Border Flows of Personal Data adopted in 1980. These Guidelines were revised in 2013.



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the establishment and operation of a private credit bureau. The Eastern Caribbean Central Bank (ECCB) has since granted a licence to a service provider to operate a single, sub-regional credit bureau for its eight (8) Member countries. The Bahamas also granted a licence to a credit bureau in December 2019 but it is not yet fully operational.

- 4.2.3 Barbados, Belize, Haiti and Suriname are all pursuing initiatives, with technical assistance from the IFC, to build out the credit reporting regime. Currently, Barbados has two (2) unregulated credit bureaus. However, the Central Bank is spearheading the establishment of a regulated credit reporting system and draft Credit Reporting Bill is under consideration.²⁴ Belize has a few businesses which operate as de facto credit bureaus but they do not utilize scoring models and there is no requirement for consent by the consumer to share his or her data.²⁵ Suriname has established a public credit registry (essentially, a mortgage registry) and more recently, an unregulated credit bureau was launched by a banking conglomerate. Haiti has produced a draft credit reporting bill which was submitted to the Parliament during the first semester of 2016. Subsequently, a credit registry became operational in July 2017 and has been collecting information on borrowing activity from banks and other institutions. This information will be augmented with microfinance data at a later phase.
- 4.2.4 In Trinidad and Tobago, the Central Bank together with the Ministry of Legal Affairs, the Ministry of Finance and the IFC had (in 2006-2007) developed a credit reporting bill, but this initiative was aborted in 2011. Despite having a fully functioning full service credit bureau, which is owned and managed by an international service provider²⁶ since 2004, the credit reporting market in Trinidad and Tobago, though well-developed, remains unregulated. The major banks, which account for 90 percent of domestic credit, have a minority stake in the credit bureau. There are also two (2) debt collection agencies which provide “credit bureau type” services to banks, albeit on a limited basis. The banks however also contact these debt collection agencies to check the credit history of potential borrowers.

²⁴ The Barbados Fair Credit Reporting Act was approved by Parliament in December 2021.

²⁵ Jentzsch, Nicola and Dela Britton (2015) - *Final Report of the Consultancy to Develop a Legal and Regulatory Framework to Facilitate Credit Information Sharing*.

²⁶ TransUnion of Trinidad and Tobago. TransUnion markets itself as a global information and insights company that makes trust possible.



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- 4.2.5 A scan to ascertain whether existing laws²⁷ in CARICOM States contain the relevant provisions to provide for the exchange of personal and credit information and for the protection of the rights of the consumer (data subject), revealed a very uneven picture with respect to the legal framework which could support credit reporting. While several Member States have enacted laws in respect to Credit Reporting, Consumer Protection and Data Protection, additional measures are required to ensure consistency especially where these laws impact the ability of entities to share information with the credit bureau. Additionally, in most cases, the Data and Consumer Protection Laws do not address the specific issues related to credit reporting. Further, the laws governing financial institutions and utilities tend to have confidentiality clauses, which limit the ability to share customer information with regulatory authorities and other entities, unless specifically allowed by another law. Moreover, there is no comprehensive framework to support the cross-border transfer of credit information and the protection of such consumers (the data subjects).
- 4.2.6 Another element of the legal framework in Member States which should be supportive of the credit reporting system is the bankruptcy/insolvency regime. This is an important source of information for credit bureaus because court decisions and judgements on bankruptcies impact the credit rating of individuals and businesses. However, in most Member States, the legislation governing bankruptcy or insolvency is rather outdated and requires modernization into a fair, transparent and efficient regime.

4.3 *Cross-Border Credit Reporting*

- 4.3.1 The issue of cross-border credit reporting requires consideration within the context of the free movement regime under the CSME. However, a determination of the extent of cross-border transactions is difficult since there are no consolidated statistics on cross-border lending to firms and individuals across Member States and banks do not report such statistics in their Annual Reports. While one credit bureau indicated that it had received cross-border requests for information of about 10 percent of its annual volume, anecdotal observations suggest that –

²⁷ Some of the main laws that were reviewed include the Credit Reporting Legislation, Banking Act, the Financial Industry Act, the Consumer Protection Laws, the Data Protection and Privacy Laws, the Telecommunications Act and other relevant legislation. The legal scan sought to determine the existence of confidentiality provisions for personal data/customer data, exemptions and/or exception to these provisions and the need for consent of the data subject regarding the use of their information.



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- (i) there is little cross-border lending to individuals and firms and the credit markets remain very much national-oriented; and
- (ii) there are occasional requests from non-residents for loans from banks.

However, it is anticipated that as CARICOM Nationals continue to move across the Community, there is likely to be an increased demand for credit reporting services as financial institutions seek to manage their credit exposure to borrowers who may be non-nationals or are not permanent residents in a Member State. An effective system for cross-border credit reporting is likely to reduce the incidence of delinquency on loans by such persons as credit institutions would be able to screen prospective borrowers who originate from other Member States.

4.3.2 With the exception of the OECS, Member States have focussed on establishing a national credit reporting regime. The existing and draft credit reporting laws have not addressed the need for a framework to facilitate the exchange of credit information between relevant entities in Member States. The Eastern Caribbean Currency Union (ECCU) Harmonised Credit Reporting Law, which provides for a regional credit bureau for its members, is also limited in its treatment of the cross-border transfer of credit information to third party countries.²⁸ An efficiently functioning CSME requires, *inter alia*, the establishment of mechanisms to support the access to credit and cross-border financial flows throughout the Community. However, such mechanisms should provide comparable safeguards for privacy rights across Member States and afford a similar level of protection to consumers regarding the use of their personal and credit information.

4.4 Data Protection and Consumer Protection within the Context of Credit Reporting

4.4.1 By its very nature, credit reporting touches on sensitive issues such as the individual privacy rights of consumers and the protection and security of their data. It is therefore critical that the credit reporting environment is fair, transparent and competitive while ensuring that individual privacy rights are respected and protected. The enactment and implementation of data protection and consumer protection laws are therefore relevant to the creation of the environment for efficient credit reporting.

