

Summary of Key Comments on the CCRA Proposal

NAME OF INSTITUTION	SUMMARY OF COMMENTS: -				
	GENERAL/OTHER COMMENTS	NATURE OF PARTICIPATION	INSTITUTIONAL OPTIONS	SCOPE OF COVERAGE	DATA DISCLOSURE
BANKING SECTOR					
<p>Hong Kong Association of Banks (HKAB)</p>	<p>Our member banks do not have a unanimous view on a mandatory CCRA. However, all member banks that oppose the proposal have indicated their support for the establishment of a CCRA on the basis that it would focus only on SMEs, be owned by the private sector, and be based on voluntary participation by AIs and borrowers.</p> <p>It seems the practical solution would be to adopt voluntary participation. If the HKMA insists on mandatory participation, this would need LegCo approval, which might be difficult to obtain.</p> <p>A number of general concerns have also been raised:</p> <ul style="list-style-type: none"> ▪ The CCRA would become a centralised, comprehensive databank to facilitate cold-calls on commercial borrowers with more comprehensive pricing and terms than their existing bankers currently provide. This might result in potential instability in the banking sector. The current mortgage “price war” is a case in point. ▪ The CCRA would facilitate the imposition of regulatory exposure ceilings by purposes, sectors, industries, customer groups or even individual borrowers. If this is what one of the secondary benefits of “potential development of supervisory tools” means, Hong Kong’s tradition of free markets and free enterprises would be at risk. The controversy of the previous property exposures ceiling guideline is perhaps a lesson to be learned. 	<p>Respondents are divided on this issue. Those members supporting mandatory participation consider that this would be necessary to ensure the effectiveness of the CCRA. Those against argue that:</p> <ul style="list-style-type: none"> ▪ To require all AIs to submit information on almost all of their customers to a government, or quasi-government agency, with or without the customers’ consent, would represent a significant departure from Hong Kong’s traditional laissez-faire, non-interventionist culture. The potential consequences for Hong Kong’s future as a financial centre could be very serious if, for example, customers chose to shift their banking relationships to a location without such mandatory disclosure. ▪ Requiring AIs to submit information will not solve the problem of the lack of comprehensive data on SMEs. ▪ If banks must participate in the scheme and report the credit information of every customer to a CCRA, they would be subject to a considerable burden in reporting. If they can get every customer’s ratings in return, some banks may have less incentive to enhance their ability of credit analysis and may lose their competitiveness to other international banks in the region. 	<p>The majority’s view is that, for different reasons, the CCRA should be privately owned, managed and operated:</p> <ul style="list-style-type: none"> ▪ Mandatory collection of customer information by a public CCRA would greatly damage Hong Kong’s free market culture and the damage would be irreversible. ▪ HKAB does not have the expertise or resources to run a CCRA and might not wish to get involved in ownership particularly if participation was mandatory and the CCRA was seen as an unpopular addition to Hong Kong’s financial infrastructure. <p>The other options favoured by a small minority are:</p> <ul style="list-style-type: none"> ▪ The provision of confidential information is clearly a sensitive issue. In order to develop confidence in the integrity of the database and the uses to which the information will be put, a CCRA should be majority owned and fully controlled by the HKMA. ▪ A joint ownership by the banking industry and the Government would be a better choice to start with. Such an institutional arrangement enables the CCRA to be a more authoritative organisation and thus facilitates more effective collection, while at the same time ensures that AIs are represented and participate in the management decision of the CCRA. 	<p>The majority of respondents believe that coverage should be restricted to SMEs only and there should be no agenda to broaden the scope to larger corporates in future:</p> <ul style="list-style-type: none"> ▪ Most AIs believe that coverage of larger corporates would simply drive their borrowing offshore. Also the cost to AIs of submitting data on so broad a number of customers would be significant. ▪ The definition of SMEs as all “non-listed commercial entities” is far too broad. One of the more usual narrowly based definitions needs to be adopted (i.e. base on number of employees, sales turnover, etc) ▪ Credit data relating to owners of companies is relevant to the credit decision and should be reported to the CCRA but on a voluntary basis. <p>Other members felt that:</p> <ul style="list-style-type: none"> ▪ Consideration should only be given to extending the scope of the CCRA to include such larger companies as and when the CCRA has been proven to be effective, and a consensus has been reached that the benefits of including such larger companies would outweigh any potential drawbacks. ▪ The CCRA should collect all information about borrowers, guarantors and securities or assets pledged. <p>The majority banks believe that both positive and negative information should be collected.</p>	<p>If the HKMA were to press ahead with mandatory disclosure of customer information, the vast majority of respondents accept that explicit legislative provision would be required. This approach has the following advantages:</p> <ul style="list-style-type: none"> ▪ To protect AIs against possible breach of their duties to customers. The suggestion to obtain consent from customers at the time of annual review would not work. What happens if the customer does not consent? ▪ The matter should be fully debated in LegCo so that all interested parties could be heard. <p>A common concern has been raised that any such legislation would raise broad privacy and human rights issues.</p>

