

Legislative Council Panel on Education

Review of Non-means-tested Loan Schemes Administered by the Student Financial Assistance Agency

Purpose

The Administration has put forward for Phase 2 public consultation various proposals to improve the operation of the non-means-tested loan schemes administered by the Student Financial Assistance Agency (**SFAA**). One of the proposals to step up efforts to reduce the loan default rate is sharing the negative data of defaulters with the credit reference agency (**CRA**) under clearly defined circumstances (**the Proposal**). As the negative data of defaulters are “personal data” within the definition of the Personal Data (Privacy) Ordinance (**PD(P)O**), the Privacy Commissioner for Personal Data (**the Commissioner**) would like to draw Members’ attention to the privacy and data protection implications of the Proposal to facilitate Members’ deliberation on the subject.

Privacy Concerns

2. Consumer credit data are very personal and private to the individuals concerned and sharing of such data entails activities which are potentially sensitive. The intended benefits of implementing the Proposal have to be carefully weighed with the interest in preserving individual privacy. It is incumbent on the Administration to seek other less privacy-intrusive measures to achieve the same policy objective.

3. Whilst the Commissioner supports in principle the Administration’s plan to strengthen efforts to tackle the loan default problem in order to safeguard public money, he emphasizes that the Proposal must be explored taking into account the privacy concerns outlined below.

Opening the Floodgate of a Closed System

4. Up till today, there is only one major consumer CRA in Hong Kong, namely, TransUnion Limited (**TransUnion**). The Proposal only states that negative credit data will be shared with the CRA, without specifying the name of the agency. We presume that the CRA is TransUnion.

5. It is important to note that TransUnion presently operates in a closed system almost exclusive to the banks and licensed money lenders in Hong Kong. These credit providers share their customers' credit data among themselves through TransUnion, the shareholders of which include an overseas company (56.25%) and 6 Hong Kong-based banks (37.5%). This credit data sharing system serves the banks and licensed money lenders themselves in assessing and monitoring their customers' credit risk, credit-worthiness and credit capacity. Providing negative credit data to a CRA to deter loan default is not a function of this system.

6. The Commissioner fears that the implementation of the Proposal will open the floodgate of this closed system to requests of a similar nature from (i) other government departments for recovery of overdue taxes, government rents and rates, water charges, etc. and (ii) private sector sources such as retail, small business, telecoms, utilities and others which are also keen to recover outstanding debts from their customers. The privacy risks that arise from expanding the range of credit data providers, in terms of data collection, use, management, retention and security safeguards, could be disproportionate.

Governance, Accountability and Transparency of CRA

7. Given the sensitive nature of the credit reporting activities, the governance arrangements of a CRA and how it ensures management accountability and operational transparency are of paramount importance. These issues are particularly acute under the Proposal as it opens up a closed system serving the banks and licensed money lenders to outside credit data providers. More importantly, it involves the transfer of consumers' sensitive data from a Government agency to a commercial enterprise.

8. In terms of governance and accountability, it is relevant to note that the majority (56.25%) shareholder of TransUnion is an overseas company. TransUnion is a commercial concern not subject to the direct oversight of the

Hong Kong Monetary Authority as the financial regulator, albeit it is regulated by the Commissioner under PD(P)O for data protection.

9. In terms of transparency of the operations of TransUnion, it is important to note that it allocates a credit score to individual consumers based on the credit information held in its database but the computation of the score is proprietary and confidential information not to be disclosed to the consumers. Hence, while the credit score is probably the key factor used by the credit providers in credit assessment, the consumers being assessed are not in a position to challenge its validity and they therefore suffer a disadvantage. For the same reason, the Commissioner is unable to assess the exact impact to the consumers created by the Proposal, except to point out that the privacy and data protection risks will increase with an enlarged credit database and greater sharing and use of credit data.

Borrowers to produce credit reports

10. Separately, the Administration proposes to require the more mature first-time loan borrowers to submit credit reports (obtainable from TransUnion for a fee of \$180) for assessment of credit-worthiness. It is uncertain from the proposal if the ability to repay a loan is a significant criterion for the award of loans. If not, the proposal might give rise to the question of whether SFAA would have collected *excessive* personal data for the purpose of administering the non-means-tested loan schemes, thus contravening Data Protection Principle 1 under PD(P)O.

Way Forward

11. Over the past years, the Commissioner has exchanged views with the Administration and raised the privacy concerns that might arise from the Proposal, with the request that it should explore other less privacy-intrusive measures to reduce the loan default rate. He will meet with the Education Bureau in late November 2011 to reiterate his concerns and to request that the privacy implications of the Proposal must be clearly explained to the public and the stakeholders during its Phase 2 public consultation.

Office of the Privacy Commissioner for Personal Data
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