



1. Introduction

1.1 Credit reference agencies ("CRAs") carry on a business of compiling and processing customer credit data, and providing such data to credit providers (e.g. banks and credit card companies) for customer credit purposes. They can be categorized into consumer CRAs and commercial CRAs, with the former focusing on the data of individuals and the latter focusing on the data of commercial enterprises. From the risk management perspective, both of them are integral components of a financial market by enabling credit providers to make informed and risk-based decisions about credit applications, thereby enhancing the stability of the financial system. For consumer CRAs, since they are in possession of a large amount of sensitive personal data, effective monitoring and protection of the data for such CRAs is particularly crucial.¹

1.2 In Hong Kong, there is no dedicated legislation regulating CRAs. The handling of consumer credit data by CRAs is guided by the Code of Practice on Consumer Credit Data issued by the Office of the Privacy Commissioner for Personal Data ("PCPD") in accordance with the Personal Data (Privacy) Ordinance (Cap. 486) ("PDPO"). Currently there is one consumer CRA and one commercial CRA in the market. A data breach incident of the former in 2018 has aroused grave public concern about the protection of personal data and operation of CRA. Against this backdrop, some Legislative Council Members and industry stakeholders have urged the Government to strengthen the regulation of the consumer CRA sector, such as introducing a specific regulatory regime to govern the operation and services of CRAs.

1.3 At the request of Hon CHAN Chun-ying, the Research Office has prepared this information note to examine the approaches adopted in overseas places in regulating CRAs in the consumer credit sector. Singapore and the

¹ Generally speaking, commercial CRAs compile and process the credit/financial data of commercial enterprises, focusing on the creditworthiness of the business rather than the ones who run the business. The nature of the data is inherently different from that of an individual. See the World Bank (2011).

United Kingdom ("UK") are selected for the study as CRAs in both places play a significant role in the consumer credit market, and are overseen by both financial and data privacy regulators. The former has recently undergone regulatory reform in the CRA market, whereas the latter is planning to subject CRAs to more stringent governance control. This information note will begin with an introduction of credit reference services and the international guiding principles in designing and operating a credit referencing system. This is followed by a review of the credit reference market in Hong Kong, and the approaches adopted in Singapore and the UK in regulating CRAs. The salient features on regulation of credit reference agencies in these three places are summarized in the [Appendix](#).

2. CRA operation and international principles

2.1 The primary purpose of CRAs, also known as credit bureaus, is to support credit information sharing on the credit status of individual consumers (known as data subjects), thereby supporting credit providers to improve their decision making on lending and credit risk management. CRAs are a key part of the credit reporting system, which comprises all the institutions, technologies, data and information that enable credit information sharing. CRAs provide credit reports, credit scores and other value-added services that enable credit providers to make informed lending decisions. They collect positive and/or negative credit data of customers primarily from credit providers, and also from public sources such as court summons and bankruptcy data.

2.2 There are different models for credit reporting systems. Some may include more than one CRA, and/or a credit registry.² To address the issue of information asymmetry between lenders and borrowers, which arises from borrowers being more informed about their financial situation than lenders and may lead to problems such as adverse selection and moral hazard,³ the

² Under a credit registry arrangement, banks and other regulated financial institutions act as data providers responsible for sending data to the credit registry, enabling to generate a centralized credit database. The credit registry is usually owned and operated by the central bank or financial regulator. The data, after cleaning and proper processing by the credit registry, will be made available to the regulated financial institutions which are also the users of the service. The consolidated credit information in the database is also used by the central bank or financial regulator for banking supervisory purposes (e.g. ascertaining capital requirements). See the World Bank (2011 and 2016).

³ Adverse selection refers to a borrower with higher risks of default being more willing to pay a higher risk premium and thus more likely to be selected. Moral hazard refers to the risk that a borrower engages in activities that make the loan less likely to be paid back. See the World Bank (2001 and 2011).

World Bank, with support from the Bank for International Settlements, launched the Credit Reporting Standards Setting Task Force⁴ in 2009 and published the General Principles for Credit Reporting ("General Principles") in 2011.

2.3 The General Principles define the minimum elements underlying a sound, efficient and effective credit reporting system, with a focus on the following key aspects:

- (a) **data** – which should be accurate, relevant, timely and sufficient;
- (b) **data processing** – which should be subject to vigorous standards in terms of security and reliability;
- (c) **governance arrangements and risk management** – which should ensure accountability, transparency and effectiveness in managing risks associated with the business; and fair access to the information by users;
- (d) **legal and regulatory environment** – which should be clear, proportionate and supportive of data subjects (i.e. individual credit consumers) and consumer rights, with effective judicial or extrajudicial dispute resolution mechanisms; and
- (e) **cross-border data flows** – which should be facilitated and subject to adequate requirements in place.

2.4 The General Principles suggest that there should be **specific rules** to address the key issues in the systems, including the types of data that can be and cannot be collected from CRAs, the types of users that can access the credit reference databases, and the conditions/consequences of non-compliant behaviours. A **robust legal and regulatory framework** covering all relevant aspects is critical for the sound functioning of credit reporting systems. However, there is no clear consensus on what constitutes an optimal legal and regulatory framework for credit reporting. The World Bank suggests that CRAs should be subject to **oversight** by a central bank, a financial supervisor, or other relevant authorities, with one or more authorities as primary overseer.⁵

⁴ It is now known as International Committee on Credit Reporting.