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DTC Association	Supportive of establishing a CCRA.	<p>Support mandatory participation by AIs in order to obtain total indebtedness information and ensure level playing field.</p> <p>However, some members have expressed the view that if a customer wishes to retain confidentiality, he must be allowed to do so. It will be up to lenders when renewing facilities and to potential lenders when considering a loan to take into account the borrower's non-participation in the CCRA. If AIs change their standard business terms to permit disclosure of information to the CCRA, one of our members fear that this may break the Unconscionable Contracts Ordinance. Many natural persons use a corporate vehicle to hold their investments in property, securities, etc and if disclosure were mandatory this business would be at risk of moving out of Hong Kong.</p>	The CCRA should be public owned by the HKMA. This would give the corporate sector and AIs greater confidence that the data would not be improperly used. Operations could be outsourced to a strategic partner such as a specialist in the credit data collection field.	The CCRA should begin by collecting both positive and negative information relating to all commercial enterprises. However, some members have expressed the view that the CCRA should initially cover SMEs and other non-listed companies only.	Explicit legislative provision will facilitate administration of the scheme by relieving the burden of getting consent from customers. However, this could be a lengthy process.
14 individual licensed banks	The majority banks support the establishment of a CCRA, agreeing that it would enhance the transparency of SMEs and credit risk management of AIs. However, a number of them have questioned the extent of benefits that the CCRA could bring to the banking industry. Some respondents remark that the usefulness of the CCRA would depend on designing a suitable institutional structure.	The majority banks support mandatory participation to provide level playing field and ensure data comprehensiveness. A number of respondents are concerned that mandatory participation might have implications for Hong Kong as an international financial centre, as lending activities might be driven offshore.	The respondents are divided on the preferred form of ownership, although the majority support some form of public sector involvement to command authority and ensure fair pricing, whether the CCRA is to be 100% publicly owned or a joint venture between the Government and the banking industry. One respondent notes that public ownership of the CCRA should not be perceived as government intervention as it would develop into an important part of Hong Kong's financial infrastructure. However, some banks consider that public ownership of a mandatory scheme would be a departure from Hong Kong's free market culture.	The majority support coverage of SMEs only and the collection of both positive and negative information. Some respondents prefer SMEs to be defined as non-listed companies. Others consider such definition too broad and that it should be more narrowly defined.	Most respondents agree that explicit legislative provision should be put in place for disclosure of customer data by AIs to the CCRA. Some are concerned that the disclosure of personal data (e.g. in relation to SME owners) might be in conflict with the existing privacy legislation and consultation with the Privacy Commissioner would be necessary.

Corporate sector

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The Hong Kong General Chamber of Commerce	<p>The SME Committee of the Chamber agrees that a properly administered CCRA could be beneficial to both banks and clients. On the other hand, there should be room for the market to play a part in defining the nature and extent of the CCRA.</p> <p>The operation of the CCRA should be governed by the principle of transparency and security of information. Although the CCRA applies to companies, the relevant principles under the Personal Data (Privacy) Ordinance should be observed. Data subjects should have the right to access and check their data in the CCRA.</p>	<p>Agree with the HKMA on the need for mandatory submission of information by AIs to the CCRA, but we strongly believe that this should be achieved without the need for legislation.</p>	<p>Appreciate the merits of a self-regulated CCRA owned jointly by the banking industry and the public sector. At the same time, some of our members have suggested that the Agency should have the benefit of involving business associations outside the banking sector.</p> <p>An important aspect of the management of the Agency is to ensure user participation and a balanced representation between banks and clients on the board of directors of the CCRA.</p> <p>The CCRA should be a neutral information provider and should not act as a rating agency or an arbitration body. It would be up to the banks making use of the information to do their own rating.</p>	<p>The scope of information collected should be on a need basis and not be excessive. The Agency should only collect information pertaining to enterprises rather than individuals. Only legal papers should be included. Written confirmation from clients should be obtained to ascertain the accuracy of information. Any renewal of information should be copied to the client concerned for information / confirmation.</p> <p>We agree with a more limited scope of coverage for the initial running of the CCRA. The scope can be further expanded when the system is up and running and proved useful.</p>	--