²⁸ Third party countries are jurisdictions that are not members of the ECCU, which include other CARICOM Member States as well as non-CARICOM countries.



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- 4.4.2 In this regard, there has been a region-wide initiative to enhance competitiveness in the Caribbean through the harmonisation of Information Communication Technology (ICT) policies, legislation and regulatory procedures (referred to as the ‘HIPCAR Project’). The objective of the HIPCAR Project was *to assist Caribbean Forum (CARIFORUM) countries to harmonise their information and communications technology policies, legislation and regulatory procedures so as to create an enabling environment for ICT development and connectivity, thus facilitating market integration, fostering investment in improved ICT capabilities and services, and enhancing the protection of consumers’ interests across the region.*²⁹ The HIPCAR Project encompassed six (6) interrelated Model Frameworks – *Access to Public Information; Privacy and Data Protection; Electronic Commerce (Transactions); Electronic Commerce (Evidence); Cybercrime and Cybersecurity; and Interception of Electronic Communications.*
- 4.4.3 The HIPCAR Model Privacy and Data Protection Policy³⁰ for CARICOM Member States sets out the protections that would be available to consumers regarding the use of their personal and credit information. However, very few CARICOM Member States have adopted the HIPCAR Policy Guidelines and data protection legislation in the region remains somewhat dated (except for Jamaica which enacted the Data Protection Act 2020 in May 2020) as reflected by the date of the legislation in the following countries - The Bahamas (2003), St. Vincent and the Grenadines (2003) and Trinidad and Tobago³¹ (2011). In St. Vincent and the Grenadines, the Privacy Act does not apply to the private sector and regulates the collection, use, maintenance, disclosure and disposition of personal information by public authorities and provides rights to certain individuals about whose personal information is maintained.³² In addition, none of the abovementioned Data Protection laws is based on the HIPCAR Policy except for the Saint Lucia Data Protection Act of 2011. Other Member States have prepared Draft Data Protection and Privacy legislation but these are at varying stages of the review process.³³

²⁹ International Telecommunication Union (2012) - *HIPCAR Policy Privacy and Data Protection: Model Policy Guidelines* - Website: <https://www.itu.int>

³⁰ This Policy was produced by the International Telecommunication Union (ITU) in collaboration with Caribbean Telecommunications Union (CTU) and the CARICOM Secretariat. This Policy may have to be eventually updated to ensure that it reflects current international standards and best practices.

³¹ In Trinidad and Tobago, the Data Protection Act has been partially proclaimed.

³² International Telecommunication Union (2012) - *HIPCAR: Assessment Report* - www.itu.int

³³ The following Member States have prepared Draft Data Protection and Privacy legislation – Antigua and Barbuda, Belize, Dominica, Grenada, Jamaica and St. Kitts and Nevis.



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- 4.4.4 Consumer protection laws also help to create the enabling environment for the development of credit reporting markets. In this regard, the consumer protection laws which currently exist in Member States³⁴ may not provide an adequate level of protection since the focus is usually on the consumption of goods. A Consumer Protection Model Law was approved by the CARICOM Legal Affairs Committee in September 2016 and is now ready for adoption by Member States. However, this Model Law does not contain specific provisions to protect consumers of financial services. Preservation of the integrity of the credit market requires that the rights of the borrower in regard to the use of his/her personal data and credit information should be enshrined in law.
- 4.4.5 While the upsurge of interest in introducing credit reporting laws is generally encouraging, the legal and regulatory regime for the protection of data privacy as well as the rights of consumers of financial services remains somewhat deficient in CARICOM Member States. The credit reporting framework in the Community must be supported by more comprehensive and robust regimes for financial consumer protection, data privacy and security with adequate safeguards against threats to data security as well as the misuse of the personal data and credit records of borrowers. In light of the emerging global trend towards strengthening data protection and privacy legislation along with the imposition of sanctions for breaches,³⁵ Member States will need to address the enactment or amendment of existing laws in accord with internationally agreed standards.

5. OBJECTIVES OF THE CARICOM POLICY ON CREDIT REPORTING

- 5.1 The CARICOM Policy on Credit Reporting seeks to promote the efficient functioning of credit markets in the Community within an environment that allows for optimal risk management and the protection of consumer rights. The Policy elaborates the principles and facilitating arrangements for the creation of a modern credit reporting system in each Member State as well as the cross-border sharing of credit information in the Caribbean Community. The introduction of a harmonised regime for credit reporting will facilitate the operations of credit bureaus in a regulated environment, in which the accepted rules

³⁴ The following Member States have passed Consumer Protection Legislation - Antigua and Barbuda, Barbados, The Bahamas, Guyana, Jamaica, St. Kitts and Nevis and Trinidad and Tobago.

³⁵ The European Union, in May 2019, introduced its General Data Protection Regulation (GDPR) which enhances the protection provided to EU citizens regarding the use of their data and with significant fines being imposed for breaches.



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and practices for licensed entities and other market players, are clearly established and where consumers/borrowers receive the necessary protection.

5.2 **The main objectives of the CARICOM Policy** are to -

- (i) Establish a modern credit reporting regime for regulating credit bureaus and matters related to credit reporting as well as facilitating cross-border sharing of credit information;
- (ii) Improve practices regarding credit risk assessment towards more efficient and optimal credit allocation decisions;
- (iii) Establish standard provisions for data privacy and protection³⁶ as they pertain to the use of personal, financial and other information for credit reporting purposes in accord with international standards and best practices; and
- (iv) Promote regulatory co-operation and coordination among the designated Supervisory Authorities in Member States, on matters relating to cross-border credit reporting.

5.3 The implementation of the CARICOM Policy on Credit Reporting will involve the design and adoption of an appropriate harmonised legal and regulatory framework for the establishment and functioning of the credit reporting system in Member States. The CARICOM credit reporting regime will reflect international General Principles and best practices and will be informed by the proposed CARICOM Policy for Privacy and Data Protection.

