

Personal Data (Privacy) Ordinance Code of Practice on Consumer Credit Data

The Sharing of Positive Credit Data

Proposed Provisions on Consumer Credit Data Protection

Consultation Document



香港個人資料私隱專員公署
Office of the Privacy Commissioner
for Personal Data, Hong Kong

This consultation document is issued by the Office of the Privacy Commissioner for Personal Data for the purpose of public consultation in accordance with section 12(9) of the Personal Data (Privacy) Ordinance (Cap.486).

If you wish to make a submission in response to this document, please do so in writing in Chinese or English to the following address:

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Submissions should be made on or before 25 October 2002

Please mark your submission: **The Sharing of Positive Credit Data**. If the submission is made by E-mail, please type **The Sharing of Positive Credit Data** in the subject field.

The Office would like, either in discussion with others or any subsequent report, whether privately or publicly, to be able to attribute comments submitted in response to the consultation document. Any wish to remain anonymous in relation to all or part of a response will be respected, but if no such wish is indicated, it will be assumed that the party making the response may be named.

Any personal data provided with a submission will only be used for the purpose of carrying out this public consultation exercise, including the preparation of amendments to the existing Code of Practice on Consumer Credit Data and any explanatory document or commentary in relation to it.

You have rights of access and correction with respect to your personal data. If you wish to exercise these rights with respect to personal data held by us, please contact the Administration and Finance Manager of the Office of the Privacy Commissioner for Personal Data at the above address.

*Office of the Privacy Commissioner for Personal Data
August 2002*

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Part I – Introduction

1.1 The Personal Data (Privacy) Ordinance (“the Ordinance”) provides for comprehensive control of the collection, holding, processing, security and use of personal data. The purpose of this document is to consult with interested parties, and the public in general, on draft proposals to safeguard consumer credit data in relation to the sharing of positive credit data. Views are also sought on the additional draft provisions to the existing Code of Practice on Consumer Credit Data (“the Code”).

1.2 The Privacy Commissioner for Personal Data (“the Privacy Commissioner”) is responsible under the Ordinance for promoting, monitoring and supervising compliance with its provisions. The Privacy Commissioner may, for the purpose of providing practical guidance in respect of any of the requirements of the Ordinance, approve and issue codes of practice (Section 12(1) refers). Before approving a code of practice, or amendments to an existing code, the Privacy Commissioner is required to consult such representative bodies of data users to which the code will apply and other interested persons as he thinks fit (Section 12(9) refers).

1.3 A contravention of a code of practice approved by the Privacy Commissioner does not of itself constitute a breach of the Ordinance. However, such a contravention may be used as evidence against the person concerned in proceedings before a magistrate, court, or the Administrative Appeals Board (Section 13(2) refers), as well as in any case before the Privacy Commissioner.

Considerations for Public Consultation

1.4 The current provisions of the Code provide a framework for the sharing of credit data, albeit principally negative information. It has been drafted with relevant data protection safeguards and restrictions to protect the personal data privacy interests of consumers. A proposal to broaden the scope of credit data sharing would be an extension of that framework and, if allowed, would require an equivalent level of data protection safeguards and restrictions to be put in place to ensure the protection of the consumers’ privacy interests. Those data protection safeguards and restrictions would serve to ensure compliance with the provisions of the Ordinance.

1.5 The proposal to share the positive credit data of consumers among credit providers has been suggested by the financial industry as a measure that would contribute towards alleviating the problems of growing consumer indebtedness and personal bankruptcy. The Privacy Commissioner acknowledges that there are privacy-related issues arising from the proposal

that are of concern to consumers. The Commissioner is cognizant of these issues and the concerns associated with them.

1.6 In considering the matter, the Privacy Commissioner takes note of the allegation that the aggressive marketing conduct of the industry may have contributed to the current unsatisfactory state of affairs in the industry. However, the marketing practices so far adopted by the industry should not become a barrier to accessing a borrower's credit information if such access or use of the information is relevant and not excessive for a legitimate purpose directly related to the assessment of the borrower's credit position. Disapproval of these marketing practices should not be a reason for rejecting the proposal to share positive credit information if that sharing accords with the public interest. From statistics compiled by the industry and relevant authorities, the Privacy Commissioner shares the view that the problem of rising levels of consumer debt and bankruptcy is a real problem and a serious threat to Hong Kong's economy.

1.7 The Privacy Commissioner further acknowledges that consumer's credit information, such as overall credit exposure and repayment history, are data that are personal and private to the individual concerned. However, in a lending and borrowing relationship, the borrower has an equal share of responsibility and obligation to provide relevant information to enable prudent lending. At the very least, the borrower's credit information should not be shielded simply on the grounds that the data are private. The provision is whether such information is necessary but not excessive for the purpose of use and, if so, what safeguards need to be put in place to ensure data privacy.

1.8 In deciding to proceed with the consultation, the Privacy Commissioner has taken into account various views expressed by the industry and consumers, and considered three factors that are central to a solution that strikes a balance between the public interest and the data privacy interest of consumers, namely:

- ***The broader public interest.*** The issues in question need to be placed in a broader context than that of the prevailing trends in bankruptcy and consumer debt. In essence the public interest is best served if the proposed measures are instrumental in developing a healthy lending environment that preserves the stability of Hong Kong's financial markets and the economy more generally.
- ***The relevance of the new credit data to be used in credit assessment.*** The collection of the new credit data to be shared among credit providers should not be excessive in relation to the purpose of credit assessment. The fundamental principle applied to any situation in which personal data is collected can be simply stated: the collection of personal data should be kept to the minimum necessary for the purpose(s) for

which they are to be used. In the present context, the relevance of the data needs to be assessed in terms of its value and contribution to the public interest.

- ***The individual's rights to data privacy.*** The consumer, being the subject of the credit data concerned, should have control over the way in which such data are to be shared with others. Informed choice should be made available to the consumer when applying for new credit. Consent to the use of his credit data, and the continued use of such data for future credit reference, is wholly desirable. This consent-based approach upholds the individual's rights to control his/her own data. This choice should also be extended to the consumer when the lending relationship is terminated upon full settlement of the credit account.

1.9 Having considered these factors, the Privacy Commissioner sets out in this consultation document the key issues arising from the industry's proposal, their ramifications and a set of draft proposals to address the issues that impact upon personal data privacy.

Part II – Developments Leading to the Proposed Revisions

Background

2.1 Over the past few years, changes in the domestic and external economic environment have adversely impacted upon the financial services sector of the Hong Kong economy. The situation facing banks, credit card issuers and other licensed bodies providing lines of credit is that the default rate on loans and credit card spending has risen significantly. This trend has degenerated so rapidly that banks and credit providers have been left with an acute problem that, they maintain, cannot be readily resolved without a change in procedures relating to the collection, use and sharing of consumer credit information.

2.2 The severity of the problem and trends in consumer debt can be derived from delinquency statistics prepared by a major credit reference agency in Hong Kong, and bankruptcy statistics published by the Official Receiver's Office.

Figure 1 – Statistics on Delinquency Records

No of loans carried by single consumer & being reported delinquent	No of Consumers Being Reported Delinquent										2H 2001 vs 1H 2002
	1H 1998 Individual	2H 1998 Individual	1H 1999 Individual	2H 1999 Individual	1H 2000 Individual	2H 2000 Individual	1H 2001 Individual	2H 2001 Individual	1H 2002 Individual		
1	10,451	14,180	18,400	7,499	4,957	4,589	7,099	14,511	55,257	281%	
2	2,411	4,521	7,954	3,052	2,177	1,957	2,613	5,982	14,220	138%	
3	1,220	2,306	4,699	1,647	1,405	1,420	1,547	3,890	6,212	60%	
4	654	1,177	3,039	1,317	1,010	874	1,104	2,696	3,911	45%	
5	311	721	2,089	975	765	698	881	1,980	3,060	55%	
6	175	407	1,470	670	614	592	664	1,609	2,394	49%	
7	125	250	1,071	602	517	486	496	1,386	1,938	40%	
8	70	200	743	471	370	385	476	1,111	1,563	41%	
9 or Above	156	471	3,008	2,333	1,870	2,010	2,269	5,950	7,327	23%	
Total no of consumers being reported delinquent	15,573	24,333	42,473	18,566	13,685	13,011	17,149	39,115	95,882	145%	
Total no of delinquent records being reported	26,946	45,494	132,947	73,597	58,145	58,792	69,208	105,815	275,196	160%	
Average no of delinquent records per consumer	1.73	1.88	3.13	3.96	4.25	4.52	4.04	2.71	2.87		

Source: Credit Information Services Limited, 30 July 2002

2.3 Figure 1 shows that the number of loans carried by a single consumer being reported as delinquent have increased appreciably between 1998 and 2001. The statistics reveal that delinquency rose from a total of 105,815 cases during the second half of 2001 to 275,196 by the end of the first half of 2002; an increase of 160%. In addition, the total number of consumers reported as delinquent rose from 39,115 in the second half of 2001 to 95,882 in the first half of 2002. This represents an increase of 145%. For consumers holding only one or two new delinquent accounts, the increase was 281% and 138% respectively. The corresponding percentage for consumers with three or more delinquent accounts was 20% to 60%. This may suggest that the worsening economic situation is now broadly affecting the repayment ability of general borrowers, not just debt-laden individuals.

2.4 Further indications of the severity of the situation can be gathered from the bankruptcy statistics shown in Figure 2. Based on these figures, it is observed that the number of bankruptcy orders increased ten-fold from 893 in 1998 to 9,151 in 2001. The rising trend continued into the first 6 months of 2002, with 13,019 bankruptcy petitions presented and 10,173 orders granted. According to a recent report prepared by McKinsey & Co, a particular feature of bankruptcy in Hong Kong is the extreme and multiple indebtedness of those who go bankrupt. The average bankrupt in Hong Kong has borrowed from 12 financial institutions and has incurred total indebtedness equivalent to 55 times his or her monthly income (compared with 21 times in the US)¹.

Figure 2 – Statistics on Bankruptcy Petitions and Orders

Year	Month	Petitions presented by			Bankruptcy Orders made on		
		Debtors	Creditors	Total	Debtors' Petitions	Creditors' Petitions	Total
1998		492	870	1362	305	588	893
1999		2721	1155	3876	2306	765	3071
2000		3810	1677	5487	3387	1219	4606
2001		11089	2097	13186	7389	1762	9151
2002	1	1976	145	2121	965	286	1251
	2	1495	121	1616	872	128	1000
	3	2101	185	2286	1758	32	1790
	4	2036	187	2223	1653	116	1769
	5	2297	142	2439	2179	115	2294
	6	2197	137	2334	1905	164	2069
Sub-total		12102	917	13019	9332	841	10173

Source: Figures published on website of Official Receiver's Office

2.5 The significance of these statistics, and their rapid growth over a short period of time, signal the need to redress the credit management situation

¹ Report prepared by McKinsey & Co (November 2001) – based on data from a sample of 563 bankrupts provided by the Official Receiver's Office for 2000.

with some urgency. Indeed, some observers are of the view that unless the pressing nature of the current situation is fully appreciated and addressed the knock-on effects could be measured in terms of a negative contribution to economic growth. The real difficulty though is in determining how best to resolve the issues that have emerged.

Impact on the Banking and Financial Sector

2.6 The 2001 Annual Report of the Hong Kong Monetary Authority² (“the HKMA”) is probably the most representative review of the banking and financial sector in Hong Kong. That report indicates that the credit card business was characterized by aggressive new account marketing over the course of the year. However, this period of fierce competition between the banks coincided with the economic downturn. In turn this reflected in a sharp increase in personal bankruptcies and the incidence of delinquency that directly contributed to higher charge-off ratios. The delinquency ratio³ stood at 1.28% at the end of 2001 compared with 0.76% at the end of 2000. The annualized charge-off ratio⁴ was 5.47% compared with 3.88% for 2000. However, in the first quarter of 2002 the charge-off ratio rose dramatically and is currently reported as high as 9%. It is statistics such as these that led the HKMA to issue a circular in February 2002 asking the financial sector to critically review their policies and controls governing consumer credit lending. The HKMA’s position is that a number of measures can be taken to address the problem including a greater sharing of consumer credit data among credit providers.

2.7 In its submission to the meeting of the Financial Affairs Panel of the Legislative Council on 9 April 2002, the HKMA made the following representation:

“There are a number of measures that need to be taken to deal with these growing problems. The banks themselves have a responsibility to ensure that they lend in a prudent manner and, in particular, do not issue credit cards indiscriminately. From the HKMA’s recent examination of the lending policies and procedures of a number of banks, it appears that these are generally satisfactory, though there is scope for improvement in individual cases. In fact, a number of banks have tightened or enhanced their credit controls in the light of growing delinquencies. However, there are limits to what individual banks can do, in the absence of full sharing of consumer credit data, to

² The Hong Kong Monetary Authority, 2001 Annual Report, p43.

³ The delinquency ratio is measured by the total amount of credit card receivables overdue for more than 90 days, and remaining unpaid at the last day of the reporting month, as a percentage of total credit card receivables.

⁴ The charge-off ratio refers to the total amount of credit card receivables written off during a period as a percentage of the total credit card receivables at the end of that period. The charge-off policy may vary among authorized institutions. To facilitate comparison among authorized institutions the charge-off ratio is annualised.

deal with the problem of multiple indebtedness. If a borrower can convince one bank that he is creditworthy, there is no reason why he cannot convince others and build up indebtedness from a number of banks, all of which are ignorant of the total extent of his borrowing.”

Previous Discussions on Measures to Tackle the Problems

2.8 The trend in rising bankruptcies and consumer debt, in particular credit card holders' failure to make credit card repayments, has also been the subject of concern among some Members of the Legislative Council. According to a briefing paper prepared by the Legislative Council Secretariat in March 2002⁵, Members had, on a number of occasions in Council meetings, enquired about the measures adopted to tackle the problem. There were also enquiries regarding whether credit reference agencies would be allowed to collect more comprehensive personal credit information for credit card issuers to access when vetting card applications. Queries were also raised about the assistance to be extended to banks in assessing the repayment ability of loan applicants when scrutinizing applications; the purpose being to curb the sharp rise in bankruptcy cases and safeguard the overall credit rating of banks in Hong Kong.

2.9 The issues relating to consumer credit data sharing were also matters discussed in the consultation paper titled “The regulation of debt collection practices” published in July 2000 by the Law Reform Commission's Debt Collection Sub-committee⁶. The paper made the following observations:

“During the course of the Sub-committee's deliberation, it has been suggested that over-aggressive lending and the proliferation of credit cards and other forms of credit have contributed towards the defaults by many debtors, which have, in turn, led to abusive debt collection activities ... According to statistics compiled by CIS, the average number of delinquent accounts held by individual consumers rose from 1.37 to 3.96 between the 2nd half of 1997 and that of 1999, representing an increase of almost two times. While such increases may be attributed partly to the economic downturn, it is likely that the problem can be alleviated if lenders can make more informed decisions on individual credit applications. Suggestions have been made that the rules should be slightly relaxed so that credit reference agencies in Hong Kong would have access to information on an individual's aggregate active loans on hand.”

⁵ Background brief on Proposal on Sharing of Positive Consumer Credit Data, Legislative Council Secretariat, 25 March 2002.

⁶ The Sub-committee was appointed in November 1998 to consider the adequacy of the existing law governing the way in which creditors, debt collection agencies and debt collectors collect debts in Hong Kong without recourse to the court system, and to recommend such changes in the law as may be thought appropriate.

2.10 The paper went on to recommend that:

“The relevant authorities should review the existing limitations imposed on the collection and use of certain positive credit data from the angle of alleviating bad debts and abusive debt collection practices, and to take into consideration the types of positive credit data available to credit providers in other major financial centres. Efforts should also be made to increase participation in the sharing of information by increasing the type of information shared, as well as the categories of credit providers sharing information.”

2.11 The HKMA and the Hong Kong Association of Banks (“the HKAB”) have, for several months, been involved in discussions designed to produce a measured response to the high level of delinquent consumer debts and personal bankruptcy. These discussions have resulted in a set of proposals seeking to extend the scope of consumer credit data to be shared by credit providers. The arguments advanced by the industry are that access to, and the use of, positive credit data of borrowers would enable credit providers to better understand the total credit exposure of their clients. This information would also assist credit providers in making more informed decisions about current and future lending.

