

Personal Data (Privacy) Ordinance

Amendments to Code of Practice on Consumer Credit Data

Consultation Paper

Deadline for Submission of Comments:

29th June, 2007



香港個人資料私隱專員公署
Office of the Privacy Commissioner
for Personal Data, Hong Kong

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Part 1 - Introduction

1.1 The sharing of consumer credit data is governed by the Code of Practice on Consumer Credit Data (“the Code”) issued by the Privacy Commissioner for Personal Data (“the Commissioner”) pursuant to section 12(1) of the Personal Data (Privacy) Ordinance (“the Ordinance”). The Code was first issued in February 1998 and took effect on 27 November 1998.

1.2 Under section 12(3) of the Ordinance, the Commissioner has the power to approve from time to time any revision of the whole or any part of the Code. The last revisions to the Code were gazetted on 23 May 2003 and took effect on 2 June 2003. The revisions establish a new regulatory regime in respect of the sharing of “positive”ⁱ and “negative” credit data amongst credit providers through the use of a central credit database operated by a credit reference agency (“CRA”).

1.3 The revised version of the Code imposed a twenty-four month transitional period during which credit providers were barred from accessing positive credit data in the course of renewal of existing credit facilities and even the access for the purposes of reviewing existing credit facilities were only restricted to certain prescribed circumstances. This transitional period has expired on 1 June 2005 and this means that there is now full usage of positive credit data by credit providers subscribing to the CRA. In order to reflect the expiration of the transitional period and to avoid any confusion, it is proposed that certain clauses of the Code be deleted and/or rewritten.

1.4 In the meantime, since the last revisions made in June 2003, in the light of practical experience in enforcing the Code, it has appeared that certain amendments to the Code may be desirable.

1.5 Under section 12(9) of the Ordinance, before the Commissioner approves any revision of a code of practice issued by him, he shall consult with such bodies representative of data users and such other interested persons as he thinks fit. Accordingly, this Consultation Paper has been prepared in order to explain the proposed amendments to the Code and the rationale behind such proposed amendments, with the view to inviting comments thereon.

1.6 The Office of the Privacy Commissioner for Personal Data (“PCPD”) wishes, either in discussion with others or in any subsequent report, whether privately or publicly, to be able to attribute comments submitted in response to the Consultation Paper. Any wish to remain anonymous in relation to all or part of a response will be respected, but if no such wish is indicated, it will be assumed that the party making the response can be named.

ⁱ Positive credit data generally mean an individual’s overall credit exposure and repayment pattern.

1.7 Any personal data provided with a submission will only be used for the purpose of carrying out this public consultation exercise, including the preparation of a final version of the Code and any explanatory document or commentary in relation to it.

1.8 Any individual providing his personal data to the PCPD in his submission will have rights of access and correction with respect to such personal data. This can be done by writing to the Administration and Finance Manager of the Office of the Privacy Commissioner for Personal Data at the below address.

1.9 Submissions in writing may be made in English or Chinese, on or before 29th June 2007, to the following address:-

The Office of the Privacy Commissioner for Personal Data
12/F, 248 Queen's Road East
Wan Chai, HONG KONG

(Fax: (852) 2877 7026, E-mail: enquiry@pcpd.org.hk)

Part 2 – Description of Proposed Amendments and Rationale

2.1 Broadly speaking, the proposed amendments to the Code can be divided into the following three categories:-

- (a) technical amendments as a result of the expiration of the transitional period;
- (b) amendments relating to the retention of data in relation to write-off accounts due to a bankruptcy order being made; and
- (c) miscellaneous amendments.

Technical amendments as a result of the expiration of the transitional period

2.2 The proposed amendments under this head relate to the revisions to the clauses of the Code as a result of the expiration of the transitional period on 1 June 2005. Accordingly, in order to avoid any possible confusion, it is now proposed to amend clauses 2.9, 2.10, 3.8.2.3 and other related clauses to reflect the lapse of restriction whereby credit providers were prevented from accessing and using those positive consumer credit data of existing borrowers for the purposes of assessing the renewal or review of existing credit facilities of these borrowers during the transitional period. Accordingly, it is now proposed to:-

- (a) delete the definition of “transitional period” in clause 1.26;
- (b) delete clause 2.10 relating to the access to account data during transitional period;
- (c) delete clause 3.8.2.3 concerning the restrictions on providing of credit report by CRA to a credit provider during the transitional period;
- (d) amend the related old clauses 2.9, 2.11, 2.12, 2.14, 3.8, 3.13.2.4 to reflect the expiration of the transitional period.

Amendments relating to “write-off account” data

2.3 Given the working experience with the Code since its last revision in June 2003, it has appeared to the PCPD that it may be necessary to alleviate certain operational difficulties encountered by the consumer credit industry in relation to data of accounts which were written off as a result of bankruptcy prior to the occurrence of any material default.

2.4 Under the Code, “material default” means a default in payment for a period in excess of 60 days. Under the existing clause 3.3, where a CRA has

collected from a credit provider any account repayment data relating to an individual that reveal a material default, the CRA may thereafter retain the account repayment data in its database until the expiry of 5 years from the date of final settlement of the amount in default or the expiry of 5 years from the date of the individual's discharge from bankruptcy, whichever is earlier.

2.5 However, for account repayment data that do not reveal a material default, under clause 3.4, the CRA may only retain the same in its database for a period of 5 years from the date of creation of such data.

