

立法會
Legislative Council

LC Paper No. CB(1) 2565/01-02
(These minutes have been seen
by the Administration)

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Legislative Council
Panel on Financial Affairs

Minutes of meeting held on
Tuesday, 9 April 2002 at 10:45 am
in the Chamber of the Legislative Council Building

Members present : Hon Ambrose LAU Hon-chuen, GBS, JP (Chairman)
Hon Henry WU King-cheong, BBS (Deputy Chairman)
Hon James TIEN Pei-chun, GBS, JP
Hon Albert HO Chun-yan
Hon LEE Cheuk-yan
Hon Eric LI Ka-cheung, JP
Hon NG Leung-sing, JP
Hon James TO Kun-sun
Hon Bernard CHAN
Hon CHAN Kam-lam
Hon SIN Chung-kai
Hon Jasper TSANG Yok-sing, JP
Hon Emily LAU Wai-hing, JP
Hon MA Fung-kwok

Non-Panel member attending : Hon Fred LI Wah-ming, JP

Members absent : Dr Hon David LI Kwok-po, GBS, JP
Dr Hon Philip WONG Yu-hong

Public officers attending : For item IV

Mr Stephen IP
Secretary for Financial Services

Action

Miss Clara TANG
Principal Assistant Secretary for Financial Services

Mr David CARSE
Deputy Chief Executive
Hong Kong Monetary Authority

Mr Raymond LI
Executive Director (Banking Development)
Hong Kong Monetary Authority

For item V

Miss Clara TANG
Principal Assistant Secretary for Financial Services

Mr CHOI Yiu-kwan
Executive Director (Banking Supervision)
Hong Kong Monetary Authority

Mrs Nancy HUI
Principal Assistant Secretary for Home Affairs

**Attendance by
invitation**

: For item IV

Mr LO Chung-hing
Acting Chairman
Hong Kong Association of Banks
Deputy General Manager
Bank of China (Hong Kong) Ltd.

Mr Peter WONG
Vice-Chairman bank representative
Hong Kong Association of Banks
Director, Standard Chartered Bank

Mr Paul THURSTON
Vice-Chairman bank representative
Hong Kong Association of Banks
Assistant General Manager
Head of Personal Financial Services, HSBC

Ms Eva WONG
Secretary, Hong Kong Association of Banks

Action

Mr TAN Yoke-kong
Vice-Chairman
The DTC Association

Mr Geoffrey J MANSFIELD
Executive Committee Member
The DTC Association

Mr Pui-chong LUND
Association Secretary
The DTC Association

Mr Raymond TANG
Privacy Commissioner for Personal Data

Mr Tony LAM
Deputy Privacy Commissioner for Personal Data

Mr Eric PUN
Legal Director
Office of the Privacy Commissioner for Personal Data

Mrs CHAN WONG Shui
Chief Executive
Consumer Council

Mr Ron CAMERON
Head, Trade Practices Division
Consumer Council

For item V

Mrs Doreen CHAN
Director and Alternate Chief Executive Officer,
Head of Retail Banking
CITIC Ka Wah Bank Limited

Mr Kelvin LO
Director and Executive Vice President
CITIC Ka Wah Bank Limited

Ms Winnie SUNG
Assistant Legal Counsel
CITIC Ka Wah Bank Limited

Mr Charles KINSLEY
Senior Tax Manager, KPMG

Action

Ms Amy LO
Partner, Clifford Chance

Mr Rolfe HAYDEN
Senior Associate, Clifford Chance

Clerk in attendance : Ms Anita SIT
Chief Assistant Secretary (1)6

Staff in attendance : Mr WONG Tin-yau, Anthony
Senior Assistant Secretary (1)8

I Confirmation of minutes of meeting and matters arising
LC Paper No. CB(1)1220/01-02 - Minutes of meeting on 7 January 2002

The minutes of the meeting held on 7 January 2002 were confirmed.

II Information paper issued since last meeting
LC Paper No. CB(1)1274/01-02 - Leaflets on the features and services available from the Investor Resources Centre of the Securities and Futures Commission (SFC) provided by the SFC

LC Paper No. CB(1)1390/01-02 - Second consultation paper on deposit insurance with the relevant press release provided by Hong Kong Monetary Authority (HKMA)

2. Members noted the above information papers issued since last meeting.

III Date and items for discussion for next meeting
LC Paper No. CB(1)1368/01-02(01) - List of outstanding items for discussion

LC Paper No. CB(1)1368/01-02(02) - List of follow-up actions

3. The Chairman advised that the next meeting was scheduled for 6 May 2002 and consulted members on the following items for discussion-

Action

- (a) Briefing by the Chief Executive of the Hong Kong Monetary Authority on the work of the HKMA;
- (b) Monitoring of the financial position of authorized insurers in Hong Kong and the compensation arrangements for insurance policy holders; and
- (c) Replacement of Government Financial Management Information System.

