

Press Release by PCO

Date: 23 January 2003

Consultation report on the sharing of positive credit data

The Privacy Commissioner for Personal Data, Mr Raymond Tang, releases today the report on the public consultation on a set of proposed provisions on consumer credit data protection in relation to the financial industry's proposal on the sharing of positive credit data.

The proposals sought to relax certain provisions of the Code of Practice on Consumer Credit Data ("The Code") as a measure to alleviate the increasing number of consumer indebtedness and personal bankruptcies. If implemented, credit providers will be allowed to share a wider extent of positive credit data via the credit reference agency.

To gauge public opinion on the privacy safeguards in relation to the relaxation of the Code, the Office of the Privacy Commissioner for Personal Data ("The PCO") launched a public consultation exercise on 28 August 2002.

A total number of 261 submissions were received on 25 October 2002 when the consultation period expired. Another 21 late comments were also accepted. In all, 282 submissions were received from individuals, private and public organizations, professional bodies, and representative associations. Besides, public views were also collected from various channels, including panel meeting at the Legislative Council, meetings with banks and relevant stakeholders, and through the mass media.

The consultation results reflect a broad public consensus that the rising trend in personal bankruptcy and consumer debt is a matter of major concern to the community. If not effectively addressed the bankruptcy problems may lead to a loss of consumer confidence in the market and the economy as a whole.

There were inevitably differences of opinion on specific aspects of the proposals. Respondents generally supported the proposals and many of them had raised comments and suggestions in relation to the privacy safeguards.

Taken the views collected during the public consultation into serious considerations, some amendments to the draft proposals contained in the Consultation Document will be made accordingly. A list of the amendments is as follows:

a) Limit reportable data by credit providers to only those data necessary to indicate the punctuality of payments, for example, the number of days past due in payment rather than the actual dates of payment.

b) Advance the requirement of conducting the first privacy compliance audit of the credit database to 6 months after the effective date of implementation. This audit should encompass an assessment of the compliance measures taken by the credit reference agency to ensure it has written instructions and has disseminated privacy policy to operating staff regarding access procedures to the credit database, and effective safeguards to ensure system integrity complies with access procedures.

c) Restrict the meaning of a "review" access to the credit database of the credit reference agency to purposes relating to matters which the credit provider may consider in respect of the borrower's credit facility, such as an increase/ decrease in the credit amount, cancellation of credit, or a restructuring, rescheduling or other modification in the repayment terms of the credit facility.

d) Require credit providers to take practicable steps to give prior notification to customers of their intention to make a "review" access to their credit reports unless the "review" is a customer initiated request, or the "review" access relates to an obligation of an existing loan restructuring arrangement concerning debts owed by the customer.

e) Require credit providers, when reporting credit data which the customer disputed, to include a notice concerning the customer's dispute in the credit data reported to the credit reference agency. The credit reference agency shall disclose such notice in the credit report of the customer.

f) Require the credit reference agency, on receipt of an "opt-out" request notified by the borrower's lender, to delete the terminated account information from its credit database.

g) Revise the eligibility to opt-out to a threshold of "no material default data with 60 days past due".

h) During the transition period, credit providers may access the credit database for the purpose of obtaining relevant credit information to facilitate a loan restructuring about a borrower's debts. For a new loan restructuring, credit providers should notify the

borrowers prior to making access to their credit reports unless the loan restructuring is initiated upon request by the borrowers.

"I am grateful to the many respondents for their proactive and considered responses on the various issues raised in the Consultation Document. Our task is to strike a balance between privacy right and the public interest. When implemented with appropriate measures to safeguard privacy protection, the revised proposal will contribute towards creating an environment in which the transparency of credit information will generate value and benefit to both lenders and borrowers. This environment will facilitate a more equitable and responsible lending/borrowing relationship, help to mitigate the potential negative economic impact arising from bankruptcies and best serve the broader public interest of preserving the stability of Hong Kong's financial markets and the economy more generally," Mr Tang says.

Subject to finalizing some technical details associated with the amendments, the revised Code is anticipated to take effect from 1 April 2003.

The Consultation Report is accessible from the PCO web site at <http://www.pco.org.hk>

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

Report on the Public Consultation

In relation to

The Sharing of Positive Credit Data: Proposed Provisions on Consumer Credit Data Protection



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Part I – The Public Consultation Exercise

Background

1.1 At present, the sharing of consumer credit data through credit reference agencies is governed by the Code of Practice on Consumer Credit Data (“the Code”) approved by the Privacy Commissioner pursuant to section 12 of the Personal Data (Privacy) Ordinance (“the PD(P)O”). 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. The basic aim of the Code is to provide practical guidance on the handling of consumer credit data by credit providers such as banks and credit reference agencies.

1.2 The combined effect of adverse economic factors upon borrowers has been evident from 1999, if not prior to that. In that year the number of consumers reported as delinquent by financial institutions (“FI”) rose appreciably as did the number of petitions filed for bankruptcy. Since then, published statistics from the sole credit reference agency in Hong Kong (Credit Information Services Ltd.) and the Official Receiver’s Office have indicated a serious deterioration in credit card delinquency and loan default. This has reflected in a number of indices:

- the increased incidence of multiple loan default;
- the rapid increase in the number of credit card holders deemed to be in the delinquent category; and
- the percentage of delinquent customers that face extreme indebtedness i.e. a level of debt many times in excess of their monthly salary.

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

1.4 The Hong Kong Monetary Authority (“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. The trend of rising bankruptcies and consumer debts has also been the subject of concern

among Members of the Legislative Council. In January 2002, the Government held a high-level Roundtable Discussion¹ among industry representatives and government officials to discuss the measures that might be taken as an effective response to tackle the issues of consumer debt and bankruptcy.

1.5 These discussions concluded with a set of proposals that sought 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 make more informed judgements about the granting of credit to existing and prospective customers. The view taken is that by sharing positive credit data via the credit reference agency the quality of data available to credit providers is materially improved. The effective utilization of shared information will facilitate better credit risk management and overcome the problem of credit providers having to lend “blind”.

1.6 The industry’s proposal, if implemented, 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. The PCO gave detailed consideration to the personal data privacy ramifications of implementing the positive credit data sharing scheme. This resulted in the articulation of specific safeguards and controls that the PCO maintain must be an integral part of the scheme if it is to comply with the requirements of the PD(P)O and the rights it bestows upon the citizens of Hong Kong. Those safeguards and controls formed the substance of a set of draft proposals contained in the Consultation Document upon which public opinions were sought.

1.7 On 28 August 2002, the PCO issued the Consultation Document in accordance with section 12(9) of the PD(P)O to seek public views on the draft proposals. Over 3,000 copies of the Consultation Document were dispatched to various interested parties. These included Members of the Legislative Council, District Council, professional and representative bodies. The Consultation Document was also accessible from the PCO’s web-site at www.pco.org.hk. To assist members of the public, copies of the document were available for collection at the 19 District Offices and the PCO. In addition, two 30-second radio APIs in Cantonese and English were also produced for broadcasting on local radio stations during the consultation period in order to raise public awareness of the matter.

1.8 During the consultation period, the Privacy Commissioner attended 12 media interviews and radio phone-in programmes to explain the various issues associated with the draft proposals. The Privacy Commissioner also attended 3 discussion forums during which public views on the proposals were

¹ The discussions involved representatives of the Hong Kong Association of Banks, the Hong Kong Monetary Authority, the then Financial Services Bureau, the Official Receiver’s Office, the Police and the Office of the Privacy Commissioner for Personal Data (“the PCO”)

collected. A list of the public activities attended by the Privacy Commissioner is at Appendix I. In addition, the Privacy Commissioner attended a meeting of the Legislative Council Panel on Financial Affairs on 24 September 2002 during which the draft proposals were discussed.

General Observations on the Submissions Received

1.9 The public consultation ended on 25 October 2002. As at the end of the consultation period, 261 written submissions were received. Another 21 submissions were received after the consultation period. In all, 282 submissions were received from individuals, organizations spanning the private and public sectors, professional bodies and representative associations. A list of the respondents is at Appendix II and a summary profile is provided below:

Respondent	Number
Statutory/Public Sector Organizations	4
Banking and Finance Sector	33
Trade Associations	11
Professional Bodies	6
Private Sector Companies	5
Consulates	2
Political Parties	2
Individuals/groups of individuals	219
Total number of submissions	282

1.10 Before examining the responses in more detail, it is worthwhile highlighting some general observations made in the submissions:

- Respondents tended to indicate that they were, in principle, either in favour of the positive credit data sharing scheme or opposed to it. This is particularly the case in submissions made by individual members of the public.
- Irrespective of whether respondents were for or against the scheme, there was a spread of opinion ranging from unqualified support/opposition to qualified support/opposition.
- The FI were unanimous in their support for the scheme although in the majority of instances they requested the PCO to consider further concessions which they felt would be beneficial to the scheme and the costs associated with operating it.

- In many of the submissions from individuals that were opposed to the scheme there was something of an ‘anti-bank’ sentiment based upon the view that the banks should be held culpable for the poor performance of their credit card and personal loan operations.
- Some respondents questioned the value of the scheme in remedying the current situation. This view was usually based upon a belief that the scheme was intent upon eliminating the record level of bankruptcies. That is clearly not so and was equally clearly stated by the PCO in the Consultation Document and during interviews with the media.
- Some respondents expressed doubts regarding the alleged benefits of the scheme to the consumer. They were of the view that FI in Hong Kong have been less than unequivocal in their public statements regarding the alleged consumer benefits of the scheme. The absence of any concerted commitment on the part of the FI to risk-based pricing has given rise to these doubts.

1.11 The result of the consultation can be summarized in two parts. The first part relates to views expressed in respect of the positive credit data sharing scheme. The second part covers respondents’ comments/ suggestions on the data protection safeguards and controls proposed in the Consultation Document.

Part II – Views on the Sharing of Positive Credit Data

Analysis of Views Expressed in Written Submissions

2.1 This part of the analysis reviews those submissions that have expressed opinions on the positive credit data sharing scheme (the “Scheme”). The analysis resulted in a division into three categories as shown below:

Respondent	For	Against	Others
Statutory/Public Sector Organizations	1	-	3
Banking and Finance Sector	31	-	2
Trade Associations	9	1	1
Professional Bodies	3	1 ²	2
Private Sector Companies	3	1 ³	1
Consulates	2	-	-
Political Parties	-	-	2
Individuals/groups of individuals	109	90 ⁴	20
Total number of submissions	158	93	31

- a) **Respondents in support of the Scheme (158 submissions: 56% of total).** In this category submissions were unquestionably in support of the Scheme. With the exception of 16 submissions, most respondents elaborated upon their support by justifying the position taken in terms of citing the benefits to be derived from the Scheme, or by making suggestions regarding the strengthening of the proposed data protection safeguards. Of the 219 submissions from individuals, 109 respondents (50%) offered their support to the Scheme.
- b) **Respondents in opposition to the Scheme (93 submissions: 33% of total).** Respondents in this category were opposed to the Scheme. With the exception of 4 submissions, most respondents gave arguments in support of their opposition. In another 5 submissions, respondents were opposed in principle to the Scheme but offered suggestions regarding the additional safeguards that should be in place if the proposals were to be implemented. Of the 219 submissions from individuals, 90 respondents (41%) were against the Scheme.

