



### Comments on Proposed Revisions to the Code of Practice on Consumer Credit Data

	Issues	Comment
1.	Whether it is necessary and not excessive for the CRA to hold the additional mortgage data contributed by the credit providers, namely, positive mortgage data in respect of residential properties, and both positive and negative mortgage data in respect of non-residential properties	<ul style="list-style-type: none"><li>• Notwithstanding that the sharing of positive mortgage data will provide a more full and complete picture of the data subject's financial condition (thereby better credit risk management), is the sharing of positive credit data on mortgages sufficiently beneficial to justify the additional data being shared in this manner? Even during the worst of the Asian crisis losses due to mortgage defaults were not material. In our view this makes it difficult to justify on a cost benefit basis.</li><li>• If the proposals are to be adopted then the following should be considered:<ul style="list-style-type: none"><li>- Why is this limited to mortgage loans? Banks lose money through other loan products also</li><li>- Will there be an increase in the amount of personal data being sent outside of Hong Kong? If yes, what additional protections (if any) should be provided? Section 33 of Cap 486 is still not in operation yet and, strictly speaking, there is nothing to prohibit the transfer of personal data overseas though more international financial institutions (which are more likely to transfer data overseas) will have set out internal procedures and guidelines on transfer of personal data overseas</li><li>- Given that a large number of investors and owner occupiers buy properties through companies - should information about private companies used for this purpose be given the same protections as personal data? In any case, personal data will be embedded in records of corporate data subjects and measures should be introduced to prevent inadvertent breach of personal data requirements as a result of the leak of corporate data</li></ul></li><li>• Inclusion of data on mortgagors will assist with the assessment of the mortgagors' credit risks by</li></ul>

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		<p>institutions that deal with the mortgagors concerned. However, it must be ensured that consent is obtained from the mortgagors also</p> <ul style="list-style-type: none"> <li>- It is necessary and not excessive to hold the mortgage data (in fact, the <i>occupation</i> of the data subject should be provided also as this will also give an indication of the level of credit risk in relation to the data subject and the ability to repay loan). However, there must be measures to ensure that the balance of non-defaulting loans is kept up to date to provide an accurate credit assessment</li> <li>- (i) Express consent is obtained from the data subject, (ii) sufficient safeguards are in place to secure all information gathered, and (iii) stringent procedures in relation to the disclosure of collected information to credit providers must be obtained/put in place</li> <li>- Non-residential mortgages are also important in Hong Kong given investors/speculators invest not only in residential properties. Without such information, the exercise would be only partially complete.</li> <li>- If credit providers can access the Mortgage Counts for assessment of all types of consumer facilities, why is the CRA's information bank limited to mortgage loans? Further, if Mortgage Counts are relied on for assessing general consumer facilities, the kinds of mortgages that are covered should be as comprehensive as possible, therefore, inclusion of non-residential mortgages is important</li> </ul>
2.	Whether there will be a "biased" record of consumers	<ul style="list-style-type: none"> <li>• Credit providers will be merely using the information to be provided by the CRA to conduct internal assessment of whether or not a deal is risky. The CRA is merely a provider of information, judgment of creditworthiness is still by the credit providers and therefore, there should not be any concern regarding biased data from the perspective of potential "mis-interpretation"/"mis-anlysis" by the CRA</li> <li>• However, there may be possibility of a biased analysis of consumers' credit risk as a result of the limited amount of information that can be contributed by the credit providers to the CRA and the information that can be disclosed by the CRA to credit providers (please see point two in item 3 below for further analysis). Having said that, responsible credit providers should already have certain preliminary information (from the account opening forms, applications for credit facilities of the credit providers) on the consumers they are dealing and should be able to, based on those preliminary, analyse the Mortgage Counts that are provided by the CRA (for example, a young professional employed by a reputable professional firm for a consecutive number of years with zero</li> </ul>

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		Mortgage Count would most likely be a credible applicant). Credit providers should, as part of their preliminary information gathering exercise, already have certain preliminary information on the consumers
3.	Whether it is appropriate to restrict the amount of positive mortgage data contributed by the credit providers to the CRA in line with the latter's operational needs, and to restrict the access of such data by credit providers (upon the credit applicants' written consent) to the Mortgage Count only	<ul style="list-style-type: none"> <li>• Collection of data by the credit provider is currently limited to information that is required by the credit provider; therefore, there is no reason why the credit provider should be required to contribute excessive information than those required by the CRA to operate the CRA's business</li> <li>• Non-disclosure of the Contributed Data will assist with the safeguarding of personal data of data subjects given there is one less transfer involved. However, whether the Mortgage Counts alone will be sufficient for the credit providers' assessment is another matter and needs to be determined by the end users (i.e. credit providers). However, we query whether the provision of Mortgage Counts alone is sufficient for the credit providers to determine the credibility of consumers. It is specifically stated in the proposal that the borrower/guarantor/mortgagor income/wealth data will not be provided. Likewise, the amount of loan(s) outstanding will not be provided either. Hypothetically speaking, a consumer may have 10 Mortgage Counts with very little amount outstanding on each count and a very high steady income. However, given the lack of further information on the details of the mortgages, credit providers may misinterpret and rank this consumer as high risk. Compared against a consumer with only 1 Mortgage Count which was newly taken out with substantial outstanding amount, credit providers may misinterpret this as being low risk. Further, there may be consumers with zero mortgage counts either because all mortgages have been paid off. Without further information, it would be difficult for credit providers to come to an accurate analysis. It would be more useful for credit providers' purpose if information such as the consumers' income and the outstanding value and the mortgage and redemption history is provided also</li> <li>• If the kinds of data to be released by the CRA to credit providers are strictly limited to information (on the basis that consent from data subject is obtained beforehand for the release of such data) that is required for the intended purpose of the credit provider, then, in our view there is no excessive use</li> </ul>
4.	Whether it is appropriate for the additional mortgage data in respect of pre-existing mortgages at the time of the	<ul style="list-style-type: none"> <li>• Although the information on a consumer would be incomplete if pre-existing mortgage data is not contributed to the CRA, nevertheless, explicit consent from the consumers should be obtained. When the original consent was provided by the consumers, they were provided under "old" (current) system. It would not be in line with the principle of the data protection if information</li> </ul>