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The Chinese General Chamber of Commerce	<p>The Chamber supports the establishment of a CCRA in view that:</p> <ul style="list-style-type: none"> ▪ A number of overseas countries have already established similar agencies. The CCRA could benefit Als' credit assessment, stability of the banking system and lending to SMEs. ▪ It would help address the lack of credit information and bring about positive impact on Als, SMEs and the whole economy. ▪ It would improve the financial infrastructure in Hong Kong, thus enhancing its role as an international financial centre. 	--	<p>The Chamber considers that any arrangement involving public and/or banking sector ownership would be under various constraints. The Chamber therefore supports a privately owned CCRA. It should be more efficient and the experiences of other countries can be used for reference. But the CCRA should be under strict supervision to protect privacy and ensure data confidentiality. HKAB is familiar with credit data management and could assume the supervisory responsibility.</p> <p>The Chamber considers that customer data should not be owned by the private entity running the CCRA.</p>	<p>The CCRA should aim at providing basic credit information for banks to assess loan applications, but not at collecting comprehensive information as a substitute for prudent credit assessment. As such, the CCRA needs not collect too much information, which would also increase the burden of updating. The CCRA should start with collecting basic information so that it could be established quickly. The coverage could be expanded when the need arises in the future.</p> <p>The CCRA should focus on SMEs. Listed companies should not be covered because their activities are more open, transparent and the information more readily available.</p> <p>The CCRA should focus on collecting objective information, and should not get involved in credit rating, which would blur its role with credit rating agencies'.</p>	<p>There is a need for formulating legislative provisions to mandate the submission of information by Als. Without it, Als would have inadequate justifications for disclosing customer information.</p> <p>The CCRA involves issues relating to disclosure of personal information. The authorities should review the related privacy legislation to avoid conflicts.</p>

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Federation of Hong Kong Industries	Support the establishment of a CCRA. The agency should increase AIs' access to their corporate customers' credit information and enable them to look at a company in a more comprehensive and thorough manner in making loan assessments.	--	The HKMA should play a leading role in the CCRA's formation. This can assure the neutrality of the body and give the public and AIs sufficient confidence in the security, confidentiality and proper use of any credit information to be collected.	<p>Currently, some AIs require companies to submit their latest financial statements when applying for loans. In view of the fact that some of these financial statements might have been prepared in a rather lax manner, we are afraid that if such information is to be collected by the CCRA and disseminated to interested parties without sufficient warning, it might impair the credibility of the CCRA. In order to prevent this from happening, we strongly recommend the exclusion of companies' financial statements from collectible information.</p> <p>Moreover, as credit information of their customers is an important reference for traders and manufacturers to decide whether any trade credit should be offered, the CCRA should consider allowing them to gain access to the database.</p>	<p>Disclosure of personal credit information is a highly sensitive issue, the HKMA should be cautious of any privacy implications. It should also consult extensively with the Privacy Commissioner for Personal Data to ensure their privacy is duly protected.</p> <p>Operational guidelines should be drawn up carefully by the CCRA to keep a tight control over the flow of credit information and clearly define who may have access to the information and under what circumstances.</p>
Dun & Bradstreet (HK) and Credit Information Services (CIS)	Support the establishment of a CCRA.	--	<p>In some markets, CCRA oversight is handled by its end-users – lenders. Participation by end-users could take the form of direct ownership as shareholders (as in the case of CIS and in Mexico) or may be achieved through representation in an advisory body that oversees the operation of the CCRA.</p> <p>Concerns of confidentiality and use of data, as a practical matter, exist whatever the ownership structure of the CCRA. These concerns have been managed in other markets through the proper use of confidentiality agreements, rights of audits, end-user monitoring and oversight as well as proper management by reputable organisations.</p>	<p>The clearest method of segmentation would be that of non-publicly listed firms.</p> <p>With negative data only, the CCRA will not be able to distinguish more sophisticated levels of risk. The absence of positive data leaves a void in risk prediction thus making it difficult to grant credit optimally. Therefore, a more balanced approach by combining positive and negative data will result in the ability to cross check and predict risk more accurately.</p>	--