⁵ See the World Bank (2011).

3. Regulation of CRA in Hong Kong

3.1 In Hong Kong, the concept of credit reference services first emerged in the 1980s. At that time, a CRA was formed by different credit providers of the vehicle and equipment financing industry.⁶ With the development of unsecured credit such as credit card business in the late 1980s, major credit card companies and banks have joined to use the CRA's service. In the 1990s, the Hong Kong Monetary Authority ("HKMA") conducted a study on the customer credit quality of authorized institutions, and concluded that a comprehensive credit database with extensive participation of the authorized institutions should be established, in order to more accurately assess the creditworthiness of customers and better manage the overall credit risk in Hong Kong.⁷ Upon the recommendation of HKMA, a fully-fledged CRA was established in the market featuring **full participation** of the authorized institutions involved in the provision of consumer credit.

3.2 Under the current legal framework, there is no dedicated legislation or licensing requirement for CRA. PDPO is the major legislation regulating the handling of personal data by CRA. In order to provide some ground rules on the handling of consumer credit data, PCPD issued the "**Code of Practice on Consumer Credit Data**" ("Code of Practice") in February 1998 pursuant to section 12 of PDPO.⁸ The Code of Practice covers the requirements for the collection, accuracy, use and security of consumer credit information, as well as data access and correction requests.⁹ For instance, it requires CRA to take appropriate actions in daily operations to safeguard against any improper access to or mishandling of consumer credit data. The Code applies **not only to CRA but also credit providers**. Up to now, the Code of Practice has been revised four times, with the latest revision made in January 2013.

3.3 As the financial regulator, HKMA requires that in addition to PCPD's Code of Conduct, authorized institutions under its oversight must also comply with the relevant supervisory requirements set out in the HKMA's Supervisory Policy Manual (under the module "The Sharing and Use of Consumer Credit Data through a Credit Reference Agency") when providing CRAs with and/or using credit data. Authorized institutions are required to lay down clear procedures on how changes to customers' consumer credit data are to be implemented, verified and transmitted to CRA. For any credit data change, they are required to update CRA

⁶ See Office of the Privacy Commissioner for Personal Data (2002).

⁷ See GovHK (2018).

⁸ Ibid.

⁹ See GovHK (2020).

promptly, or in any event, by end of each reporting period not exceeding 31 days. Authorized institutions that use the service of CRA must enter into a formal contractual agreement with CRA. The level of usage charge or subscription fee paid by them is not regulated.

CRA operation in the market

3.4 There is no restriction under the Code of practice or the existing policy on the number of CRAs in the market. Business entry or exit is left to the market.¹⁰ At present, there is only one consumer CRA operating in Hong Kong, whose members include all HKMA authorized institutions. They contribute consumer credit data to CRA which maintains a central database, and use the pooled data from CRA to facilitate decisions on providing credit facilities to consumers.¹¹ Transfer of consumer credit data by CRA to a place outside Hong Kong is not allowed, unless the purpose of use of the data transferred is the same as/directly related to the original purpose of data collection. According to the information of the CRA website, it held consumer credit records of about 5.5 million individuals.¹²

3.5 Apart from providing credit reference services to credit providers, CRA also provides credit reports to data subjects (i.e. customers) on request. Under the Code of Practice, CRA shall provide a **free** copy upon an individual's request, only if the lender has **declined** the application after assessing the credit record. In other circumstances, CRA is free to charge the consumer a fee for request of credit reports.¹³

3.6 On the other hand, it has also collaborated with several business partners (or known as third-party service providers) which provide or facilitate individuals' free online access to the credit reports held by CRA.¹⁴ In exchange, the CRA business partners can contact, market, or match individuals with the financial products based on their credit information, upon individuals' express consent. Some of the business partners are themselves credit providers, some are not.

¹⁰ See Hong Kong Monetary Authority (2011).

¹¹ See Office of the Privacy Commissioner for Personal Data (2015).

¹² See TransUnion (2021).

¹³ For instance, the subscription fee is HK\$280 per month for the online access, based on the CRA's website.

¹⁴ See TransUnion (2018).

3.7 As a **recommended practice** under the Code of Practice, CRA should engage an independent compliance auditor as may be approved or nominated by PCPD to conduct compliance audit at least annually. In 2018, PCPD was informed by a local newspaper that it was able to pass through the online authentication procedures of CRA and obtain the credit reports of a number of public figures. Upon receipt of the data breach notification from CRA in respect of the suspected unauthorized access, PCPD commenced a compliance check against CRA.¹⁵ According to the investigation report, CRA was found in breach of the data protection principles of PDPO in respect of its online authentication procedures, as it failed to take all practicable steps to ensure that the personal data held was protected against unauthorized or accidental access or use. As a result, PCPD served an enforcement notice on CRA to remedy and prevent any recurrence of the contravention. Although CRA has subsequently fulfilled the requirements of PCPD, the incident has sparked grave public concerns over the adequacy of regulations over the sector.