6. **STRATEGIES FOR IMPLEMENTING THE CARICOM POLICY ON CREDIT REPORTING**

6.1 ***General Principles and International Standards for Credit Reporting and Data Protection***

The CARICOM Policy on Credit Reporting establishes the broad framework for the emergence of a modern, fair, efficient and transparent credit reporting system including the cross-border exchange of credit information among Member States. In order to

³⁶ These provisions are enshrined in the proposed CARICOM Model Legislation on Privacy and Data Protection (HIPCAR Project) which is based on international standards and best practices.



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promote a robust and fair credit reporting system, the Policy is informed by the following general principles and international standards for credit reporting and data protection –

- (i) The system should create a level playing field for credit bureaus as well as financial institutions within and across different Member States;
- (ii) Credit bureaus, financial institutions as well as consumers should share the costs and benefits of the system;
- (iii) The consumer is the main source of information and therefore the main holder of the property right to his/her personal information;³⁷
- (iv) No one shall be subject to discrimination by the information sharing system based upon factors that are not under the will and willful influence of an individual. This refers to factors such as gender, genetics, sexual orientation, and religion;
- (v) The permissible purposes³⁸ of credit reports should be carefully delineated so that the credit reporting system does not become over-arching; and
- (vi) The Supervisory Authority must have in its possession or be able to access promptly all relevant information including up-to-date market data held by market participants in order to effectively perform its functions.

6.2 **Strategy 1: Establishing a Modern Credit Reporting Regime in CARICOM Member States**

6.2.1 **Legal and Regulatory Framework for Credit Reporting.** The CARICOM Policy on Credit Reporting recognises the general principle that the *“overall legal and regulatory framework for credit reporting should be clear, predictable, non-discriminatory, proportionate and supportive of the data subject and consumer rights.”*³⁹ In accord with this principle, all credit reporting activities will be regulated and supervised by each

³⁷ This is the only way a consumer can remain sovereign in critical economic decisions.

³⁸ It is important for policymakers to determine what are the permitted users of credit reporting in order to prevent credit reports from being arbitrarily used to limit an individual’s access to a wide range of economic and social services.

³⁹ World Bank General Principle 4 (Annex II).



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Member State in accord with applicable domestic law and, in this regard, a **model CARICOM law** will be formulated for adoption by Member States. The CARICOM Model Law on Credit Reporting will provide the basis for the harmonisation of domestic laws in accord with the principles espoused in this Policy. The Model Law will, *inter alia* –

- (i) Contain institutional requirements and procedures for the licensing and registration of credit bureaus and credit information providers including provisions for the revocation and/or suspension of a licence;
- (ii) Prescribe the minimum requirements (including ownership rules) for the establishment and/or operation of a credit bureau;
- (iii) Prescribe the responsibilities of credit bureaus and credit information providers as well as the permissible activities for such entities; and
- (iv) Delineate which institutions may be authorised to perform credit reporting activities and their obligations.

6.2.2 Regulatory and Supervisory Structures. Effective credit reporting systems require appropriate regulatory and supervisory structures to facilitate the establishment and monitoring of the activities of credit bureaus as well as to take action in the event of contravention or breaches of the rules. Each Member State shall assign the responsibility for credit reporting to a designated Minister (usually the Minister of Finance). In addition, Member States will determine the appropriate institutional arrangements (including the designation of a Supervisory Authority) required to regulate the national credit reporting system and the procedures to facilitate the cross-border transfer of credit information. The designated supervisory authority (usually the Central Bank)⁴⁰ will be responsible for *inter alia*, awarding the licence as well as regulating the activities of credit bureaus, credit information providers and matters related to credit reporting. In the discharge of its functions, the designated supervisory authority will actively collaborate with other regulatory bodies with responsibility for data protection and consumer protection.

⁴⁰ In some countries, the Data Protection Authority has principal responsibility for credit reporting while in other jurisdictions, the central bank discharges these responsibilities.



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- 6.2.3 **Prevention of Anti-Competitive Behaviour.**⁴¹ The ownership configuration of credit bureaus varies between credit bureaus that are majority-owned by domestic credit institutions or independent third parties, and credit bureaus which are owned by many shareholders. CARICOM Member States will ensure that the regulatory framework for credit reporting does not allow credit bureaus to engage in anti-competitive behaviour. Accordingly, a single entity (including a bank, credit institution, or insurance company) shall not own, whether directly or indirectly, or control more than five (5) percent of the share capital of a credit bureau. Additionally, the shareholding of a body, group or consortium in a credit bureau, whether directly or indirectly, shall not exceed 49 percent of the share capital of the credit bureau. In general, it is advisable that the ownership of credit bureaus be sufficiently diffused so that it does not allow any shareholder to act in a manner that is inimical to the market. Notwithstanding, the ownership model for the credit bureau in Member States would be determined by the market environment and country-specific circumstances.
- 6.2.4 **Credit Information Providers.** The CARICOM Policy advocates the importance of regulating and supervising all participants in the credit reporting system in order to limit the risk of identity theft or violation of personal privacy. As such, the Model Law will stipulate the entities that can become credit information providers and be allowed to share and withdraw credit information from the credit bureau. In general, eligible entities include commercial banks, microfinance institutions, credit unions, telecommunications and other utilities, hire purchase companies, public registries and any institution so designated by the Minister or the Supervisory Authority in the respective Member State. Eligible entities will be required to conclude a contract with the credit bureau and may only collect and share credit information in accord with the standards stipulated in the Credit Reporting Law.
- 6.2.5 **Protecting the Rights of Data Subjects.** In order to ensure that the rights of the data subject are protected, the permissible purposes of a credit report will be set out in the Model Law. The permissible purposes for credit reports in CARICOM comprise extending credit, statistical analyses, risk consultancy services, identity theft management and

⁴¹ If the majority shareholders in a credit bureau are primarily the largest lenders, they can use their controlling interest to restrict or prevent access to information sharing by smaller lenders or even other users.



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debtor tracing.⁴² Member States will seek to limit the collection and use of personal information on data subjects to the specified purposes stated in the Model law. In addition, the consent of the data subject must be obtained before a credit report can be utilised for all permissible purposes. This consent may be included in the loan documentation signed by the data subject prior to receipt of the credit facility.