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PUBLIC ORGANISATIONS					
Consumer Council	--	--	The Council's major concern is that confidentiality is maintained on private information, regardless of what form of institution is created. Nevertheless, in order to ensure that there are maximum safeguards on data confidentiality, the Council would consider the option of a public owned CCRA likely to be the most suitable. Being public owned, this would seem to secure, as much as possible, a higher level of confidence in the governance of the institution, and certainty on data confidentiality issues, than might otherwise be the case, if the data was maintained by private interests.	--	The Council considers that client consent should still be required. While this might result in the rejection of the application, the fact of seeking consent would, in the first instance, inform borrowers of the fact that their information would be forwarded to the institution, and thereby allow them to exercise their rights by withdrawing the application or agreeing to go ahead.
Hong Kong Exchanges and Clearing	Support the establishment of a CCRA.	Support a mandatory scheme to ensure data comprehensiveness.	If participation is mandatory, the institutional set-up must also command commensurate authority and confidence from the market. A wholly private initiative does not seem to be in line with this proposition. Some degree of ownership and control of the regulator (namely the HKMA), either directly or indirectly, in the CCRA is important and commensurate with the function of the CCRA being primarily an important infrastructure of the banking sector. We are not however wedded to any particular composition of the ownership and see merit in a joint venture comprising also the industry association, namely HKAB.	Support a comprehensive scope of coverage in terms of both information collation and bank customers. While we understand that for starting up the CCRA may wish to limit its coverage to certain commercial entities, and in this connection the SMEs are the obvious and reasonable choice, we believe all companies, be they listed or otherwise, should be subject to the disclosure provision of the CCRA in the long term. Insofar as the listed sector is concerned, the disclosure to the CCRA would be commensurate to any disclosure requirements under the Listing Rules of the Exchange and they contribute together to the better transparency of the corporate sector of Hong Kong as a whole. It would be desirable to cover also the identity of related companies of the same group.	Favour a legislative approach to enable and require the disclosure of customers' credit information by AIs to the CCRA.

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Privacy Commissioner for Personal Data	The Privacy Commissioner has raised a number of specific comments in relation to the implementation of a CCRA e.g. the HKMA may wish to give consideration to the procedures that may need to be established to demarcate, or prevent, the interchange of borrower's consumer credit data and commercial credit data. He recommends further consultation with him prior to the HKMA adopting a final position on the substantive issues detailed in the consultation paper.	--	As good corporate governance would rank as an important operational requirement, a structure drawing upon the strengths and expertise of the HKMA and HKAB would appear to have certain merits.	<p>There may be merit in an incremental approach to the issue of coverage in that the experience gained with an initial target group e.g. SMEs, may subsequently be extended to other groups.</p> <p>The range of positive data to be collected by the CCRA should be clearly defined.</p> <p>If the CCRA were to embrace the sole proprietor this would imply the collection of personal data which would be subject to the provisions of the PD(P)O. Similarly, in the case of personal guarantees given by shareholders of a small firm there may be a blurring of the distinction to be made between personal data, and data required by the AI to process a loan application and/or for disclosure to the CCRA.</p>	Unless there is uniform expectation among AIs regarding the borrower information to be disclosed to the CCRA it is difficult to see how the latter could function effectively.