² This includes a submission from a respondent who conducted a survey of its members. Out of the 195 members who responded, 124 (64%) objected to the Scheme as they considered it to be an invasion of personal privacy and were concerned about the risk of data being misused.

³ This includes a submission from a respondent who claimed to act for a group of credit card holders.

⁴ This includes a submission from an individual that contains copies of dialogue from an Internet discussion forum.

- c) **Others who have commented on the Scheme (31 submissions: 11% of total).** In this category, respondents were neither supported nor opposed the Scheme. They expressed reservations and/or raised concerns/issues in relation to the Scheme. Of the 219 submissions from individuals, 20 respondents (9%) were in this category.

Arguments expressed in support of the Scheme

2.2 The following arguments were commonly cited by those who supported the Scheme:

- The proposal is helpful in developing a healthy lending environment that preserves the stability of Hong Kong's financial markets and the economy. Positive credit data sharing will make the credit market more transparent and hopefully bring down interest rates as well.
- Consumers who have good credit positions can benefit from the proposal since they are likely to obtain better terms for loans when banks have more credit information to assess the risk.
- If banks were able to distinguish between creditworthy and un-creditworthy borrowers, they would be able to use an enhanced personal profile of a potential borrower when conducting a credit assessment. This would help to reduce the possibility of lending to a borrower who was already over-exposed. The cost of borrowing would then come down.
- Positive credit data sharing is a mechanism that will benefit the consumer in two ways: (i) enjoy a positive credit rating among lenders; (ii) address the problem of falling into the trap of over-indebtedness which has led to family issues and potential bankruptcy.
- Positive credit databases have a long history in other jurisdictions and those jurisdictions established stringent rules governing the use of customer data. Applying this to Hong Kong, the proper use of data will help financial institutions to build a stronger and healthier credit portfolio that will further benefit genuine borrowers.

Arguments expressed in opposition to the Scheme

2.3 The following arguments were commonly cited by opponents of the Scheme:

- Personal details such as deposits, indebtedness and credit exposure fall within the scope of “privacy” and should not be circulated among FI. The Scheme will supply credit providers with the credit data of non-delinquent as well as delinquent customers. The database will inevitably result in the classification of credit consumers and erroneously label or stigmatize them.
- The establishment of a positive credit database will be at the expense of customers’ privacy. It offers no panacea worthy of the price that the individual consumer may have to pay when implemented. There is no evidence that the alleged financial benefits to credit providers will be passed on to consumers.
- The banks have not done enough to exploit the full use of negative credit data when making credit assessments. The banks have also not done enough regarding current credit marketing strategies e.g. withdrawal of promotional offers, reduction of credit limits and suspending the practice of credit card cash advances.
- A positive credit database is not a solution to bankruptcies or bad debt problems and will not assist those in financial difficulties. On the contrary, it may lead to some financially sound consumers being unreasonably denied access to credit. FI should be responsible for their imprudent behaviour and bear the losses arising therefrom.
- The sharing of positive credit data would run an unacceptable risk of unauthorized access. The credit database would be capable of being accessed by literally hundreds, if not thousands, of FI employees. This prospect would inevitably lead to the abusive use of data. Not only would abuses occur but the individual may well have no knowledge that this abuse had taken place.

A further review of concerns and issues raised by respondents

2.4 Of the total 282 submissions, 31 respondents (11%) indicated no strong support or opposition to the Scheme. However, they did raise certain concerns and issues, some of which were also found in submissions that opposed to the Scheme. These are further discussed in the ensuing paragraphs.

Placing private sector interests above individuals’ privacy interests

2.5 Some respondents took issue with the PCO because they regarded the Consultation Document as effectively endorsing the Scheme. This was felt to be morally objectionable. In their view, approval by the PCO of the Scheme would compromise its integrity. It was also asserted that any such move by the

PCO would amount to a violation of its mission to protect the personal data privacy rights of the community.

Financial institutions role in precipitating the current credit problem

2.6 Some respondents were of the view that in many ways the FI had exacerbated, if not precipitated, the problems in the consumer credit market. This argument amounted to an expression of anti-bank sentiment and suggested that FI had largely authored their present predicament through the overly aggressive marketing of consumer credit products. This market strategy was compounded by imprudent judgement in the granting of credit. Respondents noted that all industries had to manage risk and the banks were no different in that respect. As a result they should be prepared to bear the consequences of self-inflicted wounds and apply the lessons to be learned from the current situation.

The integrity of financial institutions

2.7 Several submissions commented that the banks operated as a cartel and had abused their market power by developing the proposed scheme in conjunction with the HKMA. In their view, banks already exercise considerable power over individual customers and this would only increase were they able to share positive credit data prior to making decisions as to whether to advance credit or not. If this were to happen it would lead to abuses of personal data. For example, unauthorized access to customer data would be “camouflaged” and that data subsequently used as the raw material for marketing campaigns.

The threat of the credit squeeze

2.8 Some respondents expressed concern that access to positive credit data could result in an over-reaction on the part of those banks that are especially anxious to receive some repayment on outstanding loans or credit card debts. If too many banks resorted to this strategy then there would be further pressure upon those debtors already facing acute financial difficulties. Ultimately, recovery actions of this nature would drive bankruptcy figures to even higher levels. The view taken was that it would be much preferable if the banks were both more rigorous in assessing loan applications, and invested greater effort in devising realistic debt rescheduling plans to assist those in difficulty.

How real are the alleged benefits of the Scheme?

2.9 Some respondents commented that in “selling” the Scheme to the public much has been made of the alleged benefits to be derived from it, particularly for those with a good-payment record and prospective credit

customers who may, in the past, have been declined credit. However, concerns were expressed about whether the benefits would in fact materialize. Some respondents were of the view that the FI had, to date, failed to differentiate good-paying customers by operating differential pricing on a range of credit products. It was doubted whether FI could be held accountable for the delivery of such benefits and, without those benefits, there was little, if any reason, to support the Scheme.

Is the Scheme fair?

2.10 Some respondents expressed the view that the sharing of positive credit data was an inherently unfair scheme. The view was that a minority of customers, with a poor credit record, seemed to be obligating those customers with a good credit record to place their positive credit data in a central database. It was argued that the proposals would be fairer if bank customers could choose whether their data were to be entered into the credit database. If customers with a previously good credit did not consent to this practice then there should be no adverse repercussions on them when they subsequently applied for a credit facility.

Hong Kong's financial environment and consumer behaviour differ from those in other countries

2.11 Some respondents questioned whether citing examples of jurisdictions where the sharing of positive credit data is established e.g. the USA, the UK and Canada, to legitimate the proposals, constituted a well-founded argument. They commented that FI had not produced any guarantees in support of their claim that those customers with a good credit record would, in fact, receive favourable interest rates on credit products. In addition, any comparison between Hong Kong and other countries may be spurious because “it assumes that consumer behaviour in the countries concerned is comparable with that of Hong Kong,” where, it was argued, idiosyncratic cultural and social values prevail.

The shape of things to come

2.12 Related to this view was the sense that *if* Government agencies were in any way seen to aid and abet one industry in the private sector, under what are likely to be temporary economic difficulties, this may be regarded as creating an unwarranted precedent. It was speculated that such a move could become the thin end of the wedge in that it might lead other sectors of the economy to argue for ‘special case’ status. That status might lead to demands for the establishment of similar databases containing sensitive information that would enable the management of other industries to refine their decision-making skills e.g. landlords and insurers.

A review of issues raised by the Consumer Council

2.13 The Consumer Council (“the Council”) submitted a comprehensive response on the draft data protection safeguards and controls proposed in the Consultation Document. In its comments on the overall safeguards to protect consumer rights, the Council made a number of suggestions to enhance those rights and other measures to enhance public confidence in the operations of any credit reference system. These suggestions are further discussed in Part III of this report.

2.14 In addition, the Council raised concerns on the wider implications of the proposal to expand the range of consumer information shared between credit providers. More specifically they addressed two issues:

- a) ***The need to measure outcomes.*** The Council shares the community’s interest in ensuring that the consumer credit industry in Hong Kong remains robust and responsive to the needs of the market place. Nonetheless, they feel it is incumbent upon the industry and government to inform consumers of the benefits that are likely to accrue to them, and to establish quantifiable benchmarks against which the benefits may be measured after a reasonable period of time has elapsed, specifically:
- the expected differentiation in interest rates for those consumers with different credit risks;
 - the expected reduction in default rates and bankruptcies that are attributable to the default of debtors, rather than to current economic circumstances;
 - the expected increase in percentage of consumers who will be eligible to obtain credit under the CRA’s expanded database, as compared with the numbers under the current restricted database; and
 - the expected decrease in other costs of finance, such as the required down payment, convenience access, credit limits and fees.

The Council further suggests that quantifiable goals should be set against which the possible increase in abusive access to the credit database can be measured. If, in due course, the goals established are not met the FI and government should be prepared to devise more effective measures to address the problems or, failing that, revert to the current situation.

- b) *The nature of credit reference agencies and their role in the future.*
The Council raises the issue of whether credit reference agencies should be permitted to develop as profit-making businesses. While it is true that the existence of these agencies brings an element of stability to the financial sector, a balance needs to be struck between serving commercial interests that are directly served by collecting consumer financial information and the privacy and ownership rights of consumers. The Council considers that the issue of the provision of credit information services by businesses is one that needs to be re-examined by the government. Since the only CRA in Hong Kong is a commercial organization, the question that needs to be asked is, who should assume overall responsibility for monitoring those aspects of its operations that impact upon the rights of the consumer?

Analysis of Views Expressed to the PCO through Other Means

2.15 Apart from collecting public views expressed in written submissions, the PCO have also collected views through other channels. These views are discussed in the ensuing paragraphs.

The Legislative Council

2.16 At the meeting of the Legislative Council Panel on Financial Affairs held on the 24 September 2002, Members were provided with the opportunity to discuss the proposals contained in the Consultation Document. Twelve Members and one non-panel Member attended the meeting together with public officers of the Financial Services and the Treasury Bureau, the HKMA and representatives of the PCO.

2.17 The meeting generated substantial discussion on issues raised in the Consultation Document. A detailed record of the exchange of views has been published in the minutes of the said meeting that can be downloaded from the LegCo web-site. In summary, the PCO note the following feedback and suggestions made by Members.

Views expressed by Members on the sharing of positive credit data

2.18 Two Members registered their support for the introduction of positive credit data sharing on the consideration that banks should rightfully be allowed to share the data to enable them to lend prudently and that the proposal could effectively tackle the problem of over-indebtedness. Another Member was also supportive and opined that, given the present-day credit environment, the sharing of positive credit data was a pre-requisite, if not the panacea, for banks to alleviate the bad debt situation.

2.19 Some Members sought clarification on the benefits of the proposed data sharing and its impact on the credit market and existing borrowers. They noted that the short-term impact of the sharing of positive credit data might lead to bad debts being surfaced or credit lending subsiding. However, it was observed that Hong Kong should look further ahead to see the longer term impact. One Member queried how far banks would be changing their lending policies with the availability of positive credit data and raised concern that credit seekers with less favourable repayment histories would be labeled as “high risk borrowers”. These credit seekers might eventually find it very difficult, if not impossible, to pay very high interest to obtain credit facilities of any form.