Members noted that item (b) was proposed for discussion by Mr James TIEN and item (c) was proposed by the Finance Bureau and was related to a funding proposal. Members agreed to discuss the above items at the Panel meeting on 6 May 2002, and to advance the starting time of the meeting to 10:00 am to allow adequate time for discussion.

IV Proposal on sharing of positive consumer credit data

LC Paper No. CB(1)1368/01-02(03) - Background brief prepared by the LegCo Secretariat

LC Paper No. CB(1)1368/01-02(04) - Paper on "Sharing of positive consumer credit data" provided by the Office of the Privacy Commissioner for Personal Data

LC Paper No. CB(1)1396/01-02(01) - Paper on the scope of positive consumer credit data proposed to be shared by financial institutions provided by the Hong Kong Association of Banks

LC Paper No. CB(1)1408/01-02(01) - Paper provided by Consumer Council

LC Paper No. CB(1)1408/01-02(02) - Paper provided by the Hong Kong Monetary Authority

LC Paper No. CB(1)1431/01-02(01) - Submission from a member of the public

4. The Chairman welcomed representatives of the Administration including HKMA, representatives of the Hong Kong Association of Banks (HKAB), the DTC Association (DTC), the Office of the Privacy Commissioner for Personal Data (PCO), and the Consumer Council (CC). At the Chairman's

Action

invitation, the representatives presented the views of their organizations on the proposal on the sharing of positive consumer credit data among credit providers.

Presentation by the Administration

5. The Deputy Chief Executive of the Hong Kong Monetary Authority (DCE/HKMA) highlighted the following points in his presentation-

- (a) The availability of positive information on borrowers' overall indebtedness would put credit providers in a better position to ascertain the credit-worthiness of their clients, and prevent borrowers who were over-extended due to multiple-indebtedness to take on more credit facilities than they could repay. In helping to improve the bad debt situation, the sharing of positive consumer credit information would also facilitate credit providers to offer cheaper credit to credit-worthy borrowers;
- (b) The sharing of positive consumer credit data would not relieve authorized institutions from the obligation to review their lending policies and practices on an on-going basis to ensure proper management of their risk exposure;
- (c) The sharing of positive consumer credit data was common in the credit provision markets of other modern economies such as the United Kingdom (UK) and the United States (US). In Asia, Shanghai had launched a comprehensive credit bureau and the Mainland authorities were planning to establish a centralized credit bureau for the entire country. Singapore also intended to establish a system for the sharing of comprehensive consumer credit data in September this year. Hong Kong as a modern consumer credit market and international financial centre, should seriously consider putting in place a similar measure, especially in the light of rising bankruptcies and bad debts; and
- (d) HKMA was aware of the concerns of some LegCo members and members of the public with personal data privacy in respect of the proposal. HKMA was of the view that a balance should be struck between sharing positive consumer credit data and protecting personal data privacy. In this regard, HKMA would work closely with PCO to ensure that such a balance would be achieved.

6. The Secretary for Financial Services (SFS) made the following points-

- (a) According to the Official Receiver's Office, there were 1 790 cases of personal bankruptcies in March 2002, and 4 041 such cases in the first quarter of 2002. Most of these bankruptcy cases were related to consumer loans and credit cards. These figures

Action

reflected a marked deterioration of the bankruptcy situation. The proposal to share positive consumer credit data as explained in the Administration's information paper would help improve the situation.

- (b) With only the aid of negative consumer credit data, credit providers were unable to detect whether a borrower had built up significant amounts of debt before suddenly defaulting and going into bankruptcy. In the light of the above, credit providers including banks had come to the consensus that to improve the bad debt and bankruptcy situation, they should be able to share positive consumer credit data which included the number of facilities held by a customer and outstanding amounts on such facilities and the overall credit history of borrowers.
- (c) The Administration was aware of the concern with the issue of personal data privacy arising from the proposal. Under the proposal of the banking industry, the credit data collected would be used solely for the purpose of credit evaluation. The Administration would work out the details with the banking industry to ensure that a satisfactory system would be put in place.