Major issues of concerns

3.8 While CRA receives and processes a considerable amount of information obtainable from different credit providers, there is **no dedicated legislation regulating its operations and business practices**. Some Members have expressed concerns about the adequacy and effectiveness of the existing regulation on the sector. The then PCPD held the view that CRA should implement controls that were at least equivalent to those being implemented by banks.¹⁶ Given that credit reference services of CRA are closely related to the financial services industry, there is a suggestion of placing CRA under the oversight of the financial regulator.¹⁷

3.9 Apart from the above, some of the CRA's business partners, irrespective of whether they are credit providers or non-credit providers, have collected consumer credit information for the **provision of credit monitoring service or marketing service** upon the consumers' consent. These activities, though determined by PCPD as not in contravention to the data protection principles under PDPO, have raised concerns over sensitive information being transferred for the own use of business partners.

¹⁵ To plug the suspected security loopholes, the CRA and its business partners were asked to suspend the online credit report ordering services.

¹⁶ See Office of the Privacy Commissioner for Personal Data (2019).

¹⁷ See GovHK (2019).

3.10 Moreover, a breach of the Code of Practice is not **an offence** under PDPO. It only gives rise to a presumption against the data user in any legal proceedings under the Ordinance.¹⁸ Even a contravention of the privacy law is found, PCPD can only issue an enforcement notice to the data user directing it to remedy. It does not have the power to impose any administrative fines. Only non-compliance with the enforcement notice by PCPD is an offence, punishable at a maximum fine of HK\$50,000 and/or imprisonment up to two years on first conviction. Indeed, the Government has admitted that the **existing level of criminal fines under PDPO and its deterrence effect are insufficient** to incentivise data users to comply with PDPO, which has been in operation since 1996.¹⁹ The Government has previously conducted a formal review of PDPO, and has indicated a plan to raise the level of criminal fines and introduce direct administrative fines. At this juncture, the Government has not submitted any legislative amendment proposal to tighten sanctions.

3.11 The data breach incident has revealed the **risk of "single point of failure"**²⁰ in the consumer credit data market as there is only one commercially-run consumer CRA in the market. Apart from the operational risk concern, there is also a concern on the high subscription fees and access fees to credit reports charged to the credit providers and individual consumers respectively.²¹

Planned enhancements to the sector

3.12 In order to enhance the service quality and reduce the operational risk of having only one commercially-run consumer CRA in the market, HKMA reached a consensus with various industry associations (e.g. the Hong Kong Association of Banks and the Hong Kong S.A.R. Licensed Money Lenders Association Ltd.) to bring in more than one CRA in Hong Kong. Any new CRA entrants are expected to have full participation of authorized institutions in the provision of consumer credit data.²² According to HKMA, the industry associations had sent out the tenders to interested companies in late January 2021 and it was reported that at least

¹⁸ It can be a proof of contravention of the relevant requirement under PDPO.

¹⁹ See Legislative Council Secretariat (2020).

²⁰ Generally speaking, a single point of failure is a system component renders an entire system unavailable or unreliable upon its failure. See Oracle Corporation (2010).

²¹ See 星島日報 (2018 年).

²² The information is based on the draft version of revised HKMA Supervisory Policy Manual (under the module "The Sharing and Use of Consumer Credit Data through Credit Reference Agencies"). See Hong Kong Monetary Authority (2020).

three organizations submitted the tender.²³ According to the Government, to avoid the challenges of "multi-to-multi" connections under the new operating model with more than one CRA, they agreed to build a multiple CRAs platform as an interface for credit providers and CRAs to share the credit information.²⁴ Details about how the platform will operate have yet been announced.

3.13 The Government, nevertheless, has indicated that it had no plan to establish a legal framework specific to CRA. At present, industry associations are drawing up a **code of practice for the CRA industry model** ("Industry Code") to set out the standards on various aspects including corporate governance, internal control and use and protection of customer data. To further enhance the security of personal credit data and protection of consumers, the industry associations will also set up a governance body to enforce the Industry Code. As the regulatory body, HKMA will endorse the Industry Code and revise the relevant module in the Supervisory Policy Manual²⁵ to set out the supervisory expectation for banks to interface with CRAs through the multiple CRA platform, and to comply with the Industry Code upon commencement of the platform. According to the latest available information, it is expected that the new developments will take place by the end of 2022.

4. Singapore

4.1 In Singapore, the Monetary Authority of Singapore ("MAS") had already been exploring the setting up of CRA (called "credit bureau" locally) as a centralized repository of credit information for financial institutions back in the 1970s-1980s.²⁶ After two decades of discussions between MAS and the financial institutions, the first consumer CRA emerged in 2002 as a financial risk management tool for the institutions to assess the risks of granting credit facilities to a potential or existing client.²⁷ It was set up as a joint venture between the Association of Banks in Singapore²⁸ and a private corporation. With the second CRA (being another

²³ See Hong Kong Monetary Authority (2021) and 東網(2021年).

²⁴ According to the draft version of revised HKMA Supervisory Policy Manual, the platform will make available a full set of consumer credit data to all CRAs with a master copy as backup. See Hong Kong Monetary Authority (2020).

²⁵ The module is "The Sharing and Use of Consumer Credit Data through a Credit Reference Agency".

²⁶ See National Library Board (2014).

²⁷ See Monetary Authority of Singapore (2016a).