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Securities and Futures Commission (SFC)	<p>Generally support the establishment of a CCRA. SFC has also raised a number of specific comments as follows.</p> <p>Information disseminated by CCRA: it is not clear if the information the CCRA will disseminate will be on a "raw" basis (like a credit registry), or whether the CCRA will summarise the data, perform analysis and then assign ratings to the subject. We believe that assigned ratings backed up by analysis reports may be easier to understand, and will be of more benefit to the market generally.</p> <p>Pricing policy: there is no mention in the Proposal as to how the information to be provided will be priced.</p> <p>Track record: generally the willingness of the industry or market to rely on a credit rating agency depends on the track record of that agency. With the CCRA being newly set up, and particularly if it is operated by organisations which have no previous experience in this area, there may be a perception that the CCRA lacks credibility.</p>	<p>We do not believe a system whereby the AIs will disclose the information subject to customers' consents will work. The Proposal notes that many AIs have indicated that they will seek consent from their customers to disclose their data when the customers apply for a new loan or renew existing facilities. However, it is not clear that the AIs will, or have to, necessarily refuse such loan facilities (new or existing) should customers' consent for the release of such information be withheld. Such arrangement does not mandate absolute disclosure, but only mandates disclosure after the customers have consented. In a competitive market environment, this may lead AIs to be less than insistent when requesting customers' consent.</p> <p>Forcing lending offshore: we have some concerns that mandatory reporting by AIs will lead to their customers deciding to borrow offshore instead. In today's competitive banking environment and with the development of electronic banking, this can easily happen. Should this take place, it may be more difficult from a regulatory point of view to monitor and supervise the banking sector. It also means that the database as compiled by the CCRA will not be comprehensive, and defeats the purpose of setting up the CCRA in the first place.</p>	<p>We are of the view that there should be as little government involvement as possible in the establishment of the CCRA in order to demonstrate our philosophy of free markets. The U.S. market has a long standing and workable model of the credit rating agencies being operated by the private sector, and we believe serious consideration should be given to that model. However, due to the confidential nature of the information, and in view of the fact that AIs are compelled to provide such information, there should be arrangements (whether by way of regulation or a franchise agreement) to define an appropriate framework within which the CCRA can operate.</p>	<p>We understand the rationale for limiting the coverage of the CCRA initially to non-listed commercial entities, but this definition is very broad. At the top end of the spectrum, many large listed companies are effectively holding companies of very substantial operating subsidiaries that are not listed. One case that comes very quickly to mind is the holding of A. S. Watsons by Hutchison Whampao. We are not clear whether the intention is to cover such operating subsidiaries as "non listed" commercial entities. At the bottom end of the spectrum, there are companies owned by individuals for the holding of residential properties. We are not sure if the definition is intended to catch such companies as well.</p> <p>Respondents to your Survey also seem to indicate a preference for including non-blue chip listed companies in the coverage by the CCRA. We accept your view that defining such a sub-group within the population of listed companies may not be easy, but we are not against the principle of providing more information on these companies.</p>	<p>We agree that credit data pertaining to owners of commercial entities who are natural persons is useful information that a credit agency may wish to collect. As your Proposal pointed out, the creditworthiness of the company and the persons who are owners are, very often in Hong Kong, intertwined. Naturally the requirements of the PD(P)O will have to be complied with.</p> <p>Disclosure to other regulators: it seems the intention is to provide information collected only to the HKMA and AIs. We believe the information collected may be of interest to other regulatory agencies as well. The SFC may have such an interest from time to time. Other organisations such as the Police, Inland Revenue Department etc, may also be interested. The HKMA may wish to consider provisions for passing on the information to certain other regulatory bodies.</p> <p>Disclosure to other parties: while we appreciate that certain information that is of a very specific and highly confidential nature cannot be released to the market generally, we would like to urge the CCRA to consider what information it can disseminate to the market generally. Assigned credit ratings, for instance, will be beneficial to brokers who are setting trading limits for clients. Should the CCRA extend its coverage to non-blue chip listed companies, any analysis/ratings would be of use to investors.</p>
OTHER ORGANISATIONS					

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The Association of Chartered Certified Accountants	The SME Sub-committee of the Association is supportive of the CCRA proposal.	--	A self-regulated CCRA jointly owned by the HKMA and HKAB would be more appropriate to Hong Kong's situation. We believe that banks will be one of the major users for CCRA. An association, which is owned by HKAB, might have the independence issue. The HKMA, which is an agent of the Government, will attract comments on Government intervention. In this regard, we believe that a joint ownership between the HKMA and HKAB can best share the expertise of the banks in running a credit agency and at the same time, the HKMA can play a monitoring role in the CCRA.	<p>The CCRA should collect both positive and negative credit information related to SMEs.</p> <p>In relation to the suggestion that the CCRA should disseminate information relating to the individual owners of commercial enterprises, we have concerns that there will be the problem of privacy and this will also contradict the spirit of corporate independence.</p>	There is no need to have legislative provisions to enforce the compulsory disclosure of customer data to the CCRA as we believe that there will be market forces encouraging corporate borrowers to disclose their credit information to the CCRA when they apply for a new loan or renewal of an existing facility. Too much legislation will only hurt Hong Kong's international impression as a free market.