2.12 In January 2002, the Government announced that a high-level Roundtable Discussion⁷ was to be held on 15 January 2002 among industry representatives and government officials to discuss the measures to tackle the issues of consumer debt and bankruptcy. The discussions identified positive credit data sharing as one of the measures that would help address multiple indebtedness and bankruptcy. By way of follow up, the HKMA undertook to discuss the industry’s proposal with the Privacy Commissioner to see what the permitted scope of positive data sharing might be and how the Code could be amended to allow for this.

2.13 These discussions took place in April 2002 and resulted in a broad understanding of the overall scope and coverage of the proposed positive data-sharing environment. However, if there were to be any relaxation of the provisions of the current Code then any changes could only be made under the protection of safeguards which place explicit constraints on the collection, use and security of positive credit data by credit providers and the credit reference agency. A working group led by the Privacy Commissioner’s Office (“the PCO”) was set up in June 2002 to study the technical details of the industry’s proposals and to consider the safeguards that needed to be put in place if revisions to the existing Code were found to be necessary.

⁷ The discussions involved representatives of the Hong Kong Association of Banks, the Hong Kong Monetary Authority, the Financial Services Bureau, the Official Receiver’s Office, the Police and the Office of the Privacy Commissioner for Personal Data.

Part III – Current Credit Data Sharing Arrangements

The Code of Practice on Consumer Credit Data

3.1 At present, the sharing of consumer credit data through credit reference agencies is governed by the Code of Practice on Consumer Credit Data issued by the Privacy Commissioner pursuant to section 12 of the Personal Data (Privacy) Ordinance. The Code was first issued in February 1998 and took effect on 27 November of that year. Some revisions regarding data retention and disclosure were introduced in February 2002 and took effect on 1 March 2002 following a public consultation exercise conducted in May 2001.

3.2 The primary reason for promulgating this Code was the substantial expansion in credit provision by financial institutions which, in turn, was a response to consumer demand for credit. The rapid expansion of the credit industry in Hong Kong in the 1990s suggested to the PCO that there was a clear need to establish ground rules for consumer credit reference agencies because these agencies fell outside the scope of existing regulatory mechanisms. More significantly perhaps, consumers were often poorly informed of the role and operations of such agencies.

3.3 The Code is designed to provide practical guidance to data users in the handling of consumer credit data. It deals with collection, accuracy, use, security and access and correction issues as they relate to the personal data of individuals who are, or have been, applicants for consumer credit. The Code covers, on the one hand, credit reference agencies, and on the other hand, credit providers in their dealings with credit reference and debt collection agencies.

Types of data available for sharing

3.4 Negative credit data are data relating to a failure by individuals to meet their obligations with regard to a financial liability. For example, past defaults of an individual who fails to repay a loan. On the other hand, positive credit data generally refer to information relating to the financial circumstances of an individual that do not involve a failure to pay. For example, an individual's overall credit exposure and repayment pattern.

3.5 The Code largely restricts data sharing to negative credit data about an individual. Under the Code, a credit reference agency may collect from different credit providers credit data about an individual, incorporate them in the form of a credit report, and provide that report to a credit provider who has made an enquiry about the individual. Data collected from credit providers

include, amongst others, account default data⁸, credit application data⁹ and credit card loss data¹⁰. In addition, credit data relating to hire purchase or leasing arrangements about an individual are also allowed. Apart from information reported by credit providers, a credit reference agency may also collect information about an individual from official public records. For example, any legal action for recovery of a debt, judgements for monies owed, and any declaration or discharge of bankruptcy.

Restrictions on data access and use

3.6 Current provisions of the Code place restrictions on who can obtain access to an individual's credit file held by a credit reference agency. Only credit providers falling within the meaning as defined in the Code may obtain access to the credit data. These include (a) an authorized institution or its subsidiary¹¹ within the meaning of section 2 of the Banking Ordinance, (b) a licensed money lender under the Money Lenders Ordinance and, (c) a person whose business is that of providing finance for the acquisition of goods by way of leasing or hire purchase, such as finance houses. Real estate agents, employers, direct marketers and other retailers are prohibited from obtaining access.

3.7 The Code also limits the purposes for which a credit provider can use a credit report obtained from a credit reference agency. The use of the information is restricted to assessing applications for credit lodged with a credit provider and other legitimate activities involved with giving credit. For example, a review of existing credit facilities, renewal of those credit facilities, or where default has occurred. The use of the information for marketing purposes is not allowed.

3.8 In addition the Code establishes the ground rules for the retention and deletion of credit data held by the credit reference agency. The general provision is that the data may be held for 5 years for credit reporting (see also paragraphs 3.18 to 3.20) and scoring purposes by the credit reference agency. For example, any account default data may be retained for a period of up to 5 years after final settlement of the amount in default. However, there are certain exceptions. For example, no retention of the default data is allowed if full repayment of the amount in default occurs within 90 days of the date the default occurred, or before the sending of a demand notification by the credit provider to the individual in default; or within 30 days of the date when such notification was sent by the credit provider.

⁸ Account default data relate to information that an account, for which the individual is holder or guarantor, is in default.

⁹ Credit application data relate to information that the individual has made an application for consumer credit.

¹⁰ Credit card loss data relate to the financial loss arising from unauthorized transactions through the use of lost cards.

¹¹ Authorized institutions include licensed banks, restricted licence banks and deposit-taking companies

Data security and safeguards

3.9 Under the Code, a credit reference agency is required to take appropriate measures to safeguard the security of consumer credit data and protect them from unauthorized access or change. These measures include a requirement on the part of the credit reference agency to enter into a formal written agreement with subscribers (credit providers) that specifies in detail the controls and procedures to be applied when they seek access to the agency's database.

3.10 There are also controls to ensure that only data to which a subscriber is entitled are released, as well as a requirement to monitor and review on a regular basis usage of the credit database system so as to detect any unusual or irregular patterns of access or use. Furthermore, a credit reference agency is required to maintain a log of all incidents involving a proven or suspected breach of security, which includes an indication of the records affected, an explanation of the circumstances and action taken.

Consumers' rights of access and correction

3.11 Credit providers are required under the Code to notify customers that their personal data may be supplied to a credit reference agency and, in the event of default, to a debt collection agency. The notification is usually given in the terms and conditions of a credit agreement or as a separate notice accompanying a credit application.

3.12 The Code also requires a credit provider, who has considered a credit report in connection with a credit application, to give notice to the customer of its decision upon the application of the fact that a credit report has been considered. The credit provider should also inform the customer how to contact the credit reference agency that provided the credit report. This would ensure that customers, who have been refused credit by a credit provider to whom a credit report has been referenced, are informed of their rights to make a data access or correction request on the data concerned.

3.13 The provision of this notification in no way compromises the consumers' right to make an access to their files kept by the credit reference agency and to correct any wrong information they may contain. If a consumer alleges any inaccuracy in his data reported by a credit provider, and requests correction of such data, the credit reference agency should seek verification from the credit provider. In the absence of any written confirmation or correction of the disputed data within 40 days of the date of the correction request, the relevant data should, upon the expiry of the 40 days, be deleted or otherwise amended as requested. This would help ensure that consumer credit data held by the credit reference agency are accurate and complete.

Consumer Reference Service in Hong Kong

3.14 Credit Information Services Ltd. (“CIS”) is the main consumer credit reference agency operating in Hong Kong. The business of a credit reference agency is to compile a central credit database using the data supplied to it by its member subscribers, and then supply the processed credit data to its members in response to their requests pursuant to specific credit applications they have received.

3.15 CIS was formed with the co-operation of finance houses and banks¹². In the late 1980’s, with the development of unsecured credit, e.g. the credit card business, the CIS database was expanded to include negative default data. Major credit card companies and banks joined CIS as members. At present, CIS has 95 members including banks and financial institutions. Members share credit information they provide to CIS for the purposes of assessing an individual’s credit application, conducting reviews or processing renewal of the credit facilities of customers.

3.16 The Code limits the amount of collectible data by CIS to mainly negative credit data and only allows sharing of negative data and certain restricted types of positive data, such as credit application data and credit card loss data¹³. When making lending decisions, each credit provider has its own set of rules for interpreting information shared and presented in a credit report available from CIS. Individual credit providers do perform their own credit scoring based upon the history of their customers’ borrowing behaviour. However, this information is for internal consumption only.

3.17 Credit scoring by CIS was made possible under the last revision of the Code. The purpose is to provide credit providers with another set of reference data, namely, a bureau score, when making credit assessments. A bureau score is a statistically validated risk indicator based on past credit data held by a credit reference agency. It is an estimate of default probability rather than a measure of certainty. Scoring techniques involve the use of statistics to summarize past experience so that it can be used consistently when making future decisions. According to CIS, the development of the bureau scoring model has not been completed and the bureau score may not be available to credit providers until October 2002.

¹² CIS was established in 1982 by 12 finance houses, which were the major players in the vehicle and equipment financing market. At that time, serious frauds were committed in relation to collateral financing and the need was seen for a centralized database to be created in order to curb double or multiple financing. Reference: <http://www.cishk.com>.

¹³ The disclosure of data by banks to CIS is not mandatory. The willingness or otherwise of banks to share their customers’ data with others, although such sharing is permissible under the Code, may be influenced by commercial considerations. Some banks do not report any credit application data; sharing being limited to information on account defaults that are 120 days overdue. Following a supervisory guidance issued by the HKMA, banks are now reporting account defaults that are 60 days overdue.

3.18 A credit report, which is disclosed to a credit provider who has made a credit check on an individual, may include data reportable by other credit providers. It may disclose information relating to account defaults and arrears, such as the date when default occurred, the type of account and the amount in default and, if it is different, the total amount owing on the account. In the case of a hire purchase account, this may be information relating to a vehicle or equipment that is subject to a hire purchase or leasing arrangement.

3.19 A credit report may also disclose information obtained from official public records such as legal action for recovery of a debt or a declaration of bankruptcy. The report will indicate a “matched record” if the English name and address of the individual match those data held on file. Otherwise, the report will show an “Unmatched record” if only the English name of the individual matches the data held on file. For “Name-Matched Public Records”, a warning will be displayed in the report reminding credit providers that the public record data have not been verified against the individual’s identity card number and must be used with caution. Further enquiry about the details of the public record data is also available to credit providers.

3.20 In addition, there are other alert details that may be disclosed in a credit report. These may include information about an individual’s application for credit, such as the type and amount of credit sought and the date of the reporting of the application. Another type of alert detail is the record of the number of enquiries made by credit providers on the individual’s credit file (“file activity data”). Disclosure of these two pieces of information in a credit report is limited to data compiled over the most recent two years. The source of the credit is not disclosed unless the source is the credit provider requesting the report.

3.21 It has been pointed out that credit application data cannot indicate whether a consumer has actually obtained credit. Credit applications may be rejected for a variety of reasons and a rejection of credit may not necessarily be due to the applicant’s credit status. This is because credit providers are currently not allowed to report on the number of credit facilities granted or the number of credit cards that an individual has had approved as these information constitute positive data. Nevertheless, the information may help to indicate whether a borrower is seeking credit from multiple sources and at risk of over-borrowing. It may also help to identify the risk of excessive exposure where the same person makes a large number of applications for credit within a short period of time.

3.22 Negative credit data sharing is useful in that it enables credit providers to obtain some information on the credit-worthiness of an existing or new borrower. The value of the CIS credit reference service to financial institutions can be judged from the fact that virtually all leading banks and major credit providers subscribe to its service. According to CIS, its database

had grown to over one million records by the end of 2000. At present, CIS processes an average of over 500,000 enquiries a month. Until the present economic downturn in Hong Kong the current arrangement, with all its limitations, appears to have worked reasonably well.

3.23 However, this no longer seems to be the case given the current problems of rising consumer delinquency and personal bankruptcies. The financial industry, and HKMA, have argued that current negative data sharing arrangements are inadequate in that they do not enable credit providers to better understand the total credit exposure of their clients when making a credit lending assessment. The present level of delinquent debtors and bankruptcy petitions signals a serious warning to the financial industry. It is the magnitude of the problem that has led the industry to request a revision of current arrangements and to extend the scope of data sharing among credit providers to include positive credit data.

Part IV – The Industry's Proposal and Justification

The Industry's Proposal on Positive Credit Data Sharing

4.1 The industry's proposal regarding the sharing of positive credit data is a comprehensive one which, in the opinion of the HKMA, is in line with models adopted in other established banking centres that permit positive data exchange, such as the US and the UK. It has been indicated to the PCO that the proposal has the support of four industry associations, namely, the Hong Kong Association of Banks, the DTC Association, the HKSAR Licensed Money Lenders Association and the Finance Houses Association. In total, these associations represent approximately 325 financial institutions (“FIs”). The proposal does therefore represent a strong consensus within the financial sector and reflects deep concerns over the problem of indebtedness.

4.2 The industry's proposal amounts to a relaxation of the provisions of the current Code to allow for a greater sharing of positive credit data via the credit reference agency. It is proposed that new positive credit data should include information on the number of facilities held by a customer, the limits and outstanding amounts on such facilities and the overall credit repayment history of the borrower. Such information will enable FIs to develop a more detailed picture of a borrower's total credit exposure and payment pattern which, in turn, will provide a comprehensive basis for credit evaluation. The key features of the proposal¹⁴ can be summarized as follows.

- **Scope of new credit data.** This would include credit facilities such as credit cards and other personal loans¹⁵. Positive data reportable by FIs to the credit reference agency will be limited to information about borrowers' credit exposure and their repayment history record. Information such as personal income, deposits and other assets of customers will not be shared.
- **Scope of coverage.** Participation in positive data sharing is a voluntary activity to be undertaken, or not, after due commercial consideration by each FI. The HKMA will encourage participation by all FIs by issuing supervisory recommendations. FIs that participate in the scheme will operate under the principle of reciprocity. In other words, FIs that choose to participate in full (i.e. reporting on all types of product) will be able to access all positive data on the full product range contributed by other FIs and use such data across all of their products. On the other

¹⁴ Submissions made by the Hong Kong Association of Banks on 21 December 2001 and 14 March 2002 to the HKMA. The latter submission was a joint submission of the 4 industry associations.

¹⁵ The original scope included the sharing of information relating to residential mortgages. This part of the proposal was subsequently withdrawn by the industry.

hand, if an FI decides to report on credit card data alone, only its credit card division will be allowed access to positive data on all products contributed by other FIs. It will only use such data in respect of its credit card business.

- ***Trigger points for reporting.*** FIs participating in the sharing of positive credit data will report on new customers (upon approval of the facility) and existing customers (upon implementation of positive data sharing) and on a monthly basis thereafter until the account is fully repaid. Retrospective credit repayment history of existing accounts will not be reported. For example, if positive data sharing is introduced on 1 January 2003, the repayment details of the account in 2002 will not be reported.
- ***Retention of positive data.*** Positive data should be retained by the credit reference agency for a sufficient period of time. This is to ensure sufficient relevant information is available to establish a reliable credit profile about an individual.

Justifications for the Greater Sharing of Consumer Credit Data

4.3 The proposal to broaden the scope of positive credit data sharing among credit providers is looked upon by the industry as one measure to assist in relieving consumer debt and bankruptcy problems. The principal argument is that access to positive credit data would significantly improve the current consumer-lending environment and facilitate the resurgence of a healthy consumer credit industry. The basis for the argument advanced by the industry is provided below.

Inadequate data sharing under existing arrangements

4.4 Existing provisions of the Code strictly limit the sharing of positive credit data. To that extent a credit reference agency is unable to provide financial institutions with the level of detailed reporting that is available in other jurisdictions. In turn these restrictions impact upon the quality of credit providers' decision making.

4.5 For example, under existing arrangements banks are unable to determine precisely how many credit cards are held by individual customers and/or how many lines of credit are available to them. In the event of the individual making an application for a credit card with a bank it is currently not possible for that bank to determine the individual's exposure in relation to other banks that he/she may have a borrowing relationship with. This means that the bank's capacity to make a sound financial judgement regarding an individual's credit-worthiness is seriously impaired.

