

The Western Hemisphere Credit & Loan Reporting Initiative (WHCRI)



**Legal and regulatory frameworks:
Impact on credit reporting systems
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World Bank-CEMLA WHCRI Team



CONTENT

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- II. Legal environment**
- III. Case study**
- IV. Analysis of major issues**
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I. OBJECTIVES

- Summarize the legal status of credit reporting in Latin America based on 10 countries with different legal systems.
- Analyze impact of legal requirements on credit reporting development.
- Serve as knowledge dissemination for credit reporting market participants.
- Provide guidance to regulators based on case studies.

II. LEGAL ENVIRONMENT I

Public and private systems operate under different legal environments.

- ◆ Consumer rights - Transparency
 - ◆ Access to own reports is required to private systems not to public. 36% (public) Vs 61% (private).
 - ◆ Cost to inspect data is present in both systems.
 - ◆ Only private systems provide previous enquiries.
 - ◆ Liabilities in public systems are established solely on sources while private systems are also liable. (100% on public Vs
- ◆ Legitimacy for data processing
 - ◆ Consent 9% (public) Vs 61% (private)
 - ◆ Mandatory (public) Vs voluntary contribution (private)

II. LEGAL ENVIRONMENT II

◆ Inaccurate data – Data Quality

- ◆ Penalties are higher for errors in private systems than in public. (monetary and service interruption Vs administrative)
- ◆ Remedies in private include higher burdens than remedies in public. (correct data)

◆ Security

- ◆ Proactive measures are more likely to be implemented in private systems than public. (61% Vs 54%)

Public systems play a significant role in the credit reporting market in Latin America

III. CASE STUDY : ARGENTINA

Legal system

- Data Protection regime
- Credit information is considered a public good.
- Partial oversight

Legal Restrictions

- Credit card law
- Legitimacy of data processing

Major issues

- Security of data (safe system)
- Consumers' rights
- Data quality
- Governance arrangements

Lack of oversight function ensuring efficient, safe and reliable systems

III. CASE STUDY : BRASIL

Legal system

- Habeas data/ consumer protection
- Bank secrecy.
- No oversight

Legal Restrictions

- Bank secrecy- Positive data

Major issues

- System does not meet users needs
- Proposed solutions are not realistic.(notification)

Existing laws negatively impact system development

III. CASE STUDY : CHILE

Legal system

- Data Protection regime
- Specific law for (BIC)
- Bank secrecy
- No oversight

Legal Restrictions

- Use of positive data.
- Access to data (BiC)

Major issues

- Fragmented data
- Data quality
- Lack of positive data

Existing laws impact negatively on credit reporting systems operation. Lack of oversight function impedes impact mitigation

III. CASE STUDY : COLOMBIA

Legal system

- Habeas data protection regime *
- Credit information is considered a public good.

Legal Restrictions

- Creditors name
- Payment history retention

Major issues

- Database integrity
- Data quality
- New legal requirements

Newly introduced law. Ambiguity calls for oversight function ensuring efficient systems.

I. CASE STUDY : MEXICO

Legal system

- Credit reporting law.
- Oversight function

Legal Requirements

- Mandatory enquiry
- Consent
- Data sharing between bureaus

Major issues

- Competition restrictions
- Consent procedure
- Limited scope of service
- Limited coverage (e.g. MFI's)

Oversight function focus on system efficiency to mitigate market failures

I. CASE STUDY : PANAMA

Legal system

- Credit reporting law.
- Bank secrecy.
- Oversight limited to law compliance.

Legal Restrictions

- Geo- demographic data.
- Consent
- Utilities and land telecom.

Major issues

- Lack of data impedes system development. (e.g VAS)
- No interaction between public/private.
- Consumers' rights

*Laws negatively impact system development.
Oversight function not focus on efficiency*

I. CASE STUDY : TRINIDAD & TOBAGO

Legal system

- Common law
- No oversight

Legal Restrictions

- Bank secrecy
- SME's data is not distributed.
- System is used only for prescreening

Major issues

- Consumers' rights
- Data quality
- Dominant position
- Systems are not used efficiently

Lack of legal framework impedes system development

I. ANALYSIS ON MAJOR ISSUES I

Bank secrecy restricts collection and use of data

- ◆ Calls for consent.
- ◆ How to enforce consent?

Habeas Data is the response to data protection in Latin America.

- ◆ Is it effective?
- ◆ Concept is not homogeneous across the region.

Credit Information is considered as “public good” enabling wide use of data.

- ◆ Enables data availability.
- ◆ Exposes data subjects to uncontrolled risks.

I. ANALYSIS ON MAJOR ISSUES II

Unfair practices among competitors causes data segmentation.

- ◆ Reciprocity Vs closed user groups
- ◆ Dominant positions affect credit in concentrated markets
- ◆ How about not showing creditor's name ?

Cross Border data flows are restricted.

- ◆ EU level of adequacy.
- ◆ Is it relevant for credit reporting?

Access to publicly available data is limited.

- ◆ Other problems not necessary legal.
- ◆ Laws on access to information

Oversight

- ◆ Limited to law compliance. How to ensure efficiency?
- ◆ Requires coordination of multiple authorities. Who should take the lead? What are the objectives for adequate oversight?

IV CONCLUSIONS

- ◆ *Countries that adopted comprehensive legal framework show higher levels of system development.*
- ◆ *Bank secrecy and not data protection is still the major cause of data sharing restriction.*
- ◆ *Efficiency of credit reporting systems needs the provision of an oversight function to mitigate market failures.*
- ◆ *Current legal responses to data quality (accuracy) are not effective.*
- ◆ *Enforcement of laws and regulation (including self regulation) requires higher levels of education on credit reporting among authorities.*
- ◆ ***Oversight role should be defined and authorities need to step in.***