Presentation by the HKAB

7. Mr LO Chung-hing, The Acting Chairman of HKAB, highlighted the following points in his presentation-

- (a) The current scope of consumer credit data available to banks was limited, and inadequate to put the latter in a position to ascertain if a borrower had multiple indebtedness. According to a study conducted by the consultant McKinsey and Company Limited in 2001, in Hong Kong, borrowers who declared bankruptcy on average borrowed from 12 financial institutions and carried debt amounts of up to 55 times their monthly salary, compared to 21 times in the US. The stark difference reflected that US banks, being able to share positive consumer data, were in a better position to assess the credit worthiness of their clients and lower the risk of bad debt and bankruptcies. The industry bodies including the HKAB, the DTC Association, the HKSAR Licensed Money Lenders Association and the Finance Houses Association of Hong Kong therefore supported lifting the current limitations on consumer credit data sharing to include positive consumer credit data. Such a measure would mitigate the problems of consumer over-indebtedness over the long term, offer credit-worthy individuals easier and cheaper access to credit, and in turn contribute to reviving the economy.

Action

- (b) The US, the UK and Canada which prided themselves on the protection of individuals' interests had long implemented the measure to share consumer credit data among credit providers, and there had not been jeopardy of personal data privacy. In Hong Kong, the Code of Practice on Consumer Credit Data and the Code of Banking Practice provided statutory and non-statutory guidelines on the use of personal data by credit providers respectively. The banking industry would work closely with PCO to ensure that personal privacy would continue to be adequately protected if the proposal to share positive consumer credit data among credit providers was implemented.

Presentation by the DTC Association

8. Mr Geoffrey J MANSFIELD, the Executive Committee Member of the DTC Association, said that the DTC Association supported the views of HKMA. He highlighted that the proposal would enable banks to make informed decisions on credit provision, and provide cheaper credit to credit-worthy individuals who formed the majority of borrowers. "Marginalized" individuals, who were borrowers with lower or variable income, would also benefit from the measure as lending institutions would be able to assess the credit worthiness of these individuals and provide them with the appropriate amount of credit.

Presentation by PCO

9. Mr Raymond TANG, the Privacy Commissioner for Personal Data, said that the Personal Data (Privacy) Ordinance (Cap. 486) (the Ordinance) provided comprehensive protection for personal data privacy. The Ordinance regulated the collection, retention, security and use of personal data in both the public and private sectors. One of the major considerations of the PCO in respect of the proposal to share positive consumer credit data was whether a balance could be reached between the privacy rights of individuals and the broader public interest. He noted that there would be some form of trade-off between these factors, in that the sharing of individuals' consumer credit data by credit providers might improve the bad debt situation and stability of the banking system and general economy, while individuals' personal information relating to his/her financial circumstances that did not involve a failure to pay would then be subject to the scrutiny of credit providers. Under such considerations, PCO would have to ensure that the risk of "usage creep" arising from the richness of the data in the centralized credit reference database would be safeguarded against, such that data being misused for purposes other than the original purposes for collection would not occur. Another major consideration of PCO was whether the provision of such information by individuals should be made on a voluntary basis.

10. Mr TANG said that according to the Ordinance, PCO would be required to conduct public consultation if there were changes to the Code of Practice on

Action

Consumer Credit Data (the Code). Putting the proposal in place would necessitate changes to the Code, and PCO would be required to conduct a public consultation exercise in this regard.

Presentation by the Consumer Council

11. Mrs CHAN WONG Shui, Chief Executive of the Consumer Council, highlighted that -

- (a) CC noted that the considerable increase in the number of personal bankruptcies was due to economic downturn and consumers over-extending on credit. CC was concerned that this was also caused by some lending institutions using promotions and gifts to encourage borrowers to take on more credit by only paying the minimum payment requirement. These tactics to some extent had contributed to the problem of over-indebtedness of some consumers.
- (b) CC noted that the bulk of borrowers repaid on time and only a minority of borrowers defaulted or went bankrupt. CC was therefore concerned that mandatory sharing of positive consumer credit data by lending institutions might expose the majority of "good" borrowers to unnecessary detailed scrutiny. The personal data privacy of these borrowers should be protected under any system for the sharing of consumer credit data.
- (c) The Administration should explore alternatives to the proposal for the sharing of positive consumer credit data, such as expanding the scope of negative information to be shared to include data on borrowers whose outstanding credit amounts were near or at their maximum credit limit. Such negative data would help identify borrowers of a higher credit risk.
- (d) CC agreed with PCO in regard to balancing the trade-off between the privacy rights of the individual and the broader public interest. As a matter of principle, individuals should be able to gain easy access to, correct and up-date their personal data at minimum cost. More consultation and discussion with the public and relevant industry bodies would be required in this regard.