4.6 The inherent deficiencies in a system that does not currently permit banks to know the number of credit cards an individual holds have led to abuses on the part of some borrowers. The industry has quoted, as an example of imprudent behaviour, a practice whereby the customer makes payments on one line of credit by drawing on another line of credit e.g. a credit card issued by another bank. The practice is delusory in that it simply transfers debt on one account to another account and to that extent nothing has changed either for the customer or the banks. A credit on one account simply becomes a debit on another.

4.7 The existing regulatory framework does not permit credit reference agencies to show credit applicants' active loans on hand in a credit report or estimations of customer's credit repayment capabilities. As a result, it is difficult, if not impossible, to control credit spread across a number of credit lines and/or credit cards provided by multiple credit providers. It is the inability to formulate a comprehensive picture of an individual's total credit exposure that has made the industry vulnerable to the imprudent behaviour of some customers.

Benefits to consumers

4.8 The industry maintains that the proposal to share positive credit data is not a knee-jerk reaction to rising personal bankruptcies and delinquencies. Indeed, the proposal made is similar to established practices in other jurisdictions and to that extent would not be unique to Hong Kong.

4.9 It has been pointed out that in other jurisdictions that permit the sharing of positive data the experience is that this has created benefits for those customers that manage their financial affairs prudently. In the US and the UK, experience has shown that these benefits amount to preferential treatment for customers e.g. lower product pricing by the banks. To that extent there are distinct advantages to be derived from the sharing of positive credit data.

4.10 The industry made a detailed representation to the PCO on the subject of consumer benefits in its submission made on 29 May 2002. These are briefly summarized below.

- ***More credit to a broader set of consumers.*** The evidence from jurisdictions such as the US and the UK, where the credit rating industry is more mature, is that more information about customers' credit exposure and borrowing has been beneficial to the prudent customer. Detailed information about a borrower's past payment history including accounts handled responsibly, as well as the current profile of the borrower's obligations and available credit lines, have proved to be an important tool in assessing risk.

In the absence of information on the past behaviour of a borrower, the industry can only price its products by factoring in a risk premium that impacts upon all consumers. This means that the majority are obliged to subsidise a minority of high risk borrowers. The availability of accurate information would distinguish prudent borrowers from the behaviour of imprudent borrowers.

With a more comprehensive picture of the credit-worthiness of the individual borrower the industry would be better informed and capable of making a more objective assessment of the individuals' credit standing, whilst offering more products at competitive rates to consumers with sound repayment records, regardless of their income level. It is worth remembering that the players in the industry compete for good customers.

- ***Fostering the robust development of the consumer credit market such that consumers will enjoy appropriate levels of credit.*** With a more detailed picture of the overall indebtedness of individuals the industry will be able to make more informed judgements and avoid a situation where customers obtain a level of credit that they are unable to service. In the long run, this would foster healthy competition and facilitate the development of a mature consumer credit market in which banks lend responsibly and consumers borrow responsibly.
- ***Reduction in the cost of borrowing.*** Enhancing the data made available by the credit reference agency to credit providers will likely attract new entrants to the local consumer credit market, offering multi-level pricing or products that are differentiated by their flexibility. Ultimately, competition in the provision of products to the credit market is the best guarantee of a level of service that equates with the needs of specific market segments.

4.11 The industry takes the view that these benefits are not vague generalities. A significant amount of research has been conducted in those jurisdictions that permit the sharing of positive credit data. In its submission to the meeting of the Financial Affairs Panel of the Legislative Council on 9 April 2002, the HKMA made the following representation:

“Apart from the above, there is evidence from academic research and experience in countries such as the US that sharing of both positive and negative consumer data helps to increase the availability of credit and reduce its cost¹⁶. The arguments presented in such academic research, though intellectually appealing, are complex. However, the benefits can be presented in simpler terms as follows. To the extent

¹⁶ Empirical research undertaken by Staten and Barron (2000), “The Value of Comprehensive Credit Reports: Lessons from the US Experience”.

that positive data sharing helps to improve the risk management ability of banks and reduce their bad debt charge¹⁷, at least part of the benefits should be passed onto customers in a competitive environment. Furthermore, in the absence of positive information, credit providers are less capable of risk pricing their customers. Normal commercial principles suggest that they will need to charge a risk premium to compensate for this. That might be one of the reasons explaining the generally high credit card interest rates in Hong Kong¹⁸ (24% vs. 15-16% in the US). Inability to price risk might have also contributed to the lack of differential pricing in the Hong Kong consumer credit market. Most borrowers pay the same price for credit regardless of their credit-worthiness. This obviously means that the good borrowers are subsidising the bad ones. They should be able to get better terms if the credit providers are able to distinguish them through the sharing of positive data.”

4.12 In summary, the industry has painted a rather bleak picture of the current problems in the credit market and the consequences of not addressing those problems. The view expressed is that the sharing of positive credit data would alleviate the difficulties experienced by credit providers by enabling them to establish the true exposure of a borrower. In their view access to positive credit data for credit reference purposes does not imply a major invasion of the privacy of the individual. Indeed, the HKMA made the following observation in its representation:

“It is recognized, however, that there is a need to strike a balance between the need to share consumer data and the need to safeguard data privacy. The HKMA fully appreciates the privacy concerns, but we do not believe that these should represent an insurmountable obstacle to greater sharing of information among lenders. As mentioned earlier, in other countries, including the UK and the US, sharing of both positive and negative data is permitted subject to suitable protection for borrowers. There seems no reason why this could not also be done in Hong Kong where a fully-fledged statutory regime to safeguard the privacy of personal data already exists.”

¹⁷ A study by a major consumer credit reference agency in the UK lends support to this apparently logical hypothesis.

¹⁸ Choice Magazine (August 2000), Consumer Council.

Part V – Issues Arising from the Industry's Proposal

The Consumer's Viewpoint

5.1 Consumers have been vocal in their comments relating to the sharing of positive credit data. On the basis of unsolicited submissions made to the PCO it would appear that there is general opposition to the proposal. At this point in time, comments received from the consumer community indicate a broad range of concerns. These are briefly discussed below.

Marketing practices of credit providers

5.2 The aggressive marketing practices of credit providers and their relaxed approach towards issuing credit cards have been the subject of criticism by the Consumer Council and the general public. The principal accusation made is that credit providers have failed to undertake a critical analysis of the consequences of their credit policies and strategies. The view taken by some consumers is that the aggressive marketing campaigns devised by credit providers have precipitated the problem. In this regard, the Consumer Council's suggestion to the HKMA is that credit providers' marketing conduct needs to be reviewed, and appropriate action taken, rather than simply resorting to the collection of additional information about consumers.

5.3 The HKMA has acted upon the suggestion made by the Consumer Council. In response to the allegation made, the Chief Executive of the HKMA, in his Viewpoint article published on 25 April 2002, made the following remark:

“The third misconception is that the rapid increase in personal bankruptcies is entirely the responsibility of the banks, in that they have not been prudent in the issue of credit cards. There is some truth in this allegation, but they are only partly responsible. During the course of last year, we reviewed and examined the credit card operations of a number of banks. In the light of our findings, we recommended to the banks in February this year a set of best practices on credit card operations.

We have also been conducting special examinations on the majority of credit card issuers that are authorized institutions under the Banking Ordinance. So far, we have only identified one case as requiring substantial improvement in its credit assessment and monitoring processes, and remedial actions are being taken.

It must be recognised that the banks play an important role in financial intermediation that promotes economic growth and development. Their credit decisions can only be as good as the

information available to them. Positive consumer credit data sharing will enable them to perform that role more effectively, rather than to take a step backwards from that role by being forced into tightening consumer credit generally.”

Effectiveness of the proposal as a measure to solve the problem of bad debts

5.4 There are different views expressed as to whether expanding the credit database will serve the purpose of resolving the problem of indebtedness. For example, consumers have questioned whether credit providers’ access to positive credit data will in practice influence their decision to grant or deny credit to a customer.

5.5 It is reasonable to assume that the granting of credit depends on the extent to which the lender judges the risk to which he exposes himself to be acceptable. If competition between credit providers is factored into that judgement then the logical conclusion is that lenders will not necessarily arrive at the same conclusion when presented with identical data about an applicant. Given any consumer profile some credit providers may take a calculated risk and grant credit. However, a more conservative provider may judge that risk to be too great and deny the credit. It is argued therefore that competitive considerations and differences in professional judgement regarding the attendant risks of granting credit to a customer play an important role. In short, it is not solely a matter of the existence of information regarding a consumer’s credit management performance.

5.6 This line of argument raises the question as to whether the sharing of positive credit data will serve the purpose of confirming the problem after it has arisen, as distinct from preventing the problem from arising in the first place. Some consumers have questioned whether access to positive credit data would have prevented a consumer from becoming bankrupt and that, in any event, credit providers should emphasize prevention rather than cure when seeking to resolve the problem of unsustainable indebtedness.

Have financial institutions fully utilized credit information available from the existing system?

5.7 Some consumers have commented that the current mechanism of negative data sharing already provides an adequate tool for credit assessment. They believe that there is room for improvement in credit assessment, even under the current environment, that could tackle the problem without the need to share positive credit data. For example, the current system can be reinforced by other measures such as adherence to the HKMA guidelines on credit assessment and more closely scrutinizing the individual's bank and income statements. These alternative measures, together with the information currently available to financial institutions, would provide insights into a person’s

financial position thereby enabling the institution to carry out a thorough credit assessment.

5.8 Consumers have also pointed out that the crux of the matter is not whether there is adequate information for credit assessment. The proposal to broaden the scope of credit data sharing presumes that financial institutions are basically prudent but they are exposed to excessive credit risks that could have been avoided if they had been provided with more comprehensive credit information on borrowers. In their view, financial institutions have not fully utilized the existing information at their disposal and have not exercised prudence in their lending. If financial institutions choose to ignore the information available to them and continue to issue credit cards indiscriminately, the proposal of having more information will not necessarily remedy the situation.

Is the sharing of positive credit data the only approach financial institutions can take in resolving current problems?

5.9 Some consumers have questioned whether the industry has exhaustively explored the full range of options open to them or whether the sharing of positive credit data has been seized upon as the most convenient option. In response to this challenge, the industry has made the following representation¹⁹:

“Financial institutions have over the course of the last year taken a number of steps to increase prudence in the provision of consumer credit. On the assessment front these have included a process of tightening the multiple criteria by which applicants are accepted, for example, the number of recent requests for another loan, or the length of time a person has been in the same employment. With respect to analytics, those authorized institutions which had not been making full use of the credit reference agency or contributing their data in a timely fashion have since done so. Marketing practices have also been revised pretty much across-the-board to carefully take risk factors into account when identifying target markets or planning campaigns.”

“The key weakness in the system remains the “taking” side of consumer lending. There are sectors within the industry that have always required extensive application details, including income levels, income verification, the full disclosure of existing debts and the provision of bank statements/books for review to test for external debt. Despite those practices these institutions have not been free of the risk that the data provided was not accurate or inclusive and have suffered from the bankruptcy trends. Thus, the only mechanism by which the industry can successfully deal with the risk of misleading applications is through the sharing of positive data.”

¹⁹ Submission paper of 24 June 2002 made by industry representatives to the PCO working group.

“Public education programmes to promote better understanding of the importance of personal financial management is another area we can consider. However, the success requires the joint effort of the public and private sectors. In February, the industry associations published for public consumption a “Financial Health Leaflet” providing tips on maintaining good financial health. More work in this area on a continuing basis to complement the effort of the industry by the Government and the Consumer Council would create a bigger impact on the community to the long term benefit of everybody.”

Experience of overseas jurisdictions

5.10 Views have also been expressed to the PCO regarding the efficacy of using a code of practice to tackle the many different consumer issues concerning consumer credit. The suggestion has been made that the experience of other jurisdictions such as the UK and the US should be examined and that consideration should be given to the adoption of a similar approach to dealing with consumer credit reporting.

5.11 The suggestion calls upon the Administration to consider, amongst other things, enacting independent legislation on consumer credit as has occurred in the UK and the US. The argument is that this would provide specific protection to consumer rights on matters relating to consumer credit such as credit card interest rates, service charges, liability for lost cards and dispute resolution mechanisms.

Data Privacy Issues and Concerns

5.12 From a privacy viewpoint, it is generally acceptable for negative credit data, e.g. past defaults of an individual who fails to repay a loan, to be collected and shared among credit providers for credit referencing purposes. However, positive credit data would capture information relating to the financial circumstances of individuals that are prudent in their financial affairs and make credit card and loan payments promptly. Traditionally, overall credit exposure and repayment history has been data that are personal and private to the individual concerned. The proposal therefore represents a change in credit risk management and the culture of consumer lending/borrowing in Hong Kong. The proposed changes may also have wider implications than the mere use of additional credit data by credit providers for credit assessment purposes such as credit profiling and credit scoring.

5.13 From a data protection viewpoint, the sharing of personal data, particularly when the data are collected for different purposes and from different sources, may adversely affect an individual’s privacy interests.

Inevitably, the proposal to expand the scope of data sharing is not going to lessen these concerns. The implications are twofold.

- **Data Concentration.** First, the inclusion of a substantial amount of information on credit users would expand the storage and retention of personal information in a single centralized source. Any citizen who has a consumer credit record, no matter whether it is “good” or “bad”, may become the subject of a centralized credit reference database. The richness of data on the database may give rise to opportunities for function “creep” and increase the risks of the data being misused for purposes other than the original purposes of collection.
- **Profiling/Stigmatization²⁰.** Secondly, there is the issue relating to consumer credit scoring. Credit scoring is a process whereby credit data relating to a borrower are used, either separately or in conjunction with other information, for the purpose of generating a score that purports to be representative of the borrower’s credit-worthiness. The process is akin to profiling individuals and placing them in categories that would span the range from “low risk borrowers” to “high risk borrowers”. This gives rise to a labeling effect on the individual concerned. Dependent upon the scoring mechanism, the types of data used and the accuracy of the data, the process may result in the individual being given an inappropriate “credit label”.

5.14 While no empirical evidence has been offered to support these data privacy concerns, nevertheless, they represent the views expressed by some consumers. In the absence of appropriate safeguards, these amount to a threat to the consumer’s rights regarding data privacy protection. A consumer, who chooses to remain anonymous, has expressed his views as follows:

“It is very difficult to pin-point or quantify the downside of the sharing of positive information by reference to a figure. However, since the sharing of positive information affects privacy, it is more the un-quantifiable human values that will be affected. Everyone who has a credit card will have a very elaborated “balance sheet” (but without the asset side) stored in the credit agency, which is accessible by potential credit providers.

One will be abhorred by the details of the proposed “balance sheet”. The information does not just disclose the credit history but also the spending pattern of an individual. This may brand a person into different categories such as a “big spender”. There may be an impact

²⁰ The HKMA has responded in its Viewpoint article of 25 April 2002 – “Credit scoring is already widely used by banks in Hong Kong. In other jurisdictions this is a proven statistical method which helps banks to assess a borrower’s credit-worthiness. The credit scoring system now used by banks will be much fairer to customers if it is also based on positive consumer credit data, and not just on negative data.”

of being branded as a “big spender” in an application for credit. If a person can service the debts when they fall due, the way he/she utilizes the credit line is irrelevant in assessing the credit risk. Spending pattern (on credit card) should not have a direct link to credit standing. First, these may be genuine spending and secondly, the person may have more than sufficient assets, e.g. bank deposits or income in supporting his spending.”

5.15 In its submission to the meeting of the Financial Affairs Panel of the Legislative Council on 9 April 2002, the Consumer Council made the following remarks.

“The Council’s major concern with the proposal to increase the amount of information held in a central database is the privacy risk from such an immense undertaking. Given the fact that credit card use is a key factor in the economy, the database will invariably hold important and sensitive information on a substantial number of consumers in Hong Kong. However, there are apparently only a minority of borrowers who either fall victim to an inability to understand the implications of getting into debt, or who actually cause a problem through planned bankruptcies.