2.20 One Member commented that both privacy interests and consumer interests were crucial considerations in regard to the proposed data sharing scheme and cautioned that the public must not be misled to regard the proposal as simply a privacy issue. Another Member commented that commercial interests and individual consumers’ interests were not necessarily mutually exclusive, they could be complementary.

2.21 On comparing credit data sharing regimes in other jurisdictions, one Member cautioned that Hong Kong should not blindly mirror their practices without taking into consideration the limitations of Hong Kong’s privacy protection framework. In this regard, he suggested that consideration should be given to upgrading the Code into laws in line with the fully-fledged statutory regimes governing credit data sharing in some overseas jurisdictions.

Suggestions by Members on the proposed data protection safeguards

2.22 One Member commented that instances of access to the credit database should be recorded and for the sake of upholding privacy interests, such instances of access should be reported to the data subjects concerned. Another Member suggested that the outcome of a privacy compliance audit should be published to provide maximum transparency and considered that public interests would best be served if the auditing reports were made open for public scrutiny.

2.23 On the issue of the 24-month moratorium, one Member, who was supportive of the proposal, expressed concern that the 24-month would merely defer the problem of over-indebtedness. Another Member queried whether the proposed 24-month moratorium would be mandatory and a period in which banks would be prohibited from driving over-extended customers into bankruptcy. On another issue of data protection, one Member cautioned that the proposed extension of credit data sharing might pose a potential hazard, as the transfer of personal data to a place outside Hong Kong was not yet afforded any statutory protection.

Media reports

2.24 Since the launch of the public consultation, the PCO have been monitoring public views reported by the news media. The reaction of the general public to the Consultation Document has been varied. Media reports covered a diverse range of opinions expressed by academics, political parties, journalists and media commentators. In most instances the arguments, issues and concerns raised mirror those contained in submissions received by the PCO. These are apparent from some of the media comments collected during the consultation period.

Media comments on views expressed by academics

2.25 Academics have polarized views on the sharing of positive credit data. Those who expressed support commented that the proposal struck a proper balance between the bank's legitimate right of access to information for credit assessment and customers' concern about loss of privacy. The main benefit as seen by this group of supporter is that knowledge about customers' positive credit data will help banks in assessing the true level of credit exposure of their customers. Academics who expressed opposition to the sharing of positive credit data generally hold the view that the proposal is not a solution to bankruptcies or bad debt problems and the establishment of a positive credit database will be at the expense of consumers' privacy.

Media comments on views expressed by political parties

2.26 Views expressed by political parties were divided. The Democratic Alliance for Betterment of Hong Kong ("DAB") expressed support for the proposal and were reported as saying that, "*The proposal of a positive credit database may help to reduce the delinquency ratio and it has no worries that the shared data would be used for poaching customers*"⁵. The Hong Kong Association for Democracy and People's Livelihood also expressed support and said, "*The Association believes the establishment of a positive credit database would help to alleviate the rising bankruptcy problem.*"⁶

2.27 On the other hand, the press reported that the Democratic Party ("DP") opposed the sharing of positive credit data because it thought that, "*Existing privacy safeguards were inadequate and the code of practice protecting consumer rights lacked teeth*"⁷. The DP had, in a press briefing held prior to the consultation, announced the result of a telephone survey it conducted with members of the public. It was reported that "*Out of the 1,279*

⁵ Sing Tao Daily, 29 August 2002.

⁶ The Association's letter dated 7 May 2002 submitted to the Panel on Financial Affairs.

⁷ South China Morning Post, 29 August 2002.

respondents, 50% (640) had credit cards. Among them, 73% objected to the sharing of their credit card data by other banks.”⁸

2.28 The convenor of Frontier was reported to have commented that “*It is doubted that the Commissioner had the power to monitor whether the credit reference agency would be subjected to an annual independent audit as recommended in the proposal.*”⁹ Some other independent legislators expressed reservation on the need to introduce positive credit data sharing. One legislator was reported to have commented that “*Bankruptcy is only a short-term economic problem. Provided that banks right the wrong and lend prudently, the bankruptcy problem will only be short term.*”¹⁰ Another commented that “*We should try to find out whether banks can still make profits from their credit card business or whether it has come to the stage that a positive credit database must be set up.*”¹¹

Media editorials and views expressed by journalists/media commentators

2.29 Apart from a few who wrote in support, opinions of media commentators tended to object to the proposal. In one instance, a media commentator cited information obtained and wrote “*The consultation paper contained fallacies. It had failed to point out objections to arguments against full exposure of all loan data – as was the case in Australia – and had focussed instead on the US and UK experience where there were positive credit bureaus.*”¹²

2.30 Other media commentary reflected worries about adverse effects that might arise from the sharing of positive credit data. One columnist wrote “*If the positive credit database is set up, banks will definitely tighten credit and force their customers to make early repayment. In this way many small and medium sized enterprises will be forced to wind up and many people will become bankrupt or driven to desperation.*”¹³ Another columnist, however, expressed a different view and wrote “*Even after the establishment of the positive credit database, banks will still issue cards to those customers who already have too many cards in order to market their products. Thus, it is still unknown whether bad debts will be reduced as a result.*”¹⁴

⁸ Oriental Daily News, 27 May 2002.

⁹ Hong Kong Standard, 25 September 2002.

¹⁰ Ming Pao, 27 August 2002.

¹¹ Sing Tao Daily, 25 September 2002.

¹² South China Morning Post, 16 September 2002.

¹³ Oriental Daily News, 5 September 2002.

¹⁴ HK Economic Times, 31 August 2002.

Briefing sessions and discussion forums

2.31 During the consultation period, the Privacy Commissioner attended three discussion forums organized by private sector organizations. Attendees of two sessions were businessmen, mostly stakeholders of SMEs. The audience in the other forum comprised of master degree candidates at a local university.

2.32 Some of the views expressed in the forums arose from a lack of full understanding of the proposals contained in the Consultation Document. In one forum, not one attendee had read the document. Nevertheless, some observations can be made from exchanges at these forums:

- Apart from some participants who spoke in support, all others had reservations, some strongly held, about the sharing of positive credit data.
- There was a strong “anti-bank” sentiment and adverse reaction against banks’ indiscriminate issuance of credit cards and provision of personal loans to obviously dubious borrowers.
- There was also a strong sense of lack of confidence in the existing credit reference agency operating as a profit-making company which people knew little about.
- There was uncertainty regarding how HKMA would ensure that there would not be a credit crunch as only a vague promise of some guidelines for banks to follow had so far been forthcoming.
- Whilst recognizing the PCO’s good faith and efforts in protecting the public interests, reservations were expressed about the apparent lack of sanctioning power by the PCO which could provide the comfort needed to allay the community’s fears and distrust of banks.

Part III – Views on the Proposed Data Protection Safeguards and Controls

3.1 This part of the analysis reviews comments/suggestions made by respondents on the data protection safeguards and controls proposed in the Consultation Document. Of the 282 written submissions, 84 respondents (29%) commented or made suggestions specifically addressing the proposed measures.

3.2 The proposed measures received wide support from respondents who were in support of the credit data sharing scheme (the “Scheme”). Unsurprisingly the views of the banking industry were unanimous on the proposed measures although in the majority of instances they requested the PCO to consider further concessions that they felt would be beneficial to the Scheme and reduce the costs associated with operating it. There were nevertheless a number of proposed measures that received a mixed response from non-bank respondents including some Members of the Legislative Council (see paragraphs 2.22 – 2.23), the Consumer Council, academics and members of the public. The proposed measures, along with significant comments from respondents, are discussed in the ensuing paragraphs.

Issue 1 – The Scope of New Credit Data

3.3 This consultation issue relates to proposals that seek to extend current credit data sharing (mostly negative data) to include positive credit data relating to credit cards and personal loans:

- ***Information not allowed to include*** - Residential mortgage loans (proposal 1). Personal income, deposits or other assets or non-credit based information such as the individual's employment information (proposal 2).
- ***Additional credit data to be included*** – (i) general credit data such as the type of facility granted etc. (ii) repayment data relating to the credit facility and (iii) account termination data (proposal 3).

Major comments received

3.4 Most respondents who supported the Scheme agreed that the proposed scope, excluding residential mortgages and non-credit information, would afford credit providers a fuller picture of a consumer’s total credit exposure and payment pattern. The Consumer Council welcomed the exclusion of information, derived from non-credit based information, which would have any labeling effect on consumers.

3.5 Other respondents suggested that apart from residential mortgages the Scheme should exclude all unsecured credit facilities, such as personal loans and overdrafts, and be exclusively restricted to credit cards. The argument was that the delinquency problem was mainly a credit card problem that was inextricably linked with Hong Kong's sustained economic recession, loss of employment, a volatile stock market and negative asset holdings. One political party suggested that the Scheme needed to be "rolled out" in several stages, commencing with credit card debt. Subsequently there should be a transparent review process, the findings of which would determine whether the Scheme should be extended to other credit products.

3.6 On the proposed range of additional credit data, the financial industry fully supported their inclusion as being necessary to establish the true credit exposure or credit-worthiness of borrowers. Respondents who opposed to or had reservations about the proposal were of the view that current (negative) data reportable to the credit reference agency ("CRA") were adequate for credit providers to identify, and prevent lending to, problematic borrowers. They considered that the proposed range of credit data, such as payment details of the borrower's account, were excessive because these data were sensitive financial information of the borrower.

Issue 2 – Restrictions on Data Sharing

3.7 Participation in the Scheme is intended to be a voluntary activity undertaken, or not, after due commercial consideration by each credit provider. Credit providers that participate in the Scheme will operate under the principle of reciprocity. This consultation issue relates to restrictions on the extent to which credit data may be collected, compiled and disclosed upon the Scheme becoming operational on the effective date:

- ***Scope of coverage.*** Upon the effective date, a CRA may collect from credit provider information about an individual's credit facilities where there is a current borrowing relationship (proposal 4). There should be no collection of an individual's credit repayment details that occurred prior to the effective date (proposal 5).
- ***Credit reports.*** Repayment history records of the most recent 24 months may be (i) displayed on a credit report (proposal 6); (ii) accessible by credit providers (proposal 9). A credit report should not disclose the name of the lender except where that lender is the credit provider requesting the report (proposal 7).
- ***Credit scoring.*** Limited to data compiled within a period of 5 years immediately preceding the date of the credit scoring (proposal 8).

Major comments received

Scope of coverage

3.8 In those submissions that commented on this proposal there was unanimous agreement that the Scheme should not commence with any retrospective collection of repayment history data by a CRA. Some submissions suggested postponement of the effective date until the economy returned to a healthier state. Others commented that delay in implementing the Scheme would deny those good-paying customers the benefit of differential pricing on credit products. One submission indicated that the Scheme should be suspended until the HKMA had stepped up the enforcement of the Code of Banking Practice with some form of statutory backing.