Discussion with members

Lending and marketing practices of banks

12. Mr Fred LI observed that apart from factors such as the economic downturn and unemployment, banks were also largely responsible for contributing to consumer over-indebtedness and bankruptcies. He observed that,

Action

induced by the lucrative consumer credit provision business, a large number of banks did not heed HKMA's caution to lend prudently, but continued to use gifts and promotional offers to encourage consumers to take on more credit, having little regard to the risk of over-indebtedness of these borrowers. Mr LI said that he had yet to be convinced that there were no other alternatives, such as improving the lending policies and practices of banks, in lieu of the sharing of positive consumer credit data to improve the consumer bad debt and bankruptcy situation.

13. S/FS replied that there might still be further room for improving the lending practices of banks to improve the bad debt and bankruptcy situation. To this end, HKMA would continue to monitor the lending practices of banks. However, without the access to positive consumer credit data, banks were unable to ascertain if a consumer had multiple loans with other lending institutions and the consumer's repayment history. The availability of such data would facilitate banks to make effective risk assessment and make prudent lending decisions.

14. Mr Peter WONG, Vice-Chairman bank representative of Hong Kong Association of Banks and DCE/HKMA shared the same view. DCE/HKMA said that the prudent granting of credit to borrowers by banks alone were ineffective for preventing multiple indebtedness, since without positive credit data, banks were unable to know that the same borrower had approached other banks for credit facilities. As such, banks were not in a position to accurately assess the credit worthiness of borrowers. Mr WONG added that with positive consumer credit data available, it would be unlikely that HKMA, as a regulator, would allow banks to continue to issue credit cards to consumers who were already over-extended.

15. Mr Fred LI said that while HKMA emphasized that credit providers in other jurisdictions such as the US and Canada commonly shared positive consumer credit data, it should also compare the promotional tactics employed by credit providers in Hong Kong with those employed by credit providers in other jurisdictions. DCE/HKMA considered that credit providers in other developed economies were if anything more aggressive than credit providers in Hong Kong. In fact, the credit card market in Hong Kong was dominated by large international banks, and as such their marketing tactics would be similar to those employed by the same banks in other jurisdictions.

Scope of consumer credit data to be shared among credit providers

16. Mr James TIEN said that Members of the Liberal Party supported in principle the proposal on sharing of positive consumer credit data for credit cards. Referring to the letter from HKAB (LC Paper No. CB(1)1396/01-02(01)), Mr TIEN said that he had reservations in regard to the proposed scope of credit data covering credit cards as well as secured and unsecured personal loans, to be shared among credit providers. He was concerned that the scope of data proposed to be shared might be over-extensive, and remarked that with such an

Action

approach, there might be the possibility that over time, the data of an individual shared among banks might be extended to include information such as individuals' salary, job stability etc. Additionally, Mr TIEN was concerned that if an individual defaulted on a loan with a particular credit provider, it might adversely affect that individual's continued entitlement to existing credit facilities with other credit providers.

17. Ms Eva WONG, the Secretary for HKAB, replied that industry bodies such as HKAB, the DTC Association, the HKSAR Licensed Money Lenders Association and the Finance Houses Association of Hong Kong had agreed that a comprehensive scope of credit information on individuals including data on credit cards, secured and unsecured personal loans being made available to credit providers would enable the latter to evaluate their credit risk in a comprehensive and prudent manner in granting credit to consumers. Ms WONG said that information on loan repayment history on the three types of loans aforementioned would be confined to the previous repayment period. Additionally, other information relating to age, employment status, salary etc. of individuals would not be reported to the credit reference agencies nor shown on the credit report under the banking industry's proposal.

18. Mr TIEN noted that many proprietors of small to medium enterprises often used their personal credit facilities to service loans for their businesses. He asked how information on such practices, if shared among credit providers, would affect these proprietors' application for further credit. Ms Eva WONG said that according to the current proposal, credit providers might enquire about the credit records in relation to the individual's application for credit as a personal individual. In regard to small to medium enterprises, there was a separate proposal on the establishment of a commercial credit reference agency, whereas the current proposal only concerned personal individuals, i.e. banking consumers.