Moreover, the Council understands from discussions with industry that approximately two thirds of credit card holders pay their monthly balances in full, and therefore would not come within the ambit of the problem.

The Council is therefore concerned that mandatory sharing of credit information to the extent proposed by industry is exposing a majority of consumers to unnecessary detailed scrutiny. And in doing so, given the problems that have arisen in the past with leakage of personal information that is used for marketing purposes, the proposal is putting their personal information at potential risk of unauthorized disclosure.”

5.16 In response to this, the HKMA, in its submission to the meeting of the Financial Affairs Panel of the Legislative Council on 9 April 2002, made the following remarks.

“Two points should be made on this argument. The first is that it will generally always be a minority of borrowers who give rise to the bad debts. The problem is that it is more difficult to identify this minority in advance if the banks cannot share information relating to all borrowers, good and bad. Second, as noted above, the bad debts of the minority push up the cost of borrowing for everyone, and if sharing of positive data can help to bring down these bad debts, good borrowers, who are the majority, should benefit from lower interest rates.”

5.17 In trying to allay public concerns regarding the privacy implications around the sharing of positive credit data the HKMA have sought to dispel a number of misconceptions expressed by the public. Its Viewpoint article on 25 April 2002, had the following to say on the matter.

“In the discussion so far, we have noticed a few persistent misconceptions, which we would particularly like to dispel. The first is that positive consumer credit data sharing means that all banks would have access to all consumer data through the credit reference agency. This is not true. The privacy laws in Hong Kong ensure that only credit providers with whom consumers have existing borrowing relationships, or are seeking to establish them, will have access to the data. The data cannot be accessed by other persons or organizations and cannot be used for purposes other than the provision of credit – for example, for marketing purposes. Furthermore, the scope of data sharing is restricted to credit-related data only. Other information, such as personal income and deposits held, will not be shared.”

“The second misconception is that the majority of consumers with good credit would be sacrificing their privacy for the minority of consumers with doubtful credit. This again is not true. The privacy risks have been exaggerated. The data would only be provided to a credit reference agency with the consumers’ consent, which they give when they borrow. Such data are protected by the privacy laws in Hong Kong. Without positive consumer credit data sharing, as at present, consumers with good credit have been subsidising those with doubtful credit. The costs of bankruptcies to the banks have been passed on, in one way or another, to all borrowers. This unfair sharing of the burden among borrowers takes the form of higher charges for banking services and higher borrowing costs for consumers. With positive consumer credit data sharing, the banks would be in a position to introduce differential pricing on the basis of credit quality. As a consequence, those with good credit, who are in the majority, will benefit, possibly through more favourable terms for borrowing and for the use of banking services.”

5.18 It should be noted that, in general, credit providers in Hong Kong have access to less positive credit data when compared with their counterparts in countries such as the UK and the US. As argued by the industry, the paucity of positive credit data available to credit providers makes it difficult for even the most prudent to avoid extending credit to borrowers that are already over-extended. Experience of other jurisdictions indicates that respect for an individual’s privacy, and the industry’s need to collect and use personal data, are not necessarily in conflict with each other. Indeed, respect for personal data privacy is an important aspect in terms of the good governance of any business.

5.19 The current problems in the consumer credit sector of the financial services market, as articulated by the industry, pose a significant challenge for the PCO. That is, the circumstances under which current credit reporting restrictions may be relaxed, while at the same time ensuring adequate safeguards are put in place to protect the collection, use, access to and security of positive credit data. Any solution must strike the right balance between the effective use of personal information by the industry whilst at the same time ensuring the protection of the personal data privacy interests of the individual.

Part VI – The PCO's Considerations and Draft Proposals

Overview

6.1 The PCO's fundamental responsibility to society is to uphold the provisions of the Personal Data (Privacy) Ordinance thereby protecting the personal data privacy rights of the individual. In effect this means ensuring that data users are compliant with the Ordinance which in turn means that their operating principles, policies and strategies are cognizant of the demands made by those provisions. Notions such as fairness, non-excessive collection, purpose of collection, use, and security punctuate the data protection principles, and it is these notions that give substance to good personal data management practices.

6.2 It is also the case that in any given jurisdiction that has privacy legislation there is an operating rule that where there is a need to collect personal data that data should be kept to the absolute minimum necessary to fulfil the purpose(s) for which they were collected. There is also the in-built protection that the data user must inform the data subject of the purpose(s) for which the data are to be used. In addition, the consent of the individual must be obtained before there can be any change of use. These conditions provide data subjects with the ability to make decisions regarding their personal data upon the basis of informed choice.

6.3 In the context of this consultation paper it might seem that the fundamental operating principle, that the collection of data be kept to an absolute minimum, is under threat. This is because the financial institutions have built their case upon the need to expand the scope of credit data to be collected and shared among the industry via the credit reference agency.

6.4 In approaching the proposals made by the industry the PCO have not operated from the premise that the personal data privacy interests of the individual should assume *supremacy* over all other societal interests. In our analysis, the PCO strongly believe that a fair and reasonable balance has to be struck between the public interest and the privacy interests of the individual so that the former is not fostered at the expense of the latter. Determining the exact nature of that balance will require the co-operation and concerted effort of various players in the consumer credit market and careful consideration of the following factors.

- **The “borrowing” side of consumer credit.** A borrower of facilities from the credit lending market has a responsibility to the market in terms of managing his financial affairs prudently and an obligation to the lender to provide relevant information to enable prudent lending

assessment. The acid test is whether such information is necessary but not excessive for the purpose of use, and if so, what safeguards need to be put in place to ensure data privacy.

- **The “lending” side of consumer credit.** In every category of lending the prudent assessment of credit risks is critical to the growth of the market. A lender has a responsibility to the market in terms of exercising prudence in lending and an obligation to the borrower to use the information obtained only for the purposes for which the information were collected. The data-sharing model provides the information platform for use in better risk management and risk management is the key. There is a limit to what can be done to improve the market if lenders choose to ignore the information available and continue to make poor decisions that heighten the associated risks.
- **Regulatory authorities.** Relevant authorities such as the HKMA and the PCO have responsibilities to ensure a level playing field exists such that the system creates an efficient market for consumer credit. Supervisory guidance is needed to ensure good commercial practices are followed, that privacy solutions are enforced, and that there is adequate data protection.

Merits of the Proposal for Greater Sharing of Credit Data

The public interest

6.5 Many factors have contributed to the recent rising levels of consumer debt and bankruptcies. Among them, prolonged economic adversity is undoubtedly a major contributing factor. The magnitude of the problem that has been reported is probably the combined effect of the economic downturn and financial institutions taking a less than conservative approach to the granting of credit.

6.6 As pointed out by the industry, a particular feature of the Hong Kong situation seems to be the extreme and multiple indebtedness of those who declare bankrupt. At times, when individuals are confronted with cash flow problems they opt for the most obvious short-term solution, that is, taking out further credit, often without any serious assessment of their repayment capabilities. Ultimately borrowers are forced to come to the conclusion that their outstanding debt is uncontrollable and there is little, if any, prospect of that situation being rectified.

6.7 The significance of combined structural and cyclical factors in the Hong Kong economy should not be under-estimated in terms of their future consequence upon economic growth and recovery. If credit default and

bankruptcies continue unchecked this will inevitably mean that the banks will have to absorb higher charge-off rates. In May 2002 it was reported that this rate had increased to a high of 9.04%²¹. It is unlikely that this level of charge-off will decline significantly in the short term.

6.8 Under instruction from the HKMA, the immediate reaction of the banks has been to monitor their credit portfolios more intensely and to exercise greater caution in granting increases to credit limits. In future it is conceivable that the industry may increase charges on these categories of financial products. Without being able to lend with the benefit of a fuller picture of an individual's credit profile, and as a consequence of rising charge-offs, there is a risk that financial institutions may limit exposure through credit tightening. Inevitably this will have ramifications in terms of consumer spending.

6.9 It has been suggested by some observers that high levels of default could trigger a chain reaction that could slow growth of the Hong Kong economy from 0.4% to as much as 1.7%²². If that were to happen it would become a major impediment to economic recovery. The argument therefore is that the issues need to be placed in a broader context than that of the prevailing trends in bankruptcy and consumer default. In essence, the public interest is best served if there is stability in Hong Kong's financial markets and the economy more generally.

6.10 In considering the broader public interest, the PCO is mindful that there are other consumer-service sectors where providers need to assess consumers' credit-worthiness prior to providing the service. Any data-sharing proposal that may impact upon the personal data privacy of consumers will have to be justified on the merits of the case in relation to the public interest. The present proposal of the financial services sector has a strong public interest element in that the issues now confronting Hong Kong are an inextricable aspect of the stability of Hong Kong's financial markets and the economy. If not addressed, these issues may lead to a loss of consumer confidence in the market and the economy as a whole.

6.11 The PCO do not regard the proposal for greater sharing of credit data as a remedy for the bankruptcy problem. The proposal, when implemented with appropriate safeguards, would contribute to creating an environment in which the transparency of credit information would become of value to lenders and borrowers thereby facilitating a responsible lending/borrowing relationship. In turn this would prevent the provision of too much credit to those individuals with little, if any, repayment ability. The flip

²¹ This figure was reported for the first quarter of 2002 by the HKMA.

²² Report on "Averting Hong Kong's Bankruptcy Crisis" – McKinsey & Co. The report was presented to the Official Receiver's Office Working Group on Consumer Debt and Bankruptcy on 21 June 2002. According to the report, a negative impact of 0.4% on 2003 GDP growth assumes that banks tighten unsecured credit by 10%. The higher negative impact of 1.7% assumes an additional credit tightening of 5% in the mortgage sector.

side of this is the avoidance of taking on too much credit. The general environment depicted may help to mitigate the potential negative economic impact arising from bankruptcies.

Information transparency as a value contributing to the public interest

6.12 In any developed economy, the individual consumer is the engine of economic growth. The credit market has been a key ingredient in making that growth a reality. In Hong Kong, there has been a significant expansion in the amount of available credit over the last decade. This has been central to the growth of Hong Kong's economy.

6.13 The serious problem now facing Hong Kong exists, in part, because individuals are running up extreme levels of indebtedness prior to filing for bankruptcy. Relaxation of some of the ground rules under the current regulatory regime on credit data sharing will contribute towards transparency of information relating to the individual's credit profile, which is central to assessing the individual's credit-worthiness.

6.14 Transparency of credit exposure information, such as the number of active loans on hand, enables the aggregate exposure of the individual to be determined. Information on past repayment history gives an indication of the individual's payment pattern and an estimate of default probability. Provided appropriate safeguards are put in place, transparency of information confers value upon both the lender and borrower in the following ways.

- **Informed decision in credit assessment.** With a more comprehensive picture of individual credit risk profiles, credit decisions will be based upon fair and complete assessments. Credit-worthiness will be determined through repayment history and positive credit track records, not purely on data relating to past defaults and bankruptcies.
- **A good credit record is an important personal asset.** Good borrowers, that is those who pay their bills on time, represent a high percentage (about 72% according to information provided by the industry) of consumers using credit. For them a good credit record will be a lifetime asset that is objectively determined and totally under their control. Transparency in relation to this information would benefit the great majority of borrowers in terms of future applications for credit and, more significantly, in terms of favourable conditions and charges attached to that borrowing.

6.15 In summary, the PCO believe that the relaxation of certain rules under the current regulatory regime on credit data sharing would contribute to the broader public interest in that greater transparency of information would serve the purpose of making credit assessment more rigorous. In turn this

would help to limit massive “run-ups” in borrowing by individuals prior to bankruptcy, which would contribute to sustained economic stability.

6.16 The industry maintains that for the majority of borrowers, a good history of credit-worthiness would allow them to take advantage of discounted pricing on products offered by the industry and be invited to avail themselves of products exclusively reserved for this category of customer. However, it is incumbent upon the industry to demonstrate conclusively how the alleged benefits of sharing positive credit data will be passed on to consumers.

6.17 Notwithstanding the pledges of confidentiality that are central to bank/client relationships, or the assurances put up by the credit reference agency, the PCO is of the view that any relaxation in the sharing of credit data should be protected by stringent privacy safeguards. These safeguards would apply to any credit data to be notified by the financial institutions to the credit reference agency. The controls would apply not merely to the credit database system but to those staff that interface with the system.

Other Matters considered by the PCO

6.18 The Privacy Commissioner recognizes that his jurisdiction is restricted to matters that relate to personal data privacy protection and that he can only act on those matters for which he is empowered under the provisions of the Ordinance. Some of the issues raised in Part V of this document are not data privacy-related and hence fall outside the PCO's remit. Nevertheless, they are important matters that the PCO feel obliged to respond in order to convey a complete picture regarding the matters that have been considered.

Effective use of credit information in prudent lending

6.19 A primary argument advanced by the industry is that insufficient positive credit data are available for credit assessment. On the other hand, questions have been raised regarding the credit risk management practices of financial institutions, and whether they should have been more prudent in granting loans or credit.

6.20 Information confers value only when it is effectively utilized to promote better decision making. The experience of those jurisdictions where the sharing of positive credit data is an established practice indicates both the value and reliance placed upon that data. By sharing positive credit data via the credit reference agency the quality of data available to financial institutions is materially improved. This enables them to apply the data and thereby enhance credit risk management. The greater sharing of positive data provides the information platform and only when the information is effectively utilized can it facilitate better credit risk management.

6.21 On a more cautionary note it must be recognized that, given the diversity of financial institutions constituting the sector, it is unlikely that credit risk management procedures will be homogeneous. The PCO is not in any position to mandate financial institutions in terms of precisely how they will apply positive credit data to credit risk management. It is the responsibility of the industry to demonstrate to consumers that they will best utilize the data to facilitate prudent lending. It may also be beneficial for the financial services sector to be issued with supervisory guidelines in this respect should the sharing of positive data be permitted.

Relevance of overseas experience

6.22 In its report titled “The regulation of debt collection practices” published in July 2002, the Law Reform Commission of Hong Kong made a comparative study of the sharing of positive credit data in jurisdictions including the UK, the US, Canada and Australia. The report presents a comparison of the kinds of positive credit data on individuals that are available to credit providers in these jurisdictions. It summarizes the comparison with this remark²³:

“As shown in the table, Hong Kong is rather conservative in terms of sharing of positive consumer credit data as compared to the United States, Canada and the United Kingdom, but is similar to Australia in this regard.”

6.23 The PCO have also carried out similar studies in relation to legislation in the US and the UK. However, closer investigation suggests that the situation in the US and the UK is not strictly analogous with the conditions prevailing in Hong Kong. To that extent the approaches adopted in the US and the UK do not mirror the Hong Kong experience and it might be inappropriate to extrapolate those approaches to the HKSAR. The explanation for this is as follows.

6.24 In the US there is no federal privacy legislation of general application. Credit reporting in the US is largely governed by the Fair Credit Reporting Act (15 U.S.C §§1681-1681(u)²⁴) and the Equal Credit Opportunity Act (15 U.S.C §§1691-1691e²⁵). These statutes were instrumental in creating a credit-reporting regime that has become central to an efficient lending market in the US. However, these pieces of legislation did not, as a prerequisite, have to balance their respective provisions with federal privacy legislation or any attendant rights they may have conferred. In effect this means that the US had a “free hand” at the time of drafting the respective bills on credit reporting.

²³ Report on “The Regulation of Debt Collection Practices” – Law Reform Commission of Hong Kong, July 2002, page 102.

²⁴ Full text of the Act is available at <http://www.ftc.gov/os/statutes/fcrajan2002.pdf>.

²⁵ Full text of the Act is available at <http://www4.law.cornell.edu/uscode/15/1691.html>.

6.25 It is worth pointing out that the credit reporting regime in the US is generally regarded as being efficient; serving both the interests of lenders and borrowers alike. It would also be true to say that citizens are conscious of the fact that their credit rating in the financial community is a personal asset. A good credit record in the US is valued and that value translates into real utility as the banks compete for the business of good customers.