6.2.6 Each Member State will determine the **permissible purposes** to which credit information can be applied and these would be enumerated in the credit reporting legislation or regulations. Where employment reporting and tenancy screening are included as permissible purposes in the national law, the Member State should ensure that there are adequate provisions in the law to protect the rights of the data subject. Accordingly, the credit bureau will only be allowed to provide credit information to approved persons for purposes authorised by the Supervisory Authority and which are stipulated in the credit reporting law. Further, the data subject has the right to –

- (i) receive a free credit report once per year;
- (ii) challenge the information contained in an unfavourable credit report; and
- (iii) request the correction of errors and provided with minimum disclosures regarding changes to credit scores.

Member States will therefore adopt minimum standards for disclosures in order to protect the data subject and to allow for the comparability of credit reports. In respect to adverse decisions, the data subject must be provided with a copy of his credit report at the time of the refusal to grant the credit.

6.2.7 **Cross-Border Credit Reporting.** The CARICOM Policy on Credit Reporting advocates that credit bureaus in Member States may conduct cross-border reporting where the target Member State provides adequate or equivalent level of protection of the rights of data subjects. As such, the Policy establishes a platform for the cross-border sharing of credit information which is expected to evolve in accord with the demands of the regional

⁴² Principle 3 of the UN Privacy Principles (Principle of the Purpose Specification) and Principle 3 of the OECD Privacy Principles (*Purpose Specification Principle*) states that the data subject must be informed about how their personal and credit information will be used at the time this information is collected. These principles seek to limit the excessive use of credit reports in determining access to a wide range of economic opportunities and social services ('purpose creep').



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market. This platform is premised on the relevant international principles⁴³ and standards governing the cross-border flow of personal data. Specifically, in order to facilitate cross-border transfer of credit information, **Member States will agree to the mutual recognition⁴⁴ of the regulatory regime in other Member States and work towards the eventual standardisation of regulations (or subsidiary legislation), as necessary.**

6.2.8 More generally, the Policy recognises the following possible modes for cross-border credit reporting and acknowledges that several of these modes may co-exist in the regional credit reporting space given that market practices will emerge to reflect the needs of market participants –

- (i) **Direct Access Mode** – The creditor from Member State A accesses the credit data of the borrower from Member State B stored in a credit register⁴⁵ located in Member State B. Based on the principle of reciprocity, after having granted a credit to that consumer, the creditor of Member State A could be required to report the data and possibly the payment performance on that credit to the credit register located in Member State B;
- (ii) **Indirect Access Mode** - Under this mode, in order to obtain the credit data of a borrower from Member State B, the creditor resident in Member State A will access the credit registers located in Member State B through a register located in Member State A. The creditor has a unique interface with the usual credit register in its country. The creditor will report the data on the credit granted and/or payment performance to that credit register according to the applicable rules and practices;
- (iii) **Report Portability Mode** - The borrower collects his/her credit report from the credit register in Member State B then provides it to the creditor in Member State

⁴³ The OECD Trans-Border Data Flows Guidelines.

⁴⁴ “Mutual Recognition” may be defined as “an understanding among two or more states under which each recognizes the adequacy of the other’s regulation or supervision of an activity or institution as a substitute for its own. Private actors who comply with the applicable home state rules may therefore access the host state pursuant to an exemption from some or all of the host state’s rules.” (*BKP Development Research and Consulting, 2016*).

⁴⁵ The term ‘credit register’ subsumes private credit bureaus and public credit registers for the purpose of categorizing the modes for cross-border credit reporting.



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A. This Mode is useful for mobile borrowers migrating to/working in another Member State but carries a higher fraud risk; and

- (iv) **Right of Access Mode** - When a borrower applies for a credit, the Creditor would require the borrower to ask the relevant credit registry or bureau in his/her country of origin to send an authenticated credit report directly to the creditor on his/her behalf. The credit bureau conducts the actual production and provision of the report directly to the creditor.

6.2.9 These Modes are all associated with advantages and disadvantages (**Annex IV**) pertaining to cost effectiveness and opportunities for fraudulent practices. However, market players in CARICOM Member States could initiate formal cross-border exchanging of credit information through the **portability** and **right of access modes** which could then evolve into the development of full-scale regional networks, once the appropriate scale of demand materialises.

6.3 Strategy 2: Improving Practices for Credit Risk Assessment towards more Efficient Credit Allocation in CARICOM Member States

6.3.1 **Licensing of Credit Bureaus.** The ultimate aim of an effective credit reporting system is facilitating access to finance in an environment of information asymmetries which could skew the decisions of financial intermediaries. CARICOM Member States will therefore encourage the establishment of credit bureaus as a key player in the financial sector risk architecture. All credit bureaus will be required to be licensed and regulated by a Supervisory Authority. A perpetual licence will be granted to the credit bureau which will be required to pay a prescribed annual fee. The Supervisory Authority will have the power to suspend or revoke this licence in accordance with certain conditions stipulated in the Credit Reporting Legislation. A credit bureau that wishes to voluntarily surrender its licence must first seek the approval of the Supervisory Authority. The activities of the credit bureau will be monitored by the Supervisory Authority and will be subjected to audits and/or examinations as determined by the Supervisory Authority. Further, where there is a breach, the Supervisory Authority has the power to impose whatever remedy it deems fit in accordance with the law.



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6.3.2 Allowable Credit Reporting Activities. Credit bureaus collect a wealth of valuable information on clients of credit institutions, which the credit bureau may wish to use for other purposes or even to sell to another data operator. However, this information is provided to the credit bureau for the primary purpose of risk assessment and its use should be limited accordingly having regard to the permissible uses within the context of supporting the effective delivery of financial services and financial system development. Specifically, credit bureaus in CARICOM will not be allowed to compete with credit institutions or engage in purpose creep (that is, the gradual expansion of the uses of credit reports). Consequently, the permissible activities to be undertaken by credit bureaus will be as follows –

- (i) collection, processing and management of credit information on data subjects;
- (ii) collection, processing and management of public information resulting from enforcement actions and declarations of bankruptcy and insolvency of data subjects;
- (iii) collection, processing and management (but not the scoring) of information on consumer dispute settlements;
- (iv) development and application of credit scores and ratings as well as other systems of classification related to creditworthiness of data subjects;
- (v) statistical analysis relating to credit and credit behaviour of data subjects both on an individual and aggregated basis;
- (vi) risk consultancy services;
- (vii) identity theft management and debtor tracing; and
- (viii) compilation of reports required by the Supervisory Authority and any other activities as identified in the credit reporting law of the respective Member State.

