

Abstract

The Credit Information Business Act B.E.2545 ("the Act") has come into force since March, 14 2003 and was amended in 2006 and 2008. After the Act became in effect, there are many changes occurred in regard of economy, credit services and information technology, causing problems to the application of the Act. For the purposes of efficiency and unity of the Credit Information Business and protection of consumer's rights, it is necessary to study and analyze these problems in order to provide practical guidance and solutions in accordance with the objectives of the law.

The main case study of this thesis is the issue of Data Subject's consent. Under section 20, Credit Information Company shall disclose Credit Information to Member or the Recipient of Service, provided that it obtains consent from the Data Subject. However, in practice of the credit granting process, Data Subject has no choice but to give consent to the disclosure of his or her Credit Information otherwise the grant of credit by Financial Institutes would not be possible.

The concept of consent in The Credit Information Business Act is that it provides protection to Data Subject's right to be informed, not right to privacy. Given that Credit Information, by nature, is information that benefits public interest i.e. the information regarding credit histories of Data Subject collected for the use of analytic process of credit granting by Financial Institutes for the purpose of promoting strong economy. Therefore, it should always be applied in accordance with its concept.

Considering the necessity of the consent principles of The Credit Information Business Act, it can be seen that such forced consents create unnecessary procedures in the

Credit Information Business. In addition, the provision of the Act that sets out the permissible purposes for the use of Credit Information is deemed to be adequate protection for consumers. Since Thailand has an industry-specific legislation regarding the Credit Information Business, concerns about the violation of Data Subject's rights, which is the main reason for the enactment of the consent principle in Data Protection Act 1998 of England, are not occurred in Thai Credit Information Business.

Furthermore, Credit Information Protection Committee's notification concerning the rules, procedures and conditions of the Data Subject's consent to the disclosure of Credit Information, dated September, 14 2007 states that Data Subject may give consent by electronic means i.e. through websites, facsimiles, ATM machines or interactive voice response (IVR). On the one hand, this notification can be viewed as the way to facilitate the consent giving process and utilize new technologies in the Credit Information Business. On the other hand, it emphasizes on the necessity issue of Data Subject's consent. By providing these various and convenient methods, although it is beneficial to Credit Information Business, it significantly decreases the value of the Data Subject's consent provision of the Act.

Another important issue in the subject of Data Subject's consent is the exception of section 20. As prescribed in section 20, paragraph 2, there are five exception cases where Credit Information Company shall disclose Credit Information without prior consent from Data Subject. A particular exception that may give rise to future problems is in (1); the disclosure in the case where an order or summon is made by the court. There is no scope or limitation of permissible purposes for such disclosure set down in the mentioned exception which may result in cases

that the court could make an order or summon based on any grounds or purposes. It is suggested that permissible purposes clause should be added in this exception. It may be prescribed as disclosures without consent shall be applied in the case where an order or summon is made by the court for the purpose of obtaining evidences in the criminal proceedings, balancing public interest to prosecute criminal offenders and Data Subject's rights, and there should be a limitation of such disclosure to the third party in order to protect the rights of Data Subjects.

Besides the main issue of Data Subject's consent, there are other problems arising from the application of the Credit Information Business Act. The following are five major issues analyzed in this thesis;

1. Security of credit information. Problems may appear in the case of the breach of security obligations by Credit Information Company. Data Subject who suffered damage from such case is only entitled to make legal claim under the tort principles of the Civil and Commercial Code, given that Data Subject is not the injured party according to the Act and can not bring an action to court in the case of violation of provisions of the law.

Moreover, as the means to provide more protection to the Data Subject, it is recommended that there should be extra measures in the case of information security breach; for instance an implementation of duty to warn. Credit Information Company should be obligate to notice the Data Subject who affected by the breach of security and gives appropriate instructions to prevent any future damage.

2. Types of consumer's Information processed by Credit Information Company. Financial information of consumer can be categorized into many types, Credit Information Protection Committee enacted notifications

concerning the processing of Information accordingly. One of the problems emerging from this issue is the processing of bankruptcy information. As the provision of the Bankruptcy Act, in the case that a creditor fails to submit the Application for Payment of Debts, such creditor shall be forfeited of the right to demand payment from the debtor who was declared bankrupt. When applied with the processing of Credit Information, creditor failed to complete the submission of Application for Payment of Debts procedure must cease to report any information regarding such debts of the bankrupt debtor to Credit Information Company. Another issue that still has not been regulated is the processing of information regarding debts of consumer in the Business Reorganizing process. It is suggested that the same rules and conditions as prescribed for bankrupt debtors aforementioned should be applied to this issue as well.

3. The time period of Information Processing. In the case of information regarding bankruptcy, Credit Information Protection Committee's notification prescribes that such information can not be processed for the time period longer than five years from the date of the court's judgment. However, according to the Bankruptcy Act, debtor shall be discharged within three years since the date of the court's judgment. This inconsistency of the laws could be solved by adding a new provision stating that when debtor is discharged by the Bankruptcy Act, Credit Information Company shall cease to process such debtor's information.

4. Exercise of Data Subject's rights. Data Subject is entitled to the right to check his or her information kept by Credit Information Company. Section 26 sets out the principle that Data Subject is able to exercise this right to both Credit Information Company and Member. At present,

however, there is only one Member who offers Credit Information checking service. Data Subject can exercise the mentioned right only to Siam City Bank, resulting in an incomplete protection for consumers.

5. Credit scoring, a new issue concerning Thai Credit Information Business which has yet regulation or notification concerned. It is recommended that fundamental principles should be established for the purpose of regulating methods and conditions of Credit Scoring; such as, prohibited factors that can not be taken into account in the calculation process of Credit Scoring i.e. information about age, sex, race or marital status.

Even though Credit Information Business in Thailand is regulated by The Credit Information Business Act and Credit Information Protection Committee's notifications, still there are problems in practice. The analysis and suggestions of this thesis will hopefully be beneficial to the amendment of the Act and present some guidance in the related subject with the intention that Credit Information Business can operate correspondingly with the objective of the law.