6.26 In the UK the situation is similar in that the UK Consumer Credit Act (1974) predates the first data protection legislation in the UK, i.e. the Data Protection Act (1984)²⁶. The UK Consumer Credit Act enables individuals, for a nominal fee, to inspect credit data held about them by a credit reference agency. Once again, the space of ten years between the respective pieces of legislation meant that the passage of the UK Consumer Credit Act was not inhibited by provisions emanating from privacy legislation.

6.27 In contrast the situation in Hong Kong is different. Currently there is no legislation pertaining to credit reporting although it has been suggested that legislation of this nature may well be a more satisfactory method of addressing the issues, rather than looking to the Personal Data (Privacy) Ordinance as the vehicle for resolving the problems. The current situation, and the problems that have arisen, has privacy implications. The PCO have responded positively to appeals from the financial community, insofar as that is possible a) given the provisions of the Ordinance and b) the provisions of the Code of Practice on Consumer Credit Data published in 1998. This consultation paper is therefore an attempt to graft on to the proposals, advanced by the financial sector, privacy-related provisions and safeguards that are consistent with the duties of the PCO which are to uphold the Ordinance and the personal data privacy rights of the individual.

Short term impact

6.28 The PCO is aware of consumer concerns that the sharing of positive credit data, if allowed, might lead to an abrupt tightening of credit by financial institutions that would target over-extended customers, thus pushing them closer to bankruptcy. Personal bankruptcies are not only expensive for financial institutions but also incur high social costs for the families of bankrupts and society at large. The greater sharing of positive credit data makes it easier for lenders to identify borrowers in financial difficulty and, where appropriate, give support in the form of debt counseling, requiring interest payment only for a limited period of time and the restructuring of loans.

²⁶ The UK Data Protection Act (1998) was in force with the establishment of the Information Commissioner (formerly Data Protection Registrar) in 2001.

6.29 It is therefore incumbent upon the industry to adopt an approach that would not result in pushing over-extended customers into bankruptcy. In this connection, the PCO was gratified to learn that the industry has just concluded an industry-wide agreement for debt relief plans to provide a structured framework that would enable more efficient and more effective debt restructuring negotiations with needy individuals. It would be to the benefit of all parties concerned if doubtful loans could be restructured.

Draft Proposals to address the Privacy-related Issues

6.30 The following draft proposals are designed to address the privacy-related issues arising from the industry's proposal of greater sharing of credit data. It should be noted that these draft proposals are features *meant to be additional to* all other existing provisions of the Code (in relation to so-called negative data). They are presented below under the following headings:

- Issue 1 - Scope of new credit data;
- Issue 2 - Restrictions on data sharing (scope of coverage, credit report, credit scoring);
- Issue 3 - Privacy safeguards applicable to credit providers (access to credit database, notification to customers);
- Issue 4 - Privacy safeguards applicable to credit reference agencies (preventing abusive access, ensuring compliance);
- Issue 5 - Other regulatory control measures;
- Issue 6 - Implementation safeguards.

6.31 Members of the community are invited to submit their views regarding these proposals.

Issue 1 - Scope of new credit data

6.32 The financial industry is seeking to expand current data sharing to include positive credit data relating to credit cards and all personal loans (except residential mortgage loans²⁷).

6.33 The PCO have sought clarification regarding the inclusion of personal loans (except residential mortgage loans) in the scope of positive data sharing. In response, the industry has provided the following additional information.

Figure 3 - Consumer Loan Delinquencies (except mortgages) for the Period since 1 January 1999

Persons who defaulted	No of persons	Delinquent/charge-off amount ²⁸ on credit cards	Delinquent/charge-off amount on other types of personal loan		Total
			Secured	Unsecured	
(a) only on credit cards	99,688	\$4.37bn	0	0	\$4.37bn
(b) only on other types of personal loan	15,798	0	\$0.81bn	\$0.48bn	\$1.29bn
(c) on both credit card and other types of personal loan	45,852	\$6.06bn	\$0.86bn	\$2.66bn	\$9.58bn
Total	161,338	\$10.43bn	\$1.67bn	\$3.14bn	\$15.24bn

Source: Credit Information Services Limited

6.34 Figure 3 indicates that the delinquent amount of “secured” personal loans amounted to HK\$1.67 billion for the period since 1st January 1999, accounting for over one third of the total delinquent amount of non-credit card consumer lending. The figures clearly show that defaults associated with secured lending cannot be ignored.

6.35 The industry has further explained that banks report consumer loans as secured if there is direct collateral linked to the facilities (e.g. mainly motor vehicles, shares and cash deposits). Those loans that are indirectly secured, such as those secured against all monies mortgages, have not been reported by banks as secured consumer loans to CIS. The amount of secured personal

²⁷ Residential mortgage loans are defined as loans to an individual or to individuals to finance the purchase of, or to refinance the earlier purchase of, any residential properties, including uncompleted units and properties under the Home Ownership Scheme, Private Sector Participation Scheme and Tenants Purchase Scheme. The proposed definition of residential mortgage is derived from the definition the HKMA used in their monthly Residential Mortgage Survey.

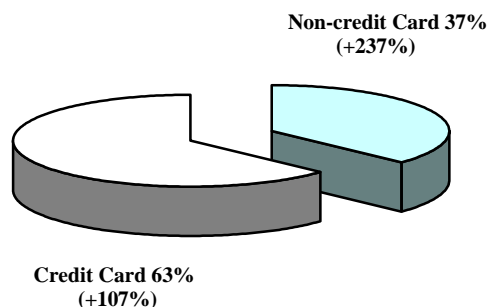
²⁸ Delinquent amount refers to the amount of past dues on delinquent accounts reported by credit providers to CIS. To the extent that repayments were subsequently made to these accounts by borrowers, the delinquent amount would be reduced or even eliminated. But to the extent that these accounts had been written off, the amount of charge-off would be shown in the CIS database. So, there is no overlapping between the delinquent and charge-off amount.

loans as presented in Figure 3 are therefore likely to be under-reported. If secured loans (except mortgages) were to be excluded in the sharing then the banks would under-estimate customers' total credit exposure and over-estimate their debt servicing ability when making credit decisions.

6.36 Statistics released by CIS in July 2002²⁹ reveal that the delinquent amount for the first half of 2002 increased by 142% over the second half of 2001 to HK\$5.5 billion. Of this gross amount non-credit card delinquency amounted to 37% and credit card delinquency to 63%. However, the respective increases for each segment in the first half of 2002 were 237% and 107% over the second half of 2001 (see Figure 4).

Figure 4 : Delinquent Amount Distribution 1H 2002

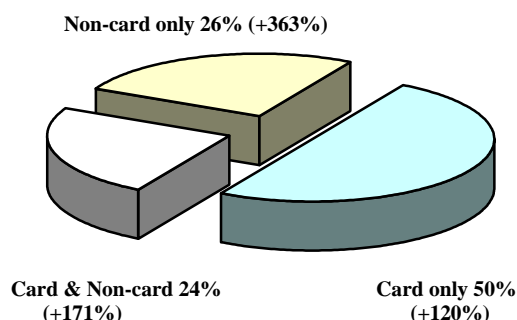
Total delinquent amount = HK\$5.5 billion (+142%)



6.37 Further analysis reveals that there has been a shift in the pattern of borrower indebtedness in the first half of 2002. Although non-credit card lending comprises little more than one-third of total bad loans, there has been a major increase in the first half of 2002 in the numbers of borrowers defaulting on personal loans. Figure 5 shows that delinquent non-credit card borrowers increased 363% to nearly 24,000 individuals. This may suggest a deterioration of the problem in that indebtedness has now migrated to the personal loan sector of the credit market.

Figure 5 : Consumer Delinquency Profile 1H 2002

By Individual Count : Total 91,569 (+169%)



Figures in () are the variance between 1H 2002 and 2H 2001

6.38 Data protection principle 1 of the Ordinance provides that personal data shall not be collected unless the collection is necessary and the data are adequate but not excessive in relation to the purpose of use. Having considered the information and explanation from the industry, the PCO consider that the proposed expansion in the scope of data sharing is necessary in order to ensure more rigorous credit assessment. Such data would be non-excessive in terms of facilitating greater information transparency and would contribute to the public interest. It is therefore proposed:

²⁹ Hong Kong Consumer Delinquency Statistics for the half year to June 2002, Credit Information Services Ltd., 30 July 2002.

Proposals

1. That a credit reference agency *may collect* from credit providers limited information on an individual's credit facilities ***excluding*** any residential mortgage loans. A residential mortgage loan means a loan to an individual or to individuals to finance the purchase of, or to refinance the earlier purchase of, any residential properties, including uncompleted units and properties under the Home Ownership Scheme, Private Sector Participation Scheme and Tenants Purchase Scheme.
2. That a credit reference agency *should not collect* from credit providers any information about an individual's personal income, deposits, other assets or non-credit based information such as the individual's employment information.
3. That the information on an individual's credit facility *reportable by* a credit provider to a credit reference agency may include the following data:
 - (a) general credit data such as (i) the identity of the credit provider, (ii) the account opening date, (iii) the type of facility and the currency in which it is denominated, (iv) in the case of the facility being a credit card, the approved credit limit, or in other cases (where applicable), the original credit amount or approved credit limit and the repayment term;
 - (b) repayment data:
 - in the case of the facility being a credit card, data such as (i) the remaining available credit, (ii) the date of last statement and amount shown on such statement and (iii) the date and amount of payment(s) made during last reporting period;
 - in the case of other credit facilities (where applicable), data such as (i) the remaining available credit (ii) the outstanding balance of the account, (iii) the date on which repayment last fell due and the amount then due, and (iv) the date and amount of payment(s) made during the last reporting period;
 - (c) account termination data (where applicable) such as (i) the date of account termination and (ii) the fact that the account had been terminated by full repayment.

Issue 2 – Restrictions on data sharing

Scope of coverage

6.39 The industry's proposal is that the scheme of positive data sharing be a voluntary arrangement. Financial institutions that participate will operate under the principle of reciprocity (see paragraph 4.2). Queries have been raised as to whether this may adversely affect the usefulness of the scheme.

6.40 In response, the HKMA has reassured the PCO that as far as authorized institutions are concerned, it would issue a supervisory guideline to encourage participation in the scheme. In the past this has proved to be an effective mechanism, similar to the current practice regarding the sharing of negative data. Furthermore, the industry confirmed that the proposal has the support of the four industry associations, which together represent approximately 325 financial institutions. In addition, all members of the industry's Bankruptcy Working Group³⁰, representing a wide cross-section of the financial services industry and accounting for over two-thirds of the credit card market, have committed to full participation.

6.41 The PCO understand that participation in the scheme may involve due commercial consideration by each financial institution and welcome the support of the HKMA in issuing supervisory guidance to the industry to encourage participation.

6.42 The concern has also been raised by some customers that, upon implementation of positive data sharing, information relating to past loans/credit cards and account payment transactions will be disclosed. In response to this, the PCO consider it necessary to limit the reporting of these types of historical information so as to protect the interests of customers.

6.43 To minimize the extent of disclosure, credit providers should not report to the credit reference agency any loan accounts or credit card accounts that have been terminated by full repayment prior to the effective date of positive data sharing. Upon the effective date, credit providers may report on credit facilities where there is a current borrowing relationship with the customer. However, repayment details of these facilities that occurred prior to the effective date should not be reported. In other words, there should not be any retrospective reporting of the credit repayment history record of the customer. Accordingly, the PCO have made the following proposals.

³⁰ The Bankruptcy Working Group has 11 members representing the HKAB, the DTC Association, the HKSAR Licensed Money Lenders Association and the Finance Houses Association. The 11 members are Bank of China (Hong Kong), Bank of East Asia, Citibank, DBS Kwong On, Hang Seng Bank, HSBC, JCG Finance, PrimeCredit, Standard Chartered Bank, United Asia Finance and Inchroy Credit.

Proposals

4. Upon a date to be specified by the Privacy Commissioner (“the effective date”), a credit reference agency *may collect* from a credit provider information about an individual’s credit facilities where there is a current borrowing relationship.
5. A credit reference agency *should not collect* from credit providers any information relating to an individual’s credit facility repayment details that occurred prior to the effective date.

Credit report

6.44 The industry has proposed that there should be one single credit report about an individual under the new data sharing arrangements. This is because insofar as the individual’s account information is concerned, the data become negative only when the individual defaults in repayment. Additional information disclosed on a credit report would include positive data reportable by credit providers and other calculated data derived from these data. Information currently allowed for display on a credit report would remain unchanged (see paragraphs 3.18 to 3.20).

6.45 Credit repayment history covers not simply defaults but includes the extent to which debt payments have been made on time, as well as those payments that are overdue. The industry has argued that records of repayment history, showing on-time and overdue payments, should be disclosed in credit reports³¹. This would make available information about the customer’s payment pattern for credit assessment. The information would also benefit customers who have a good record of payment. However, if only records of default payment were allowed, this would make the record of payment history incomplete and inaccurate.

6.46 The following example may help to illustrate the argument. It shows the display of a 9-month account payment history in a credit report produced on the 10th month of the account. The “bucket” displayed on the extreme left shows the most recent monthly payment and each preceding “bucket” represents monthly payment updates. A display of “000” denotes the amount is 0 days past due, “030” denotes 30 days past due and so on.

Month-9	Month-8	Month-7	Month-6	Month-5	Month-4	Month-3	Month-2	Month-1
000	000	120	090	060	030	000	000	000

³¹ The financial institutions originally requested 36 months of data. After discussion, 24 months was agreed upon as being in the interests of keeping data disclosure to the absolute minimum duration necessary yet adequate for credit assessment purposes.

6.47 The information provided above gives a picture of the account payment pattern. Month 1 was the month the account was opened. Payments for months 2 and 3 were on time. Defaults occurred in months 4 to 7 in which the accumulated amount was 120 days past due. This was then repaid in month 8 and on-time payment was made in month 9.

6.48 The argument advanced by the industry is that if only records of default payment were allowed then, in the above example, no information would appear in the payment history display of months 2, 3, 8, and 9. This would make the repayment record incomplete and may disadvantage the customer because an on-time payment pattern could not be disclosed in the credit report.

6.49 The PCO acknowledge the validity of this argument. Provided that the disclosure is restricted to a limited duration, the PCO consider the information necessary to establish a positive credit profile of the customer. It is the positive profile of most customers that gives individuals the value and the benefits to be derived from a positive data system. Accordingly, the PCO have made the following proposals.

Proposals

6. A credit report about an individual that is provided to a credit provider for credit assessment purposes *may display* information on the individual's credit facilities data reportable by credit providers and other calculated data derived from these data. Display of repayment history records relating to the credit facilities should be limited to the most recent 24 months.
7. A credit report *should not disclose* the names of the lender (i.e. the source of the credit) of an individual's credit facilities except where that lender is the credit provider requesting the report.

Credit scoring

6.50 The general rule on data retention, applicable to negative data, is that the information may be held for 5 years for credit reporting and scoring purposes by the credit reference agency. For example, data of any default over 90 days may be retained for a period of up to 5 years after final settlement of the amount in default (see paragraph 3.8).

6.51 The industry has explained that if credit scoring is to be effective, this would require: (a) the entire monthly account payment history including default and non-default data, (b) credit information displayed on credit reports, (c) information derived from contribution data such as the outstanding balance on the account in previous months, and (d) credit data of closed accounts.

6.52 To enable an optimal scoring prediction, it has been suggested that at least 5 years data on all account information should be made available for analysis. If data on normal accounts have to be deleted upon closing, whereas data on delinquent accounts can be retained for 5 years, the account history characteristics will be short on positive data and long on negative data. This creates a bias and will affect the accuracy of score prediction.

6.53 The industry have indicated their support for the bureau score service offered by the credit reference agency because it provides financial institutions with another set of reference data when making credit assessments. They have pointed out that individual institutions have their own criteria for internal scoring, and for this purpose, they require access to the repayment history records of the borrower.

6.54 The argument advanced by the industry is that for the purpose of developing a more reliable and credible credit profile of a borrower, any credit scoring process should involve the historic repayment behaviour of the borrower. If a previous payment pattern cannot be ascertained then the credit scoring process is impaired. In addition it is argued that the longer the period upon which the credit profile is built, the more representative the file will be.

