

(852) 2529 0121

(852) 22527 0790

L/M (2) in G9/8/1/1 Pt.8

23 April 2003

By Fax: 2121 0420 - 15 pages

Ms Connie Szeto
Clerk to Panel on Financial Affairs
Legislative Council Building
Hong Kong

Dear Ms Szeto,

Panel on Financial Affairs

Follow-up to meeting on 20 March 2003

I refer to your letter dated 28 March 2003 and provide herewith the information requested by Panel Members at the captioned meeting –

- (a) A breakdown on the number of complaints received in 2002 by the Securities and Futures Commission (SFC) and the Office of Commissioner of Insurance (OCI) in respect of services provided by banks is at **Annex A**. Complaints received by the Hong Kong Monetary Authority (HKMA) have been reported to the Panel in its submission on 13 March 2003.
- (b) The Privacy Commissioner of Personal Data's response to the Consumer Council's proposals regarding the sharing of positive credit data set out in paragraph 18 of the Council's submission to the FA Panel is at **Annex B**.
- (c) Both the Securities and Futures Commission and the HKMA conduct inspections on licensed corporations without advance notice (i.e. surprise inspections) if necessary. The supervisory procedures adopted by the two regulators in relation to the inspection of regulated activities under the Securities and Futures Ordinance are similar as shown in the note at **Annex C**.

(d) The imposition of fees and charges is the commercial decision of banks. According to the Code of Banking Practice, banks are required to disclose details of fees and charges of banking services. At present, a number of retail banks levy maintenance fee on low-balance deposit accounts while some do not impose any minimum balance requirements. The majority of banks impose such charges either provide an alternative no-fee savings account¹ or grant various exemption to the more vulnerable groups of community, e.g., persons who are above 65 years old, recipients of government disability allowance or customers who maintain a payroll account with the bank. It seems that options are available for customers with payroll accounts in banks to avoid paying fees on low-balance deposit accounts. Please see the attached table, at **Annex D**, on relevant fee policy of banks with substantial retail network.

Yours sincerely,

(Millie Kiang)
for Secretary for Financial Services and the Treasury

c.c. CE/HKMA (Attn: Ms Carman Chiu)
SFC (Attn: Mr Keith Lui)
MPFA (Attn: Ms Alice Tang)
PCO (Attn: Mr Raymond Tang)

¹ Customers generally have to make use of alternative methods of banking, e.g. ATM, phone or internet banking. Two major retail banks have already introduced such account while another major bank has plans to introduce such account within the first half of 2003.

Complaint Cases received by the Securities and Futures Commission, the Office of Commissioner of Insurance and the Mandatory Provident Fund Schemes Authority in relation to services provided by banks in 2002

Generic product type	SFC	OCI	MPFA	Remarks
Loans and credit facilities in relation to share financing	1			Where appropriate, SFC had referred these cases to the HKMA to follow up in line with the agreed arrangement that the HKMA is the frontline regulator for banks' securities business.
Securities accounts	3			
Unit trust and fund investment	4			
Primary market product activities such as IPO and issuance of equity-linked instruments	4			
Insurance products		9		OCI had followed up with authorised insurers or intermediaries concerned
MPF Products			179*	MPFA had followed up with the MPF service providers concerned

* The complaint figures represent complaints lodged against trust companies set up by banks to provide MPF services. As many trustees have delegated some of their MPF functions (e.g. scheme administration, investment, etc) to other service providers, the services complained against might have been provided by service providers other than banks. The complaints are all related to scheme administration (e.g. failure to update or provide contribution information, failure to transfer funds, failure to update account information or issue documents, failure to release accrued benefits, etc).

The Privacy Commissioner of Personal Data's response to Consumer Council's proposals set out in paragraph 18 of the Council's submission to the FA Panel in March 2003

The issues raised by the Consumer Council have been incorporated and addressed in the Consultation Report issued by the PCO in January 2003 following an extensive consultation exercise, though some of its concerns relate to issues of consumer rights which are not data privacy related in nature. PCO's response to the Consumer Council's proposals set out in paragraph 18 of the Council's submission to the FA Panel is summarized as follows.

(a) Examine the nature and future role of credit reference agencies (i.e. whether they should operate as private, for profit companies).

The PCO advised that insofar as the application of the Personal Data (Privacy) Ordinance ("the Ordinance") and the Code of Practice on Consumer Credit Data ("the Code") is concerned, whether a data user is a commercial enterprise or not makes no difference in terms of legal obligation. The statutory requirements apply equally to the public and private sectors, whether profit making or not.