6.3.3 Harmonising CARICOM Credit Reporting Frameworks. Within the context of facilitating a harmonised credit reporting framework in the Community, Member States will seek to



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promote the standardisation, where possible, of processes and procedures in respect to the collection, processing and dissemination of credit information. Efforts should be directed at standardising the licensing requirements for credit bureaus, reporting obligations as well as the roles and responsibilities of market participants which should be clearly articulated in the legislation. Achieving convergence in the operational and administrative procedures of credit bureaus will improve the ease of doing business within the Community. Where feasible, the credit bureaus across Member States should also seek to standardise documentation and credit reporting scoring methodology so as to facilitate cross-country comparisons in the use of credit reports. The standardization of reporting obligations will allow Supervisory Authorities to have consistent macroeconomic data and financial information to support the effective oversight of credit markets at the national and regional level.

6.4 *Strategy 3: Establish Standard Provisions for Privacy and Data Protection with respect to the Acquisition and Use of Credit Information in CARICOM Member States*

6.4.1 Privacy and Data Protection. A key ingredient in well-functioning credit reporting systems is transparency of information sharing practices for all participants as well as the regulator. CARICOM Member States will treat as a priority the data protection rights of the data subject as well as the privacy rights of individuals. In this regard, Member States will advance the adoption of the HIPCAR Policy Guidelines and Model Law on Privacy and Data Protection⁴⁶ which is in compliance with both the United Nations Declaration on Human Rights (which protects the privacy rights of individuals) and the guidelines concerning computerised personal data files under the International Covenant on Civil and Political Rights. These guidelines prescribe the minimum standards regarding the collection and processing of personal data on individuals and set out the rights of individuals concerning data processors. These guidelines will be supplemented with the provisions of the CARICOM Model Law on Credit Reporting which will specify the retention period for both positive and negative records on data-subjects. The maximum retention period for records on data-subjects will be seven (7) years in the Caribbean Community.

⁴⁶ International Telecommunication Union (2012) - *HIPCAR Policy on Privacy and Data Protection: Model Policy Guidelines* - Website - <https://www.itu.int>



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6.4.2 **Issue of Consent.** The CARICOM Policy on Credit Reporting acknowledges that the Data Subject must have control over his or her personal and other information which should not be used by a Credit Bureau or any Data Operator or Data Provider without explicit consent. Explicit consent must be received prior to utilization of the client's data and the Data Subject must be advised as to the purposes for which the data would be applied. Accordingly, credit information providers would be required to advise current and prospective customers that their credit information will be shared with a credit bureau. The credit information provider would also be required to include a consent clause in the loan agreement and other contracts. The consent clause⁴⁷ should clearly state the information to be collected, the purpose for collecting the information and the parties with whom the information may be shared. Moreover, credit information providers must obtain the consent of data subjects before a credit report is obtained from a credit bureau. Where consent is granted by the Data Subject, the consent will obtain for the duration of the contract with the credit institution. If the application is rejected by the credit institution, the applicant's consent lapses immediately. The consent of the data subject will not be required –

- (i) where the information is requested in response to a court order;
- (ii) when the data is used in a form in which the identity of the data subject is not disclosed or for statistical/research purposes; and
- (iii) any other circumstance identified in the credit reporting law.

6.4.3 **Permissible Purposes of Credit Reports.** As the market for big data has grown, there is an increasing (and seemingly insatiable) demand for individuals' personal data and other information. This phenomenon has led to a growing incidence of data breaches as well as the encroachment on the rights of individuals in the area of data privacy and protection. Consequently, there is greater interest in restricting credit bureaus to using the personal and credit information only for the purposes for which consent was provided. The credit report may only be used for permissible purposes as stipulated in

⁴⁷ According to the World Bank Credit Reporting Principles, the data subject should be informed about the conditions of collection, processing and distribution of data. The data subject should be provided with information about the use of his data and should be advised of the measures, which can be taken to seek redress for errors.



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the credit reporting law⁴⁸ and not for any prohibited activity such as marketing. As such, the credit bureau shall only provide credit reports for the following purposes:

- (i) The evaluation of a credit application, review and extension of loans and debts, collection of credit facilities granted, and other credit activities involving financial risk;
- (ii) Evaluation of an application for insurance or claim for insurance payment or for the ongoing monitoring of risks;
- (iii) Detection and measures to prevent fraud related to credit;
- (iv) Aggregated statistical analysis as well as research, where an individual data subject is not identifiable within the data set;
- (v) With the written permission of the consumer, for the purposes of –
 - (a) the employment of the consumer; or
 - (b) facilitating a financial or other commercial transaction involving the consumer; and
- (vi) Any other permissible purpose of credit reports as contained in the laws of respective Member States.

6.4.4 Responsibilities of Credit Reporting Participants. Credit information providers will be required to upload credit information to a licensed credit bureau, in accordance with their obligations under the law and in the stipulated format. Credit bureaus will be required to protect the confidentiality of data subjects and shall not disclose credit information except as authorised by the data subject or for regulatory and enforcement purposes. Credit information providers and credit bureaus will be also required to ensure that –

⁴⁸ The purpose limitation principle is necessary in order to ensure trust, predictability, legal certainty and transparent use of personal data by data controllers.



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- (i) information on data subjects is protected against any loss and unauthorised access, use or disclosure;
- (ii) the credit report is based on accurate, complete and relevant information.