2.6 A practical problem has arisen in addressing write-off accounts in relation to the operation of the Code. This arises in the situation where a customer of a credit provider becomes bankrupt prior to the time when a material default has actually occurred. As a general existing practice, the consumer credit industry will write off accounts immediately where a loss is inevitable, e.g. upon receipt of a bankruptcy order, so as to meet the industry standards. This means that the retention period of this kind of early write-off bankruptcy account data with no material default is shorter than the retention period applicable to accounts with material default.

2.7 Figure 1ⁱⁱ shows the statistics on bankruptcy petitions and orders from 2000 to 2005 and Figure 2ⁱⁱⁱ shows the number of write-off accounts with no material default revealed in the present CRA database.

Figure 1 – Statistics on Bankruptcy Petitions and Orders

Year	Petitions presented	Bankruptcy Orders made
2000	5487	4606
2001	13186	9151
2002	26922	25328
2003	22092	24922
2004	12489	13593
2005	9933	9810

ⁱⁱ Figures published on the website of the Official Receiver's Office

ⁱⁱⁱ Figures provided by the Hong Kong Association of Banks

Figure 2 – Number of write-off accounts with no material default (“w/o accounts”) revealed

Number of w/o accounts	Year last reported	Year to be deleted by the CRA
2000	2000	2005
5000	2001	2006
37000	2002	2007
130000	2003	2008

2.8 Based on the statistics in Figure 1, it is observed that the number of bankruptcy orders reached their climax in 2002 and 2003. From Figure 2, the same period saw a similar rising trend of accounts written off by credit providers where no material default occurred. The Hong Kong Association of Banks has indicated to the PCPD that both information regarding material defaults and write-off because of bankruptcies are data which are necessary for the industry to consider in deciding whether to grant credit facilities. In fact, bankruptcy may even be more important than material default in that it evidences a much more serious financial condition. According to the present provisions of the Code, early write-off bankruptcy account data with no material default are only allowed to be retained for 5 years, i.e., the shorter retention period applicable to accounts with no material default. Thereafter, the credit providers may not be able to have access to this information which carries no less significance than those account repayment data that reveal a material default. The invisibility of these data would defeat the spirit of the credit data sharing arrangement because in relation to customers who have been made bankrupt but who are not otherwise in material default, their data may not be available to a credit provider seeking a credit report. As the credit providers’ credit decisions can only be as good as the information available to them, the credit providers’ capacity to make a sound financial judgement regarding an individual’s credit-worthiness may therefore be impaired.

2.9 To remedy this deficiency, it has been proposed to the PCPD by the Hong Kong Association of Banks that the Code should be amended so as to allow the data relating to a write-off account with no material default due to the making of a bankruptcy order against an account holder to be retained in the CRA database as if they were account repayment data that reveal a payment default in excess of 60 days.

2.10 Generally speaking, the rationale behind the issuing of the Code by the PCPD is to ensure that there is a proper balance between the privacy rights of individuals in their consumer credit data and the interest of credit providers and society at large in maintaining both commercial viability and stability in the consumer lending industry. In line with such general policy, therefore, the PCPD is cognizant of the fact that default in the consumer lending situation can arise through a number of factors or event which are not just date related. In

the present situation, the account is written off due to the making of a bankruptcy order against the account holder. The account holder is deemed to be unlikely to pay his credit obligations to the credit provider in full because the bankruptcy order would avoid or delay repayment of the credit obligation to the credit provider. A default is considered to have occurred though there may not be a payment default in excess of 60 days prior to the write-off of the account.

2.11 We are prepared to revisit the provisions of the Code as circumstances may demand, provided that any proposed revisions to the Code do not go beyond what is strictly necessary for the purpose of enabling better credit assessment.

2.12 Accordingly, it is now proposed to:

- (a) add a new clause 3.4A after clause 3.4 under the heading of “Retention of account repayment data not revealing default period in excess of 60 days” to the effect that where any account general data reveal the status of an account as write-off due to a bankruptcy order being made, the CRA may retain in its database the account repayment data at the time of write-off as if they were account repayment data that reveal a material default pursuant to clause 3.3.
- (b) add a new definition of “terminated account” which means an account closed for further business after being fully repaid subject to the agreed terms and conditions. For the avoidance of doubt, no write-off account, including cases of bankruptcy, debt rescheduling or individual voluntary arrangements should be classified as a terminated account.

2.13 As a result of the above substantial amendments, other consequential amendments are required and they are listed as follows:-

- (a) amend the old clauses 2.1.3 and 2.2 to make reference to write-off account;
- (b) add a new clause 2.1.3A after 2.1.3 under the heading of “Notification upon application for consumer credit” to the effect that any credit provider shall take all reasonably practicable steps to provide to individual credit applicants information about the retention period of account repayment data in the event of a bankruptcy order;
- (c) add “*subject to clause 3.4A*” at the beginning of clause 3.4;
- (d) amend the old clause 3.8.2.2 so that the credit report may contain account data relating to write-off due to bankruptcy orders as if they were material default data;

(e) amend the old clauses 3.8.2.2.1, 3.8.2.2.2 and 3.10.5.1 because of the inclusion of a new definition of “terminated account”.

Miscellaneous Amendments

Clause 2.7 - Updating of account data

2.14 The existing clause 2.7.1 requires a credit provider to periodically update the account data provided by it to a CRA until the termination of the account. This applies also to accounts that have been written off. The banking industry however advised that it was not compatible with normal banking practice to periodically update written off accounts as if they were still active.