On this issue, the Government's view is that as a proper framework for protection of consumer credit data is already in place, it is neither necessary nor desirable for the Government to be involved directly in such commercial activities. This is in line with the practices in other developed countries. Credit rating agencies in most developed countries (e.g. US, UK, Australia, Canada, Germany, Japan, Singapore, etc.) are privately owned.

(b) Provide consumers with the means to opt out of data sharing at the time of making application for credit.

If the expanded data sharing regime is to work in full force to bring about the intended results, the choice to opt-out should best be made at the time the account is terminated by full repayment and be available to only deserving consumers. To allow an opt-out upon credit application may create undesirable imbalance of credit information which essentially affects the efficacy and reliability of the information system, which underlies the public interest that is to be served by the regime.

(c) Improve data updating frequency such as a shorter reporting cycle.

It is accepted that the shorter the reporting cycle, the more accurate the data

may likely be. There are, however, practical considerations such as operational cost which will ultimately be borne by the consumer. There is a balance to be struck between the quality of data and the cost of updating. The proposed requirement is “promptly” and not more than 31 days, therefore, subject to the aforesaid consideration, a shorter reporting cycle is certainly possible. Designing an optimal reporting period is only one of the attempts to ensure data accuracy, many other measures will be incorporated in the Revised Code to this end, for instance the express provision of consumers’ entitlement to make correction request and the indication of the existence of data related dispute in the credit report.

- (d) ***Provide a free certified copy of payment history to consumers who choose to opt out upon full repayment of their accounts.***

Whether a credit reference agency should provide free certified copy of payment history to consumers upon their opt-out is more a matter for commercial decision. The only provision that may seemingly be relevant is section 28 of the Ordinance which provides that a data user shall not impose excessive charges for complying with a data access request. What is excessive is always a question of fact depending on circumstances.

- (e) ***Specify a time frame that credit providers should inform the borrower of the opt-out upon full repayment of their accounts.***

It is the position of the PCO that the notification of the choice to opt-out, being one thing related to the purpose of use of the consumers’ data, should be a part of the Personal Information Collection Statement and be given to the consumers on or before collection of their personal data by a credit provider. This is in fact the requirement of Data Protection Principle 1(3) in Schedule 1 of the Ordinance. As the repayment of a loan may span over years, to avoid the possible overlooking of the choice due to long lapse of time, the PCO intend to make it a recommended good practice for credit providers to give a reminder of such right to the consumer upon full repayment of facility.

- (f) ***Obtain consumer consent for disposing of credit information to credit providers or credit reference agency.***

Pursuant to the requirement of Data Protection Principle 1(3), a credit provider should notify the consumer, on or before collecting his personal data, of the intended purposes of use of the data and the classes of persons to whom the data may be transferred e.g. a credit reference agency or a debt

collecting agency. By accepting the contract terms with full knowledge of these matters, the consumer may be taken as having agreed to such uses of the data by the credit provider. As such, no consent is necessary when the data is subsequently used for the said purpose. The stance of the PCO is that such notification should be prominent and reader friendly.

- (g) ***Provide consumers with a free copy of their credit report every 12 months, so that they can ascertain whether access to their credit report through the reporting year is legitimate, and that information in the report is complete and accurate.***

Whether a free copy of credit report should be provided to the consumer by the credit provider is a matter for commercial decision. The answer in paragraph (d) above applies equally in the circumstances. The other question as to how often should such a credit report, as a snapshot of the consumer's credit position at a particular moment of time, be provided is beyond the scope of the Ordinance.

- (h) ***Define clearly the meaning of 'review' to prevent abusive access.***

To address the vagueness of the term "review" and the problems that may entail by the lack of a definition, the term will be defined clearly in the Revised Code. Such a move is indeed a direct response to consumers' concern reflected to the PCO through operation of the Old Code. Furthermore, it will be made a mandatory requirement in the Revised Code for credit providers to give prior notification to the consumer of such a review access subject to limited exceptions. Other controls against abusive review access also exist which include the logging of access and the invention of a suspected abnormal access guard. The HKMA will be issuing supervisory guidelines for credit providers to deal with similar issues.

- (i) ***Make available a register of recognized credit providers for public inspection.***

Given the clear specification now in Schedule 1 of the Code as to who are credit providers entitled to share data, the proposal for a register of recognized credit providers for public inspection may seem unnecessary at least for the time being.