Additionally, management and staff of credit bureaus will be required to adhere to the observance of a perpetual obligation of confidentiality of credit information during and even after the termination of their tenure. Accordingly, credit bureaus will be required to maintain sufficient liability insurance coverage to cover complaints from consumers (data subjects), and to address any risk to its operations. The Supervisory Authority will establish guidelines on the provision and use of credit reports as well as the disposal of a data subject's information that is no longer required.

6.5 Strategy 4: Promote Regulatory Cooperation and Coordination among the Designated Supervisory Authority in Member States on Matters Relating to Cross-Border Credit Reporting

6.5.1 Regulatory Coordination and Cooperation. Effective credit reporting systems require appropriate regulatory and supervisory structures at the national level, to monitor the activities of credit bureaus and to take appropriate action in the event of contravention or breaches of the rules in the Credit Reporting law and the regulations. CARICOM Member States will determine the appropriate institutional arrangements required to supervise and monitor the credit reporting system as well as to facilitate cross-border cooperation among supervisory authorities. Several Member States have designated the Central Bank as the supervisory authority for credit reporting.

6.5.2 Cross-Border Credit Information Exchange. The export of credit information between Member States should only be pursued where the respective national legislation contains the necessary safeguards for privacy and protection. Member States will only allow data to be exported to other Member States which have adequate safeguards and which afford a similar level of protection to consumers regarding the use of their personal and credit information.⁴⁹ Where the requesting Member State does not have the required safeguards in place, then a Member State may take the appropriate action to restrict the

⁴⁹ World Bank General Principle 5 (Annex II).



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exchange of information. In general, the pre-conditions for the cross-border transfer of credit information would involve a prior exchange agreement between the designated Supervisory Authorities in the exporting and receiving Member State and the consent of the consumer for the sharing of his or her credit information.

6.5.3 In addition, where Member States agree to exchange credit information and the credit reporting legislated standards are higher in one Member State, the credit reporting legislation of the Member State with the higher standard will apply. This will ensure that the highest level of protection will be available to the data-subject in the transfer and use of his/her credit information between Member States.

6.5.4 **Functional Cooperation.** The promotion of regulatory and functional co-operation among CARICOM Member States is also necessary to achieve effective supervision of cross-border credit reporting. This collaboration among the relevant Supervisory Authorities in Member States could be facilitated through a Regional Body of Credit Reporting Supervisors.⁵⁰ The required institutional arrangements to facilitate the functioning of this Body will be determined by the Council for Finance and Planning (COFAP).

6.6 *Supporting Measures*

6.6.1 In order to support the implementation of a modern credit reporting regime in the Community, Member States will:

- (i) Review and update their legislative framework to ensure consistency with the provisions of the credit reporting, consumer protection, as well as privacy and data protection (HIPCAR) Model Laws;
- (ii) Pursue the modernisation and harmonisation of their national bankruptcy or insolvency regimes⁵¹ so as to provide distressed individuals and businesses with the opportunity to restructure their finances in a timely manner;

⁵⁰ This body could be constituted under a structure similar to that of the CARICOM Committee of Banking Supervisors.

⁵¹ A regional project is currently underway to assist Member States to harmonize companies and insolvency laws.



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- (iii) Undertake institutional strengthening of the appropriate Supervisory Authority for credit reporting (central banks), where necessary, including the provision of technical, information technology and other resources, to enable the Supervisory Authority to effectively discharge its functions;
- (iv) Launch a comprehensive public education initiative on credit reporting on the basis of a regionally designed programme. The funding for the roll-out of this initiative at the national-level will be determined by each Member State;
- (v) Establish appropriate dispute resolution mechanisms, where these do not exist, for grievances which arise in the domestic environment. Cross-border disputes will be settled in accord with the CARICOM arrangements for dispute settlement; and
- (vi) Investigate the options for adopting a Single Identification for CARICOM natural persons and firms which will be used for, *inter alia*, credit reporting purposes.

Several of these supporting measures have already been targeted for regional action within the context of consolidating the CSME.

7. IMPACT ASSESSMENT

7.1 *Nexus between Efficient Credit Reporting Markets and Financial Development*

- 7.1.1 There are significant benefits to be derived from the implementation of a harmonised credit reporting framework among CARICOM Member States. The adoption of a modern credit reporting framework which is aligned with international standards and best practices will lead to the development of more transparent and efficient credit markets in the Community and serve as a platform for the free movement of capital among Member States. Such a framework would harmonise the protection provided to borrowers, with respect to the use of their personal and business credit information irrespective of nationality or place of residence and limit opportunities for abuse. In addition, the standardisation of procedures and processes regarding credit reporting throughout the Community along with the legislated limitations on the use of credit



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reports will ensure that consumers are not unduly disadvantaged in accessing social/economic and financial services. Moreover, borrowers (both individuals and small and medium-sized businesses) will be able to better manage their credit information profiles.

- 7.1.2 The establishment of credit bureaus should improve the flow of information in credit markets, which would allow credit institutions or lenders, to better assess credit risks. The availability of more accurate, reliable and up-to-date credit information should lead to an improvement in credit allocation decisions. Additional benefits for credit institutions include the reduction in loss provisioning due to better performing loan portfolios and the employment of improved risk management techniques. This will facilitate more accurate prediction of repayment probabilities as the risk profile of borrowers would be known thereby mitigating the adverse selection problem. Moreover, central banks and other financial sector supervisors would be able to obtain better quality information on credit exposures which can enhance the quality of supervision of financial institutions and other licensed entities.

7.2 *Implications for Public Private Sector Partnership*

- 7.2.1 The promotion of efficient credit markets is largely viewed as a public policy concern which requires early action by Member States but is also representative of an opportunity for an effective public private partnership. Public Sector initiative and resourcing will certainly be required in establishing the legal and regulatory framework as well as the institutional arrangements (including the standardisation of procedures and processes) to support credit reporting. Some key areas of public resourcing would include the staffing of the Supervisory Authority, the provision of ongoing technical training to the staff and other officials as well as the launch of a comprehensive public education and sensitisation programme on credit reporting. However, some of these costs may be absorbed by other stakeholders such as the credit bureau and credit information providers. Specifically, the

adoption of the CARICOM Policy on Credit Reporting will, *inter alia*, provide a platform for the pursuit of joint initiatives in Credit Reporting in relation to public education, training, and the standardisation of information technology systems which would help to reduce the overall implementation cost to individual Member States.