Personal data privacy of individuals

19. Mr SIN Chung-kai noted that in the US and the UK, measures had been put in place recently to strengthen protection for the data privacy of consumers in the banking sector. He asked if the HKMA in putting forward the proposal to share positive consumer credit data among credit providers had drawn reference from those measures adopted in overseas jurisdictions for safeguarding personal data privacy.

20. Mr TO Kun-sun commented that there must be adequate protection for data privacy of individuals, and suggested that legislation should be developed to provide that law enforcement bodies such as the Independent Commission Against Corruption and the Inland Revenue Department etc. should not be given access to consumer credit data kept by lending institutions and credit reference agencies.

Action

21. Ms Emily LAU expressed her reservations on the proposal. She was concerned that the proposal might deprive individuals of their personal data privacy, and leave them exposed to unnecessary scrutiny by credit providers. Mr LEE Cheuk-yan shared the concern. Ms LAU further noted that there were various concerns from the public on the proposal, citing the statement in the information paper provided by PCO that "comments received by the PCO from the consumer community indicate a broad range of concerns over the proposal". Ms LAU stressed that since a number of concerns were still unresolved, the Panel should scrutinize the proposal in greater detail.

22. Mr Peter WONG said that from his experience working with the Credit Information Services Ltd. (CIS), a company which collected credit information of borrowers for the use of credit providers since the 1980s, the sharing of consumer credit data had not jeopardized the personal data privacy of individuals. He stressed that banks thrived on their integrity, and would not allow their integrity to be damaged by the mis-management of consumer credit data.

23. Mr Raymond TANG said that while it could not be said categorically that the provision of positive consumer credit data would necessarily improve the bankruptcy situation, the availability such data might help improve the situation by facilitating prudent risk management of banks. It would be however up to industry bodies to explore if there were other alternatives to tackle the bankruptcy and bad debt problems. If the sharing of positive consumer credit data among credit providers was subsequently found justified in the light of public interest, PCO would scrutinise the procedural and other related aspects to ensure that personal privacy would be safeguarded. In this regard, he suggested that a privacy audit could be put in place to ensure that the storage, use and management of the data complied with related legislation. He stressed that in any event, the Ordinance provided the fundamental safeguard for personal data privacy, in that if there was any breach of the legislation in respect of misusing personal data, the individual(s) to which the data belonged could seek compensation by way of civil litigation.

24. Regarding the measures to be put in place to protect the data privacy of individuals under the proposal, S/FS advised that the Code contained detailed provisions governing the collection, use, security, access and correction of consumer credit data. Further measures such as implementing an annual review on how the data had been used by credit providers might also be considered.

25. Mr LO Chung-hing said that banks thrived on their credibility and he therefore did not envisage that banks and their staff would handle client information in an irresponsible manner. He assured members that it had all along been a basic requirement on bank employees who had access to client information that they must manage and use client information in an appropriate and the strictest confidential manner. He added that improper management of such information would cause termination of employment.

Action

26. Mr Henry WU noted from the banking industry's proposal that all participating financial institutions would be allowed access to all positive data on all product types contributed by other FIs and use such data across all their products. He urged the authority/parties concerned to very clearly define the type of institutions that would be allowed access to credit data under the proposal.

Possible consequences of not sharing positive consumer credit data

27. Ms Emily LAU sought clarification on the statement "banking sources have suggested that unless the current situation is effectively addressed the impact could reduce Hong Kong's economic growth by as much as 1.7% by 2003" in the information paper provided by PCO. Mr Raymond TANG clarified that this piece of information had been taken from a newspaper reporting on the relevant projection by the banking industry. Mr Peter WONG supplemented that the projection was quoted from a consultancy report produced by McKinsey and Company. The projection was based on a range, with 1.7% being on the higher side of the range. The projection was based on the hypothetical scenario that the bankruptcy situation did not improve, generating repercussions that caused more stringent control of credit among banks and in turn dampening economic growth. Mr WONG added that currently bad debts were costing the banking industry about HK\$13 million a day. It would be unthinkable if the trend of bankruptcy and bad debts continued, and thus there was pressing urgency to allow banks to share positive consumer credit data so as to forestall the trend. SFS added that regardless of how accurate the projected figure of 1.7% was, it could not be disputed that the continuing rise in bad debts would increase the cost of credit, which would adversely affect Hong Kong's economy.