3.9 The Consumer Council also raised query on whether voluntary participation by credit providers would adversely affect the usefulness of the Scheme given that at present there is no statutory requirement for credit providers to report their customers' credit data to the CRA. It considered that consumers should be provided at the outset with the right to opt-out of the Scheme and to be expressly informed of this right, and the extent and effect of the Scheme, upon application for credit. This should be done in a manner that would clearly and prominently spelled out the information, i.e. not in "small print". A few respondents commented that the Scheme should not cover existing account holders as of the effective date. This was because at the time they contracted with the credit providers, the issue of sharing positive credit data did not exist. "Changing the rules while the game is still in play" would be a violation of the contractual spirit.

Credit reports

3.10 Not many respondents commented on this proposal. The Consumer Council did not object to the non-disclosure of lender names in a credit report other than to the lender that requested the report. However, it suggested that such information should be disclosed in a credit report requested by the consumer concerned so that the consumer would be in a better position to ascertain those credit providers who had accessed the credit database and to identify the source of errors, if any. The Consumer Council also raised other consumer rights in relation to credit reports. These are discussed in paragraphs 3.15 and 3.17 in relation to access to credit database.

Credit scoring

3.11 Some respondents called for greater transparency around raw input data and the formulae applied to calculate an individual's credit score. The argument was that any unreasonable scoring procedures or any deviation in the procedures would lead to an inappropriate labeling effect. The Consumer

Council commented that a CRA should disclose information on the formula used in computing credit scores and the scoring system should be publicly debated with expert input. Consumers should be allowed access to credit scores and be provided with details of it as a part of their credit report.

Issue 3 – Privacy Safeguards Applicable to Credit Providers

3.12 This consultation issue relates to restrictions applied to credit providers accessing the credit database, requirements on notification to customers on their choice to opt-out after repayment of the loan in full and obligations on the part of CRA when such “opt-out” requests are made.

Access restrictions to credit database

3.13 Three proposals were made:

- Limit the purposes of access by credit providers only in the course of considering any grant, review or renewal of consumer credit to the consumer, or where default has occurred (proposal 10).
- Require credit providers to inform the CRA of the reason necessitating access to the credit database (proposal 12).
- Require credit providers to update an individual’s credit facilities previously disclosed to the CRA on a reporting cycle not exceeding 31 days (proposal 11).

Major comments received

Access to credit database

3.14 A number of submissions expressed concern over the use of the term “review” by credit providers. Some argued that the term was so vague that it would permit credit providers with considerable discretion in terms of accessing customer credit reports. For example, “review” access could be used by some credit providers to select suitable individuals with acceptable credit records for inclusion in a targeted marketing campaign involving new banking services. Another submission pointed out that the absence of criteria attached to a “review” access would frustrate the auditing process as auditors would not be able to find out whether there had been an abuse in access of the credit database. Generally they asked for tighter controls on the “review” access by credit providers. A number of suggestions are noted:

- Disallow access to credit reports on grounds of credit review unless with the consent of the customer.

- Define clearly the meaning of “review” access to credit reports.
- Restrict access to customer initiated transactions only.
- Inform customers prior to access of credit reports.
- Record instances of access and report back to customers.

3.15 The Consumer Council raised a number of consumer right issues in relation to access to credit reports. In summary, the following are noted:

- ***Right to limit access.*** A CRA may not give out information about a consumer without the consumer’s written consent.¹⁵ As a check and balance against abusive access, consumers should have the right to know what information has been reported about them, who has accessed their credit report, and the right to review their credit report for accuracy without paying a fee for the privilege.
- ***Right to know if access to a credit report is legitimate.*** Consumers should be assured that only persons with a permissible purpose have access to their credit report and only to people who are recognized by the PCO as having a need to consider credit applications. It is useful to register in a list, for public inspection, those credit providers who have been recognized. Consumers should be provided, annually, with a contact list of all individuals or companies that have requested a copy of their credit report, along with a copy of the report.
- ***Right to know the contents and to have a free copy of credit report.*** Consumers must be told if information in their reports has been used against them, for example, in denying credit. A CRA should provide consumers one free copy of their credit report every twelve months either upon the consumers’ request and/or by an online access to read-only version of credit reports.¹⁶

Updates of credit data

3.16 Not too many submissions commented on this proposal. One political party commented that banks would normally need 14 working days to process personal loans and credit card applications. The proposed 31-day reporting cycle would mean that there would be a two-week gap in reporting that might result in the creation of a record that did not necessarily reflect the actual position of the borrower. It suggested that consideration be given to

¹⁵ The Consumer Council acknowledges that there will be an implementation problem, for example, whether this will be an application consent (i.e. one-off consent) or a per-request consent.

¹⁶ The Consumer Council cited the example of the US Fair Credit Reporting Act. Under this Act, consumers are entitled to a free consumer credit report if they are either unemployed, a recipient of public welfare assistance, believe their file contains inaccurate information due to fraud, or have been the subject of adverse action such as denial of credit.

shortening the cycle to two weeks. The Consumer Council also urged credit providers and CRA to explore ways to improve data updating frequency.

3.17 The Consumer Council also suggested a number of “reasonable procedures” that would assist credit providers and CRA to increase data accuracy standards. It considered that consumers should have the right to question the information in their credit report and have the questions investigated by both the CRA and credit providers or information source. In summary, it suggested:

- ***Credit providers.*** If a consumer disputes an item to a credit provider, the credit provider should not then report the information to the CRA without including a notice of the consumer's dispute. Once the consumer has notified the source of the error, the credit provider should cease reporting the information if it is, in fact, an error.
- ***CRA.*** It must give the consumer a written report of the investigation and a free copy of an updated credit report if the investigation results in any change.
- ***Consumers.*** They should be allowed to add a brief statement about any information in their report if a dispute is not resolved. This would be a qualifying statement to explain the circumstances surrounding the negative information in the consumer credit report. The consumer should not have to pay for access to such information.

The choice of opt-out and obligations on credit providers and CRA

3.18 Four proposals were made:

- Upon application for a new credit facility the credit provider should inform borrowers of the provisions that, upon full repayment of his account, the borrower may elect to opt-out of the use of the account information by the CRA (proposal 13).
- Credit providers are encouraged, upon termination of an account by full repayment, to remind former borrowers of their choice to opt-out of the use of their account information for future credit reporting or scoring purposes (proposal 14).
- Credit providers should seek from former borrowers their written consent to access closed account data (proposal 15).
- Where the “opt-out” request by a former borrower has been verified the CRA should, subject to the account containing no default

payment data exceeding 90 days past due, cease using the account information in any future credit report and cease making the information available to other credit providers (proposal 16).

Major comments received

3.19 In general, the submissions received were supportive of the proposal to provide consumers with a choice to opt-out in relation to terminated account data although there were different views on the implementation details such as the “opt-out” procedures and the eligibility to opt-out. A few submissions commented that the option would tend to diminish the value of setting up the positive credit database if a large number of borrowers chose this option after settlement of a loan. In a submission from one individual, it was suggested that the “opt-out” choice should be extended to cover existing credit application data. It was argued that this type of data would falsely label an individual as an over-indebted person even if the person fully repaid the loan or failed to be granted the loan.

3.20 Respondents from the financial industry argued that the “opt-out” procedures would be costly and administratively cumbersome. They suggested that exercising the “opt-out” choice should be made once only and within a limited time period. The argument was that notification of the “opt-out” choice would be a requirement made at the time of credit application and there should not be any obligation on the part of credit providers to give further notification to eligible customers upon full repayment of the loan. If this requirement were to remain, then customers should make a choice within, say 30 days, from the date of receipt of notification.

3.21 Some respondents, including individuals, doubted the value of the “opt-back-in” provision relating to accounts that the borrower had opted-out-of. The view taken was that the facility to opt-back-in by a borrower at some future date would likely create a situation in which credit providers were treated unequally in that access to previous account records would be restricted to those lenders whom the borrower gave consent to opt-back-in.

3.22 Regarding the eligibility for an “opt-out” on full repayment of the loan, all respondents from the financial industry raised objection to the proposed threshold of “no material default data with 90 days past due”. They argued that this would create potential manipulation by borrowers with 30, 60 or more days past due default records being concealed from a new prospective lender thereby impairing its assessment capability. Manipulation of data in this way could also introduce statistical bias that would undermine scorecard development and the credit scoring process. They suggested that only those customers with less than 30 days past due records, which would normally accommodate the occasional late payment, should have the choice to opt-out upon settlement of the loan in full.

3.23 In its submission, the Consumer Council acknowledged that the “opt-out” option could work both to the advantage and disadvantage of consumers. It suggested for consideration an alternative whereby consumers who wished to contain the exposure of their credit information are provided with a free certified copy of their payment history from the CRA. It was argued that this would provide those consumers having a substantial concern over their privacy, with a reliable reference to their credit payment history, should they wish to reactivate their participation in the market.

Issue 4 – Privacy Safeguards Applicable to Credit Reference Agencies

3.24 This consultation issue relates to the provision of safeguards applicable to the operations of the CRA when managing its credit database. Three proposals were made.

- ***Preventing abusive access.*** The CRA should implement an access log record system of all instances of access made by credit providers and it should keep such log records for not less than 2 years for examination by its compliance auditor and/or the PCO (proposal 17). The CRA should promptly report incidents regarding any suspected abnormal access by staff of the credit provider to the senior management of the credit provider and to the PCO. It should then undertake a prompt investigation of the incident (proposal 18).
- ***Ensuring compliance.*** The CRA is recommended to commission an independent compliance audit annually to verify whether its data management practices are compliant with the Code. The compliance auditor should submit the audit report to the PCO no later than 3 months from the date of commencement of the audit (proposal 19).

Major comments received

3.25 In general, the submissions received were supportive of the proposed audit control measures although there were comments made that an unsatisfactory feature of the control measures was that problems could only be discovered after the event when damage had already been done. Some respondents cautioned that the latitude in any definition of terms such as “review access” and “abusive access” would make any legal challenge to a breach of access improbable.

3.26 Another submission suggested there might be reluctance on the part of the existing CRA to report a suspicion of abnormal practice to credit providers since most members of the banking industry owned the CRA. It

cautioned that the involvement in the CRA by credit providers could pose the risk of a conflict of interest.

3.27 The Consumer Council emphasized that improving consumers' access by providing them with the means to monitor access to their credit report could act as a check and balance against abusive access. The provision of some clear and transparent guidelines in this respect would enhance public confidence in the operations of the CRA. It further suggested it would be worthwhile considering a mechanism by which proven violations of the Code could result in the application of redress procedures designed to compensate the individual.

3.28 The Consumer Council and a number of submissions from individuals expressed support for the proposal of requiring a CRA to commission an annual independent compliance audit. Some other submissions, however, raised doubts about the cost-effectiveness of enforcing compliance given that it would not be easy to identify a breach of compliance without a very significant investment in a skilled force of "compliance police". The PCO noted that one Member of the Legislative Council requested consideration be given to making the outcome of the compliance audit open for public scrutiny.

Issue 5 – Other Regulatory Control Measures

3.29 Other regulatory control measures were proposed to encourage the adoption of a privacy-compliant regime among CRA and credit providers:

- The CRA should make its credit reference system available for inspection by the PCO (proposal 20).
- Credit providers, in deciding on the engagement or renewal of any relationship with a credit reference agency, should treat as an important criterion the demonstration by the agency of its compliance with the PD(P)O and provisions of the Code (proposal 21).