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7.3 *Policy Implementation, Monitoring and Evaluation*

7.3.1 The implementation of the CARICOM Credit Reporting Policy will require specific actions by Member States to align their existing domestic laws with the companion Community Model Law as well as related legislative guidelines in respect to financial consumer protection and data privacy and protection. The dynamism of the credit market in Member States will require ongoing monitoring to ensure that regional standards and procedures remain appropriate to the prevailing market environment in Member States. Monitoring of the credit reporting framework in Member States will involve an effort to identify gaps to be addressed and the removal of obstacles which impede the cross-border exchange of credit information. Accordingly, the CARICOM Policy on Credit Reporting will undergo regional review every three (3) years from the date of adoption.

8. CONCLUSION

8.1 The CARICOM Policy on Credit Reporting advocates the establishment of a harmonised framework for credit reporting which seeks to make credit markets more transparent while simultaneously promoting the fair treatment of borrowers or data subjects especially as it pertains to the use of their personal information throughout the Community. The Policy also addresses the cross-border transfer of credit information in the Community and provides for regulatory cooperation and coordination among Member States.

8.2 Further, the CARICOM Policy promotes the opportunity for a strong public private partnership towards the establishment of an efficient and well-regulated credit reporting system in Member States. Public sector leadership will be required to design and regulate an appropriate credit reporting system, resource the supervisory authority and support the institutional arrangements for cross-border credit information exchanges. However, collaboration with the private sector operatives of credit bureaus regarding the adoption of appropriate standards and best practices along with the roll-out of a comprehensive public education programme is a prerequisite for building a robust and transparent credit market which is facilitative of the cross-border transfer of credit records



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ANNEX I

GLOSSARY

Arrears: Failure to pay an obligation when due.

Borrower: see Debtor.

Collection agencies: businesses specialized in collecting delinquent accounts.

Consent: A data subject's freely informed and specific agreement, written or verbally recorded, to the collection, processing and disclosure of personal and credit data.

Consumer: (see data subject)

Credit Bureau: Model of credit information exchange whose primary objective is to improve the quality and availability of data for creditors to make better-informed decisions.

Credit Information is any electronically stored or paper-based data referring to secured and unsecured loans, advances and other arrangements, whereby a customer of a bank, credit institution or an insurance company has access to funds or financial guarantees of the entity.

Credit Information Provider: Refers to any entity that furnishes credit information to the credit bureau. These entities may include financial institutions, service providers of utilities, co-operatives, retailers, hire purchase institutions. (See Credit Reporting System Participant).

Credit Registry: Model of credit information exchange whose main objectives are assisting bank supervision and enabling data access to regulated financial institutions to improve the quality of their credit portfolios.

Credit Reporting Service Provider: An entity that administers a networked credit information exchange.

Credit Reporting System: Credit reporting systems comprise the institutions, individuals, rules, procedures, standards and technology that enable information flows relevant to making decisions related to credit and loan agreements.



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Credit Reporting System Participant: Any individual or business that intervenes at one or more points throughout the cycle of collecting, storing, processing, distributing and, finally, using information to support credit-granting decisions and financial supervision.

Credit Score: A numerical expression based on a level of analysis of a person's credit records used to represent the credit-worthiness of an individual.

Credit Scoring: A statistical method for evaluating the probability of a prospective borrower fulfilling its financial obligations.

Credit Type: Refers to the purpose of the credit (e.g. mortgage, credit card, consumer credit).

Creditor: One to whom a financial obligation is owed. Also, an individual or legal person who is engaged in the business of lending money or selling items for which immediate payment is not demanded but an obligation of repayment exists as of a future date.

Creditworthiness: The ability of a borrower to repay current and prospective financial obligations on a timely manner. It is an assessment of a borrower's past credit behaviour and is used to assist a potential lender in evaluating credit risks and in making a decision whether or not to extend new credit.

Data Privacy: Ability to control one's personal information. See also Data Protection.

Data Protection: Discipline that aims at creating adequate safeguards to prevent misuse of individual data subjects' information. Comparable to consumer protection in other areas.

Data Providers: Creditors and other entities that proactively and in a structured fashion supply information to the credit reporting service providers.

Data Subject: An individual or a business whose data could be collected, processed and disclosed to third parties in a credit reporting system.

Debtor: An individual or a business that owes a financial obligation to a creditor.



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Default: Failure to complete a payment obligation under a credit or loan agreement (see delinquency).

Delinquency: Situation where the borrower fails to meet his/her financial obligations as and when due.

Financial Infrastructure: The underlying foundation for a country's financial system. It includes all institutions, information, technologies, rules and standards that enable financial intermediation.

Late Payment: Any payment posted after the due date (see arrears). In the credit report is represented by the number of days after the due date.

Lender: See Creditor.

Moral Hazard: The risk that a party to a transaction has not entered into the contract in good faith. For example, this may include that party providing misleading information about its assets, liabilities or credit capacity.

National Credit Reporting System: Describes the broader institutional framework for credit reporting in an economy, including the following: (1) the public credit registry, if one exists; (2) private credit reporting firms, if they exist, including those run by chambers of commerce, bank associations, and any other organized database on borrower performance available in the economy; (3) the legal framework for credit reporting; (4) the legal framework for privacy, as it relates to credit reporting activities; (5) the regulatory framework for credit reporting, including the institutional capacity in government to enforce laws and regulations; (6) the characteristics of other pertinent borrower data available in the economy, such as data from court records, utility payments, employment status; and (7) the use of credit data in the economy by financial intermediaries and others, for example, the use of credit scoring or use of credit data in creating digital signatures.

Negative data (Negative records): It consists of statements about defaults or arrears and bankruptcies. It may also include statements about lawsuits, liens and judgments that are obtained from courts or other official sources.



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Networked Credit Information Exchange: Mechanism enabling credit information collection, processing and further disclosure to users of data as well as value added services based on such data.