28. Mr Henry WU said that there were other factors apart from the lack of positive consumer credit data contributing to the current bad debt and bankruptcy situation. He however noted that in HKMA's information paper, it was conjectured that should the proposal to share positive consumer credit data among credit providers not be implemented, there would be dire consequences such as slow economic recovery, unemployment etc. Mr WU considered that such projections might be somewhat over-dramatized. He was not yet fully convinced on the necessity of putting in place the proposal.

29. DCE/HKMA opined that should credit providers continue to operate their business without adequate data to accurately evaluate their companies' and clients' credit risk, the outlook would certainly be adverse. He elaborated that the revenue channels of banks were not looking optimistic. The economic downturn had caused banks' lending to corporate and small businesses to diminish. As banks were financial intermediaries and in the business of lending, it was understandable that they would encourage consumers to take on more credit to generate more interest income. If the situation did not improve, banks

Action

would probably cut back on their investment, which would in turn contribute to unemployment and dampen economic recovery.

30. Mr TO kun-sun said that the availability of positive consumer credit data would bring changes to the market environment of the consumer credit provision business. While the banking business had not been encouraging in recent years, banks should review what would be an acceptable risk that they would be willing to take to generate profits under unfavourable economic conditions. He pointed out that banks might be willing to provide credit to borrowers who had already taken on multiple credit facilities notwithstanding the higher risk involved, as lending to these borrowers would generate interest income for banks. He therefore opined that the proposal of sharing positive consumer credit data per se would not help tackle the bad debts and bankruptcy problems.

31. Noting that it was likely that the bad debt situation would continue until proper measures to improve the situation had been put in place, Mr SIN Chung-kai asked what interim measures the Administration had planned to tackle the problem. DCE/HKMA replied that in the short term, banks might have to resort to tightening credit to prevent the bad debt situation from worsening. Such a measure, however, was not without negative effect on the economy. Banks could also make fuller use of consumer credit information currently available to assist their evaluation of clients' credit worthiness. Mr Geoffrey J MANSFIELD added that positive consumer credit data was more preventive in nature and would not solve the problem of rising bad debts in the short term.

Usage of consumer credit data currently available

32. Ms Emily LAU noted that according to Mr Raymond TANG, the use of credit data currently available by credit providers had been relatively low. She said that as such it would be difficult to justify incorporating positive consumer credit data to be shared among credit providers. She enquired about the reasons for the low usage of the current credit data available. DCE/HKMA responded that the relatively low usage of consumer credit data at present might be attributed to a number of reasons. Firstly, credit application data which did not contain information on the usage of credit had limited value for banks. Secondly, in the past banks had reported delinquent data inconsistently, varying from 90 to 120 days. Banks had already been requested by HKMA in September 2001 to supply standardized information on accounts delinquent for 60 days. It was expected that consistent reporting would increase usage of the data.

33. Mr Peter WONG said that he envisaged that the usage rate of positive consumer credit data would be high, based on his experience with CIS. Before the issuance of credit cards, banks would normally check the credit data and history of their clients in the data base of the CIS.

Action

Benefits of the proposal to consumers

34. Mr LEE Cheuk-yan maintained that the sharing of positive consumer credit data among credit providers would mean that some degree of personal data privacy of individuals would be sacrificed, and opined that any such sacrifice should be adequately compensated by direct benefits available to consumer individuals. For example, borrowers who repaid on time should be charged a lower interest rate to reward their timely re-payment.

35. Mr Peter WONG quoted the example of banks in the US, highlighting that with the aid of positive consumer credit data banks were able to lower the credit card interest rate from over 20% to over 10% for the "good" borrowers. Similarly, in Hong Kong, residential mortgage owners who were considered credit worthy clients enjoyed preferential rates. He remarked that the availability of adequate consumer credit data coupled with market forces would ensure that the 'good' customers would be rewarded with preferential rates.

36. Following Mr LEE Cheuk-yan's suggestion to reward 'good' borrowers, Mr CHAN Kam-lam sought CC's views in this regard. Mrs CHAN WONG-Shui said that while CC agreed such a reward scheme would be to the benefit of consumers, CC's main concern was the scope of consumer data to be shared in order for banks to be able to offer such rewards, and the implications on consumers' personal data privacy.

Choice of consumers not to disclosure personal credit data to other credit providers

37. Mr CHAN Kam-lam said that he supported the proposal to share positive consumer credit data among credit providers to help maintain the robustness of the banking sector. He suggested that the parties concerned should further examine whether the sharing of such data should require prior consent from individuals concerned.

