

Consumer Council

**Submission to LegCo Panel on Financial Affairs
'Proposal on sharing of positive consumer credit data'**

1. The Consumer Council is pleased to provide further views and take part in the Panel discussion on the subject of sharing of positive consumer credit data.
2. As indicated in the Council's recent submission to the Panel on consumer protection issues in the banking industry, the Council has reservations with the proposal to expand the range of information that can be collected and stored by a credit reference agency about consumers' credit information.

Identifying the problem

3. The Council has considered this issue at length and has had detailed discussions with the Hong Kong Monetary Authority (HKMA), the Office of the Privacy Commissioner for Personal Data (PCO), and representatives of the banking industry.
4. The Council's understanding is that the proposal to expand the range of data stored within a credit reference bureau is to serve a number of purposes. The primary reason being to allow banks in Hong Kong to lend prudently and avoid possible detrimental consequences for the economy arising from bankruptcies. In particular, concern has been expressed about current levels of unsustainable debt in the community.
5. The Council considers it of paramount importance for industry and government to examine the root cause of the current indebtedness problem and to target measures to resolve the problem. Positive information may or may not address the real issues. In addition, proper debt counseling and relief measures need to be put in place.
6. Positive information is defined by industry as information on borrowers' credit exposure (such as credit limits and outstanding amounts on credit facilities) and pattern of repayments (such as the date and amount of last payment). Leaving aside the indebtedness problem, industry claims have also been made to the Council that there are benefits that can accrue to the industry, and in turn flow on to consumers.
7. The Council's position is that notwithstanding the conceptual benefits that may flow from increased information in terms of facilitating competition and allowing lenders to develop more efficient risk profiles on borrowers, a number of issues need to be addressed before any further action is taken. Those issues are as follows.

Marketing practices of credit providers

8. The Council has identified, as a primary concern, the marketing tactics of credit providers, in promoting the use of credit. In this regard it requested that the HKMA undertake profiling of banks to identify whether the high incidence of defaults could be attributed to the conduct of credit providers. The Council is pleased to note that the HKMA has acted on the Council's suggestion that credit providers conduct needs to be assessed, and appropriate action taken, rather than simply relying on expanding the collection of information on consumers. The Council expects that this form of supervision over authorised institutions under the HKMA's jurisdiction whose credit card delinquency ratios and charge-off ratios exceed the industry average, and the conducting of profiling exercises, along the line suggested by the Council, will be conducted on an ongoing basis.
9. However, notwithstanding the results of HKMA's findings that authorised institutions were generally in line HKMA's expectations, the Council still has a concern that the marketing practices of credit providers is contributing to the problem of unsustainable indebtedness in the community.
10. The first point to make is that the HKMA's jurisdiction is limited, in that it does not have supervisory power over all credit providers, and there is high reliance on industry self regulation. The marketing problems that the Council has concerns with exist across all institutions that provide credit in the community. In considering the means to resolve the debt problems that are arising in the community, the dispersed nature of regulatory supervision in the credit sector is a factor that government must consider in the immediate future.
11. The issue of marketing practices also needs to be viewed in an evolutionary perspective, in that the marketing practices used by institutions to entice consumers into borrowing vary and change over time. Some examples that have come to the Council's attention are as follows:
 - (a) A common advertising feature that the Council has become aware of, through complaints and inquiries from consumers, is that credit providers represent to consumers that they only need to pay minimum monthly payments to secure access to large amounts of readily available funds. However, the advertisements fail to fully inform consumers of the compounding effect of interest on the debt. Needless to say, the full costs of repayment in terms of the number of years required to pay off the amount owing is the reason why many consumers have sunk deeply into unsustainable debt.
 - (b) Another marketing tactic is the practice of encouraging customers to, in effect, take out an overdraft in the first weeks of obtaining a credit card, and repay the minimum balance in the first three months in order to obtain a prize.