6.55 Data protection principle 2(2) of the Ordinance provides that personal data shall not be kept longer than is necessary for the fulfillment of the purpose (including any directly related purpose) for which the data are, or are to be, used. Section 26 of the Ordinance provides for the erasure of personal data unless any such erasure is prohibited under any law or it is in the public interest for the data not to be erased. For the purposes of credit scoring, it would be in the individual's interest that a limited duration of positive credit data be retained so that any result would not create a bias due to the different duration in positive and negative data used in scoring. Access by credit providers to repayment history records should also be limited to the minimum necessary for the purpose of credit scoring and assessment. Accordingly, the PCO have made the following proposals.

Proposals

8. Credit data relating to an individual's credit facility that are to be used for credit scoring on the individual by the credit reference agency should be *limited* to data compiled within a period of 5 years immediately preceding the date of the credit scoring.
9. Repayment history records relating to an individual's credit facility that are accessible by credit providers should be *limited* to data compiled within a period of 24 months immediately preceding the date of the access.

Issue 3 – Privacy safeguards applicable to Credit Providers

Access to the credit database

6.56 The current provision of access to the credit reference database is restricted to credit providers that are defined in the Code (see paragraph 3.6). The Code also limits the purposes of access by credit providers only during the course of considering any grant, review or renewal of consumer credit to the consumer or where default has occurred. The PCO consider that the same restrictions should apply if the sharing of positive credit data is introduced.

6.57 Concern has been raised by some consumers that access to the credit database may be open to abuse. There are no criteria attached to a “review” access that would guard against illicit retrieval of information such as obtaining the customer's credit data with the intention of marketing a pre-approved credit offering. There is also no restriction on the number of occasions the credit provider can check on an individual's credit information on the grounds of “review” or “renewal” of credit.

6.58 The PCO acknowledge the concern expressed but consider it more appropriate to introduce audit control measures on usage of the credit database than to restrict the frequency of access by credit providers. These considerations are discussed in more detail as safeguards to be implemented by the credit reference agency (see paragraphs 6.81 – 6.84) and implementation safeguards (see paragraphs 6.91 – 6.96).

6.59 Keeping information of the credit database updated is important in ensuring data quality such that the customer is not prejudiced by information that may be out-dated. Inaccurate and out-dated data may erroneously label the customer as a highly indebted person when in fact the customer has made on-time repayments in respect of his debt. Credit providers have the responsibility

to report updated information in relation to credit data that they have previously disclosed to the credit reference agency.

6.60 Data protection principle 2(1) of the Ordinance provides that all practicable steps shall be taken to ensure that personal data are accurate having regard to the purpose (including any directly related purpose) for which the personal data are, or are to be, used. In this regard, the PCO consider that credit providers should adopt a reasonably practical arrangement to update information on the credit database. The frequency of updates should minimize any undue administrative burden on the efficiency of the credit providers' operations. Accordingly, the PCO have made the following proposals.

Proposals

10. A credit provider *may access* from a credit reference agency credit data about an individual's credit facility (in addition to the negative data as currently permitted) in the course of considering any grant, review or renewal of consumer credit to the individual or to another person for whom the individual proposes to act as a guarantor; or upon default by the individual as principal or as guarantor.
11. A credit provider is *required to update* credit data about an individual's credit facility previously disclosed to a credit reference agency at the end of each reporting period not exceeding 31 days to ensure that the individual is not prejudiced by information that may be out-dated.
12. On each occasion of accessing the credit reference database of a credit reference agency, a credit provider *should specify* to the agency the event necessitating such access in accordance with the permissible purposes mentioned above.

Notification to customers

6.61 Since the commencement of the Code, it has been standard practice among financial institutions to issue a notification to customers regarding the possible disclosure of their personal data to a credit reference agency and, in the event of default, to a debt collection agency. The notification is usually given in the terms and conditions of a credit agreement or as a separate notice accompanying a credit application. This practice is consistent with the requirements of data protection principle 1(3). A specific requirement is that a data user should take all practicable steps to explicitly inform the data subject on or before collecting personal data of the purpose(s) for which the data are to be used and the classes of persons to whom the data may be transferred.

6.62 Some financial institutions have advised that they have recently revised their credit application form to request borrowers to provide information relating to their outstanding credit facilities and grant authority to verify the information. Terms and conditions of an account agreement also contain a provision that the customer agrees to the disclosure of account information to a credit reference agency for the purposes of conducting credit checks and assisting other financial institutions to conduct credit checks.

6.63 In many cases, however, the terms and conditions of an account agreement are in very small print which some customers maintain they can neither read nor understand. There are also doubts as to whether this arrangement amounts to explicit notification whereby consent is given voluntarily by the customer concerning the disclosure of his account information.

6.64 The industry is of the view that their existing notification to customers would suffice to cover greater sharing of positive credit data when it is introduced. This may appear to be the case as long as the account is current when the account relationship exists. However, this would not be the case when the account is closed after the customer has discharged the loan in full. Upon settlement, the account relationship ceases to exist, as do its terms and conditions, which will no longer be applicable. The issue therefore is whether, upon full repayment of a credit facility, the positive credit data previously reported by the lending institution regarding that facility should continue to be used by the credit reference agency for future credit reporting and scoring.

6.65 Section 26 of the Ordinance provides for the erasure of personal data unless any such erasure is prohibited under any law or it is in the public interest for the data not to be erased. Applying this to the case where the account relationship is terminated upon full settlement, it could be argued that the continued retention of the account data is permissible if this would serve the public interest. At the same time, it could be argued that the customer, being the subject of the data concerned, should have control over the way in which the data are subsequently used by other financial institutions when the borrowing obligation has been fulfilled.

6.66 To balance the two interests, the PCO is of the view that borrowers should be given a choice, upon full repayment of each individual credit account, to request a credit reference agency to cease using the account information for future credit reporting and scoring (“the “opt-out” choice”). When borrowers apply for credit, lending institutions should inform them of this “opt-out” choice and provide sufficient information to enable their understanding of the implications. Upon settlement by full repayment, the lending institution should also consider sending a simple reminder to borrowers regarding their choice about the future use of the information of the account that is closed. However, the choice should not remove the requirement placed upon the lending

institution to keep the closed account information for its own accounting purposes.

6.67 An “opt-out” arrangement is preferable to “opt-in” because it would not be contrary to the spirit of the public interest protection intended under section 26 of the Ordinance. It also has a parallel in section 34 of the Ordinance, in relation to “the use of personal data in direct marketing”, which provides for a data subject to request a data user to cease using his personal data for direct marketing purposes. Furthermore, the “opt-out” arrangement offers the additional benefit of greater efficacy in credit data management.

6.68 A borrower of facilities from the lending market has an obligation to the market to provide relevant information to enable prudent assessment by lenders, provided such information is necessary but not excessive for the purpose of credit assessment. As long as he remains a consumer of any credit facilities, his obligation to provide relevant information about his borrowings will remain. Only when he discharges himself fully from having any credit facilities, will his obligation cease. Only at that point should the information about his borrowings be removed entirely from use by the market.

6.69 The “opt-out” arrangement gives a borrower a choice regarding the use of his closed account information for future credit reporting and scoring. This information has a residual value to both the borrower and lender should the borrower wish, at some future time, to enter into a new borrowing relationship with a new lender. The effect of the “opt-out” is that his future credit report will be “prohibited” from displaying any data relating to the account, except for the borrower’s name and a numeric count of all facilities under that name. Only when the borrower repays all accounts with a lender, and has exercised an “opt-out” in relation to each of those accounts, will all information about his borrowings with that lender be barred from disclosure by the credit reference agency. Similarly, if the borrower repays all accounts with all lenders (i.e. he is no longer having any credit facilities) then all information about his borrowings will be barred from disclosure. In other words, he will then become anonymous to the financial institutions comprising the lending market.

6.70 The PCO have also considered whether conditions should be attached to the provision of an “opt-out” to customers. The views of financial institutions are that the choice to opt-out should be confined to customers whose account payments show no late payments or, if there are late payments, they do not exceed 30 days. The argument is that customers with frequent late payments in excess of 30 days exhibit important behaviour patterns that may indicate a deteriorating performance.

6.71 The HKMA has recently undertaken an analysis of the migration pattern of delinquent credit card accounts between October 2001 and May 2002.

According to the HKMA, the results showed that 36% of delinquent accounts in the “31-60 days” past due category deteriorated to the “120-180 days” past due category over this period. The corresponding percentage for accounts in the “61-90 days” category was 49%. Given that a significant proportion of the relevant accounts would eventually be written off, the HKMA is of the view that a threshold not exceeding 60 days would be a fair benchmark to apply for eligibility of the “opt-out” choice.

6.72 From the information provided by the industry, there may well be a case for applying a lower threshold than the current 90 days as the criterion for determining the “opt-out” choice. However, given the impact that the revision may have on the individual’s data privacy, the PCO consider that greater care should be taken and that it is not desirable to make such a revision at this stage.

6.73 The PCO believe that the principle to be applied in the circumstance is that, if any conditions are to be attached to the “opt-out” choice, the borrower should not be placed in a worse position than that which prevails under current arrangements. At present, if the borrower repays any amount in default within 90 days, say on the 61st day, from the date the default occurred, his default data would have to be deleted by a credit reference agency (see paragraph 3.8). When the borrower subsequently settles the account in full, his future credit report will show no information of payment data about the closed account despite the fact that there has been a late payment of 61 days during the period of the account.

6.74 Under the new arrangement, if that same individual is not given the choice to “opt-out”, his future credit report will show the closed account with data displayed relating to on-time payments together with data displayed relating to the late payment of 61 days. Only when the individual has the choice to “opt-out” and, if he elects to do so, will his future credit report show no information of payment data about the closed account. In other words, the individual’s position can be no worse than that under prevailing arrangements if he is entitled to the advantage of the “opt-out” choice under the new arrangement.

6.75 The PCO consider that the choice to “opt-out” should be available to all customers upon settlement of each individual credit account with the lending institution. However, the threshold is that the account should contain no default payment data held on file e.g. no default payments in excess of 90 days past due (see paragraph 3.8). A consistent approach to the matter would also help to maintain the integrity of information on the credit database.

6.76 It is important for customers to fully understand the implications of the choice to “opt-out” because, in some instances, that choice may affect future credit ratings. This can be illustrated with an example of a customer

whose terminated account with a lending institution had no record of late payments.

6.77 If the customer elects to prohibit for future credit reporting the use of information relating to the closed account, the information will no longer be available to other financial institutions. However, should he decide, at some future time, to apply for credit with these institutions, he may be disadvantaged because his credit report would not display the closed account information, even though the information, showing no record of late payments, could indeed reflect a pattern of good payments.

6.78 On the other hand, if the customer elects not to exercise the choice to “opt-out” then his closed account information, with record of no late payments, would continue to be used for future credit reporting. This is particularly advantageous when he subsequently applies for credit with other financial institutions because his credit report would display the closed account information showing no record of late payment. He is likely therefore to be in a stronger position to negotiate better terms of credit that effectively reflect his good payment record.

6.79 An individual who elects to “opt-out”, upon settlement of an account, indicates a wish to prohibit the use of the account information for future credit reporting and scoring. However, it is conceivable that at some point in time the individual may wish to enter into a new credit relationship with a new credit provider. In such circumstances, his previous decision should not bar him from giving express consent to the new credit provider to access information on closed accounts that have been “prohibited”. In other words, given the express consent of the individual, the new credit provider, when seeking a credit report or a credit score about him, can indicate to the credit reference agency that the credit report may display information on any closed accounts that have previously been “prohibited” by the individual. The procedure for dealing with the request is best managed by the credit reference agency and its member subscribers (credit providers) on the basis of a contractual agreement.

6.80 The PCO are mindful that any procedural steps involved should minimize any undue administrative burden to financial institutions and should cause minimal inconvenience to customers. In this regard, the PCO consider that customers should be allowed to submit their “opt-out” request directly to the credit reference agency. Accordingly, the PCO have made the following proposals.

Proposals

13. Upon application for a new credit facility, a credit provider should make provision to inform the borrower that, upon full repayment of the account, the borrower may elect to “opt-out” of the use of the account information by a credit reference agency for future credit reporting and scoring purposes.
14. As a matter of good practice, a credit provider should consider giving to the borrower, as soon as reasonably practicable upon the termination of his account by full repayment, a reminder regarding his choice to “opt-out” of the use of the account information for future credit reporting and scoring.
15. Subsequently, a credit provider, who is intent upon accessing credit data held by a credit reference agency in respect of a borrower’s account which the borrower has previously elected to “opt-out”, should seek from the borrower his written consent for it to access such data.
16. Upon receipt of an “opt-out” request relating to a closed account, and subject to verification of the individual’s identity/authority and further that the said account contains no default data held on file (e.g. no default payments in excess of 90 days past due), the credit reference agency should:
 - (a) cease using the account information in any future credit reports and for credit scoring concerning the individual; and
 - (b) cease making available the account information to other credit providers;

unless such credit provider has confirmed that it has obtained the individual’s written consent to access the information, in which case, the credit reference agency may use that account information for providing a credit report or credit score on the individual.

Issue 4 – Privacy safeguards applicable to Credit Reference Agencies

Preventing abusive access

6.81 As with any personal data system, the credit reference database requires stringent access controls to be put in place to ensure data protection. It is equally important that these access controls include measures that address the discipline to be applied by staff when they access and use information processed by the database system.

6.82 Concern has been raised by some consumers that access to the credit database may be open to abuse. There are no criteria attached to a “review” enquiry that would guard against non-genuine retrieval of information such as obtaining the customer’s credit data with the intention of marketing a pre-approved credit offering. There is also no restriction on the number of occasions the credit provider can check on an individual’s credit information on the grounds of “review” or “renewal” of credit.

6.83 The PCO are given to understand that a financial institution may make a “review” enquiry about the customer in circumstances where signs of not performing have been detected, or where there is a desire to increase the credit line or limit.

6.84 The PCO acknowledge the concern of consumers but consider it to be more appropriate to introduce audit control measures on the usage of the credit database rather than to restrict the frequency of access by financial institutions. Such measures should be capable of detecting and logging any abnormal or unusual access. Any incidents involving suspected abnormal access should be acted upon promptly. Abnormal-access alerts would also be useful to signal excessive access if a certain threshold were exceeded. In this respect, financial institutions have advised that it would be very unusual for an institution to make credit checks on the same customer, on the grounds of a “review” enquiry, more than 5 times per calendar month. A similar rationale can be adopted to develop an “abnormal-access” threshold.

Ensuring compliance

6.85 A privacy compliance audit is another useful tool that should be deployed by the credit reference agency to review and check whether data management practices are adequate to comply with the requirements of the Code. If it has not already done so, the agency should consider conducting a privacy compliance audit on an annual basis.

6.86 The PCO consider that an independent compliance auditor is important for the purposes of ensuring objectiveness and impartial examination of matters relating to the audit. Upon request by the credit reference agency, the Privacy Commissioner may assist in the election of the compliance auditor or may approve the appointment of the auditor. The audit should be carried out with a view to having the compliance auditor submitting an audit report to the Privacy Commissioner. Accordingly, the PCO have made the following proposals.

Proposals

17. A credit reference agency should implement an access log record system of all instances of access to its credit database by credit providers. These log records should be kept for not less than 2 years for examination by its compliance auditor and/or the Privacy Commissioner.
18. A credit reference agency should promptly report to the senior management of a credit provider and to the Privacy Commissioner incidents involving any suspected abnormal access to its credit database by staff of the credit provider. The credit provider should then undertake a prompt investigation of the incident.
19. As a matter of good practice, a credit reference agency is recommended, at its own expense, to commission an independent compliance audit annually to verify whether its data management practices are adequate in terms of enabling the agency to comply with the requirements of this Code. Such an audit should be carried out with a view to having the compliance auditor submitting to the Privacy Commissioner an audit report no later than 3 months from the date of the commencement of the compliance audit.