2.15 There should be no issue of inaccuracy if the “write-off” status of an account is properly reported to the CRA by the credit provider, provided that the CRA database be updated to reflect any repayment of the written off amount.

2.16 Clause 2.7.2 requires a credit provider to update as soon as reasonably practicable the CRA database upon the occurring of certain important events concerning an account with default data, which involve a change in the amount in default or a scheme of arrangement. This is an obligation in addition to the periodic updating requirement in clause 2.7.1. A reporting period of not exceeding 31 days is stipulated in clause 2.7.1, but no similar guidance is given in clause 2.7.2 as to the time for the required updating, apart from “as soon as reasonably practicable”.

2.17 It is therefore proposed to amend clause 2.7 to address the above concerns.

Clause 3.2 – Retention of account general data

2.18 The present wording used in clause 3.2 suggests that CRA may retain the account general data for so long as there remain in such database any account repayment data relating to the same account. However, an absurd situation may arise where the general data of an account not yet terminated may be deleted by CRA simply because there is no activity of this account and hence no repayment data. Pursuant to the present clause 3.4, an account repayment data may be retained by CRA for a period of 5 years from the date of creation of such data. That means where there is no repayment data of an account for more than 5 years, the account general data of the same account will be deleted although the account is not actually terminated. This absurdity will affect the accuracy of the full credit exposure of a customer.

2.19 In order to address this problem, it is now proposed to amend the old clause 3.2 to allow CRA to retain the account general data until the termination of the account save for residential mortgage loan data which will only be supplied when an account is in “material default” but will be deleted 5 years after settlement of the default. Had such residential mortgage loan account general data been allowed to retain until the termination of the account while there is no account repayment data relating to the same account, this would indirectly indicate to the reader of the credit report that at some point over 5 years ago, there was a material default in payment for this residential mortgage loan account and therefore the account general data were provided to the CRA though the repayment data had been deleted 5 years after the final settlement of the amount in default. This was not the original intent of excluding positive residential mortgage loan data in the present sharing regime and might disadvantage the individual concerned.

Schedule 2 item (B) – Account repayment data

2.20 Clause 3.3 requires a CRA to delete account repayment data that reveal a “material default” upon the expiry of 5 years from the date of final settlement of the amount in material default. It is therefore necessary for the CRA to be supplied with the date of final settlement of the amount in material default for calculation of the retention period. Hence, it is proposed to add to item (B) of Schedule 2 such account data to be provided by credit provider to CRA.

Typographical error in clause 2.6

2.21 A typographical error was found in the old clause 2.6 and it is proposed that the word “subsequently” be amended as “subsequent”.

Other Clauses

2.22 Upon the incorporation into the current Code of all or any of the proposed amendments as described above, the provisions of the current Code may be modified to the extent necessary for maintaining stylistic and regulatory consistency of the Code as a whole.

Part 3 – The Code (With Proposed Amendments Highlighted)

The following shows the Code of Practice on Consumer Credit Data with the current proposed amendments highlighted:-

“PERSONAL DATA (PRIVACY) ORDINANCE CODE OF PRACTICE ON CONSUMER CREDIT DATA

I INTERPRETATION

Unless the context otherwise requires, the terms used in the Code have the following meanings:

- 1.1 “Account” means any account between a credit provider and an individual that involves the provision of consumer credit, and includes any new account created as the result of any scheme of arrangement involving one or more previous accounts;
- 1.2 “Account data” means the account data referred to in Schedule 2. For account involving the provision of consumer credit to another person for whom an individual acts as guarantor, the account data of such account is, in addition to being account data relating to that other person as the borrower, deemed to be also account data relating to the individual to such extent as to reveal the contingent liability of the individual as guarantor;
- 1.3 “Account general data” means the account general data referred to in Schedule 2;
- 1.4 “Account repayment data” means the account repayment data referred to in Schedule 2;
- 1.5 “Banking Code” means the Code of Banking Practice issued jointly by the Hong Kong Association of Banks and the DTC Association and endorsed by the Hong Kong Monetary Authority, including any revision from time to time in force;
- 1.6 “Commissioner” means the Privacy Commissioner for Personal Data;
- 1.7 “Consumer credit” means any loan, overdraft facility or other kind of credit provided by a credit provider to and for the use of an individual, or to and for the use of another person for whom an individual acts as guarantor. For credit involving leasing or hire-purchase, an individual acquiring motor vehicles, equipment or vessels financed by a credit

provider by way of leasing or hire-purchase is deemed to be provided with credit by the credit provider to the extent of the value of those goods, any amount overdue under the lease or hire-purchase agreement is deemed to be an amount in default under the individual's account with the credit provider, and all related terms and expressions are to be construed accordingly;

- 1.8 “Consumer credit data” means any personal data concerning an individual collected by a credit provider in the course of or in connection with the provision of consumer credit, or any personal data collected by or generated in the database of a CRA in the course of or in connection with the providing of consumer credit reference service;
- 1.9 “Consumer credit reference service” means the service of compiling and/or processing personal data (including consumer credit scoring), for disseminating such data and any data derived therefrom to a credit provider for consumer credit purposes and, for performing any other functions directly related to consumer credit transactions;
- 1.10 “Consumer credit scoring” means the process whereby personal data relating to an individual held in the database of a CRA are used, either separately or in conjunction with other information held in the system, for the purpose of generating a score (being information statistically validated to be predictive of future behaviour or the degree of risk of delinquency or default associated with the provision or continued provision of consumer credit) to be included in a credit report on the individual;
- 1.11 “CRA” means credit reference agency, which in turn means any data user who carries on a business of providing a consumer credit reference service, whether or not that business is the sole or principal activity of that data user;
- 1.12 “Creation”, in relation to consumer credit data held by a CRA, means the entering of such data into the database of the CRA;
- 1.13 “Credit provider” means any person described in Schedule 1;
- 1.14 “Credit report” provided by a CRA on an individual means a disclosure made by the CRA, in whatever form, of consumer credit data relating to such individual held in its database;
- 1.15 “DCA” means debt collection agency;
- 1.16 “DPP” means data protection principle;
- 1.17 “Effective date” means 2 June 2003;
- 1.18 “Hire-purchase, leasing or charge account” means an account involving

the hire-purchase or leasing of, or the creation of a charge over, motor vehicles, equipment, vessels or other assets excluding real estate property;