38. Mr LEE Cheuk-yan also suggested that the public might feel more comfortable with the proposal if they were given the choice to opt out of disclosing their credit information to other credit providers when applying for new credit facilities. It would also help move public sentiment in favour of the proposal if the public could rest assured that there were adequate measures to ensure that the positive consumer credit data would only be used by credit providers for evaluating credit worthiness, and not for marketing purposes or other unauthorized uses.

39. Mr Peter WONG said that there were pros and cons to the above suggestion, which was nevertheless worth further consideration. Mr Raymond TANG, on the other hand, opined that the suggestion to offer individuals the option to opt out of providing their credit data was not a straightforward issue. While theoretically such an option might be provided to individuals applying for

Action

credit, in reality credit providers might have hesitation in granting credit to individuals who chose to withhold their credit information with other credit providers. Mr TANG said that the crux of the matter was rather if, under Mr LEE's suggestion, there would be adequate transparency to the individual in regard to the amount, purpose and intended usage of such information, such that they could make informed decisions as to whether they would be willing to provide such information.

Public consultation on proposed changes to the Code

40. Mr NG Leung-sing said that he understood that PCO would be receiving comments from the public either for or against the proposal. He sought elaboration on how PCO would evaluate the proposal in the light of public opinion. Mr Raymond TANG replied that he had already received a number of comments from the public on the proposal, some expressing concerns with individual data privacy under the proposal. PCO would study the proposal in the context of personal and public interest, and with regard to the consumer credit business and economic stability. PCO's challenge was to see if a balance could be struck between individual privacy rights and public interest, and whether our society was ready for a change in the consumer lending culture.

The way forward

41. In response to Ms Emily LAU's query as to how the proposal would be taken forward, DCE/HKMA replied that he understood that PCO would be discussing the proposal with related industry bodies. If PCO considered the proposal worth pursuing, it would develop a public consultation paper on the proposal. Mr James TO suggested and members agreed to keep in view the development and further discuss the subject when there were new developments.

V Private Member's Bill on the merger of CITIC Ka Wah Bank Limited with The Hong Kong Chinese Bank, Limited

LC Paper No. CB(1)1401/01-02(01) - Information note on the CITIC Ka Wah Bank Limited Merger Bill

LC Paper No. CB(1)1401/01-02(02) - Draft of the CITIC Ka Wah Bank Limited (Merger) Bill

LC Paper No. CB(1)1408/01-02(03) - Paper provided by the Administration

42. The Chairman welcomed the representatives of the Administration, CITIC Ka Wah Bank Limited, KPMG and Clifford Chance.

Action

43. The Chairman noted that the CITIC Ka Wah Bank Limited (Merger) Bill (the Bill) was sponsored by Dr David LI. As Dr LI was out of town, Mr NG Leung-sing introduced the Bill to members on his behalf at the Chairman's invitation. Mr NG said that the Bill sought to transfer the undertaking of CITIC Ka Wah Bank Limited (CKWB) to The Hong Kong Chinese Bank Limited (HKCB), effecting a merger between the two banks.

44. At the Chairman's invitation, Mr Kevin LO, Director and Executive Vice President of the CITIC KA Wah Bank Limited and the Principal Assistant Secretary for Financial Services (PAS/FS) each in turn made a presentation on the proposed merger Bill to the Panel. The salient points of Mr LO's presentation were as follows-

- (i) The proposed Bill sought to provide for the merger of CKWB with its wholly-owned subsidiary HKCB. The objective of the merger was to allow CKWB to consolidate its banking business in HKCB, and to permit CKWB to become a financial holding company on the consequent revocation of its banking licence by the HKMA to become the CITIC International Financial Holdings Limited, which would be listed on the Stock Exchange of Hong Kong.
- (ii) Upon the merger, HKCB would focus on the key business areas of commercial and investment banking, asset management, and future business expansion.
- (iii) Issues related to personal data privacy arising from transfer of client data under the merger would be carefully handled to ensure compliance with the Personal Data (Privacy) Ordinance (Cap. 486). Additionally, the proposed Bill had been submitted to the Office of the Privacy Commissioner for Personal Data, which had reviewed and endorsed that the Bill complied with the said Ordinance.
- (iv) There was no significant pressure on either CKWB or HKCB to lay-off staff as a result of the merger, and part of the staff would be retained as employees of the financial holding company.

45. The Principal Assistant Secretary for Financial Services said that the Administration supported the proposed merger, in that it was consistent with the government's policy to promote stability in the banking sector.