Major comments received

3.30 Not many submissions commented on these proposals. Respondents who commented on this issue supported the provision for regular internal audits by CRA to be conducted and then submitted to the PCO. Some of them suggested that there should be an interim review and assessment at the end of the first year by the PCO, rather than other third parties, to see whether any improvements or modifications should be taken before contemplating any further extension of data sharing. On the other hand, one respondent suggested that the PCO might consider delegating its inspection powers to the HKMA so

that it could conduct appropriate inspections of authorized institutions, given its greater resources.

3.31 Another respondent observed that the CRA should also be in a position to evaluate the integrity of the credit providers' data management practices and if they failed to meet prescribed benchmarks then the CRA should prohibit their access to the credit database.

Issue 6 – Implementation Safeguards

3.32 Two proposals were made in respect of this consultation issue:

- That there should be a twenty-four month transition period following the effective date for the full sharing of positive credit data. During that period, credit providers may report positive credit data of existing borrowers to the CRA, but would be 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 twenty-four month period has elapsed (proposal 22).
- That the above restriction should not apply to new applications for credit made by a borrower to the credit provider during the transition period.

3.33 Many submissions from the financial industry offered comment on the proposed two-year transition period. Credit providers invariably wanted to restrict the transition period to one year or less. They argued that a prolonged transition period would have an adverse impact on the over-extended borrowers (the minority) and also on those having a good repayment record (the majority) in that:

- It might provide a false sense of security to some individuals in the hope that time would solve their problems. Since lenders were restricted from gaining access to the borrowers' credit exposure information during the transition period, the delayed action by borrowers in talking to their lenders might result in viable options, such as debt rescheduling, disappearing quickly.
- For the majority of "good" borrowers, allowing too long a transition period might deny them the benefits of positive credit data sharing since lenders would be unable to differentiate them from over-extended borrowers. Due to restrictions on access to credit exposure information about these customers, lenders would not be able to reassess their credit policies and offer differentiated products or services to them.

3.34 The PCO noted that some Members of the Legislative Council also expressed concern that a prolonged transition period would merely defer the problem of over-indebtedness. On the other hand, the Consumer Council commented that if the proposal to extend the range of data collected on consumers were to proceed, it would agree with the transition period being a minimum of 24 months. This was necessary to gauge the extent to which the new system was functioning and to forestall the problem of a sudden calling-in of loans which could have a significant impact on the economy.

3.35 In some submissions from individuals, respondents commented that it was not an issue of whether the transition period should be 12 or 24 months. Irrespective of the length of time, greater emphasis should be placed upon more realistic debt restructuring plans to assist those in financial difficulties. Another respondent commented that “existing customers” might become “new customers” if credit providers were to circumvent restrictions on accessing credit report files. This could be done by requiring existing customers to terminate an existing loan agreement and sign a new agreement, such as a debt rescheduling arrangement, that would effectively change the status of the customer from “existing” to “new”.

Part IV – Response to Concerns and Issues Raised

Response to Concerns raised on the Sharing of Positive Credit Data

4.1 The views expressed during the consultation period have provided the PCO with useful feedback on how the community looks at the sharing of positive credit data and its related issues. The PCO fully acknowledge that both privacy interests and consumer interests are crucial considerations in deciding the way forward. We also concur with the view that commercial interests and individual consumer interests are not necessarily mutually exclusive, they can be complementary.

4.2 Some of the concerns raised relate to issues of consumer rights that are not data privacy-related. Nevertheless, the PCO have had the benefit of receiving comments on some of these issues from other relevant authorities, professional bodies and members of the public. The following paragraphs, therefore, present our collective responses to some general concerns and specific issues collected during the consultation period.

General

4.3 The PCO is an impartial statutory body established under the PD(P)O. Its fundamental responsibility to society is to uphold the provisions of the PD(P)O thereby protecting the personal data privacy rights of the individual. Some comments maintain that the PCO has placed private sector interests above individuals' privacy interests (see paragraph 2.5). The issue has never been about subordinating privacy interests to other societal interests. It is about achieving a balance of interests. The balance that has been sought is between the public interest and the privacy interest, the legitimate needs of financial institutions and the privacy protection needs of their customers. The PCO will remain steadfast in adhering to privacy principles and insist that they remain undiluted and a constituent element of the proposal.

4.4 Concern has been raised about the integrity of financial institutions (see paragraphs 2.6 – 2.8). It is not within the scope of the current consultation exercise for the PCO to study the integrity of financial institutions in Hong Kong. What is evident however is that Hong Kong's market structure in terms of financial institutions is little different from the structure in many other jurisdictions. In any free market sellers have the right to determine their trading terms. It is for the consumer to decide whether these are acceptable. If, as suggested by some respondents, cartel practices constrain competition and result in a largely homogeneous product offering, then it is for government to decide whether this warrants investigation.

4.5 Some respondents are concerned that the credit data contained in the database are too sensitive for them to be owned by a private company. Views were also expressed by some respondents that since most members of the banking sector own the existing credit reference agency in Hong Kong this might pose the risk of a conflict of interest. The Consumer Council also raised the issue of whether credit reference agencies should be permitted to develop as profit-making businesses (see paragraph 2.14). As noted by the Council, this issue is one that the government may wish to re-examine. However, it should be pointed out that the PD(P)O regulates data users in the management of personal data. To that extent the provisions are equally applicable to a credit reference agency as they are to a credit provider both of whom are data users. Whether the credit reference agency is a profit-making or non-profit making organization is not a valid distinction in respect of a data user's legal obligation under the PD(P)O.

4.6 From the consumers' point of view, some feel that the proposal is unfair because they are obligated to make their positive credit data available in a central database (see paragraph 2.10). On the other hand, some "good" borrowers consider preserving the status quo (i.e. no reporting of positive credit data) to be unfair because current arrangements deny them the benefit of differential pricing on credit products. It is however clear that without the ability to know a borrower's past repayment history and indebtedness, credit managers will be lending "half-blind" and will not be able to make sound judgements based on individual risk. Most credit providers will still have to price their credit products based on total risk exposure resulting in "good" borrowers being treated in the same way as those that are heavily in debt. However, when there is a framework of an open, transparent and information-efficient market place, market forces will drive prices down and legitimate lenders could earn a reasonable return on their lending business while good borrowers would enjoy their services at a more reasonable price.

4.7 There are comments that the proposal may set a precedent for other consumer-service sectors to argue for "special case" treatment (see paragraph 2.12). The PCO is mindful that there are other consumer-service sectors where providers need to assess consumers' credit-worthiness prior to providing the service. It is the view of the PCO that 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 that it serves. Consumer credit data sharing is regarded as a special case given the magnitude of economic ramifications associated with the issues that are involved.

Experience of overseas jurisdiction

4.8 Views have been expressed by some respondents that Hong Kong should not blindly mirror the practices of other jurisdictions such as the US or the UK without considering differences in the financial environment and

consumer behaviour (see paragraph 2.11). Whether consumer behaviour in Hong Kong is fundamentally different from that in other advanced economies is open to debate. However, what is evident is that the system has generally worked well in other jurisdictions that have a well established credit data sharing regime and has materially benefited borrowers.

4.9 One political party suggested for consideration the alternative of introducing separate legislation that deals specifically with consumer credit data (as is the case in the US and UK) rather than relying upon a code of practice under the PD(P)O (see paragraph 2.21). The Consultation Document has provided some basic findings referenced from a comparative study¹⁷ of approaches towards data sharing in overseas jurisdictions and an in-house study relating to US and UK legislation.¹⁸ The situation in the US and UK is not strictly analogous with the conditions prevailing in Hong Kong. In the US and UK, the collection and sharing of credit data is highly comprehensive. In Australia, credit data sharing is restricted to largely negative data but there are growing calls in the business community for positive credit data to be shared. In Hong Kong, the basic privacy principle is to permit the collection and sharing of credit data at the minimum level necessary to serve a specific purpose in the public interest. The PD(P)O is a comprehensive data protection law that protects an individual's personal data regardless of the type of the personal data. In the view of the PCO, there seem to be no strong grounds for separate legislation to deal specifically with consumer credit data, as the existing statutory framework is efficacious.

Quantifiable benchmarks

4.10 Some consumers are skeptical about the benefits that may be derived from extending the sharing of credit data (see paragraph 2.9). The Consumer Council considers there is a need to establish quantifiable benchmarks against which the benefits may be measured (see paragraph 2.14). The PCO appreciate that there are understandable concerns from consumers. The views of the financial industry and the HKMA are that whilst overseas experience has shown that sharing of positive credit data would benefit both consumers, credit providers, and society at large, it would be extremely difficult to predict or establish in advance any quantifiable targets for benchmarking. This is so because of the variety of factors that may affect the future development of consumer finance markets and because there is no local experience in positive credit data sharing.

4.11 More recently, in correspondence with the PCO, the HKMA have indicated that they are considering a number of indicators that may be useful in

¹⁷ Report on "The Regulation of Debt Collection Practices" – Law Reform Commission of Hong Kong, July 2002, page 102.

¹⁸ Paragraphs 6.22 – 6.27, pages 36 to 37 of the Consultation Document.

assessing the benefits of the sharing of positive credit data in due course. These indicators include:

- changes in percentage distribution of credit card receivables by level of interest rates;
- level of credit card charge-off rate;
- average indebtedness in terms of monthly income of bankrupts;
- ratio of total personal loans to nominal GDP;
- aggregate number of individual customers taking out consumer credit from authorized institutions;
- fees charged on drawing cash advances from a credit card account.

4.12 The PCO believe that the bad debt charge-off ratio can offer a good measurement to gauge the effectiveness of extending credit data sharing. In the absence of general economic adversity, the charge-off rate is one indicator of the recoverability of loans granted and is indicative of the credit providers' effective use and application of the extended credit information in terms of enhancing credit risk management.

4.13 The HKMA is also of the view that the benefits of positive credit data sharing will take a few years to materialize. They indicate that the first quantitative assessment is more likely to be carried out immediately after the transitional period although the results of assessments made in earlier years are unlikely to fully reflect the effects of positive data sharing. Thereafter, similar assessments can be conducted annually. In this regard the PCO welcome the suggestions made by the HKMA.

4.14 Some respondents from the financial industry point out that there are already institutions in Hong Kong offering risk based pricing. Where this happens, it is observed that the difference in pricing may be as much as 24% between the highest and lowest categories of risk. All pricing is market driven and will lead to an equilibrium at which each institution feels it is receiving the minimum compensation for the risk taken (one need only witness the dramatic effect competition has had in reducing the costs for mortgage loans and automobile finance). When the market drops below that of a given firm's risk/reward acceptance point it will exit that product segment (as is happening with mortgage and auto loans today). In this way the market will adjust to a lower equilibrium at a lower price level. Clearly the benefit of risk based pricing will be derived from positive credit data sharing which makes assessment of different categories of risk possible.

4.15 It has also been pointed out that it has long been the practice among money lenders to grant credit facilities to borrowers on the basis of their income proof and negative credit data history, if any. With the extended sharing of credit data to include positive data, money lenders may grant credit facilities to certain borrowers who do not have solid proof of income based upon their total debt exposure. Borrowers such as truck or taxi drivers and sole proprietors, etc. would have easier access to credit facilities provided by money lenders.