- (j) ***Impose mandatory minimum statutory damages to consumers in case of a credit reference agency's non-compliance.***

Section 66 of the Ordinance which gives express right to a data subject to claim against the data user for contravention of the Ordinance serves the purpose to provide a redress channel as suggested by the Council. As the Ordinance applies to all kinds of personal data, there seems to be no justification for a selective application. Besides, the Code is not a vehicle for the creation of a penal provision which is a matter for the legislature.

Comparison of inspections undertaken by the Securities and Futures Commission (SFC) and the Hong Kong Monetary Authority (HKMA)

SFC

1. Section 180 of the Securities and Futures Ordinance (Cap. 571) provides the legal basis for inspections of licensed corporations by the SFC for the purpose of checking compliance with the applicable regulatory requirements.
2. The SFC may conduct routine and/or special inspections on licensed corporations. For both types of inspections, the selection of inspection targets as well as the determination of the scope of review is risk-based.
3. For routine inspections, the targeted licensed corporation is usually given at least a 7-day notice before the inspection. This is to enable the licensed corporation to provide relevant information to SFC to facilitate the planning for the inspection.
4. For special inspections, they are not conducted routinely and are tailored on a case by case basis depending on the cause of conducting the inspection. For example, they may be performed upon referral of complaints from other regulators or third parties suggesting possible regulatory breaches by a licensed corporation. Inspection procedures are generally tailored for the specific circumstances of each case. If necessary, inspections can be conducted without advance notice to a licensed corporation (i.e. surprise inspection) or at a shorter notice than the usual 7-day notice given in a routine inspection.
5. For both routine and special inspections, any inspection staff exercising his inspection power under s.180 of the SFO will produce a copy of his authorization for inspection pursuant to the requirement of s.180(12).
6. In the course of a formal investigation commissioned under section 182 of the SFO, e.g., where the SFC has reasonable cause to believe that an offence under the Ordinance has been committed, the Enforcement Division of the SFC may conduct covert inquiries on licensed corporations as part of its investigation activities. However, it should be noted that the investigation powers of the SFC cover all types of intermediaries (i.e. including registered institutions under the supervision of the HKMA).

HKMA

7. Following the enactment of the SFO, authorised institutions (AIs) which intend to carry on regulated activities as defined in the SFO have to apply for registration with the SFC (thus becoming registered institutions) and are subject to the relevant rules, codes and guidelines issued by the SFC.
8. The HKMA continues to be the frontline supervisor responsible for the day-to-day supervision of registered institutions' conduct of regulated activities according to standards that are in line with those applied by the SFC to licensed corporations. Section 180 of the SFO specifically empowers the HKMA to inspect a registered institution.
9. The supervisory procedures adopted by the HKMA in relation to the inspection of registered institutions' regulated activities are similar to those adopted by the SFC. The routine supervisory processes generally cover off-site review and on-site inspections. The first refers to collection of prudential information via regular returns or on an ad hoc basis for analysis. The latter is essentially a field audit to ascertain whether an institution is complying with the applicable regulatory requirements. The scope and focus of review is in line with that adopted by the SFC. The two regulators maintain regular communication in this regard at MOU meetings. A risk-based approach is also adopted in the supervisory processes.
10. On-site inspections are usually conducted with an advance notice of at least 7 days to an institution so that the institution can provide relevant information to the HKMA to facilitate the planning for the inspection. .
11. Surprise inspections can also be conducted if necessary (similar to special inspections conducted by the SFC), e.g., arising from the investigation of a complaint. Section 55 of the Banking Ordinance empowers the HKMA to examine the books, accounts and transactions of an authorised institution at any time, with or without prior notice to the institution.
12. Like the SFC, the HKMA generally does not conduct covert inquiries on registered institutions as part of its routine inspection activities. However, it would not rule out the possibility of doing so if there is a need.