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	implementation of the proposal to be contributed to the CRA, with or without prior explicit notification to the consumers	previously not provided to the CRA can now be submitted to the CRA without consent from the data subject. This is similar to the bundled consent versus specific consent issue in relation to direct marketing. With the expanded system, specific consent should be obtained for all pre-existing mortgages
5.	Whether it is appropriate to permit, subject to the consumers' written consent, access to the additional mortgage data by the credit providers to evaluate not only mortgage loan applications but also to assess other new consumer credit applications as well as review and renewal of the consumers' existing credit facilities	<ul style="list-style-type: none"> <li>• There is no reason why the credit sharing system should be limited to mortgage loans only. There are a variety of credit facilities in the market and a person's creditworthiness rests not only on mortgages, but also other debts that are outstanding. Further, due diligence on consumers' creditworthiness is equally important for renewal of existing credit facilities as for new credit facilities</li> <li>• If the public is concerned that mortgage data will be disclosed even for insignificant loan amounts (such as credit card application), it may be possible to set a threshold and only if the loan amount or facility limit reaches this threshold amount can mortgage data be accessed by the credit provider</li> <li>• So long as when the data is collected, it is made clear to the consumers that the collected information may be used for the evaluation of loans or other credit facilities, and the consumers are clearly made aware of the potential extent of disclosure and agree to such disclosure, then there is no reason why the additional mortgage data cannot be used for the assessment of other credit facilities</li> <li>• With regards to whether the credit provider "has reasonable grounds to suspect that the customer is in financial difficulties", this right to judge may lead to abuse by certain credit providers. If such subjective test is permitted, then, at least some guidelines should be set on which the credit providers can base their judgment and the credit provider must be obliged to set out its reasons in writing and provide a copy to the data subject</li> </ul>
6.	Whether 24 months is an appropriate transitional period before access to the additional mortgage data is allowed for the purpose of general portfolio reviews of consumers' creditworthiness	<ul style="list-style-type: none"> <li>• We express no views on this issue. It is largely for data users and the credit providers to assess how long they need to implement the new arrangements and to inform customers of them</li> </ul>
7.	What and how additional privacy safeguards should be	<p>Given this extended scope of sharing:</p> <ul style="list-style-type: none"> <li>• The CRA should keep records of (i) what information has been received, (ii) from whom, and (iii)</li> </ul>

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	<p>imposed upon the CRA and the credit providers commensurate with an enlarged credit database and greater sharing and use of the mortgage data</p>	<p>when and what information is given, to whom and when. Such information should be made available to data subjects on request</p> <ul style="list-style-type: none"> <li>• Further, only a limited number of people within the CRA and each of the credit providers should have access to all such information and each time an authorized employee accesses information, such access should be recorded so that a proper trace can be made</li> <li>• The CRA should take greater steps to make it easier for data subjects to review information held about them – currently it is necessary to physically visit a site at an inconvenient location in order to do this – it should be possible to do it on line</li> <li>• Given the increased data that will be shared, credit providers/data users should be required to notify data subjects on every occasion that they access personal data (currently this does not happen). The most ideal arrangement would be to ensure that a copy of each data request (and the corresponding reply from the CRA) is sent to the data subject. However, given the vast number of mortgages applied for in Hong Kong everyday and given that not all persons may wish to see the reply from the CRA, to require the CRA to automatically send a copy of its reply to the data subject may not be practical and is not cost efficient. It would therefore be more practical if the data subject (to whom a copy of the data request would have been provided by the credit provider) request a copy of the reply from the CRA if he/she finds it necessary. The lender should facilitate any such requests</li> </ul>
8.	General comment	<ul style="list-style-type: none"> <li>• Clarity - both the legislation and the current draft of the Code have resulted in material differences between the understandings of data users and the Privacy Commissioner</li> <li>• Given the vast amount of information that will be held by the CRA, stringent procedures must be put in place to ensure that no privacy encroachment issues will arise. Not only strict controls are to be put in place for (i) the contribution of data by credit providers, (b) the collection and maintenance of data by the CRA, (c) the provision of data to credit providers by the CRA, and (d) use of data by credit providers, penalties for breaches should also be set out clearly upon commencement</li> </ul>