4.16 Doubts have been expressed regarding the collective abilities of the PCO and HKMA in terms of being able to monitor the possible increase in abusive access to credit data. The Consumer Council suggests that quantifiable goals should be set to measure this (see paragraph 2.14). Having considered the suggestion carefully, the PCO is of the view that it is not practicable to establish any meaningful and quantifiable benchmarks. The effectiveness of the proposed preventive safeguards is more important, such as the access log system, reporting of abnormal access and the proposed annual independent compliance audit of the credit reference agency. In so far as the authorized institutions (“AI”) are concerned, the HKMA is of the view that the issuance of supervisory guidelines requiring AI to have in place adequate controls to guard against unauthorized access should be sufficient to minimize the threat of abusive access. The HKMA has also suggested that an annual quantitative assessment of the effectiveness of AI’s privacy safeguards be conducted commencing in the first year after launch of the positive credit data sharing arrangement which would include the transition period. The monitoring mechanism would be triggered on the basis of complaints received by the HKMA and the PCO.

Response to Issues Raised in relation to Proposed Data Protection Safeguards and Controls

Scope of new credit data

4.17 It has been suggested by some respondents that the extension of credit data sharing should be restricted to information pertaining to credit cards and that other unsecured loans should be excluded (see paragraph 3.5). The Consultation Document¹⁹ examined this option and came to the conclusion that it did not accurately reflect the present situation. Historically credit card indebtedness and default on credit cards may have been the initial cause for concern. However, statistics available from Credit Information Services Ltd. (“CIS”)²⁰, and reported by financial institutions, clearly indicate that this problem has been compounded by the number of borrowers taking on one or

¹⁹ Paragraphs 6.33 – 6.37, pages 39 to 40 of the Consultation Document.

²⁰ CIS is the main consumer credit reference agency operating in Hong Kong.

more loans and subsequently defaulting on the repayment of those loans. In short, the pattern is that there has been a replication of what was initially a credit card problem with unsecured loans. Given this trend and the need to address the problem before it deteriorates further, the PCO remain of the view that the proposed new credit data should include positive data relating to credit cards and unsecured loans. This would best serve the public interest of maintaining the stability of Hong Kong's financial markets in the long term.

The range of reportable data in relation to credit repayment history

4.18 Data Protection Principle 1 (“DPP1”) provides that personal data shall be collected for a lawful purpose, that it should not be excessive in relation to that purpose and that it should be fair in the circumstances of the case. The term ‘excessive’ is not defined in the PD(P)O. Accordingly what is, or is not, excessive must be seen as contextual. No two situations are identical.

4.19 The data requirements for credit providers in making credit assessments, based upon positive credit data are, information on the number of credit facilities held by the borrower, the limits and outstanding amounts on such facilities and the overall credit repayment history of the borrower. The number of active loans on hand enables the aggregate exposure of the borrower to be determined. Information on past repayment history gives an indication of the borrower's payment pattern and an estimate of default probability. For the purpose of enabling prudent credit assessment, the PCO remain of the view that the proposed range of data reportable by credit providers to a credit reference agency are not excessive in terms of facilitating greater information transparency that permits more rigorous credit assessment. Given the relevance of repayment history data in predicting default probability, the PCO consider that reporting the punctuality of payments in terms of “number of days past due” would be more appropriate than the “actual dates of payment”.

Scope of coverage

4.20 The PCO share the view of the Consumer Council that voluntary participation by credit providers may conflict with the notion that increasing the range of data sharing will assist in addressing some of the problems now facing the financial industry (see paragraph 3.9). In recent correspondence with the PCO the HKMA has advised that it will soon draft the industry supervisory guidelines on the sharing of positive data that will, among other things, require comprehensive participation by authorized institutions. The PCO understand that participation in the data sharing scheme may involve due commercial consideration by each credit provider and support the HKMA in issuing industry guidelines that encourage participation.

4.21 The PCO have advocated that credit providers offer borrowers clear and unequivocal notification on matters relating to the use and disclosure of

credit data at the time when they collect personal data from the borrower. This would satisfy the requirements of DPP1. It is understood that it has been a standard practice in the industry to incorporate such notification either in the terms and conditions of a credit agreement or in a credit application form. The PCO fully support the view expressed by the Consumer Council that the “opt-out” provisions should not be lost in the fine print of lender/borrower agreements. In this regard, the PCO encourage credit providers to take appropriate measures to respond to the concerns raised by consumers.

Effective date

4.22 There is a suggestion that the proposal to extend credit data sharing should be postponed until the HKMA has stepped up enforcement of the Code of Banking Practice with some form of statutory backing (see paragraph 3.8). In response to this, the HKMA considers that a voluntary code remains a preferable alternative to legislation. Given the evolving nature of business practices and that the focus of consumer concerns change over time, the code needs to be flexible enough to be adapted from time to time. In the view of the HKMA, a statutory code would also increase the regulatory cost both to the banks and the regulator. This is undesirable particularly in the prevailing economic environment. As regards the enhancement of monitoring efforts, the HKMA announced in September 2002 a new self-assessment framework requiring banks to provide annual assessment reports to them. This self-assessment requires internal auditors of authorized institutions, or other equivalent units, to independently review their compliance with the requirements of the Banking Code.

4.23 The PCO recognize that a balance needs to be struck between instituting adequate safeguards, offering borrowers reassurances of the measurable gains to be derived from the data sharing scheme and ensuring that any deferral of the scheme would not unduly delay the benefits to be derived from it. These factors have inclined the PCO to the view that there is a case for advancing the requirement of conducting the first privacy compliance audit of the credit database to 6 months after the effective date of implementation. This audit should encompass an assessment of the compliance measures taken by the credit reference agency in that it has (i) written instructions and disseminated privacy policy to staff regarding access procedures to the credit database and (ii) effective safeguards to ensure system integrity complies with access procedures.

Credit report

4.24 There are suggestions that the credit report requested by an individual should not conceal the identity of lenders who have made access to the individual’s credit file (see paragraph 3.10). According to information provided by CIS, a credit report currently requested by an individual includes

disclosure of the identity of credit providers who have made access in the “file activity data”²¹ and the source of credit in the “credit application data”²². The PCO do not see any reason for a change in this practice when there is an extension of the scope of credit data sharing.

4.25 In relation to access to credit report, the Consumer Council raised a number of issues concerning consumer rights, some of which are not data-privacy related (see paragraph 3.15). With regard to those that relate to the PD(P)O, the PCO would like to offer the following response.

- ***Right to know who has made access, etc.*** It should be noted that the PD(P)O provides a right to an individual to make a data access request for one’s own personal data held by data users. In the existing Code, provisions are provided that give practical guidance for the CRA to deal with the access of credit reports by individuals, and for them to request the correction of inaccurate data. Provisions are also provided requiring credit providers to give notice to a borrower if his credit report has been referenced in the consideration of credit assessment. As mentioned in paragraph 4.24, a credit report requested by an individual discloses information relating to the identity of credit providers who have made access and also the source of credit. There are no grounds for revising these provisions.
- ***PCO to keep a list, for public inspection, of those credit providers who have been recognized.*** The suggestion appears to be linked to section 15 of the PD(P)O that empowers the Privacy Commissioner to maintain a register of data users that have submitted data user returns²³. The PCO do not dispute that this may be a useful measure to give comfort to consumers regarding persons permitted to access the database. However, it should be pointed out that credit providers are clearly defined in the existing Code and only those falling within the definition may obtain access to the credit database. These include (a) an authorized institution or its subsidiary 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 a finance house. Nevertheless, the PCO will keep the suggestion under review.

²¹ “File activity data” is one form of enquiry alert information that shows the number of enquiries made by credit providers on the individual’s credit file.

²² “Credit application data” is also a form of alert information about an individual’s application for credit including among others the source of the lender.

²³ Section 15(1) provides that the Commissioner shall use (a) data user returns submitted to him under section 14(4); and (b) any notices served on him under section 14(8) to keep and maintain a register of data users which have submitted such returns.

- ***Right to a free copy of the credit report.*** The PD(P)O makes no provision for this. On the other hand, section 28 of the PD(P)O provides that a data user may impose a fee for complying with a data access request that should not be excessive. Whether or not a fee should be charged for a copy of the credit report is a commercial decision that should be made by the CRA concerned. On this aspect, the PCO note the Director and General Manager of CIS made the following remark to the press:

“As for those consumers whose credit applications have been refused, CIS may consider allowing them to access their credit data free of charge in cases where they can produce a refusal notice from the bank.”²⁴

Credit scoring

4.26 There have been suggestions calling for greater transparency on the credit scoring mechanism adopted by the CRA (see paragraph 3.11). The PCO appreciate public concern about the influence of credit scores on daily credit activities between credit providers and consumers. However, it should be noted that individual banks already calculate credit scores for their customers based solely upon negative credit data and the pattern of borrowing and repayment behaviour exhibited by the individual. Similar to credit bureau in overseas jurisdictions and institutions with internal credit scores, the score developer owns the intellectual property right of the scoring algorithm. For commercial reasons, the detail of the scoring formula would not be made available to the public. Nevertheless, in order to help the general public understand credit scoring, the PCO encourage the CRA to produce an information leaflet on the general description of the statistical model used in deriving a credit score and the type of information used in the scoring algorithm.

“Review” access to the credit database

4.27 The PCO appreciate the concerns expressed by consumers that a “review” access to the credit database may be open to abuse because no clear criteria exist (see paragraph 3.14). It cannot be denied that a lack of definition of the term “review”, and the criteria by which a review is warranted, is less than helpful, especially insofar as consumer interests are concerned. It is also conceivable that the lack of a rubric may encourage the practice of conducting a review where it is not justified.

4.28 The PCO have considered carefully the suggestions made in relation to this issue. In the analysis, the PCO believe that some of the suggestions are

²⁴ Oriental Daily News, 4 September 2002.

not practicable in terms of implementation, for example, the suggestion requiring credit providers obtain consent from the customer on a per-request basis. This would create excessive administrative burden to the parties concerned and probably some administrative costs would have to be borne by the customers as a whole. In some situations, this approach may disadvantage the customer if consent could not be immediately obtained. Nevertheless, the PCO believe that, in the interests of data protection, there is a case for introducing tighter controls on the “review” access to the CRA credit database by credit providers and confine the “review” access to certain permitted purposes. The purposes may include a consideration by the credit provider concerning the customer’s credit facility in matters such as (a) an increase/decrease in the credit amount, (b) cancellation of credit, or (c) a restructuring, rescheduling or other modification in the repayment terms of the credit facility.

4.29 A loan agreement provides the basis on matters that the borrower agrees to when granted with the loan. Among others, this includes the consent by the borrower on the use of his personal data for legitimate purposes relating to the credit relationship. However, this sort of one-off consent may not always best serve the data privacy interest of the borrower if he is unable to be aware of who has made access to his data held in the CRA database. As distinct from the lender’s access to its own record about the borrower’s credit position, a “review” access to the CRA database by the lender may disclose the customer’s credit position with other lenders. If the borrower defaults in payment, the access to the CRA database is understandable if it is for a purpose as mentioned above. However, the “review” access to the CRA database will serve no reasonable purpose if the borrower is not currently in default. Taking into account various views, the PCO consider necessary to require credit providers to take practicable steps to give prior notification to customers of the intention to make “review” accesses to the CRA database, unless

- the “review” is a customer initiated request, or
- the “review” access relates to an obligation of an existing loan restructuring arrangement concerning debts owed by the customer.