²⁸ It is the non-profit organization representing the interests of the banking sector in Singapore.

private corporation) entering the market in 2007, there are two commercially-run CRAs that are **recognized** by MAS under the Banking Act.^{29, 30}

4.2 As a condition for recognition³¹, CRAs undertake to safeguard the confidentiality, security and integrity of the credit data, and to seek MAS's prior approval for any changes to their corporate and shareholding structures, scope of business and credit reporting systems. CRAs have voluntarily established and published their own Code of Conduct. However, in view of increasing amount of sensitive credit information collected by them, the Singapore government considered the regulatory regime inadequate as it only allows MAS to recognize or to revoke the recognition of CRAs.³² Specifically, MAS does not have any other powers to exercise effective supervision over CRAs.

Establishing a licensing framework for CRAs

4.3 Against the above backdrop, the government proposed in 2014 to strengthen the oversight of CRAs through a dedicated regulatory regime. After 18 months of consultation with the industry and the public, the Credit Bureau Act was passed in 2016. Targeted to commence by the first half of 2021,³³ the Act aims to establish a licensing framework for CRAs (including commercial CRAs) which collect and disclose credit data to their members (i.e. credit providers)³⁴ and put them under the formal oversight by MAS. In particular, it sets out the duties of CRAs and grants MAS power to perform various supervisory controls. The Act also contains provisions to enhance consumers' rights. The key provisions are discussed below:

²⁹ According to the CRA websites, the first CRA is participated by all banks in Singapore in data contribution and sharing; whereas the second CRA is not, but it invites major financial institutions to join as members. Apart from consumer credit data, the latter CRA also provides commercial credit reference services. See Credit Bureau Singapore (2021) and Experian Singapore (2021).

³⁰ For moneylenders, there is a specific central repository of data on borrowers' loans and repayment records with moneylenders (known as "Moneylenders Credit Bureau"), which is under the initiative of the Ministry of Law in Singapore. Moneylenders are not under the oversight of MAS. See Ministry of Law (2021).

³¹ The recognition status is gazetted by MAS.

³² See Monetary Authority of Singapore (2016a).

³³ Information is based on the email reply from the Monetary Authority of Singapore at the request of the Research Office.

³⁴ Covered credit providers are banks, merchant banks, finance companies (which are licensed to provide loans to small and medium-sized enterprises), and card issuers.

- (a) **Licensing of CRAs:** Under the Credit Bureau Act, MAS is empowered to **issue, renew, suspend and revoke licences** of CRAs in Singapore. Each licence is valid up to five years. MAS is empowered to set admission criteria for CRAs, as well as requirements for licence renewal;
- (b) **Supervisory controls of MAS:** To ensure that CRAs adhere to the requirements, MAS may **issue codes or guidelines**.³⁵ It can conduct **inspections** on CRAs and gather their business information (e.g. accounting records) from time to time. It can also launch **investigations** against CRAs for confirming their compliance with the statutory requirements, as well as determining whether their business practices would be potentially detrimental to the interests of members or customers of the members. MAS can issue notices, impose financial penalties and compound offences over CRAs if a contravention is proved;
- (c) **Obligations and duties of CRAs:** CRAs are obliged to submit **periodic reports** relating to their business to MAS. They have to notify MAS as soon as practicable after the occurrence of certain events such as breach of confidentiality/security of credit information and operational disruptions to their business. As a governance control of MAS, they are required to **appoint an auditor and obtain the approval of MAS** on an annual basis. This is in contrast to the arrangement of Hong Kong where engagement of compliance auditor by CRA is a recommended practice. Moreover, any **change in key aspects of the operations** (e.g. shareholdings, board of directors and credit scoring methodology) will also be required to be approved by MAS.

Under the Credit Bureau Act, CRAs have the duty to ensure the integrity of the credit data and protect the data by making reasonable security arrangements to prevent unauthorized access, collection and disclosure. It is prescribed clearly in the Act that CRAs breaching the duties or obligations will be **liable to a fine** of up to S\$250,000 (HK\$1.41 million). Continuing offence would be fined on a daily basis; and

³⁵ Similar to Hong Kong, a breach of the codes/guidelines is not an offence under the Act. Instead, it may be relied upon by any party to the proceedings as tending to establish or negate any liability in the matter. See Singapore Statutes Online (2021c).

- (d) **Consumer protection:** Recognizing that consumers have a fundamental right to access and review their own credit information and dispute any inaccuracies,³⁶ the Credit Bureau Act requires CRAs to provide consumers with their credit reports within **five business days** upon their requests. CRAs can determine the charging fee for the credit information requested by consumers.³⁷ However, in the case that a consumer has applied for a credit facility, and upon his/her request, CRA has a duty to provide consumers with **free copies** of their credit reports after the application has been **approved or rejected**.³⁸ Where disputes about the information of the credit reports are raised, CRAs (and their approved members) are required to conduct prompt investigations and rectify any erroneous records in a timely manner.

4.4 Different from Hong Kong where PCPD's Code of Conduct and HKMA's Supervisory Policy Manual are the primary guidelines for credit providers, in Singapore, the **duties of specific credit providers** are explicitly stipulated in the Credit Bureau Act. These include the duties to maintain security and integrity of data, and to correct any data error or omission. To facilitate timely submission of credit data to CRAs, MAS has proposed in the draft notice that the credit providers be obliged to submit any data **before the first business day of each week**. Whereas in Hong Kong, PCPD's Code of Practice provides that credit providers have a maximum time of 31 days for reporting data update.