**Fee Policy on Savings Accounts with Minimum Balance Requirements
(provided by HKMA, as of 10 April 2003)**

Bank	Savings Accounts		Alternatives for low balance account holders
	Monthly Fee	Exemption policy	
HSBC	Average balance below \$5,000 : \$40 per month	<ol style="list-style-type: none"> 1. Senior Citizens (aged 65 or above) 2. Recipients of government disability allowance and Comprehensive Social Security Assistance by reason of disability 3. Super Ease, PowerVantage*, BusinessVantage* and HSBC Premier customers* 4. Customers with overdraft facilities, loans, unit trusts, life insurance, monthly investment plan and time deposit with HSBC <p>* subject to other minimum balance requirement</p>	Easy Savings Account <ol style="list-style-type: none"> 1. No minimum balance requirements 2. No maintenance charges 3. Free ATM, Phone banking and Internet Banking 4. Free counter deposits 5. \$20 fee for cash withdrawals or transfers over the counter 6. Tiered interest rates
Standard Chartered	Average monthly balance below \$10,000 : \$100 per month	<ol style="list-style-type: none"> 1. Existing customers aged 65 or above or below 18 years of age (only applicable to customers who joined SCB on or before 31 Jan 2001) 2. Priority Banking / Excel Banking / Easy Banking customers 3. Recipients of Comprehensive Social Security Assistance 4. Recipients of Social Security Allowance 5. Recipients of disability allowance 6. Customer with payroll account with SCBHK 7. Customer using MPF products from SCBHK 8. Customer using any of SCBHK's financial management services including mortgages, personal loan or time deposits and insurance products 	Nil

Bank	Savings Accounts		Alternatives for low balance account holders
	Monthly Fee	Exemption policy	
Bank of China	Average monthly balance below \$5,000 : \$50 per month	<ol style="list-style-type: none"> 1. Senior citizens (age 65 or above) 2. Recipients of government disability allowances 3. Customers who use the following BOC products: <ul style="list-style-type: none"> - Money Mate - Fixed Deposits - Credit Card - Corporate accounts - Securities accounts - Safe Deposit Box - Overdraft or Loans - FX Margin Trading - Mortgage - FX Margin Trading (HKD) 4. Customers aged under 18 5. Customers with a company payroll account with BoC and using its MPF products 6. Recipients of Comprehensive Social Security Assistance 	<p><i>NEW</i></p> <ol style="list-style-type: none"> 1. BoC intends to introduce a no-fee passbook type of account (target implementation date: first half of 2003)
Asia Commercial Bank	Average balance below \$2,000 : \$30 per month	<ol style="list-style-type: none"> 1. Minor Account (customer aged below 18) 2. Senior Citizen (customer aged 65 and above) 3. Recipients of Government Social Security Assistance/Disability Allowance 4. ACB Prestige customer 5. Mortgage Loan customer 6. Unsecured Personal Loan customer 7. Commercial Loan customer 8. Overdraft customer 9. Securities Account Holder 10. Fixed Deposit customer 11. Joint Name Account 12. Payroll Account 13. Autopay Account 14. Deceased Account 15. Bankruptcy customer 16. Account in liquidation 	Nil

Bank	Savings Accounts		Alternatives for low balance account holders
	Monthly Fee	Exemption policy	
Bank of America (Asia) Limited	Average monthly balance below \$5,000 : \$50 per month	<ol style="list-style-type: none"> 1. Value Plus customers 2. Primer Banking Customers 3. Customers with loans, insurance, or investment with the bank 	Nil
Bank of East Asia	Average daily balance below HK\$3,000 : HK\$30 per month	<ol style="list-style-type: none"> 1. Children accounts 2. Senior citizens aged 65 or above 3. Recipients of government social security support 4. The Government of the HKSAR 5. Non-profit making organisations 6. Customers with one of the following services/accounts with BEA : payroll account, collection account, BEA Mandatory Provident Fund, mortgage loan and consumer loan 	Nil
Chiyu Banking Corporation	Average monthly balance below \$5,000 : \$50 per month	<ol style="list-style-type: none"> 1. Senior citizens (aged 65 or above) 2. Minor citizens (aged below 18) 3. Recipients of government disability allowances 4. Recipients of Comprehensive Social Security Assistance 5. Recipients of Portable Comprehensive Social Security Assistance (PCSSA) Scheme 6. Payroll accounts with BOCI-Prudential MPF participation 7. Customers who use the following products: <ul style="list-style-type: none"> - Money Mate - Credit Card - Corporate accounts - Fixed Deposits - Mortgage - FX Margin Trading - FX Margin Trading (HKD) - Overdraft or Loans - Securities accounts - Safe Deposit Box - Notional Precious Metals 9. Accounts with the following status: <ul style="list-style-type: none"> - staff of BOCHK and its subsidiaries - visually impaired persons - hearing impaired persons - insolvency - legally frozen - bankruptcy - deceased 	Nil

