

The credit information companies law company business partnership essay

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As per the CICRA, the credit information pertaining to individuals in India have to be collected as per privacy norms enunciated in the CICRA regulation. Entities collecting the data and maintaining the same have been made liable for any possible leak or alteration of this data. Based on Fair Credit Reporting Act and Graham Leach Bliley Act, the CICRA has created a strict framework for information pertaining to credit and finances of the individuals and companies in India. The Regulations under CICRA which provide for strict data privacy principles have recently been notified by the Reserve Bank of India. The Credit Information Companies (Regulation) Act 2005 (CICRA 2005) was enacted with a view to provide a comprehensive set of data protection standards in order to facilitate efficient distribution of credit and for matters incidental to it. Based on Fair Credit Reporting Act and Graham Leach Bliley Act, the CICRA provides for establishing a compulsory surveillance system under S 15 and 17 of the Act. According to the Act, no company can carry on a credit information business without being registered under the Act as a credit information company (CIC) (s3). All credit institutions must be members of one CIC (s15(1)-(2)), but may join more than one (s15(3)).

These surveillance functions of the system are provided in CICRA Rule 19 and Form II. According to the two, the credit institutions are bound to collect certain minimum information from potential borrowers, including such information pertaining to the borrower's father's name, bank account details, and passport or other ID details etc.

The central focus of the Act is on credit information which is defined as " any information relating to(i) the amounts and the nature of loans or advances,

amounts outstanding under credit cards and other credit facilities granted or to be granted, by a credit institution to any borrower;(ii) the nature of security taken or proposed to be taken by a credit institution from any borrower for credit facilities granted or proposed to be granted to him;(iii) the guarantee furnished or any other non-fund based facility granted or proposed to be granted by a credit institution for any of its borrowers;(iv) the creditworthiness of any borrower of a credit institution;(iv) any other matter which the Reserve Bank may, consider necessary for inclusion in the credit information to be collected and maintained by credit information companies, and, specify, by notification, in this behalf;"

Data protection regulations under the CICRA

1. S. 19: Accuracy and security of credit information

According to this section, the CIC or the institution, which is in possession of credit information is under an obligation to ensure that the data maintained by them is accurate. In addition, the section also requires that the data held by them is protected against any loss or unauthorized access or use or unauthorized disclosure thereof.

This section requires data to be accurate. If that principle seems to be similar to the one enshrined within the European directive, its scope remains rather limited since:- Only the credit institution, the credit information company and the specified user must take measures to ensure the accuracy and the limited access and disclosure of the information maintained by them;- Only credit information are concerned by this provision, there is no such obligation for other kind of information².Section 20:(a) Section 20(b) requires

that every CI, CIC and specified user must be certain about the purpose for which the information may be used and restrict itself to that purpose only.

(b) Section 20(c) imposes a duty of accuracy on these institutions. Accordingly, the institutions are under an obligation to check accuracy of the credit information before furnishing such information further.

(c) Section 20(d) sets forth principles with respect to the preservation of such information, the time for which this information may be held, the manner of deletion, and the maintenance of records of credit information.

Privacy Principles:

Principle 1:

a) Principle 1. Care in Collection of Credit Information⁹⁷

This principle lays down that every CIC or CI must ensure that all information it possesses must:

Recorded and Processed properly
Safeguarded against loss
Protected against any unauthorized use, modification or disclosure
In order to do so, every credit institution must update information and take measures to ensure that the information being supplied to CIC is accurate and up to date.

b) Principle 2. Data Security and secrecy⁹⁸
The Act also sets forth certain measures with respect to employees of such institutions that are appropriate to the risks presented by the processing. They are:
(a) The employees must sign a declaration of fidelity and secrecy;
(b) The institutions must establish procedures to ensure that credit information will be transferred and received through a secure medium.

c) Principle 3. Access and

Modification⁹⁹ According to this principle, every person has a right to access any information pertaining to him. The institutions have the obligation to establish procedures for providing the same. In addition, the principle also provides the user the right to modify any such information. The CIC must ensure the correction or otherwise take appropriate steps to update the information within 15 days upon receiving a request by a Credit Institution or a user to do so.