- 1.19 “Loan restructuring arrangement” means any scheme of arrangement in relation to debts owed by an individual consequent upon a default in the repayment of those debts;
- 1.20 “Material default” means a default in payment for a period in excess of 60 days;
- 1.21 “Ordinance” means the Personal Data (Privacy) Ordinance (Cap. 486);
- 1.22 “Reporting period”, in relation to an account, means the period between the effective date and the date on which account data are provided by the credit provider to the CRA for the first time, and, thereafter, the period (not exceeding 31 days) between each successive instance of providing such data;
- 1.23 “Residential mortgage loan” to an individual or to individuals means a loan to such individual or individuals as borrower, or a loan to another person for whom such individual or individuals act as guarantor, to finance the purchase of, or to refinance the earlier purchase of, any residential property, including uncompleted units and properties under the Home Ownership Scheme, Private Sector Participation Scheme and Tenants Purchase Scheme;
- 1.24 “Scheme of arrangement” means any restructuring, rescheduling or other modification of terms of whatsoever nature in relation to debts owed by an individual, whether as borrower or as guarantor, towards a single creditor or more than one creditor;
- 1.25 “Suspected abnormal access” means the occurrence of access on five or more occasions within a period of 31 days made by the same credit provider seeking access to the consumer credit data of a particular individual held by a CRA, in connection with the review of existing consumer credit facilities pursuant to clause 2.9.1.2 of the Code;
- 1.26 ~~“Transitional Period” means the period of 24 months beginning on the effective date and ending on the day before the second anniversary of the effective date.~~ “Termination of the account”, “account termination” or other word that connotes an account being terminated means closure for any further business between the credit provider and the borrower of the account after being fully repaid subject to the agreed terms and conditions then in force. For avoidance of doubt, any amount being written off in full or in part is not considered as repayment.

Words and expressions importing the masculine gender include the feminine, and words and expressions in the singular include the plural, and vice versa.

II THE HANDLING OF CONSUMER CREDIT DATA BY CREDIT PROVIDERS

Notification to customer by credit provider

Notification upon application for consumer credit

- 2.1 A credit provider who provides consumer credit data to a CRA or, in the event of default, to a DCA, shall, on or before collecting the personal data of an individual applicant for consumer credit, take all reasonably practicable steps to provide to such individual a written statement setting out clearly the following information¹:
- 2.1.1 that the data may be so supplied to a CRA and/or, in the event of default to a DCA;
- 2.1.2 that the individual has the right to be informed, upon request, about which items of data are routinely so disclosed, and his right to be provided with further information to enable the making of a data access and correction request to the relevant CRA or DCA, as the case may be;
- 2.1.3 that, in the event of any default in repayment, unless the amount in default is fully repaid or written off (otherwise than due to a bankruptcy order) before the expiry of 60 days from the date such default occurred, ~~otherwise~~ the individual shall be liable to have his account repayment data retained by the CRA until the expiry of 5 years from the date of final settlement of the amount in default; ~~and, where applicable;~~
- 2.1.3A that, in the event of any amount being written off due to a bankruptcy order being made against the individual, the individual shall be liable to have his account repayment data retained by the CRA, regardless of whether the account repayment data reveal any default in excess of 60 days, until the earlier of the expiry of 5 years from the date of final settlement of the amount in default or the expiry of 5 years from the date of the individual's discharge from bankruptcy as notified to the CRA by such individual with evidence; and, where applicable;
- 2.1.4 (where the consumer credit applied for does not involve a residential mortgage loan) that the individual, upon termination of the account by full repayment and on condition that there has not been, within 5 years immediately before account termination,

¹ If a credit provider fails to take reasonably practicable steps to give to the individual applicant a written statement as described in clause 2.1, this will give rise to a presumption of contravention of DPP1(3) under section 13(2) of the Ordinance.

any material default on the account, will have the right to instruct the credit provider to make a request to the CRA to delete from its database any account data relating to the terminated account².

Notification upon default

- 2.2 Where the credit provider has provided consumer credit to an individual and the account is subsequently in default, the credit provider shall, as a recommended practice, give to such individual within 30 days from the date of default a written reminder stating that unless the amount in default is fully repaid or written off (otherwise than due to a bankruptcy order) before the expiry of 60 days from the date of the default, ~~otherwise~~ the individual shall be liable to have his account data retained by the CRA until the expiry of 5 years from the date of final settlement of the amount in default or 5 years from the date of the individual's discharge from bankruptcy as notified to the CRA, whichever is earlier.