Recent developments

4.5 Following the passage of the Credit Bureau Act, MAS launched in October 2020 another consultation on proposed regulations and notices for CRAs and approved members, prescribing further requirements to give effect to the provisions under the Act. For instance, the proposed regulations will **mandate** each CRA to issue a code of practice, in order to enhance their governance standards. The code of practice shall document the duties and detailed procedures of the operations (e.g. the process and the frequency for approved members to provide, receive or request data). In addition, it will also require CRAs to establish a **Dispute Resolution Committee** to resolve complaints and data

³⁶ The Singapore government considers that consumers also play an integral role in ensuring credit data maintained by CRAs are accurate and complete.

³⁷ The consumer can choose how the credit report should be delivered (e.g. printed or electronic copy).

³⁸ Such a request should be made within 30 days of approval or rejection of the credit application.

disputes, and to establish an **Approved Members Committee** to review and coordinate operational matters concerning the credit reporting processes between the credit providers and CRA.³⁹

4.6 Moreover, the proposed regulations will extend to cover **technology risk management and cyber security**. Under the proposal, CRAs will be subject to similar technology risk management requirements and cyber security measures as other financial institutions regulated by MAS. Specifically, CRAs must put in place a framework and process to deal with "**critical system**", a system failure of which will cause significant disruption to the operations of CRAs. They must also implement various cyber hygiene practices, including the implementation of network perimeter defence, malware protection and multi-factor authentication. The consultation on the above subsidiary legislation has ended in December 2020. Since the Credit Bureau Act has yet to commence, how it will enhance the CRA service quality remains to be seen.

Regulation under data privacy law

4.7 While the governance and internal control requirements of CRAs are covered under the Credit Bureau Act, similar to other organizations handling personal data, CRAs are required to comply with the Personal Data Protection Act 2012 ("PDPA"), which is administered and enforced by the Personal Data Protection Commission. Unlike Hong Kong, there is no formal code or advisory guidelines specific to handling of consumer credit data.⁴⁰ Contravention of the data privacy provisions is liable to a fine, which is up to S\$1 million (HK\$5.63 million) currently, and will increase to 10% of the breaching organization's annual turnover, starting from February 2022 or later.⁴¹

³⁹ For each committee, MAS proposes it to be made up of at least five persons. Among them, at least one-fifth of the committee members must be independent of CRA and the approved members.

⁴⁰ Despite this, Singapore's data privacy regulator has issued an informal guidance to provide CRAs with clarity on the application of the data privacy law. The document however does not serve as an opinion of the regulator or legal advice. See Personal Data Protection Commission (undated).

⁴¹ The penalty amount of 10% of annual turnover will apply if it is more than S\$1 million (HK\$5.63 million).

5. The United Kingdom

5.1 In the past, consumer CRAs in the UK were regulated by the Consumer Credit Act. The then Office of Fair Trading (the former independent authority for enforcing competition and consumer protection) was responsible for licensing consumer credit firms (including CRAs) and enforcing the Consumer Credit Act. Subsequent to its disbandment in 2014, the regulatory function was performed by the Financial Conduct Authority ("FCA"). Since then, consumer CRAs have been required to be **authorized** by FCA under the Financial Services and Market Act 2000 for their operations.⁴² Like most of the organizations processing personal data in other sectors, CRAs are required to comply with various data protection regulations which are enforced by the Information Commissioner's Office ("ICO").⁴³

5.2 At present, there are three large CRAs and around 20 much smaller CRAs in the market. Most small CRAs are recent entrants to the market.⁴⁴ A data provider may provide data to multiple CRAs but CRAs do not share information directly with one another.⁴⁵ Apart from credit reference services, CRAs also provide other credit information services for lenders and/or consumers, such as affordability tools. To compete with the main CRAs, smaller CRAs seek to use advanced analytical techniques to provide alternative credit-scoring models, and/or develop new business models by complementing traditional credit information with alternative data sources such as social networks or interviews with consumers.⁴⁶ However, the government has noted that there are also some small CRAs being inactive in the market.⁴⁷

5.3 FCA rules do not explicitly require lenders to use information from CRAs when making lending decisions. However, a survey found that 96% of lenders used CRAs and 48% used two or three CRAs.⁴⁸ Besides providing the credit information to financial institutions for their assessment of granting credit facilities to consumers, CRAs are also allowed to provide the information to organizations in

⁴² On the other hand, commercial CRAs are not under the oversight of FCA. They are designated by the HM Treasury under the Small and Medium Sized Business (Credit Information) Regulations 2015. See GovUK (2019).

⁴³ To facilitate the performance of their regulatory functions, the two authorities have signed a Memorandum of Understanding which sets out the broad principles of collaboration and the legal framework governing the sharing of relevant information between them. The latest revision was made in 2019. See Financial Conduct Authority & Information Commissioner's Office (2019).

⁴⁴ See Financial Conduct Authority (2019a).

⁴⁵ Ibid.

⁴⁶ See Financial Conduct Authority (2019a).

⁴⁷ See Competition and Markets Authority (2018).