4.30 A notification can be given by the usual means of contact with the customer such as providing an insert of the notice in a billing statement or other communication means convenient to the parties. To give documentary evidence on compliance, the credit provider should keep internal records about instances of “review” access made to the CRA database. These records should be made available for examination by the Privacy Commissioner in an investigation of an alleged abusive access complaint or reviewed by the compliance auditor during a privacy compliance audit.

Updates of credit data

4.31 The PCO note the suggestion calling for a shorter reporting cycle whereby credit providers may report credit data to the CRA (see paragraph 3.16). Clearly a shorter reporting cycle may enhance data accuracy. However, there are practical considerations that should be taken into account in designing the optimal reporting cycle and a balance needs to be struck between the quality of data and the cost of updating that data. While the PCO see the merits of the suggestion, and would support any movement to reduce the data reporting cycle, it is of the view that initially, at least, it should remain at 31 days until the system has a proven record of stability and accuracy.

4.32 The PCO welcome the Consumer Council's suggestions to increase data accuracy standards (see paragraph 3.17). However, it is to be noted that DPP2 of the PD(P)O provides that all practicable steps shall be taken to ensure that where there are reasonable grounds for believing that personal data are inaccurate having regard to the purpose (including any directly related purpose) for which that data are used, then (i) the data are not used for that purpose unless and until those grounds cease to be applicable to the data, whether by rectification of the data or otherwise; or (ii) the data are erased. The PCO accept it would be useful to give practical guidance on the DPP2 requirement for credit providers to deal with circumstances when reporting credit data which the customer disputed. The PCO consider that, in these circumstances, credit providers should include a notice concerning the customer's dispute in the credit data reported to the CRA which should then disclose the notice in the credit report of the customer.

The "opt-out" choice upon full payment of an account

4.33 The PCO note that there was general support for the "opt-out" proposal although there were different views regarding implementation details such as "opt-out" procedures and eligibility to opt-out (see paragraphs 3.19 – 3.23). The PCO acknowledge that the choice to opt-out and opt-back-in relating to closed account data can work to the advantage and disadvantage of consumers. Ultimately it will be for the consumer to evaluate the merits and demerits of the choice before coming to a decision.

Notification of the "opt-out" choice

4.34 The PCO remain of the view that notification of the choice to opt-out must be given to a borrower at the time of application for credit. Repayment of a loan may span several years and during that period the choice to opt-out may be overlooked by the borrower. It is for this reason that the PCO consider it appropriate, as a good practice, for credit providers to give a reminder to the borrower as soon as practicable upon repayment in full of the facility. Having considered the arguments advanced by respondents in the

financial industry (see paragraph 3.20), the PCO are not convinced that a borrower should be restricted to exercising the choice only within a time limit upon receipt of the reminder. Borrowers, provided that they are eligible to opt-out, should be able to exercise the choice free from any conditions attached to it.

The extent to which the “opt-out” applies

4.35 There is a suggestion that the “opt-out” choice should be extended to cover existing “credit application data” (see paragraph 3.19). However, it should be noted that “credit application data” is a form of information alert that may help to indicate whether a borrower is seeking credit from multiple sources and thereby running the risk of over-borrowing. Without positive credit data reporting, such as the number of credit facilities actually granted, the credit database may reflect a situation in which there is an imbalance of credit information about the borrower. In contrast, with positive data reporting, including “active” credit accounts and payment pattern, this abnormality would be minimized because a balanced picture of the borrower’s overall exposure would be available from the credit database. The Consumer Council considers that consumers should be provided at the outset with the choice to opt-out of the positive credit reporting system. This scenario, which is similar to the situation in which there is no positive credit data reporting, may create an undesirable imbalance of credit information that may be dis-advantageous to the borrower. Accordingly, the PCO remain of the view that the choice to opt-out should be a feature available to borrowers upon full repayment of an account.

The effect of an “opt-out” request

4.36 The PCO note the concern of some respondents regarding the value of the “opt-back-in” provision relating to closed account data (see paragraph 3.21). There is no dispute that a good credit record is a lifetime asset for most “good” borrowers who represent the majority of consumers using credit. It is felt unlikely that this group of borrowers will elect to opt-out their good credit record from disclosure in the credit report. Hence the “opt-back-in” provision will be of little value to them. The balance of borrowers, who are in the minority, are unlikely to avail themselves of the “opt-back-in” opportunity simply because they are not eligible to opt-out in the first place. On the basis of this reasoning, it would appear that the “opt-back-in” provision is of minimal value and probably unnecessary. Furthermore, it seems more appropriate from a privacy viewpoint that an “opt-out” request should have the effect of a “deletion” request of the closed account data from the CRA credit database.²⁵

²⁵ The “opt-out” arrangement proposed in the Consultation Document has the effect of “prohibiting” closed account data to be used for future credit reporting and credit scoring. The prohibition is removed only when the borrower elects to opt-back-in the data.

4.37 The arrangement for “deleting” closed account data from the CRA database upon full repayment offers the maximum convenience to those borrowers who have a substantial concern about their privacy. However, some respondents are of the view that the absence of closed account data may lead to a skewing effect on the scorecard model and may impair statistical reporting. Development of a scorecard model, as distinct from a credit scoring of the borrower, does not rely on data that need to identify any particular borrower. So long as the closed account data are anonymized such that they do not relate to any particular individual, the data can be used for the purpose of scorecard development and statistical reporting. Accordingly, the PCO consider that there is a case for allowing a borrower, who is eligible to opt-out, to make a request for the deletion of a credit account upon repayment in full. To offer the maximum convenience to the borrower, such request should be made to the lender direct. A lender always has a responsibility to the borrower of all credit data it reported to the CRA, no matter the borrower is a current or a former customer. In this regard, it would be reasonable for the lender to take on the duty to notify the CRA of an “opt-out” requested by its former borrower upon full repayment of an account. Upon receipt of the “opt-out” notification, the CRA is obliged to delete the said account information from its credit database.

The “opt-out” threshold

4.38 The eligibility for a borrower to opt-out depends on whether the borrower has a “clean” account record. In the Consultation Document, the benchmark for a “clean” account record was proposed as “no material default payments in excess of 90 days past due”. On reviewing submissions and the arguments advanced (see paragraph 3.22) and also statistics of defaulters provided by the HKMA, the PCO consider there is a case to re-visit the threshold for determining the eligibility to opt-out.

4.39 A request for data “deletion” needs to be considered in the context of the public interest provision of section 26 of the PD(P)O. Section 26 places a duty on the data user to erase personal data unless it is in the public interest for the data not to be erased. It therefore follows that in determining the threshold for the eligibility to opt-out due regard has to be given to the public interest that these data are to serve. In this respect, the following factors would be relevant:

- A lower threshold would enhance transparency around the individual borrower’s repayment behaviour. Rather than let 90 days elapse, a shorter period would provide an earlier indication of any irregularity or protraction of repayment pattern.
- An earlier triggering mechanism would also enable credit providers to respond more rapidly to any deterioration in payment pattern. Earlier indications would enable the credit provider to make a more

timely assessment and, based upon that assessment, offer the individual material assistance in correcting any degeneration in repayment pattern.

4.40 In the preparation of the Consultation Document, the PCO were provided with information of an analysis of the migration pattern of delinquent credit card accounts between October 2001 and May 2002. The results showed that 36% of delinquent accounts in the 31-60 days past due category eventually migrated to the 121-180 day category. More significantly the figures also showed that 49% of all accounts in the 61-90 days past due category migrated to the 121-180 day category.²⁶ More recent figures for the period up to October 2002, provided by the HKMA, indicate the migration ratios of 32% and 44% respectively²⁷. This significance of these figures is that there has been a persistent high percentage of credit card accounts (49% and 42%) in the 61-90 days past due category migrated to the 121-180 day category and eventually might result in the indebtedness being written off.

4.41 In considering a revision to the opt-out threshold, the PCO are fully aware that the decision may be interpreted as both denying the borrower the choice to opt-out upon full repayment of a credit facility or imposing a “personal loss” upon those borrowers who have exhibited delinquent account behaviour. However, the PCO remain of the view that multiple levels of safeguards have been designed that amount to a tightening of controls on accessing the credit database and that, in combination, those safeguards would help prevent abusive access and use.

4.42 It is also felt that any perceived “personal loss” arising from the retention of a delinquent repayment record in the database would not by the fact of retention alone materially affect future judgements by credit providers regarding an individual’s credit-worthiness were he/she to apply for a new credit facility. This is because personal circumstances, ability to recover from a delinquent record and ultimate repayment of the credit facility in full would all be weighed by credit providers in the decision to grant new credit facilities. Credit providers would much rather be provided with the borrower’s less-than-clean credit record than no credit record at all when making lending decision. Indeed, the latter situation is more likely, in the view of the PCO, to result in denial by credit providers of credit facilities requested by borrowers.

4.43 Having considered all factors and given due regard to the public interest to detect and pre-empt further deterioration in repayment patterns, the PCO are of the view that it would be more appropriate for evidence of a

²⁶ Paragraph 6.71, page 49 to 50 of the Consultation Document.

²⁷ Accordingly to the HKMA, the lower ratios was largely due to a change in the charge-off policy of some major market players during August to October 2002 by charging off earlier on the date of bankruptcy petition instead of the date of bankruptcy order. Some banks have also advanced their delinquency charge-off to 120 days, instead of 150 or 180 days overdue.

“clean” record to be reduced from 90 to 60 days past due. In other words, borrowers who have “no material default payments in excess of 60 days past due” would be eligible to exercise the “opt-out” choice upon full repayment of a credit facility.

Privacy safeguards applicable to credit reference agencies

4.44 The PCO note that there was general support on the proposed audit control measures. In particular, the PCO share the views of the Consumer Council that allowing consumers to monitor access to their credit report could act as a check and balance against potential abusive access (see paragraph 3.27). The PCO have responded to the issues concerning credit reports and abusive access in paragraphs 4.25 – 4.26 and 4.27 – 4.30 respectively.

4.45 As regards the suggestion of setting up redress procedures similar to those of a claims tribunal, the PCO consider that the compensation provision under section 66 of the PD(P)O would be sufficient in this respect. In any event, the creation of a tribunal is beyond the remit of the PCO and a matter more appropriately considered by the government.

Other regulatory control measures

4.46 The PCO acknowledge the merits of conducting an interim review at the end of the first year of the transition period and will give due consideration to this need. The suggestion made in paragraph 4.23 makes provision for an independent compliance audit of the credit database to be carried out 6 months after the effective date of implementation. In so far as authorized institutions are concerned, the HKMA have suggested that they will conduct annual assessments of the effectiveness of their privacy safeguards commencing in the first year after launch of the positive data sharing scheme. In these circumstances, the PCO consider the multiple sets of regulatory control measures to be undertaken by respective parties to be adequate. However, none of the measures in any way diminish the powers of the PCO to conduct an inspection of the relevant systems of credit providers and the CRA at any time, of its own initiative pursuant to section 36 of the PD(P)O.