Notification upon account termination

- 2.3 Upon the termination of the account by full repayment (excluding payment by refinancing of the debit balance on the account by the credit provider), the credit provider shall, as a recommended practice, give to the individual a written reminder of his right (on condition that there has not been, within 5 years immediately before account termination, any material default on the account) to instruct the credit provider to make a request to the CRA to delete from its database any account data relating to the terminated account³.

Providing of consumer credit data by credit provider to CRA

Scope of data to be provided

- 2.4 Where a credit provider has collected any consumer credit data in relation to an individual, subject to compliance with clauses 2.5 and 2.6, it may thereafter provide to a CRA any of following items of consumer credit data⁴:

2.4.1 general particulars of the individual, being: name, sex, address,

² See clause 2.152.14 for the duty of the credit provider to make such a request to the CRA upon the individual's instructions.

³ See clause 2.152.14 for the duty of the credit provider to make such a request to the CRA upon the individual's instructions.

⁴ If, in the absence of any applicable exemption, a credit provider provides to a CRA any consumer credit data other than those permitted under this clause, this will give rise to a presumption of contravention of DPP3 under section 13(2) of the Ordinance.

contact information, date of birth, Hong Kong Identity Card Number or travel document number;

2.4.2 credit application data, namely, the fact that the individual has made an application for consumer credit, the type and the amount of credit sought;

2.4.3 account data as described in Schedule 2, provided that the credit provider shall not provide to the CRA:

2.4.3.1 account data of any account which has been terminated by full repayment (excluding payment by refinancing of the debit balance on the account by the credit provider) prior to the effective date;

2.4.3.2 account repayment data held by it prior to the effective date of any account which already existed prior to the effective date and continues to exist after that date, unless such account repayment data reveal a currently outstanding default, in which case, the credit provider may provide to the CRA the default data relating to such default; or

2.4.3.3 account data relating to a residential mortgage loan, unless such account data reveal a currently outstanding material default, in which case, the credit provider may provide to the CRA the account general data together with the default data relating to such material default;

2.4.4 credit card loss data, being:

2.4.4.1 notice that the credit provider, as card issuer, has suffered financial loss as the result of an unauthorized transaction carried out through the use of a credit card that has been reported lost, for an amount in excess of the maximum liability of the individual before notification to the card issuer of the loss of the card;

2.4.4.2 the amount of such maximum liability and the amount of financial loss suffered by the card issuer;

2.4.4.3 the reported date of the loss of the credit card, and the date of such report; and

2.4.4.4 a description of the event (misplacement of wallet, theft, robbery, etc.) reported to have given rise to the loss of the credit card and any follow-up action

including, where applicable, any report to the police, subsequent investigation or prosecution and result, finding of the lost card, etc.

Accuracy of data provided

- 2.5 Before a credit provider provides any consumer credit data to a CRA, it shall have taken reasonably practicable steps to check such data for accuracy. If subsequently the credit provider discovers any inaccuracy in the data which have been provided to the CRA, it shall update such data held in the database of the CRA as soon as reasonably practicable⁵.

Providing of disputed data

- 2.6 Whenever a credit provider provides to a CRA any consumer credit data disputed by the individual to whom such data relate, this shall be accompanied by an indication of the existence of the dispute. If at any subsequently time the dispute has ended, the credit provider shall as soon as reasonably practicable update the data held by the CRA accordingly⁶.

Updating of account data

- 2.7 Without prejudice to the generality of clauses 2.4, 2.5 and 2.6, where a credit provider has provided any account data to a CRA:

2.7.1 the credit provider shall thereafter continue to update such account data promptly or, in any event, by the end of each reporting period not exceeding 31 days, until ~~the termination of the account~~ is terminated or written-off, whereupon the credit provider shall promptly update the account data to indicate such termination or write-off; and

2.7.2 in addition, the credit provider shall update as soon as reasonably practicable but in any event not later than 14 days the account data held in the database of the CRA upon the occurring of any of the following events⁷:

⁵ If a credit provider fails to have taken reasonably practicable steps to check the accuracy of the data before providing such data to a CRA, or if it fails to update the data held in the database of the CRA after discovering such accuracy, this will give rise to a presumption of contravention of DPP2(1) under section 13(2) of the Ordinance.

⁶ If a credit provider provides to a CRA any consumer credit data disputed by the individual to whom such data relate without accompanying the data with an indication of the existence of such dispute, or if the credit provider, having accompanied the data with such an indication, fails to update the data held by the CRA as soon as reasonably practicable after the dispute has ended, this will give rise to a presumption of contravention of DPP2(1) under section 13(2) of the Ordinance.

⁷ If a credit provider fails to update any account data provided to a CRA in accordance with

- 2.7.2.1 the repayment ~~or write-off~~ in full or in part of any amount in default;
- 2.7.2.2 a scheme of arrangement being entered into with the individual; ~~or~~
- 2.7.2.3 the final settlement of the amount payable pursuant to such a scheme of arrangement-; ~~or~~
- 2.7.2.4 the write off of any amount whether or not the amount has been in default or the subsequent repayment in full or in part of the written off amount.

Access by credit provider to consumer credit data held by CRA

Access for updating

- 2.8 A credit provider may at any time, for the purpose of providing or updating consumer credit data on an individual, access from a CRA such consumer credit data on the individual as were previously provided by it to the CRA⁸.

Access through credit report

- 2.9 Without prejudice to the generality of clause 2.8 ~~but subject to clause 2.10 regarding access to account data during the transitional period~~, a credit provider may, through a credit report provided by a CRA, access consumer credit data held by the CRA on an individual⁹:
- 2.9.1 in the course of:
 - 2.9.1.1 the consideration of any grant of consumer credit;
 - 2.9.1.2 the review of existing consumer credit facilities granted; or
 - 2.9.1.3 the renewal of existing consumer credit facilities granted,

clause 2.7, this will give rise to a presumption of contravention of DPP2(1) under section 13(2) of the Ordinance.