⁴⁸ Ibid.

other sectors (e.g. utility companies, and government bodies) to assist them in verifying the identity of consumers and helping recover payment of outstanding debts. The data sharing between CRAs and these financial institutions/organizations is governed by the Principles of Reciprocity⁴⁹, an industry agreement that covers key issues including terms of access and purposes for which the information may be used. Generally speaking, these arrangements set out that data contributors can access credit information of the same kind they contribute.

Regulation by Financial Conduct Authority

5.4 Under the Financial Services and Market Act 2000, CRAs are a type of consumer credit firms.⁵⁰ Provision of credit reference services and other credit information services are regulated activities. CRAs must seek authorization of FCA and obtain "full permission" for their operations.⁵¹ Like other financial services firms, CRAs seeking authorization are required to comply with the general rules including meeting the minimum threshold conditions set out in the FCA Handbook.⁵² The authorization team will assess the application in a way that is **proportionate** to the size and nature of the business, and the potential risks to consumers. CRAs are required to continue to meet the minimum standards in order to continue the authorization. However, there are **no rules specific to the conduct of business for CRAs**.⁵³

⁴⁹ They were prepared following extensive discussion among lenders, trade associations and regulatory bodies on the use of consumer information during the 1990s. The main thrust of the Principles of Reciprocity is that data are shared only for the prevention of over-commitment, bad debt, fraud and money laundering and to support debt recovery and debtor tracing, to aid responsible lending.

⁵⁰ Other types of consumer credit firms include credit broking firms and debt collecting firms.

⁵¹ Generally speaking, firms engaging in activities with higher risk are required to obtain full permission which are subject to more conditions to meet at authorization and when carrying out the activities than those with "limited permission".

⁵² Minimum threshold conditions include maintaining adequate human and financial resources, demonstrating effective supervision and management competence. See Financial Conduct Authority (2016).

⁵³ Previously, there was a section in the Consumer Credit sourcebook requiring CRAs to notify relevant lenders following removal or amendment of an entry in an individual's CRA file, or receipt of a notice of correction from the individual. Nevertheless, following its consultation in 2015, FCA decided to remove the section from the sourcebook, viewing that "the requirement no longer serves any useful purpose". See Financial Conduct Authority (2015).

5.5 Recognizing the importance of CRAs in retail lending, FCA has expressed concerns over various issues in the market such as ineffective market competition between CRAs.⁵⁴ According to FCA, the market appears to be concentrated and some credit providers have raised concerns about the high costs of switching CRA. On the other hand, individual credit consumers' awareness/understanding of the CRA market has tended to be low. A survey found that over 50% of people had not checked their credit report and over one-third wrongly thought that checking their credit score regularly would damage their credit rating. Furthermore, FCA has expressed concerns that given over 20 CRAs in the market, each CRA may have an incomplete picture of an individual's financial standing, since lenders are not required to share data to all CRAs, and CRAs do not share data between themselves. This may lead to lenders being unable to accurately assess the creditworthiness of consumers.⁵⁵ As such, FCA launched a comprehensive review of the credit information market in 2019 to examine the latest market status and its impacts on the consumers. However, due to the disruption of the coronavirus pandemic, the interim review was postponed and FCA has not yet published the review findings.

5.6 Having said that, in the light that CRAs hold a wide range of consumer data for a large number of consumers, FCA has recently set out its views and expectations on CRAs regarding their handling of potential risks of individuals' personal data.⁵⁶ FCA has pointed out that loss or misuse of personal data, poor handling of customers' complaints and lack of transparency in credit broking activities are among the key drivers of potential harm in CRAs. To reduce the potential risks and strengthen the market integrity, FCA has indicated that where it sees CRAs creating harm in the market, it will hold appropriate individuals to account based on the "**Senior Managers and Certification Regime**".⁵⁷ The Regime, aiming to **regulate people working in FCA-regulated firms**, features that: (a) regulated firms are required to check and certify at least once a year that their "core employees" (who perform specific functions⁵⁸ that can have a significant impact on customers, the firm and/or market integrity) are fit and proper to perform the roles; (b) there are conduct rules setting the minimum standards of individual behaviours in financial services; and (c) senior managers will need the approval of FCA before starting their roles. If the regulated firm breaches one of the requirements, the senior managers responsible for that area could be held accountable if they did not take reasonable steps to prevent/stop the breach.⁵⁹

⁵⁴ See Financial Conduct Authority (2019a).

⁵⁵ See Financial Conduct Authority (2017a).

⁵⁶ See Financial Conduct Authority (2020).

⁵⁷ At present, the Regime covers firms regulated only by FCA. It has replaced the previous Approved Persons Regime.

⁵⁸ These include client dealing and algorithmic trading.

⁵⁹ See Financial Conduct Authority (2017c and 2019b).

5.7 At present, the above Regime has been applied in the banking sector and other financial services firms. While the timetable on the implementation of the above plan on CRAs has yet been revealed, FCA had engaged with some large CRAs to assess how they would address the potential risks highlighted by FCA and the possible impacts on them. It has also asked CRAs to consider what action they need to take to comply with the Regime, and review and improve their firm's organizational standards of conduct. Subject to the interim findings of the credit information market review, it will update CRAs within 2021 about its views on the market status and its supervisory plans.