Bank	Savings Accounts		Alternatives for low balance account holders
	Monthly Fee	Exemption policy	
Citibank N.A.	Average daily combined balance below \$30,000 : \$200 per month	1. Seniors aged over 65 receiving government social security allowance	Nil
Dah Sing Bank	Total relationship balance below \$5,000 : \$20 per month	<ol style="list-style-type: none"> 1. All minor accounts (i.e. trust minor accounts held for children aged from 0 to 11 by account holders aged over 18; and minor accounts whose account holders are aged 12 to 17. 2. Account holders aged below 18 or over 65 3. Accounts with social welfare allowances (refer to all types of allowances which are autopaid to account holders by the Social Welfare Department) 	Nil
Dao Heng Bank Ltd / Overseas Trust Bank Ltd	Total relationship balance below \$5,000 : \$40 per month	<ol style="list-style-type: none"> 1. Senior citizens (aged 65 or above) 2. Minors (aged 18 or below) 3. Recipients of government disability allowance (supporting documents required) 4. Customers (before June 2001) receiving Comprehensive Social Security Allowance (supporting documents required) 5. Packaged account customers (Treasures Priority Banking, ec-account and ec-payroll) 6. Mandatory Provident Fund (MPF) customers with savings account – entitled to a waiver for 3 months 7. Investment Fund Savings Plan customers (waived until June 2003) 8. Children's Education Savings Plan customers (waived until June 2003) 	Nil

Bank	Savings Accounts		Alternatives for low balance account holders
	Monthly Fee	Exemption policy	
DBS Kwong On Bank	Average daily balance below \$5,000 : \$40 per month	<ol style="list-style-type: none"> 1. Customer aged 65 or above 2. Customers aged below 18 3. Recipients of Government Comprehensive Social Security Assistance 4. Recipients of Government disability allowance 5. Customers who use the following product/service: <ul style="list-style-type: none"> - Time Deposit - Securities Services - Mortgage Loan - Investment Fund Services - Personal Loan - Mandatory Provident Fund - Overdraft - Arrangement of regular fund credit to Save & Cheque Account by the Bank - Hire Purchase Financing 	Nil
Hang Seng Bank	Average daily balance below \$5,000 : \$40 per month	<ol style="list-style-type: none"> 1. Accounts opened before 12 Apr 2001 2. Seniors (aged 65 or above) 3. Minors (aged below 18) 4. Recipients of government disability allowance 5. Tertiary students holding HSB U-Smart Banking Plus account 6. Customers with integrated accounts, overdraft facilities, loans, mortgages, investment funds, securities, life insurance and time deposits 7. Customers of our Monthly Investment Plan 	ATM Savings <ol style="list-style-type: none"> 1. No minimum balance requirements 2. No maintenance charges 3. Free ATM service 4. Free counter deposits 5. \$20 fee for cash withdrawals or transfers over the counter
ICBC (Asia)	Average balance below \$1,000 : \$10 per month	<ol style="list-style-type: none"> 1. Senior Citizens 2. Recipients of government disability allowance 3. Recipients of Social Security Allowances 4. Customers with loans, time deposits, unit trusts, life insurance and payroll accounts with ICBC Asia 	Nil

Bank	Savings Accounts		Alternatives for low balance account holders
	Monthly Fee	Exemption policy	
Nanyang Commercial Bank	Average monthly balance below \$5,000 : \$50 per month	<ol style="list-style-type: none"> 1. Senior citizens (aged 65 or above) 2. Minor citizens (aged below 18) 3. Child citizens (aged below 11, "in trustee of" form) 4. Recipients of government disability allowances 5. Recipients of Comprehensive Social Security Assistance 6. Recipients of Portable Comprehensive Social Security Assistance (PCSSA) Scheme 7. Payroll accounts with BOCI-Prudential MPF participation 8. Customers who use the following products: <ul style="list-style-type: none"> - Money Mate - Credit Card - Corporate accounts - Fixed Deposits - Mortgage - FX Margin Trading - FX Margin Trading (HKD) - Overdraft or Loans - Securities accounts - Safe Deposit Box - Notional Precious Metals 10. Accounts with the following status: <ul style="list-style-type: none"> - staff of BOCHK and it's subsidiaries - visually impaired persons - hearing impaired persons - insolvency - legally frozen - bankruptcy - deceased 	Nil
Wing Hang Bank	Average balance below \$3,000 : \$30 per month	<ol style="list-style-type: none"> 1. Customers aged below 18 2. Customers aged 65 or above 3. Recipients of government social security support (all types) 4. Customers with mortgage loans, auto/equipment finance, overdraft, time deposit, unit trusts, securities trading, MPF and life insurance in WHB 	Nil

Retail banks which currently do not impose any minimum balance requirement:

Bank of Communications
Citic Ka Wah Bank
Fortis Bank Asia Hong Kong
International Bank of Asia
Liu Chong Hing Bank
Shanghai Commercial Bank
Wing Lung Bank