Issue 5 – Other regulatory control measures

6.87 At present, any breach of the requirements under the Code would be accepted as evidence of a breach of the relevant data protection principles under the Ordinance. The Privacy Commissioner may issue an enforcement notice to a data user, following investigation (initiated by either a complainant or by the Commissioner) about a contravention of the relevant data protection principles, to direct the data user to take such remedial steps as are specified in the notice. Continued contravention by a data user after the enforcement notice has been served would constitute an offence. Upon conviction, the data user is liable to a fine of \$50,000 and to imprisonment for 2 years and, in the case of a continuing offence, to a daily penalty of \$1,000.

6.88 In addition, an individual who suffers damage by reason of a contravention by a data user is entitled to compensation from the data user for that damage under section 66 of the Ordinance.

6.89 Section 36 of the Ordinance empowers the Privacy Commissioner to inspect personal data systems for the purpose of making recommendations to promote compliance with the Ordinance, in particular the data protection principles, either by the relevant data user or a class of data users to which the data user belongs. Following the completion of an inspection, the Privacy

Commissioner may publish a report setting out any recommendations arising from the inspection.

6.90 The above-mentioned statutory provisions are relevant regulatory control mechanisms that have been given due consideration by the PCO. Matters contained therein may not necessarily be included in the provisions of the Code, but they are included in this document for completeness and general information. It is therefore proposed:

Proposals

20. A credit reference agency should make its credit reference system available for inspection by the Privacy Commissioner pursuant to his power under section 36 of the Personal Data (Privacy) Ordinance.
21. A credit provider, in deciding on the engagement or renewal of any relationship with a credit reference agency for the provision of consumer credit reference services, should treat as an important criterion the demonstration by the agency of its compliance with the requirements of the Ordinance and of this Code.

Issue 6 – Implementation Safeguards

6.91 Section 12(2) of the Ordinance requires the Privacy Commissioner, in approving any code of practice or its revisions, by notice in the Gazette, to identify the code concerned and specify the date on which its approval is to take effect.

6.92 The implementation of the sharing of positive credit data, if approved, is an immense task to be undertaken by all parties concerned. Safeguarding data privacy of consumers has been a primary concern in the discussion of the data sharing proposal between the industry and the PCO. In this respect, and in order to minimize the extent of disclosure of credit information relating to existing customers, the current proposal is that there should not be any retrospective reporting and use of existing customers' credit repayment details that occurred prior to the effective date (see paragraph 6.43). Indeed, this stipulation is consistent with the suggestion made by the industry in its proposal concerning greater sharing of positive credit data (see paragraph 4.2).

6.93 In light of the impact the implementation may have upon the data privacy interests of existing borrowers, the PCO believe that a transition period of twenty-four months, as of the effective date, should be enforced. During the

transition period, financial institutions are prevented from accessing and using positive credit data held by the credit reference agency for the purposes of the renewal or review of existing credit facilities extended to borrowers. The PCO's proposal is based on the following arguments.

- A transition period would enhance the personal data privacy of existing borrowers. It offers them an additional level of safeguard in the knowledge that any positive credit data collected by the credit reference agency could not be accessed and used for two years immediately following the effective date of the implementation. This may be beneficial to those who have over-borrowed in that it would offer a lengthier period of time in which they would be able to re-assess and revise a realistic repayment schedule with their lending institutions.
- More importantly, the twenty-four month period would be conducive to establishing a more reliable picture of an existing borrower's repayment profile. In turn, this would benefit the individual inasmuch that credit decisions based upon a twenty-four month period would be fairer to the individual. A shorter period is considered less than fair in terms of the interests of the borrower because it may generate a repayment profile that is untypical of the individual. As such, the profile may be misleading for the purpose of credit assessment. Misleading data would have poor predictive characteristics that would adversely impact upon credit decisions.
- Furthermore, the twenty-four month transition period would facilitate the endeavours of financial institutions in that, where appropriate, it would enable them to come to a better judgement in terms of the extent to which their own credit recovery strategies were efficacious. Those strategies would include debt relief plans and/or the restructuring of non-performing loans.

6.94 As regards the handling of new applications for credit, i.e. when considering the grant of new credits after the effective date, the PCO consider that the restrictions placed on financial institutions during the transition period should not apply. This is because a new credit application poses a different proposition in that the lending institution, in offering a new credit facility, would be assuming a new risk. Historically, the inability of financial institutions to fully assess that risk has aggravated the problems of default and bankruptcies. Hence, any restrictions imposed in the circumstance of a new application for credit would result in the lending institution having neither a previous track record of the applicant's repayment history nor access to reliable information regarding his total credit exposure.

6.95 Having considered the above situation, the PCO consider that for the purpose of assessing new applications for credit, financial institutions should

be allowed, as of the effective date, to access and use positive credit data as a means of more accurately determining the existing credit exposure of a new applicant. The process of assessment would become progressively more refined as the subsequent reporting of positive credit data generates a richer database upon which to make such decisions.

6.96 Accordingly, the PCO have made the following proposals.

Proposals

22. That there should be a twenty-four month transition period following the effective date for the sharing of positive credit data. During that period, credit providers may report positive credit data of existing borrowers to the credit reference agency, but are prevented from accessing and using these data for the purposes of assessing the renewal or review of existing credit facilities of borrowers until after the transition period has elapsed.
23. The above-mentioned restriction should not apply to new applications for credit made by a borrower to the credit provider during the said transition period.

Appendix I –Proposed Amendments to the Code of Practice on Consumer Credit Data

PART I : DESCRIPTION OF PROPOSED ADDITIONAL PROVISIONS TO THE CODE

A. Additional Definitions

“*account*” means an account between a credit provider and a borrower which involves the provision of consumer credit other than a residential mortgage loan;

“*additional consumer credit data*” means all or any of the consumer credit data which a CRA may collect from a credit provider under paragraph 1;

“*borrower*” means a borrower who is an individual, and includes a proposed borrower or former borrower;

“*Commissioner*” means the Privacy Commissioner for Personal Data;

“*CRA*” means credit reference agency;

“*the current Code*” means the Code of Practice on Consumer Credit Data first issued by the Commissioner on 27 February 1998 and revised by the Commissioner on 8 February 2002;

“*date of creation*”, in relation to additional consumer credit data, means the date on which such data were first created;

“*DPP*” means data protection principle;

“*effective date*” means a date to be appointed by the Commissioner, as from which date all or some of the amendments as proposed under Part I or Part II herein shall take effect;

“*material default record*” means any account default data within the meaning of clause 2.1.2.1 of the current Code, in relation to which account default data no notice of repayment as described in clause 3.5.1 or 3.5.2 of such Code has been given to the CRA by the credit provider¹;

¹ See Part II below for a description of the nature and effect of a notice of repayment under the two sub-clauses of clause 3.5

“*prohibition command*” means a command in whatever form which, once entered against an account, then, unless overridden, will have the effect of prohibiting the use of all, or a certain part, of the data relating to such account for a particular purpose or purposes;

“*repayment punctuality record*” means a record which indicates the extent to which payment on an account has been punctual or late (i.e., the period of lateness, if any) over a certain period;

“*reporting period*”, in relation to an account, means the period between the effective date and the date on which additional consumer credit data in respect of the account are collected by the CRA from the credit provider for the first time, and, thereafter, the period (not exceeding 31 days) between the date of one collection of such data and the date of the next collection;

“*residential mortgage loan*” means a loan to an individual or to individuals to finance the purchase of, or to refinance the earlier purchase of, any residential property, including uncompleted units and properties under the Home Ownership Scheme, Private Sector Participation Scheme and Tenants Purchase Scheme;

“*suspected abnormal access*” means the occurrence of access on five or more occasions within a period of 31 days made by the same credit provider seeking access to the consumer credit data of a particular individual held by a CRA, in connection with the review of consumer credit granted to such individual by that credit provider;

“*transitional period*” means the period of 24 months beginning on the effective date and ending on the day before the second anniversary of the effective date.

B. Collection and Retention of Additional Consumer Credit Data by CRA

1. A CRA may collect from a credit provider the following consumer credit data in respect of an account²:

- (a) general credit data, being:
 - (i) the identity of the credit provider;
 - (ii) the account opening date;

² If a CRA collects from a credit provider consumer credit data other than those permitted under paragraph 1 or those mentioned in Clause 2.1 of the current Code, this will give rise to a presumption of contravention of DPP1(1) under section 13(2) of the Ordinance.

- (iii) the type of the facility and the currency denominated; and
- (iv) in the case of the facility being a credit card, the approved credit limit, or, in other cases, where applicable, the original credit amount or approved credit limit and the repayment period;

(b) repayment data, being:

(in the case of the facility being a credit card)

- (i) the remaining available credit under the approved credit limit;
- (ii) date of last statement, and amount shown on such statement; and
- (iii) the date and amount of payment(s) made during the last reporting period;

(and/or, in the case of other credit facilities, where applicable)

- (iv) the remaining available credit under the approved credit limit;
- (v) the outstanding balance of the account;
- (vi) the date on which repayment last fell due, and the amount then due; and
- (vii) the date and amount of payment(s) made during the last reporting period;

provided that the CRA shall not collect from the credit provider any repayment data created before the effective date;

(c) (upon termination of the account) account termination data, being:

- (i) the fact and date of account termination; and
- (ii) (where applicable) the fact that the account had been terminated by full repayment.

2. During the currency of an account, the credit provider shall update any additional consumer credit data provided by it to the CRA pursuant to paragraph 1 above at the end of each reporting period not exceeding 31 days³.

³ If a credit provider fails to abide by the requirement under paragraph 2, this will give rise to a presumption of contravention of DPP2(1) under section 13(2) of the Ordinance.

3. In relation to an account, the CRA may, subject to the restrictions against usage of consumer credit data under the Code⁴, retain in its record system⁵:
 - (a) the general credit data referred to in paragraph 1(a) above, until the expiry of 5 years from the date of account termination;
 - (b) the repayment data in relation to the account referred to in paragraph 1(b) above, until the expiry of 5 years from the date of creation of each item of such data;
 - (c) the account termination data referred to in paragraph 1(c) above, until the expiry of 5 years from the date of account termination.

C. Use of Additional Consumer Credit Data by CRA During the Currency of an Account

4. During the currency of an account, the CRA may use the additional consumer credit data described in paragraph 1 above for providing a credit report on the borrower, to the extent that such a credit report may reveal:
 - (a) the general credit data under paragraph 1(a) above, subject to the limitation that the identity of the credit provider under paragraph 1(a)(i) may be revealed only in a credit report to that credit provider;
 - (b) the repayment data referred to in paragraph 1(b) above, confined to data created within the period of 24 months immediately preceding the date of the credit report;
 - (c) repayment punctuality record in relation to the account, in respect of a period not exceeding 24 months immediately preceding the date of the credit report, derived solely from repayment data in respect of the account; and
 - (d) account count record, namely, the total number, as recorded in the CRA's record system, of account(s) (being the account in question, any other account that is current and any terminated account, whether or not a prohibition command has been entered against such terminated account) held or previously held by the borrower with the credit provider with whom the account in question is held, except that no such account count record shall

⁴ See, in particular, paragraphs 4, 5, 7 and 10 below which restrict the use of additional consumer credit data by a CRA for providing a credit report or credit score on the borrower.

⁵ If a CRA retains in its record system any data referred to in paragraph 3(a), (b) or (c) beyond the period permitted under the respective sub-paragraph, subject to clause 2.5 of the current Code (as revised), this will give rise to a presumption of contravention of DPP2(2) and/or section 26 under section 13(2) of the Ordinance.

be revealed where each and every one of the said account(s) has been terminated and has a prohibition command⁶ entered against it,

provided that the revelation of items (a), (b), (c) or (d) as described above in a credit report during the transitional period shall be confined to a credit report to a credit provider who has confirmed to the CRA, pursuant to paragraph 16(a) below, that it is in the course of considering the grant of new credit (excluding increase in any existing credit limit) to the borrower, or to another person for whom the borrower proposes to act as guarantor⁷.

5. During the currency of the account, the CRA may use the additional consumer credit data described in paragraph 1 above for providing a credit score on the borrower, provided that:
 - (a) in calculating such score, no account shall be taken of any repayment data created earlier than 5 years immediately preceding the date of the credit score; and
 - (b) during the transitional period, the additional consumer credit data may be used for providing a credit score only to a credit provider who has confirmed to the CRA, pursuant to paragraph 16(a) below, that it is in the course of considering the grant of new credit (excluding increase in any existing credit limit) to the borrower, or to another person for whom the borrower proposes to act as guarantor⁸.

D. Notification by Credit Provider upon Account Termination

6. Upon the termination of an account, the credit provider shall promptly notify the CRA⁹:
 - (a) the fact and date of such termination; and

⁶ The effect of such a prohibition command is to be explained in paragraph 10 below.

⁷ See Note 8 to paragraph 5 below.

⁸ If, during the currency of an account, a CRA uses any additional consumer credit data in respect of the account in any way other than for a purpose and in a manner permitted under paragraph 4 or 5, subject to paragraph 18 below, this will give rise to a presumption of contravention of DPP3 under section 13(2) of the Ordinance.

⁹ If, upon the termination of an account, the credit provider fails to give notification to the CRA in accordance with the requirement under paragraph 6, this will give rise to a presumption of contravention of DPP2(1) under section 13(2) of the Ordinance.

- (b) (where applicable) the fact that the account had been terminated by full repayment.
7. After receiving from the credit provider notification of the termination of the account, the CRA may, unless and until it receives from the borrower a written instruction in respect of such account under paragraph 8 below, continue to use the additional consumer credit data in respect of the account (including the account termination data collected by it from such notification by the credit provider) for the purpose of providing a credit report or a credit score on the borrower. In so doing, the CRA shall continue to abide by the limitations laid down respectively in paragraphs 4 and 5 above, save that the phrases “*immediately preceding the date of the credit report*” and “*immediately preceding the date of the credit score*”, wherever they appear respectively in paragraphs 4(b) and (c) and 5(a), shall be construed as meaning “*immediately preceding the date of account termination*”¹⁰.
8. Where, at the time of the termination of an account by full repayment, it is held in the record system of a CRA any additional consumer credit data, but no material default record, in respect of the terminated account, the borrower shall be entitled to give a written instruction to the CRA to prohibit any subsequent use of such additional consumer credit data without his express consent. To ensure that such potential restriction on the use of the borrower’s additional consumer credit data after account termination has been duly notified to him, a written notice containing a clear explanation of this shall have been given by the credit provider to the borrower on or before the opening of the account in question¹¹. In addition, as a matter of good practice, the credit provider should also consider giving to each borrower, as soon as reasonably practicable upon the termination of his account by full repayment, a written reminder of the said written notice previously given.

¹⁰ If, in using any additional consumer credit data after receiving from the credit provider a notice of the termination of the account, the CRA fails to abide by the limitations laid down in paragraph 4 and/or 5 above (as modified by paragraph 8), then subject to paragraph 18 below, this will give rise to a presumption of contravention of DPP3 under section 13(2) of the Ordinance.

¹¹ If the credit provider has failed to give such a notice to the borrower on or before the opening of the account, under section 13(2) of the Ordinance, such failure will give rise to a presumption of contravention of DPP1(3) (which requires a data user to take all reasonably practicable steps to ensure that a data subject is informed of, *inter alia*, the purpose for which his personal data are to be used, *on or before* the collection of such data from the data subject).

E. Handling of Written Instruction from Borrower

9. If, at any time after the termination of an account, the borrower or another person acting under his authority shall give to the CRA the written instruction referred to in paragraph 8 above, then upon the receipt of such instruction and subject to verification of:

- (a) the identity or authority of the person giving the instruction;
- (b) the fact that the account had been terminated by full repayment;
and
- (c) the fact that there appears in the record system of the CRA no material default record in relation to the account in question,

the CRA shall enter, in its record system, a prohibition command against the terminated account¹².

10. Subject to paragraph 4(d) above, after a prohibition command has been entered against a terminated account, and so long as such prohibition command shall remain in force, the CRA shall not use, or allow to be used, any additional consumer credit data in respect of such account for the purpose of providing a credit report or credit score on the borrower, except to a credit provider who has given its express confirmation to the CRA that it has obtained the borrower's written consent to access such data. If the credit provider gives such an express confirmation to the CRA, the CRA shall then (and only then) have the prohibition command overridden, and use the said data for providing a credit report or credit score on the borrower to that particular credit provider in accordance with paragraph 7 above¹³. Save as aforesaid, the prohibition against the use of the additional consumer credit data shall continue to apply as against any other credit provider.