Discussion with members

Data privacy issues related to mergers

Action

46. Mr TO Kun-sun said that on previous occasions when the Panel discussed similar bank merger bills, the Administration had undertaken to introduce statutory provisions in the Personal Data (Privacy) Ordinance regarding the transfer of personal data in acquisition/merger activities. There was however no indication when such an amendment bill would be introduced to LegCo to address the issue. The Principal Assistant Secretary for Home Affairs said that the Administration was reviewing the Personal Data (Privacy) Ordinance (Cap. 486) and the aspect mentioned by Mr TO was covered in the review. It was hoped that proposed amendments to the Ordinance could be introduced to LegCo for scrutiny in the 2002-03 legislative session.

47. Mr LEE Cheuk-yan noted that in Mr LO's presentation it was said that there was not significant pressure to lay off staff as a result of the merger between CKWB and HKCB. He sought clarification as to what the planned arrangements were in regard to the staff of both entities after the merger. Mrs Doreen CHAN, Director and Alternate Chief Executive Officer, CKWB replied that there was a total of 1 490 staff from CKWB and HKCB. The staff would be deployed such that the above number of staff would be maintained as far as possible. She elaborated that as the ratio of the total number of staff to the total asset value of the merged entity would be on a par with banks of a similar size, there were no plans to lay off any staff.

Transfer and vesting of undertaking

48. Mr TO Kun-sun highlighted that CKWB being a listed company should protect its shareholders with regard to any contract or document, governed otherwise than by the laws of Hong Kong, which might prohibit the transfer and vesting of the undertaking of CKWB. He was in particular concerned that any contracts or documents governed by a law of a foreign jurisdiction would not pass from CKWB to HKCB by virtue of the Bill and, if such contract or document included a prohibition on merger clause, then section 12 of the draft Bill (which seeks to waive such prohibitions) could not be relied upon. He sought clarification in this regard.

49. Miss Winnie SUNG, Assistant Legal Counsel, CKWB replied that due diligence was being conducted on this particular aspect of the Bill. If contracts had been signed in a foreign jurisdiction such that the transfer and vesting of the undertaking of CKWB would be prevented, and if such contracts were not governed by Hong Kong law, then further discussions would have to be made with the relevant legal counsel in the foreign jurisdiction concerned to see how the transfer would be expedited.

50. Mr TO requested the LegCo Secretariat to follow up on this issue with the legal representative of CKWB and HKCB and incorporate further information on this issue in the report to the House Committee on this Bill.

Action

(*Post meeting note:* ALA1 sent a letter dated 9 April 2002, to Clifford Chance, the legal representative of CKWB and HKCB, to seek clarification on the above and related issues in the draft Bill. ALA1's letter and Clifford Chance's reply letter of 16 April 2002 have been circulated to members vide LC Paper No. CB(1)1539/01-02 dated 19 April 2002).

VI Any other business

Governance of HKMA

51. Ms Emily LAU noted that as a follow-up to the discussion of the above subject at the Panel meeting on 5 November 2001, the Secretariat had prepared a background brief on "Purchase and fitting-out of government office" which revealed that past cases of office purchases by the Administration were approved by the Finance Committee. She considered it problematic that HKMA, being a part of the Administration, could be exempted from seeking approval from the Finance Committee for the purchase of the new office premises. She also noted that there were other areas of HKMA such as staff remuneration which did not appear to be subject to similar scrutiny and governance as other departments of the Administration. Ms LAU therefore suggested that the Panel should discuss the issue of governance of HKMA sometime in June or July 2002.

52. The Chairman advised that for the June 2002 Panel meeting, it was already planned that FS would conduct a regular briefing for the Panel on the overall economic situation of Hong Kong, and that the subject of consumer protection in the banking industry would be discussed. Members agreed to the Chairman's suggestion of discussing the subject of the governance of HKMA in July 2002. To facilitate discussion, Ms LAU requested the Research and Library Services Division of the LegCo Secretariat to prepare a research paper comparing the governance of HKMA and other government departments with analyses of the reasons/justifications for the differences. She also requested that an invitation for the submission of views on the subject be put on the LegCo website.

(*Post meeting note:* An invitation for the submission of views on the governance of the HKMA has been put on the LegCo website on 19 April 2002 and a letter dated 19 April 2002 was also sent to the 18 District Councils inviting their views on the subject.)

53. There being no other business, the meeting ended at 1:00 pm.