d) Principle 4. Data Collection Limitation¹⁰⁰ This principle imposes a limitation on the data collected by the Institutions. The principle accordingly requires that the data collected by the Institutions must be relevant and not excessive with respect to the purpose for which it was collected. This principle is similar to the proportionality principle as enunciated in the European directive.

e) Principle 5: Data Use Limitation This principle stipulates the purposes for which specified users may request access and use Credit Information Reports. In addition, the principle also lays down the purposes for which the CIC may publish CIRs. Some of these purposes are: pursuant to an order of a court, tribunal etc.; for purposes as may Reserve Bank specify.

f) Principle 6: Data Accuracy¹⁰² This principle makes the credit institution responsible for the correctness of the data submitted to CIC. Also, according to the above principle, the CICs are also under a duty to make efforts to ensure accuracy of the data made available to them.

g) Section 19. Remedies to individuals¹⁰⁵ This Section provides the remedial measures to individuals against the Institutions for contravening any provisions of the Act. The Act provides that the individual must file a case before the Reserve Bank in case of any breach. The Reserve Bank is empowered to impose penalty or take required measures against the

Institutions if they are found to be infringing any provisions of the Act. j)

Section 18. Procedure to be adopted¹⁰⁶This Section provides for an enforcement mechanism with respect to adaptation of the principles and procedures. Some of them are: protection of personal data; accepting complaints, enquiries and disposal thereof; imparting training to their staff about their policies and practices with respect to credit information^{3. 3. 5. 3.}

Regulations made by the Government^{3. 3. 5. 3.}These Rules foresee some procedures that must be taken by credit institution, credit information company and specified user to ensure accuracy, completeness and protection of data, prohibition of unauthorised access, use or disclosure and fidelity and secrecy obligations. In exercise of the powers conferred by Section 36 of the Credit Information Companies (Regulation) Act, 2005, the Government has framed the Rules mentioned hereunder that need to be complied by the Institutions:

Rule 20. Steps for Security and Safeguards to be taken by Credit

Institution¹⁰⁷This Rule puts an obligation on every Institution to engage various appropriate measures and specifying the safeguards relating to collection, processing and collating of data by them. Rule 21. Collection of

Data and Maintaining Credit Information¹⁰⁸This Rule relates to the principle of proportionality and provides for a procedure that must be followed by the Institutions in order to ensure fair appropriation of data. Rule 22. Accuracy of

data provided by a credit institution¹⁰⁹This Rule is aimed at reinforcing the data quality. According to this Rule, it is mandatory for every credit institution to check the accuracy of the data before furnishing it to a credit information company or disclosing to to anyone else. If an institution discovers on its own or is informed about any inaccuracy, the Rule stipulates

that it must take immediate steps to intimate the CIC or the individual of such inaccuracy or error, If the concerned institution, without any sufficient reason, fails to comply with the above, it would be held liable for contravention of the provisions of the Act. Rules 23, 24 and 25: These Rules collectively put an obligation on the credit institution to maintain the necessary compliances with respect to updating the credit information and adopting appropriate measures in its daily operations to safeguard and protect the data, information and the credit information against any improper access or mishandling. Rule 26. Formulation and adoption of the procedure by Credit Information Company¹¹³ According to this Rule, every credit information company must, inter alia, include in its policy and procedure: minimum prescribed identification parameters that must be satisfied before forming borrower's identity; tolerance limit against each parameter within which each identification parameter must be satisfied; the procedure for making a notation, in the data, received from a member credit institution in respect of the identified borrower; 3. 4. The Public Financial Institutions Act of 1993 In India, there is an obligation on the bankers to maintain secrecy of the accounts of the customers. This is done so that no third party is able to get any access to such records. Therefore, this Act codifies this obligation of maintaining confidentiality in bank transactions. In the case of Kattobamman Transport v. State Bank of Travancore, the Court held that that the bank owes a duty of secrecy to its customers. This rule is, however, subject to certain limitations wherein the law requires such disclosures to be made.