11. If the CRA, having received from a person the written instruction referred to in paragraph 8 above, fails to be satisfied on any of the following matters, namely:

¹² If a CRA, having received a written instruction referred to in paragraph 8 above, fails to verify any of the matters referred to in paragraph 9, or, having so verified and having been satisfied with all those matters, fails to enter in its record system any prohibition command against the terminated account, such failure will give rise to a presumption of contravention of DPP2(1) under section 13(2) of the Ordinance.

¹³ If, in relation to an account against which a prohibition command has been in force, the CRA uses, or allows to be used, any additional consumer credit data in respect of such account for providing a credit report, or a credit score, on the borrower to a credit provider who has not expressly confirmed to the CRA that it has obtained the borrower's written consent to access such data, this will give rise to a presumption of contravention of DPP2(1) and/or DPP3 under section 13(2) of the Ordinance.

- (a) that the person giving the instruction is the borrower of the account to which the instruction relates, or has the authority of such borrower;
- (b) that the account had been terminated by full repayment; and
- (c) that there appears in the record system of the CRA no material default record of the borrower in relation to the same account,

the CRA shall give to the person who gave the instruction written notice of its rejection of the instruction, and its reason(s) for so rejecting¹⁴. The CRA may then continue to use the additional consumer credit data in relation to the account for providing a credit report and a credit score on the borrower in accordance with paragraph 7 above, unless and until it shall be subsequently satisfied of all of the said matters, at which time a prohibition command shall be entered against the account in question¹⁵, and thereafter paragraph 10 shall apply.

- 12. For the purpose of verifying the identity or authority of any person giving a written instruction under paragraph 8 above, the CRA may, at its election, treat the production by that person of his identity document or the original written reminder from the credit provider given under paragraph 8 above, as the case may be, as sufficient proof of such identity or authority (without prejudice, however, to the right of such person to prove his identity or authority in any other way which may be sufficient under the general law).
- 13. Save as provided under paragraph 10 above, a CRA shall be under no obligation to comply with any request from a borrower to have a prohibition command entered against his account overridden.
- 14. Subject to the restriction under clause 3.1 of the Code and for the purpose of paragraph 10 above, if a credit provider is intent upon accessing any additional consumer credit data held by a CRA in respect of an account against which a prohibition command has been entered, it shall seek from the borrower of the account his written consent for the credit provider to access such data. If the borrower has

¹⁴ If the CRA fails to give to such person written notice of its rejection of the instruction and the reason(s) for so rejection (so as to enable the person to provide further proof of his identity or authority, or to seek correction to any inaccurate data held by the CRA, as the case may be), such failure by the CRA will give rise to a presumption of contravention of DPP2(1) under section 13(2) of the Ordinance.

¹⁵ If, even after being satisfied of all of the matters referred to in paragraph 11(a), (b) and (c), the CRA still fails to enter a prohibition command against the account in question, such failure will give rise to a presumption of contravention of DPP2(1) under section 13(2) of the Ordinance.

given such written consent to the credit provider, the credit provider may then (and only then) confirm this to the CRA¹⁶.

F. Additional Privacy Safeguards

15. A CRA shall take appropriate measures, including the following, to safeguard against any improper access to consumer credit data¹⁷:

- (a) where there has been any suspected abnormal access by a credit provider to the consumer credit data of an individual held by the CRA, the CRA shall as soon as reasonably practicable report to the senior management of the credit provider, and to the Commissioner, about such suspected abnormal access;
- (b) the CRA shall maintain a log of all instances of access to its record system by credit providers, which log shall include:
 - (i) the identity of the credit provider seeking access;
 - (ii) the date and time of access;
 - (iii) the identity of the individual whose data were so accessed;
 - (iv) the event under Clause 3.1 of the Code which necessitates such access (as specified by the credit provider pursuant to paragraph 16(a) below); and
 - (v) instances of reporting by the CRA of suspected abnormal access to the senior management of a credit provider and to the Commissioner,

and shall keep such a log for not less than 2 years for examination by its compliance auditor¹⁸ and/or by the Commissioner, as the case may be.

16. A credit provider shall take appropriate measures, including the following, to safeguard against any improper access to consumer credit data:

¹⁶ If a credit provider gives an untrue confirmation to a CRA that it has obtained the written consent of a borrower under paragraph 14, this will give rise to a presumption of contravention of DPP1(2) under section 13(2) of the Ordinance.

¹⁷ If a CRA fails to take any of the measures referred to in paragraph 15 to safeguard against any unauthorized or accidental access to consumer credit data, this will give rise to a presumption of contravention of DPP4 under section 13(2) of the Ordinance.

¹⁸ See paragraph 17 below.

- (a) on each occasion of accessing the consumer credit record system of a CRA, it shall specify to the CRA the event necessitating such access in accordance with clause 3.1 of the Code (as revised), namely, the considering of grant, review or renewal of consumer credit, the providing or updating of data, or the fact that the individual is in default, as the case may be¹⁹;
- (b) upon receiving from a CRA a report of suspected abnormal access as referred to in paragraph 15(a) above, the credit provider shall as soon as reasonably practicable conduct an internal investigation to ascertain whether such suspected abnormal access has been the result of:
 - (i) improper access or other mishandling of data by any person (including but not limited to its staff), in contravention of the requirements of the Ordinance or of this Code; or
 - (ii) any defect in its system of handling consumer credit data which may have enabled or facilitated such improper access or mishandling²⁰;
- (c) if as the result of the investigation, the credit provider discovers any improper access, mishandling or defect as aforesaid, the credit provider shall, as soon as reasonably practicable, take appropriate action to prevent any further improper access or mishandling or to rectify the defect, as the case may be (including but not limited to disciplinary action against its staff, or reporting any case of suspected contravention of the Ordinance or other laws to the Commissioner or other relevant authorities, as the case may be)²¹;
- (d) the credit provider shall maintain a log of:
 - (i) all reports of suspected abnormal access made to it by a CRA; and
 - (ii) the action taken by it as a result of any such reports, including a description of the investigation undertaken, the result and any action taken consequent thereon,

¹⁹ If the credit provider fails to so specify the event necessitating such access, or specifies an event which is untrue, this will give rise to a presumption of contravention of DPP1(2) under section 13(2) of the Ordinance.

²⁰ If a credit provider fails to take any of the measures referred to in paragraph 16(b), (c), (d) or (e) to safeguard against any unauthorized or accidental access to consumer credit data, this will give rise to a presumption of contravention of DPP4 under section 13(2) of the Ordinance.

²¹ See Note 20 above.

and shall keep such log for not less than two years for examination by the Commissioner if and when required²²;

- (e) In deciding on the engagement of, and the renewal of any engagement with, a CRA for the provision of consumer credit reference service, a credit provider shall treat as an important criterion the demonstration by the CRA of its compliance with the requirements of the Ordinance and of this Code, including compliance with the recommended good practice laid down in paragraph 17 below, regarding the security of consumer credit data²³.

- 17. To supplement the requirement under paragraph 15 above, as a matter of good practice, a CRA should engage, at its expense, an independent compliance auditor as may be approved by the Commissioner or, at the election of the Commissioner, to be nominated by the Commissioner, to conduct audit annually on its provision of the consumer credit reference service, including the security of consumer credit data held by the CRA, and the adequacy and efficiency of the measures taken by it to comply with the requirements of the Code and the Ordinance, with the view to having the compliance auditor submit to the Commissioner its audit report no later than 3 months from the date of the commencement of the compliance audit.

G. General

- 18. For the avoidance of doubt, none of the proposed provisions as described above shall have the effect of prohibiting the use of additional consumer credit data by a CRA for the purpose of developing, or enabling the development of, a consumer credit scoring model intended to be of general application, insofar as this shall give rise to exemption of the data from data protection principle 3 under section 62 of the Ordinance.
- 19. Upon their incorporation into the current Code, the proposed additional provisions as described above may be modified to the extent necessary for maintaining stylistic and regulatory consistency of the Code as a whole.

²² See Note 20 above.

²³ See Note 20 above.

PART II: GENERAL DESCRIPTION OF THE MAIN PROPOSED AMENDMENTS TO THE PROVISIONS OF THE CURRENT CODE

Clauses 1.1, 1.2, 1.5 and 4.1

The definitions of “consumer credit data”, “consumer credit” and/or “consumer credit reference service” under clauses 1.1, 1.2 and/or 1.5 are proposed to be amended so as enable a CRA to include in its consumer credit reference service any hire purchase or leasing data, where such financing was for the purpose of enabling an individual to acquire goods or equipment (such as, for example, vehicles or machinery) for business application. Clause 4.1 is also proposed to be amended accordingly.

Clauses 2.1.2.1, 2.1.3, 2.2, 2.6.1 and 3.5

Currently, these clauses encompass the following situations:

1. any account default data, as defined in clause 2.1.2.1, in relation to which a CRA has not received from the credit provider any notice under clause 3.5 (namely, a notice that the amount in default has been repaid within 90 days, or repaid before the expiry of a 30-day warning period, or repaid pursuant to a scheme of arrangement, as the case may be) may be revealed by the CRA in a credit report, and be used for credit scoring on the borrower, until the expiry of 5 years of the date of the default;
2. for any account default data in relation to which there has been such a notice under clause 3.5, the data are to be deleted by the CRA upon the receipt of the notice.

With the proposed introduction of the new provisions, as described in Part I above, concerning the use of additional consumer credit data (including account default data), situation 1 is to remain basically unchanged, whereas situation 2 is to be superseded by the proposed new provisions concerning the retention by a CRA of such additional consumer credit data.

Clauses 2.1.2.1, 2.1.3, 2.2, 2.6.1 and 3.5 (and other related provisions in the Code, where necessary) are therefore to be amended accordingly.

Clause 2.1.4

To provide greater clarity, the scope of current transaction data relating to motor vehicle or equipment leasing or hire-purchase permitted to be collected by a CRA under this clause of the current Code, for use in a leasing and hire-purchase enquiry service, is to be stated to expressly include general credit data, repayment data and account termination data as described in paragraph 1 of

Part I, to the extent that the same may be applicable to motor vehicle or equipment leasing or hire-purchase.

Clause 2.5

To provide greater clarity, this clause is proposed to be amended so as to expressly permit the retention of consumer credit data by a CRA for the purpose of developing a consumer credit scoring model intended to be of general application.

Clause 3.1

To protect additional consumer credit data (as opposed to other consumer credit data) held by a CRA from full disclosure during the transitional period of two years after the effective date of the Code, this clause is proposed to be amended so as to confine access to such additional consumer credit data, by any credit provider during such transitional period, to the situation in which the credit provider so seeking access is in the course of considering the grant of new credit (excluding increase in any existing credit limit) to the borrower, or to another person for whom the borrower proposes to act as guarantor.

Furthermore, to provide greater clarity, the clause is proposed to be amended to expressly allow a credit provider to access consumer credit data in the record system of a CRA for the purpose of providing or updating data in accordance with the requirements of the Code.

Other Clauses

Upon the incorporation into the current Code of all or any of the proposed additional provisions as described in Part I above, the provisions of the current Code may be modified to the extent necessary for maintaining stylistic and regulatory consistency of the Code as a whole.

Appendix II - Data Protection Principles and Relevant Provisions of the Personal Data (Privacy) Ordinance

1 Principle 1 - Purpose and Manner of Collection of Personal Data

- (1) Personal data shall not be collected unless -
 - (a) the data are collected for a lawful purpose directly related to a function or activity of the data user who is to use the data;
 - (b) subject to paragraph (c), the collection of the data is necessary for or directly related to that purpose; and
 - (c) the data are adequate but not excessive in relation to that purpose.
- (2) Personal data shall be collected by means which are -
 - (a) lawful; and
 - (b) fair in the circumstances of the case.
- (3) Where the person from whom personal data are or are to be collected is the data subject, all practicable steps shall be taken to ensure that -
 - (a) he is explicitly or implicitly informed, on or before collecting the data, of -
 - (i) whether it is obligatory or voluntary for him to supply the data; and
 - (ii) where it is obligatory for him to supply the data, the consequences for him if he fails to supply the data; and
 - (b) he is explicitly informed -
 - (i) on or before collecting the data, of -
 - (A) the purpose (in general or specific terms) for which the data are to be used; and
 - (B) the classes of persons to whom the data may be transferred; and
 - (ii) on or before first use of the data for the purpose for which they were collected, of -
 - (A) his rights to request access to and to request the correction of the data; and
 - (B) the name and address of the individual to whom any such request may be made,

unless to comply with the provisions of this subsection would be likely to prejudice the purpose for which the data were collected and that purpose is specified in Part VIII of this Ordinance as a purpose in relation to which personal data are exempt from the provisions of data protection principle 6.

2 Principle 2 - Accuracy and Duration of Retention of Personal Data

- (1) All practicable steps shall be taken to ensure that -
 - (a) personal data are accurate having regard to the purpose (including any directly related purpose) for which the personal data are or are to be used;
 - (b) where there are reasonable grounds for believing that personal data are inaccurate having regard to the purpose (including any directly related purpose) for which the data are or are to be used -
 - (i) the data are not used for that purpose unless and until those grounds cease to be applicable to the data, whether by the rectification of the data or otherwise; or
 - (ii) the data are erased;
 - (c) where it is practicable in all the circumstances of the case to know that -
 - (i) personal data disclosed on or after the appointed day to a third party are materially inaccurate having regard to the purpose (including any directly related purpose) for which the data are or are to be used by the third party; and
 - (ii) that data were inaccurate at the time of such disclosure.
 - that the third party -
 - (A) is informed that the data are inaccurate; and
 - (B) is provided with such particulars as will enable the third party to rectify the data having regard to that purpose.

- (2) Personal data shall not be kept longer than is necessary for the fulfilment of the purpose (including any directly related purpose) for which the data are or are to be used.

3 Principle 3 – Use of Personal Data

Personal data shall not, without the prescribed consent of the data subject, be used for any purpose other than -

- (a) the purpose for which the data were to be used at the time of the collection of the data; or
- (b) a purpose directly related to the purpose referred to in paragraph (a).

4 Principle 4 - Security of Personal Data

All practicable steps shall be taken to ensure that personal data (including data in a form in which access to or processing of the data is not practicable) held by a data user are protected against unauthorized or accidental access, processing, erasure or other use having particular regard to -

- (a) the kind of data and the harm that could result if any of those things should occur;
- (b) the physical location where the data are stored;
- (c) any security measures incorporated (whether by automated means or otherwise) into any equipment in which the data are stored;
- (d) any measures taken for ensuring the integrity, prudence and competence of persons having access to the data; and
- (e) any measures taken for ensuring the secure transmission of the data.

5 Principle 5 - Information to be Generally Available

All practicable steps shall be taken to ensure that a person can -

- (a) ascertain a data user's policies and practices in relation to personal data;
- (b) be informed of the kind of personal data held by a data user;
- (c) be informed of the main purposes for which personal data held by a data user are or are to be used.

6 Principle 6 - Access to Personal Data

A data subject shall be entitled to -

- (a) ascertain whether a data user holds personal data of which he is the data subject;
- (b) request access to personal data -
 - (i) within a reasonable time;
 - (ii) at a fee, if any, that is not excessive;
 - (iii) in a reasonable manner; and
 - (iv) in a form that is intelligible;
- (c) be given reasons if a request referred to in paragraph (b) is refused;
- (d) object to a refusal referred to in paragraph (c);
- (e) request the correction of personal data;
- (f) be given reasons if a request referred to in paragraph (e) is refused; and
- (g) object to a refusal referred to in paragraph (f).

26 Erasure of Personal Data no Longer Required

- (1) A data user shall erase personal data held by the data user where the data are no longer required for the purpose (including any directly related purpose) for which the data were used unless -

- (a) any such erasure is prohibited under any law; or
- (b) it is in the public interest (including historical interest) for the data not to be erased.