Other Data Sources: Entities that collect information for purposes different than credit granting decision-making and/or financial supervision. These entities typically do not pro-actively provide the information they collect to credit reporting service providers but rather can be consulted upon request.

Payment history: A detailed compilation of past and current payment behaviour.

Personal Information: Any information relating to an identified or identifiable individual that is recorded in digital or paper form including information referring to characteristics or behaviour which is used for the analysis of that person.

Positive Data (Positive records): Information that covers facts of contractually compliant behaviour. It includes detailed statements about outstanding credit, amount of loans, repayment patterns, assets and liabilities, as well as guarantees and/or collateral. The extent to which positive information is collected typically depends on national legislation, including the data protection regime.

Public Records: Information filed or recorded by government agencies that are made available to the public under existing laws. Typical public records include corporate and property records, court judgments, and identification information, among others. These records are subject to be made available to the public.

Reciprocity: Mutual exchange of information.

Sensitive Data: Personal data that affect the individual's most intimate sphere or that could lead a party that gets hold of such data to discriminate against, or create a serious risk to, certain individuals. Sensitive data typically includes gender, health status, marital status, national origin, political affiliation, race, sexual orientation, or union membership, among others.



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User: An individual or business that requests credit reports, files or other related services from credit reporting service providers, typically under pre-defined conditions and rules.

Source: World Bank, 2011. General Principles for Credit Reporting, Washington D.C., September 2011.



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ANNEX II

GENERAL PRINCIPLES FOR CREDIT REPORTING

1. In 2011, the World Bank, in conjunction with the Bank for International Settlements, issued the **General Principles on Credit Reporting**, which provide minimum standards and recommendations to guide the development and oversight of credit reporting systems in any jurisdiction. This document provides guidance to countries in designing their legal and regulatory framework for credit reporting. According to the World Bank, the public policy objectives of the General Principles are to ensure that:

Credit Reporting systems... effectively support the sound and fair extension of credit in an economy as the foundation for robust and competitive credit markets. To this end, credit reporting systems should be safe and efficient, and fully supportive of the data subject and consumer rights.

2. The World Bank articulated five (5) General Principles for Credit Reporting, the roles of key players as well as recommendations for the effective oversight of credit reporting systems. These are as follows:

Data (General Principle 1)

Credit reporting systems should have relevant, accurate, timely and sufficient data – including positive – collected on a systematic basis from all reliable, appropriate and available sources and should retain this information for a sufficient amount of time;

Data Processing: Security and Efficiency (General Principle 2)

Credit reporting systems should have rigorous standards of security and reliability and be efficient.



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Governance and Risk Management (General Principle 3)

The governance arrangements of credit reporting service providers and data providers should ensure accountability, transparency and effectiveness in managing the risks associated with the business and fair access to the information by users.

Legal and Regulatory Environment (General Principle 4)

The overall legal and regulatory framework for credit reporting should be clear, predictable, non-discriminatory, proportionate and supportive of data subject and consumer rights. The legal and regulatory framework should include effective judicial or extrajudicial dispute resolution mechanisms.

Cross Border Data Flows (General Principle 5)

Cross border credit data transfers should be facilitated, where appropriate, provided that adequate requirements are in place.

3. Roles of Key Players

Role A: Data providers should report accurate, timely and complete data to credit reporting service providers, on an equitable basis.

Role B: Other data sources, in particular public records agencies, should facilitate access to their databases to credit reporting service providers.

Role C: Credit reporting service providers should ensure that data processing is secure and provide high quality and efficient services. All users having either a lending function or a supervisory role should be able to access these services under equitable conditions.

Role D: Users should make proper use of the information available from credit reporting service providers.

Role E: Data subjects should provide truthful and accurate information to data providers and other data sources.



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Role F: Authorities should promote a credit reporting system that is efficient and effective in satisfying the needs of the various participants, and supportive of data subject/consumer rights and of the development of a fair and competitive credit market.

4. Recommendations for Effective Oversight

Recommendation A: Credit reporting systems should be subject to appropriate and effective regulation and oversight by a central bank, a financial supervisor or other relevant authorities. It is important that one or more authorities exercise the function of primary overseer.

Recommendation B: Central banks, financial supervisors and other relevant authorities should have the powers and resources to carry out effectively their responsibilities in regulating and overseeing credit reporting systems.

Recommendation C: Central banks, financial supervisors and other relevant authorities should clearly define and disclose their regulatory and oversight objectives, roles and major regulations and policies with respect to credit reporting systems.

Recommendation D: Central banks, financial supervisors and other relevant authorities should adopt, where relevant, the General Principles for credit reporting systems and related roles and apply them consistently.

Recommendation E: Central banks, financial supervisors and other relevant authorities, both domestic and international, should cooperate with each other, as appropriate, in promoting the safety and efficiency of credit reporting systems.

Source: World Bank, 2011. *General Principles for Credit Reporting*, Washington D.C., September 2011.



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ANNEX III

POSSIBLE MODES FOR CROSS-BORDER CREDIT REPORTING

Mode	Advantages	Disadvantages
Direct Access Model	Cost-effective for member institutions	Not very attractive to foreign creditors
	Compliant with the freedom to provide services principle	How to implement principle of reciprocity?
		Issue of control of foreign creditors?
Indirect Access Model	Cost effective solution for foreign creditors	Requires building a network between credit registers
	Economies of scale: same formats for all members	Similar to anti-competitive market division
	Facilitates the control of the creditors	
Report Portability Model	Model is easy to implement	Documents might be easy to forge
	No need to obtain consent, as it is implied	In some countries, borrowers are charged for report, not in others
	Consumer's control is higher	Possibility of misuse by employers and utilities
Right-of-Access Model	Model is easy to implement	There may be a fee for the creditor
	No huge investments required for connections	Verification procedures needed between credit bureau and borrower.

Source: Jentzsch, Nicola and Britton, Delia (2015) - Final Report: Consultancy to Develop a Legal and Regulatory Framework to facilitate credit information sharing among CARICOM Member States.