- (c) A variation of this tactic is to promote the borrowing of a substantial installment loan to be repaid at a set amount over a set period of time, in order to receive a prize.
 - (d) Yet another practice is to require a person who has requested a credit card facility to take out a number of other extra cards with substantial credit limits, even though the person has not requested the extra cards.
12. The Council believes that if the problem of unsustainable indebtedness is a major problem in the community, and is causing concern, then credit providers should not be engaging in marketing tactics that focus on promoting debt itself, and encouraging persons to get into debt merely for benefits like prizes, that are unrelated to the worthwhile purposes that credit can serve in the economy. The focus should rather be on marketing tactics that promote the benefits of a credit providers products, in terms of lower interest rates, lower fees etc. for those persons who need the credit.
 13. It might be argued by credit providers that they are under no obligation to inform consumers of the downside in taking on large amounts of debt. However, from what industry and administration have publicly stated on the extent of the problem, the Council believes there is an obligation on the part of industry not to exacerbate the problem by exaggerating the benefits of their credit products, or by omitting important facts in their marketing tactics.
 14. The Council is devoting its resources to educate and inform consumers of the pitfalls in promises made in advertisements that portray only the favorable side of a product. However, the resources available to the Council are no match when compared to those devoted to the promotion of credit in the marketplace; as demonstrated by the barrage of media advertising, junk mail, and cold calling that the industry devotes to promote debt.
 15. The Council hopes that the Code of Banking Practice, which trusts industry to observe high standards of behaviour in their marketing activities, will therefore be rigidly observed by members. However, it should be noted that the successful legal action brought by consumers against banks for engaging in unconscionable conduct under the *Unconscionable Contracts Ordinance* supports the notion that codes of conduct cannot be solely relied on to provide consumer safeguards¹.

1. ¹ In July 2000 the High Court made a ruling on an action brought under the *Unconscionable Contracts Ordinance* by consumers (assisted by the Consumer Council) who were subjected to onerous debt collection practices, set out in the terms and conditions of credit card contracts, by certain Hong Kong banks.

Interrogating the data base

16. The Council notes, from the profiling work undertaken by the HKMA, that the problem with many bankrupts is apparently not with a bank issuing multi-cards to the same customer but with multi-banks issuing cards to a customer without realizing how much exposure that customer already has. The HKMA has stated that the sharing of information on the number of credit cards, total credit limits, and outstanding balances would therefore be useful to address the problem of rising bankruptcies, as this would enable credit providers to realise the extent of indebtedness of a consumer and thereby deny the consumer any further credit.
17. However, whether the existence of this information does actually influence a credit provider to deny the granting of credit depends on the extent to which the credit provider decides to expose itself to the risk of default. The common factor in this regard is the extent of competition between credit providers, and the different risk profile strategies that each provider would develop. The Council considers that it is these factors that will play the determining role in whether credit is extended, not simply the existence of information on the extent of an individual's indebtedness.

Privacy

18. The Council's major concern with the proposal to increase the amount of information held in a central data base 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.
19. 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.
20. 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 unauthorised disclosure.
21. The Council would assume that in the face of a concerted effort by industry to construct an unprecedented data base on consumers' personal information, the industry would also give some thought to proposals on enhancing the privacy interests of consumers. The Council feels that consumers are owed such an

explanation in order to balance the proposals put forward to protect credit providers' commercial interests, and to placate obvious concerns.

22. In this regard the Council asks that consideration be given to the following.
- (a) In view of the fact that the majority of consumers are not causing the purported problems with bankruptcies, and the different views that exist as to whether expanding the data base will serve the purpose of resolving the problem of indebtedness, the industry needs to clearly justify the expansion of information in terms of Principle 1 (c) of Schedule 1 of the Personal Data (Privacy) Ordinance - "the data are adequate but not excessive in relation to that purpose".
 - (b) Examine what additional privacy safeguards should be proposed to enhance the protection that currently exists, if the proposal to substantially increase information, as put forward by industry, is accepted. This is particularly important given that the data base will be a lucrative source of marketing information.
 - (c) Steps should be taken to examine the possibility of expanding the definition of negative information to include information that is more pertinent to identifying only those consumers who pose a credit risk, rather than all consumers, the majority of whom do not pose a credit risk. Industry might examine whether, for example, it would be more relevant to collect information on whether a person has been paying only the minimum balance on a fully extended line of credit, for a period that indicates the person has difficulty paying off the debt in a reasonable length of time, and hence may warrant attention if a new line of credit is extended.
23. As noted, the Council appreciates the work done by HKMA in assessing the conduct of industry, and in furthering consumers' interests generally. We welcome this cooperation, and stand willing to assist government and industry, through making our resources available, to address the various problems that arise in the finance sector.

Consumer Council
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