⁸ If the credit provider accesses any of the consumer credit data held by a CRA in situations other than those provided for in clause 2.8, ~~2.9~~ or ~~2.10~~2.9, this will give rise to a presumption of contravention of DPP1(1) and/or DPP1(2) under section 13(2) of the Ordinance.

⁹ For the consequence of a credit provider accessing the consumer credit data held by a CRA in situations other than those provided for in clause 2.9, see Note 8 to clause 2.8 above.

to the individual as borrower or to another person for whom the individual proposes to act or acts as guarantor; or

2.9.2 for the purpose of the reasonable monitoring of the indebtedness of the individual while there is currently a default by the individual as borrower or as guarantor,

and for the purpose of clauses 2.9.1.2, ~~2.10.2, 2.10.3, 2.10.4~~ and other related clauses, the word “review” means consideration by the credit provider of any of the following matters (and those matters only) in relation to the existing credit facilities, namely:

2.9.3 an increase in the credit amount;

2.9.4 the curtailing of credit (including the cancellation of credit or a decrease in the credit amount); or

2.9.5 the putting in place or the implementation of a scheme of arrangement with the individual.

Access to account data during transitional period

~~2.10 Notwithstanding clause 2.9, a credit provider shall not, during the transitional period, be entitled to access any account data (comprising of account general data and account repayment data) through a credit report, unless the access is made under any of the following circumstances¹⁰ :-~~

~~2.10.1 in the course of considering a grant of new consumer credit (excluding increase in any existing credit amount) to the individual, or to another person for whom the individual proposes to act as guarantor;~~

~~2.10.2 in the course of the review of existing credit facilities currently in default for a period in excess of 60 days, with a view to putting in place a loan restructuring arrangement by the credit provider;~~

~~2.10.3 in the course of the review of existing credit facilities, where there is in place a loan restructuring arrangement between the individual and the credit provider (whether or not other parties are also involved), for the implementation of the said arrangement by the credit provider; or~~

¹⁰ ~~If the credit provider accesses any account data (other than that provided for in clause 2.10.5, 2.10.6 or 2.10.7) held by a CRA during the transitional period in circumstances other than those provided for in clause 2.10, this will give rise to a presumption of contravention of DPP1(1) and/or DPP1(2) under section 13(2) of the Ordinance.~~

~~2.10.4 in the course of the review of existing credit facilities, with a view to putting in place a scheme of arrangement with the individual initiated by a request from the individual,~~

~~provided that nothing in this clause above shall affect any access made by a credit provider during the transitional period to the following account data (the access to which may be made under circumstances other than that provided for in clause 2.10.1, 2.10.2, 2.10.3 or 2.10.4 but in accordance with clause 2.9):-~~

~~2.10.5 account data (comprising of account general data and account repayment data) relating to a hire purchase, leasing or a charge account;~~

~~2.10.6 account data (comprising of account general data and account repayment data) relating to an account, other than an account mentioned in clause 2.10.5, which reveal a material default that remains outstanding at the time of access; or~~

~~2.10.7 account general data together with default data which reveal a material default, relating to an account other than an account mentioned in clause 2.10.5 or 2.10.6 where there had been a material default prior to the time of access.~~

Confirmation to CRA upon access

~~2.112.10~~ On each occasion of accessing any consumer credit data held by a CRA, the credit provider shall confirm to the CRA for its record⁺¹⁰:

~~2.11.12.10.1~~ the circumstances provided for in clause 2.8,~~2.9~~ or ~~2.102.9~~ under which the access has been made; and

~~2.11.22.10.2~~ in the case where the access has been made in the course of the review of existing consumer credit facilities under clause 2.9.1.2, the specific matter or matters provided for in clause 2.9.3, 2.9.4 or 2.9.5 that has been considered upon such a review.

No access for direct marketing

~~2.122.11~~ For the avoidance of doubt, subject to clauses 2.9 ~~and 2.10~~, a credit provider is prohibited from accessing the consumer credit data of an individual held by a CRA for the purpose of offering or advertising the availability of goods, facilities or services to such individual. Any contravention by the credit provider of such prohibition will give rise to

⁺¹⁰ If the credit provider, on accessing any consumer credit data held by the CRA, fails to give to the CRA the confirmation referred to in this clause ~~2.112.10~~, or gives a confirmation that is not truthful, this will give rise to a presumption of contravention of DPP1(2) under section 13(2) of the Ordinance.

a presumption of contravention of DPP1(2) and/or DPP3 under section 13(2) of the Ordinance.

Notification to individual of access to consumer credit data

Notification of access for considering credit application

2.132.12 Where a credit provider has been provided by a CRA with a credit report on an individual and has considered such credit report in connection with an application for consumer credit by that individual, the credit provider shall, in its notification to the individual of its decision on the application, give notice of the fact that a credit report has been so considered. The credit provider shall also inform the individual how to contact the CRA who provided the credit report, for the purpose of making a data access and correction request under the Ordinance⁴²¹¹. If a correction request made by the individual is subsequently complied with by the CRA, the credit provider shall, at the request of the individual, use a new credit report obtained from the CRA as a basis for its reconsideration of the credit application⁴³¹².