Regulation by Information Commissioner's Office

5.8 Apart from the supervision of FCA, credit reference activities of CRAs are also governed by various other laws such as Data Protection Act 2018 ("DPA"), the Consumer Credit Act and the Companies Act. Among them, DPA enforced by ICO is the main legislation governing CRAs in respect of handling of personal data. Subsequent to the enactment of European General Data Protection Regulation ("GDPR") in 2018 and Brexit, the UK has enacted its own GDPR (known as "UK GDPR") to supplement DPA. UK GDPR has been in effect since the beginning of 2021. It sets out the general principles for data processors to follow, their obligations and individual rights. As data processors, CRAs are required to comply with these two data privacy laws.

5.9 CRAs have obligations under UK GDPR and DPA to provide data subjects with a **right of personal data access**, which include:⁶⁰

- (a) the individual shall have the right to obtain from the CRA's confirmation as to whether or not personal data about the financial standing of him or her is being processed⁶¹;
- (b) CRA shall provide a copy of the personal data about his/her financial standing (known as "statutory report") being processed to the individual for free. For any further copies requested by the data subject, CRA may charge a reasonable fee based on administrative costs;⁶²

⁶⁰ See Information Commissioner's Office (2018c and undated) and GovUK (2018).

⁶¹ According to ICO, "processing" means obtaining, recording or holding the information or data or carrying out any operation or set of operations on the information or data. See Information Commissioner's Office (2014a).

⁶² On the other hand, CRAs may charge for the provision of value-added information (e.g. its credit rating/score to an individual).

- (c) when personal data about the financial standing is transferred to a third country or to an international organization, the individual shall have the right to be informed of the appropriate safeguards; and
- (d) in the course of data disclosure, CRA must inform the individual of his/her rights to request correction of wrong information.

5.10 To ensure that CRAs adhere to the data protection principles and regulations, ICO has been promoting good practices in the sector. Given the fairly large number of CRAs in the market, ICO is concerned whether they handle the default records of consumers in a similar way so as to assist credit providers to predict bad debt equally.⁶³ Regarding this, it had published the technical guidance about filing defaults with CRAs. Since 2014, the guidance has been replaced by the **high-level principles for the reporting of arrears, arrangements and defaults at CRAs**, drawn up by ICO with the credit industry as the main source of advice for CRAs and data providers.⁶⁴ The Principles cover the arrangements for reporting and recording credit files under various scenarios. For instance, when the account of a consumer is closed, the record in CRA should properly reflect the closing payment status of the account and any agreement between the parties.

5.11 Unlike Hong Kong, the power of the UK's ICO has gone beyond conducting compliance assessments of CRAs and issuing enforcement notices. Empowered by DPA, ICO can impose **monetary penalties** on breaching corporations including CRAs, at an amount of up to £17.5 million (HK\$174.3 million) or 4% of the annual global turnover (whichever is greater) for the serious breach of data.⁶⁵ In 2018, one CRA was fined £500,000 (HK\$5.23 million) for failing to take appropriate technical and organizational measures against unauthorized and unlawful processing of the personal data of the UK citizens in a cyber attack.⁶⁶ Investigation of data protection compliance of CRAs is not just the matter of the data privacy regulator. According to ICO, in investigating the three large CRAs concerning the provision of offline marketing services⁶⁷ in 2018, it has worked closely with FCA to understand any regulatory overlap and to assess potential impact as a result of the regulatory action.

⁶³ See Information Commissioner's Office (2007).

⁶⁴ See Information Commissioner's Office (2018d).

⁶⁵ See Information Commissioner's Office (undated).

⁶⁶ The fine was the ceiling amount under DPA at that time. See Information Commissioner's Office (2018b).

⁶⁷ Offline marketing services referred to the provision of marketing service to individuals through methods other than the internet, such as postal, telephone and SMS marketing. See Information Commissioner's Office (2020).

6. Concluding remarks

6.1 CRAs play a significant role in the consumer credit market. By providing consumer credit information to credit providers to make informed decisions, they indirectly help enhance the stability of a financial system. In Hong Kong, there is no dedicated legislation or licensing requirement for CRA. PDPO is the major legislation regulating the handling of personal data by CRAs. The Code of Practice issued pursuant to section 12 of PDPO serves as a practical guide for such handling. However, a breach of the Code is not an offence under PDPO. Following the data breach incident of CRA in 2018, there have been concerns over the adequacy and effectiveness of the regulation. According to the Government, to enhance the quality of CRA services, HKMA has discussed and agreed with various industry associations in the credit market to introduce more than one CRA in Hong Kong. Meanwhile, an industry code is being developed by the industry associations to set out the standards on various aspects including corporate governance, internal control, and use and protection of customer data. However, the Government has no plan to establish a legal framework specific to CRA.

6.2 Different from Hong Kong, in both Singapore and the UK, CRA operation must be recognized or authorized by the financial regulator. The former has even passed the Credit Bureau Act in 2016 to establish a dedicated licensing framework for CRAs, subjecting them to formal oversight by MAS. Yet to commence, it grants MAS power to perform various supervisory controls, and stipulates the duties of CRAs and consumers' rights to data access. CRAs breaching the specified duties such as maintaining security and integrity of data will be liable to a fine of up to S\$250,000 (HK\$1.41 million). Further requirements proposed in the draft subsidiary legislation include establishing a Dispute Resolution Committee to resolve complaints and data disputes, and measures on technology risk management and cyber security. Whereas in the UK, to remain authorized, CRAs must meet the minimum thresholds such as appropriate resources and management competence. However, noting some irregularities in the credit information market, FCA launched a comprehensive review in 2019 to get a clearer picture. While the review findings have not been published, FCA has revealed that where it sees CRAs creating harm in the market, it will hold appropriate individuals to account based on the Senior Managers and Certification Regime.