The transitional period

4.47 The 24-month transitional period proposed in the Consultation Document restricts lenders from gaining access to the borrowers’ credit exposure information for the purposes of assessing the renewal or review of existing credit facilities except where access is for the purpose of considering the grant of new credit. There are different views regarding the appropriate length of the transitional period (see paragraphs 3.33 – 3.35). It has also been suggested that provisions can be made for the PCO, subject to a review, to decide on whether to uplift the moratorium after 12 months or to extend it for

no more than a further 12 months. Having given due consideration to the suggestion and the arguments advanced by the industry, the PCO are of the view that there are insufficient grounds to merit a shortening of the transitional period.

4.48 The PCO understand that the industry has put in place “debt relief plan” arrangements, which are backed by industry guidelines, to set out how financial institutions are expected to deal with consumer debt problems. The guiding principle is that institutions should deal with debt problems sympathetically and positively. The HKMA advise that it is prepared to lend support to the “debt relief plan” and to the accompanying guidelines by issuing appropriate supervisory guidelines to the industry. In this respect, the PCO welcome the initiative of the industry to provide alternative solutions that assist borrowers who may be in need of assistance about their debt problems.

4.49 The PCO accept that the proposal may be too restrictive and result in lenders being prevented from obtaining relevant credit information that would help them to organize debt restructuring arrangements to assist those borrowers who are in financial difficulties. It is also noted that there may be on-going debt restructuring arrangements that were organized prior to the effective date of the data sharing scheme that will require continued access to the credit data after implementation. Barring this type of access by lenders would be undesirable and disadvantageous to the borrower.

4.50 Subject to the proviso of tighter controls on “review” access (see paragraphs 4.28 – 4.30), the PCO consider there is a case for allowing lenders to have access to relevant credit information so as to facilitate a loan restructuring about the borrower’s debts during the transitional period.

Part V – The Way Forward

5.1 The rising trend in personal bankruptcy and consumer debt is of major concern to the community; a view that was expressed in nearly all submissions that responded to the consultation exercise. The serious economic and social problems now confronting Hong Kong are an inextricable aspect of the stability of Hong Kong's financial markets and the health of the economy. If not effectively addressed these problems may lead to a loss of consumer confidence in the market and the economy as a whole. It is clear from the views expressed that no single cause is responsible for the current state of personal bankruptcy and consumer debt. Equally, there is probably no single panacea either.

5.2 The right to data privacy exists in the context of a society but this right is not absolute. The PD(P)O gives recognition to this. For example, section 26 of the PD(P)O 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. The exemption provisions of the PD(P)O recognize other broader community interests, such as the prevention of crime or dishonest conduct, and permit the use of personal data to serve those interests. When conflicts arise, a balance has to be struck between the private right and the public interest so as to devise a solution that brings mutual recognition and benefit.

5.3 The PCO is of the view that the proposal for the greater sharing of credit data, when implemented with appropriate measures to safeguard privacy protection, will contribute to creating an environment in which the transparency of credit information will become of value to lenders and borrowers. This environment will facilitate a more equitable and responsible lending/borrowing relationship, help to mitigate the potential negative economic impact arising from bankruptcies and best serve the broader public interest of preserving the stability of Hong Kong's financial markets and the economy more generally.

5.4 In deciding to take the matter forward, the PCO have considered carefully various views and suggestions collected during the consultation period. The PCO have also reflected upon other developments that are of significance in supplementing the extension of credit data sharing to include positive data:

- ***Supervisory guidance.*** In September 2002, the HKMA announced a new self-assessment framework requiring authorized institutions to provide annual reports to them. This self-assessment requires internal auditors of authorized institutions, or other equivalent units, to independently review their compliance with the requirements of

the Code of Banking Practice. The HKMA is about to develop supervisory guidelines on the sharing of positive credit data requiring comprehensive participation by authorized institutions and the implementation of adequate privacy safeguards and controls

- ***Benchmarking.*** A broad approach towards quantifying benchmarks that would gauge the effectiveness of positive credit data sharing has been discussed by the HKMA and the Consumer Council. The HKMA has indicated that the first quantitative assessment is likely to be carried out immediately after the transitional period. Thereafter, similar assessments will be conducted annually.
- ***Public awareness.*** In August 2002, the HKAB prepared a customer information leaflet entitled “A Guide to Greater Data Sharing” explaining the impact and benefits of positive credit data sharing for distribution by its members to their customers. It is noted that some major banks posted the leaflet information on their websites and others distributed the information in their monthly billing statement to customers.

5.5 The PCO will take a reasoned approach towards building a regulatory framework, based upon the overall credit data sharing concept, with requisite data protection safeguards and controls that operate in a meaningful way. The framework will create a new credit data sharing environment that provides significant potential to benefit Hong Kong and the community as a whole. Clearly the framework will have to be supplemented by other strategies such as a regular review of lending practices by credit providers and public education. In this regard the PCO will re-write the Code of Practice on Consumer Credit Data to give effect to this regulatory framework.

List of amendments

5.6 In the revised Code, the PCO will incorporate some of the suggestions collected during the consultation period. Accordingly, some amendments to the draft proposals contained in the Consultation Document will be necessary, a list of which is as follows:

- a) Limit reportable data by credit providers to only those data necessary to indicate the punctuality of payments, for example, the number of days past due in payment rather than the actual dates of payment (see paragraph 4.19).
- b) Advance the requirement of conducting the first privacy compliance audit of the credit database to 6 months after the effective date of implementation (see paragraph 4.23). This audit should encompass an

assessment of the compliance measures taken by the credit reference agency to ensure that it has:

- written instructions and has disseminated privacy policy to operating staff regarding access procedures to the credit database, and
 - effective safeguards to ensure system integrity complies with access procedures.
- c) Restrict the meaning of a “review” access to the CRA credit database to purposes relating to matters which the credit provider may consider in respect of the borrower’s credit facility (paragraph 4.28) such as:
- an increase/decrease in the credit amount,
 - cancellation of credit, or
 - a restructuring, rescheduling or other modification in the repayment terms of the credit facility.
- d) Require credit providers to take practicable steps to give prior notification to customers of their intention to make a “review” access to their credit reports (see paragraphs 4.29 – 4.30) unless:
- the “review” is a customer initiated request, or
 - the “review” access relates to an obligation of an existing loan restructuring arrangement concerning debts owed by the customer.
- e) Require credit providers, when reporting credit data which the customer disputed, to include a notice concerning the customer’s dispute in the credit data reported to the credit reference agency. The credit reference agency shall disclose such notice in the credit report of the customer (see paragraph 4.32).
- f) Require the credit reference agency, on receipt of an “opt-out” request notified by the borrower’s lender, to delete the terminated account information from its credit database (see paragraphs 4.36 – 4.37).
- g) Revise the eligibility to opt-out to a threshold of “no material default data with 60 days past due” (see paragraphs 4.39 – 4.43).
- h) Subject to the revision made in (c) above, credit providers may access the credit database for the purpose of obtaining relevant credit information to facilitate a loan restructuring about a borrower’s debts during the transition period (see paragraphs 4.49 – 4.50).

5.7 Subject to finalizing some technical details associated with the above amendments, the Privacy Commissioner will approve the revised Code pursuant to his power under section 12(1) of the PD(P)O with an aim to bring the revisions into effect on 1 April 2003.

Appendix I – List of Public Activities Attended by the Privacy Commissioner

1. Media Interviews/Radio Phone-in Programmes

- “Financial Plaza”, HK Commercial Broadcasting (28 August 2002)
- “Hong Kong Today”, RTHK 3 (29 August 2002)
- “Talk About”, RTHK 1 (29 August 2002)
- “Good Morning Asia”, ATV, Home Channel (29 August 2002)
- “Chinese Central Television News program (29 August 2002)
- “Cable TV News program” (29 August 2002)
- “Power Talk”, Metro Radio Finance Station (30 August 2002)
- “Saturday Forum on Economic and Public Affairs”, HK Commercial Broadcasting (31 August 2002)
- “Party Line”, RTHK 1 (31 August 2002)
- “Newslines”, ATV World Channel (1 September 2002)
- “BackChat”, RTHK 3 (5 September 2002)
- “Good Morning Hong Kong”, TVB, Jade Channel (10 September 2002)

2. Seminars/Discussion Forums:

- “Hong Kong Institute of Directors” (16 October 2002)
- “Y’s Men International, Hong Kong District” (17 October 2002)
- “Department of Decision Sciences and Managerial Economics, The Chinese University of Hong Kong” (19 October 2002)

Appendix II – List of Respondents who Submitted Written Comments

Statutory/Public Sector Organizations

1. Hong Kong Monetary Authority
2. Hong Kong Housing Authority
3. Consumer Council
4. Independent Commission Against Corruption

Banking and Finance Sector

5. Bank of America (Asia) Ltd.
6. Bank of China (HK) Ltd.
7. HSBC – Asia Pacific Consumer Credit Risk
8. The Bank of East Asia
9. Bell-Net Finance Co. Ltd.
10. First Investments (HK) Ltd.
11. PrimeCredit Ltd.
12. Liu Chong Hing Bank Ltd.
13. SHK Finance Ltd.
14. Wah Sun Finance Ltd.
15. The HK and Shanghai Bank (HSBC)
16. United Asia Finance Ltd.
17. Chiyu Banking Corporation Ltd
18. Standard Chartered Bank
19. Shanghai Commercial Bank Ltd.
20. Citibank
21. American Express International, Inc.
22. AP Finance Ltd.
23. AG Capital Ltd.
24. Lloyds TSB Bank
25. Inchroy Credit Corp. Ltd.
26. AEON Credit Service (Asia) Ltd.
27. Wing Lung Bank
28. Hung Kai Finance Co. Ltd.
29. The Bank of Tokyo-Mitsubishi, Ltd.
30. Nanyang Commercial Bank, Ltd.
31. Hang Seng Bank
32. Chekiang First Bank Ltd.
33. DBS Kwong On Bank
34. Overseas Trust Bank Ltd.
35. AIG Credit Card Company
36. AIG Finance (Hong Kong) Ltd.
37. International Bank of Asia, Ltd.

Trade Associations

38. The Hong Kong Association of Banks
39. The Chinese Manufacturers' Association of Hong Kong
40. The British Chamber of Commerce in HK
41. Licensed Money Lenders Association Ltd.
42. The Finance Houses Association of HK Ltd.
43. The DTC Association
44. Correctional Services Department Credit Union
45. The American Chamber of Commerce in HK
46. The Chinese General Chamber of Commerce
47. The Australian Chamber of Commerce in HK
48. HK General Chamber of Commerce

Professional Bodies

49. HK Credit and Collection Management Association
50. Hong Kong Bar Association
51. The Association of Chartered Certified Accountants
52. The Law Society of Hong Kong
53. Hong Kong Society of Accountants
54. The Association of Accredited Advertising Agents of HK

Private Sector Companies

55. K.B Chau & Co.
56. InfoAtlas Inc.
57. Credit Information Services Ltd.
58. APCO Asia Ltd.
59. PA Consulting Group Ltd.

Consulates

60. British Consulate-General
61. Consulate General of the USA

Political Parties

62. Democratic Alliance for Betterment of Hong Kong
63. The Frontier

Individuals/Groups of Individuals

219 individuals have submitted written comments.