Notification of access for review

2.142.13 Where a credit provider accesses the consumer credit data of an individual held by a CRA for the purpose of the review of existing consumer credit facilities ~~(whether within or outside the transitional period)~~:

2.14.12.13.1 the credit provider shall, before making such access, take such steps as may be reasonably practicable in the circumstances to notify the individual of⁴⁴¹³:

2.14.1.12.13.1.1 the fact that his data are being so accessed upon the review of his existing consumer credit

⁴²¹¹ If the credit provider fails to notify the individual of the fact that a credit report has been considered, or fails to inform such individual how to contact the CRA who provided the credit report, this will give rise to a presumption of contravention of DPP2(1) under section 13(2) of the Ordinance.

⁴³¹² If, despite the request of the individual whose consumer credit data held by the CRA has been corrected, the credit provider fails to use a new credit report obtained from the CRA as a basis for its reconsideration of the credit application, this will give rise to a presumption of contravention of DPP2(1) under section 13(2) of the Ordinance.

⁴⁴¹³ If the credit provider, in situations other than those mentioned in clause 2.14.1.32.13.1.3 or 2.14.1.42.13.1.4, fails to take such steps as may be reasonably practicable in the circumstances to give prior notification to the individual of the matters provided for in clauses 2.14.1.12.13.1.1 and 2.14.1.22.13.1.2, this will give rise to a presumption of contravention of DPP1(2) under section 13(2) of the Ordinance.

facilities; and

~~2.14.1.22.13.1.2~~ the specific matter or matters, as provided for in clause 2.9.3, 2.9.4 or 2.9.5, to be considered by the credit provider upon such a review,

except that no such notification by the credit provider shall be necessary:

~~2.14.1.32.13.1.3~~ where the review of existing consumer credit facilities has been initiated by a request from the individual; or

~~2.14.1.42.13.1.4~~ where there is in place, at the time of the access, a loan restructuring arrangement in relation to debts owed by the individual to the credit provider; and

~~2.14.22.13.2~~ the credit provider shall, upon making such access, create, and thereafter keep for a period of 2 years, an internal record of the notification given to the individual pursuant to clause ~~2.14.12.13.1~~ or, where applicable, the specific matter as provided for in clause ~~2.14.1.32.13.1.3~~ or ~~2.14.1.42.13.1.4~~ which made such a notification unnecessary⁴⁵¹⁴.

Request to CRA for deletion of data after account termination

Request on instructions from individual

~~2.15.2.14~~ Where a credit provider has provided to a CRA any account data relating to an account, if within 5 years after account termination, the credit provider receives instructions from the individual to whom such account relates (or, if the account relates to more than one individuals, their joint instructions) to make a request to the CRA to delete such account data from its database, the credit provider shall, as soon as reasonably practicable upon the receiving of the instructions, check from its own records whether both of the following conditions are satisfied, namely:

~~2.15.12.14.1~~ that the account has been settled by full payment (other

⁴⁵¹⁴ If the credit provider, upon accessing the consumer credit data of an individual held by a CRA for the purpose of the review of existing consumer credit facilities, fails to create, or thereafter fails to keep for a period of 2 years, the internal record referred to in clause ~~2.14.22.13.2~~, this will give rise to a presumption of contravention of DPP1(2) under section 13(2) of the Ordinance.

than payment by refinancing of the debit balance on the account by the credit provider); and

~~2.15.22.14.2~~ that there has not been, within 5 years immediately before account termination, any material default on the account (whether or not such default period fell entirely within those 5 years).⁵

and shall, upon verifying that both conditions are satisfied, make the request to the CRA as soon as reasonably practicable, or alternatively, upon verifying that one of the said conditions is not satisfied, notify the individual as soon as reasonably practicable its rejection of the instructions, and the reason for such rejection⁺⁶¹⁵.

Providing of consumer credit data by credit provider to DCA

Matters to be satisfied with before providing data

~~2.16.2.15~~ On or before providing any consumer credit data to a DCA for debt collection against an individual, a credit provider shall ensure that⁺⁷¹⁶:

~~2.16.12.15.1~~ a formal contract has been executed to require, or written instructions have been issued under such a contract to require, the DCA to follow such conduct as stipulated by the Banking Code or similar industry codes (if any) in relation to debt collection activities; and

~~2.16.22.15.2~~ the credit provider is satisfied with the reputation of such DCA, on the basis of previous dealings with the DCA or other reasonable grounds, that the agency will fully comply with the requirement as aforesaid.

Data to be provided

~~2.17.2.16~~ Subject to clause ~~2.16.2.15~~, if a credit provider engages a DCA for collection against an individual in default, it may provide to the agency only information relating directly to the individual consisting of the following⁺⁸¹⁷:

⁺⁶¹⁵ If the credit provider fails to handle the instructions from the individual for the deletion of the account data in accordance with this clause ~~2.15.2.14~~, this will give rise to a presumption of contravention of DPP3 under section 13(2) of the Ordinance.

⁺⁷¹⁶ If the credit provider fails to ensure the matters set out in this clause before providing any consumer credit data to a DCA, this will give rise to a presumption of contravention of DPP3 under section 13(2) of the Ordinance.

⁺⁸¹⁷ If the credit provider provides to a DCA any consumer credit data relating to an individual

~~2.17.12.16.1~~ particulars to enable identification and location of the individual, including address and contact information;

~~2.17.22.16.2~~ the nature of the credit;

~~2.17.32.16.3~~ amount to be recovered and details of any goods subject to repossession.