6.3 Same as other organizations handling personal data, CRAs in Singapore and the UK are required to comply with the local data protection laws. In the latter, the obligations of CRAs regarding individuals' right of access to data are provided under DPA. This is contrary to Hong Kong where such rights are laid down in the Code of Practice. The enforcement authority ICO has also drawn up principles on reporting default data, to ensure consistent handling of default records among CRAs and credit providers. This might be of reference to Hong Kong when there is more than one CRA in the market. Contrary to Hong Kong's PCPD which can only serve enforcement notice, the data privacy regulators in both Singapore and the UK are empowered to impose monetary penalties on breaching corporations or individuals including CRAs. In the UK, the amount can be as high as over HK\$170 million for serious breach of data.

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Salient features on regulation of credit reference agencies in Hong Kong, Singapore and the United Kingdom

	Hong Kong	Singapore	The United Kingdom
Major relevant legislation	<ul style="list-style-type: none"> Personal Data (Privacy) Ordinance (Cap. 486) ("PDPO"). 	<ul style="list-style-type: none"> Banking Act (Cap. 19). Credit Bureau Act (passed in 2016 but not yet in operation). Personal Data Protection Act 2012. 	<ul style="list-style-type: none"> Financial Services and Market Act 2000. Data Protection Act 2018. UK General Data Protection Regulation.
Regulator(s) enforcing the legislation	<ul style="list-style-type: none"> Office of the Privacy Commissioner. 	<ul style="list-style-type: none"> Monetary Authority of Singapore ("MAS"). Personal Data Protection Commission. 	<ul style="list-style-type: none"> Financial Conduct Authority ("FCA"). Information Commissioner's Office.
Regulation by financial regulator			
CRA approval requirement	<ul style="list-style-type: none"> No. 	<ul style="list-style-type: none"> Yes. Recognized by MAS; licensing required upon commencement of the Credit Bureau Act. 	<ul style="list-style-type: none"> Yes. Authorization by FCA.
Obligations and/or governance requirements over CRAs	<ul style="list-style-type: none"> Not applicable. 	<ul style="list-style-type: none"> Under the Credit Bureau Act: including submission of periodic reports; appointment of auditor; notification of changes in key aspects of operations; and measures to facilitate consumers' access to their credit reports. 	<ul style="list-style-type: none"> Not specifically prescribed; but CRAs are subject to the general rules including meeting the threshold conditions such as effective supervision and management competence.
Any dedicated regulatory regime for CRAs	<ul style="list-style-type: none"> Not applicable. 	<ul style="list-style-type: none"> Yes, under the Credit Bureau Act. 	<ul style="list-style-type: none"> No, but they are still regulated by FCA under the "full permission" regime.
Regulation by data privacy regulator			
CRA approval requirement	<ul style="list-style-type: none"> No. 	<ul style="list-style-type: none"> No. 	<ul style="list-style-type: none"> No.
Compliance with the data privacy law	<ul style="list-style-type: none"> Required. 	<ul style="list-style-type: none"> Required. 	<ul style="list-style-type: none"> Required.
Specific code or formal guidelines on handling of consumer credit data	<ul style="list-style-type: none"> Yes, designed to provide practical guidance. Breach of the code will give rise to a presumption against the data user in any legal proceedings under PDPO. 	<ul style="list-style-type: none"> No, but there is an informal guidance providing CRAs with clarity on the application of the data privacy law. 	<ul style="list-style-type: none"> Yes, high-level principles for the reporting of arrears, arrangements and defaults at CRAs drawn up by ICO with the credit industry.
Enforcement power	<ul style="list-style-type: none"> Issuing enforcement notice. 	<ul style="list-style-type: none"> Issuing enforcement notice. Imposing monetary fines, at a maximum of S\$1 million (HK\$5.63 million). 	<ul style="list-style-type: none"> Issuing enforcement notice. Imposing monetary fines, at an amount of up to £17.5 million (HK\$174.3 million) or 4% of the annual global turnover (whichever is greater).
Recent updates			
Status on enhancement of CRA regulation	<ul style="list-style-type: none"> Industry associations are developing an industry code and bringing in multiple CRAs in the market, with the endorsement of the Hong Kong Monetary Authority. The Government has conducted a formal review of PDPO, with a plan to strengthen the sanctioning power of PCPD. 	<ul style="list-style-type: none"> The subsidiary legislation and relevant notices under the Credit Bureau Act have been drafted for public consultation. The Act is targeted to commence by the first half of 2021. The Personal Data Protection Act was amended. Among others, the maximum penalty for breaching the provisions would be either S\$1 million (HK\$5.63 million) or 10% of the organization's annual turnover in Singapore (whichever is greater) in normal cases. The latter addition will take effect no earlier than February 2022. 	<ul style="list-style-type: none"> FCA is planning to introduce the "Senior Managers and Certification Regime" to regulate people working in CRAs. Details subject to the findings of the review of the credit information market.

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