Accuracy of data provided

~~2.182.17~~ A credit provider shall only provide consumer credit data to a DCA after checking the data for accuracy. If the amount in default is subsequently repaid in full or in part, or if any scheme of arrangement is entered into with the individual, or if the credit provider discovers any inaccuracy in the data which have been provided to and which the credit provider reasonably believes are being retained by the DCA, the credit provider shall notify the DCA as soon as reasonably practicable of such fact¹⁹¹⁸.

Data security and system integrity safeguards by credit provider

Engagement of CRA

~~2.192.18~~ In deciding on the engagement of a CRA for the provision of consumer credit reference service, and in considering, from time to time, the continued engagement of such CRA, a credit provider shall treat as an important criterion the demonstration by the CRA of its compliance with the requirements of the Ordinance and of the Code, including compliance with the recommended good practice laid down in clauses 3.14 to 3.17 below, regarding the security of consumer credit data²⁰¹⁹.

Measures to take in preparation for subscription to consumer credit reference service

~~2.202.19~~ On or before a credit provider's subscription to the consumer credit

other than those permitted under this clause ~~2.172.16~~, this will give rise to a presumption of contravention of DPP3 under section 13(2) of the Ordinance.

¹⁹¹⁸ If the credit provider fails to check the accuracy of the data before providing such data to a DCA, or if it fails to notify the DCA of any inaccuracy of the data that it has provided to the DCA after discovering such inaccuracy, this will give rise to a presumption of contravention of DPP2(1) under section 13(2) of the Ordinance.

²⁰¹⁹ If the credit provider, in deciding on the engagement of the CRA and in considering, from time to time, the continued engagement of such CRA, fails to treat as an important criterion the demonstration by the CRA of its compliance with the requirements of the Ordinance and of the Code regarding the security of consumer credit data, this will give rise to a presumption of contravention of DPP4 under section 13(2) of the Ordinance.

reference service of a CRA, the credit provider shall take appropriate measures, including the following, to safeguard against any improper access to or mishandling of consumer credit data²⁴²⁰:

2.20.12.19.1 develop written guidelines and disciplinary procedures specifying the controls and procedures to be followed by its staff in relation to the access to and the use of a CRA's database;

2.20.22.19.2 establish controls, including but not limited to password controls, to ensure that only authorized staff are allowed access to a CRA's database;

2.20.32.19.3 enter into a formal written agreement with the CRA whose consumer credit reference service is being subscribed for, which shall specify :

2.20.3.12.19.3.1 the duty of both parties to comply with the Code in providing and in utilizing the consumer credit reference service;

2.20.3.22.19.3.2 the conditions under which the credit provider may access consumer credit data held by the CRA;

2.20.3.32.19.3.3 the controls and procedures to be applied when the credit provider seeks access to the CRA's database.

Measures to take in daily operations

2.21.2.20 A credit provider shall take appropriate measures, including the following, to safeguard against any improper access to or mishandling of consumer credit data in its daily operations²²²¹:

2.21.12.20.1 the credit provider shall maintain a system whereby its senior management is provided with regular reports regarding instances of access to a CRA's database made during the period since the last report, to facilitate overall monitoring and to enable the detection of anomalous trends in access, if any;

²⁴²⁰ If a credit provider, in preparation for subscription to a consumer credit reference service, fails to take any of the measures required under clause 2.20.19 to safeguard against any improper access to or mishandling of consumer credit data held by it, this will give rise to a presumption of contravention of DPP4 under section 13(2) of the Ordinance.

²²²¹ If a credit provider, in its daily operations, fails to take any of the measures required under clause 2.21.20 to safeguard against any improper access to or mishandling of consumer credit data held by it, this will give rise to a presumption of contravention of DPP4 under section 13(2) of the Ordinance.

2.21.22.20.2 in case any anomalous trends in access have been identified, or upon receiving from a CRA a report of suspected abnormal access pursuant to clause 3.13.1, the credit provider shall as soon as reasonably practicable conduct an internal investigation to ascertain whether such anomalous trends in access or suspected abnormal access (as the case may be) has been the result of:

2.21.2.12.20.2.1 improper access or other mishandling of data by any person (including but not limited to its staff), in contravention of the requirements of the Ordinance or of the Code; or

2.21.2.22.20.2.2 any defect in its system of handling consumer credit data which may have enabled or facilitated such improper access or mishandling;

2.21.32.20.3 if as the result of the investigation, the credit provider discovers any improper access, mishandling or defect as aforesaid, the credit provider shall, as soon as reasonably practicable, take appropriate action to prevent any further improper access or mishandling or to rectify the defect, as the case may be (including but not limited to disciplinary action against its staff, or reporting any case of suspected contravention of the Ordinance or other laws to the Commissioner or other relevant authorities, as the case may be);

2.21.42.20.4 the credit provider shall maintain a log of:

2.21.4.12.20.4.1 all instances of anomalous trends in access identified by it, and all reports of suspected abnormal access made to it by a CRA;

2.21.4.22.20.4.2 the actions taken by it as a result of the above including a description of the investigation undertaken, the result and any action taken consequent thereon;

2.21.4.32.20.4.3 attempts made by it to access account data held by a CRA for the purpose of the review of existing consumer credit facilities, including the specific matter or matters provided for in clause 2.9.3, 2.9.4 or 2.9.5 that has been considered upon such a review;

and shall keep such log for not less than two years for examination by the Commissioner if and when required;

2.21.52.20.5 the credit provider shall review on a regular and frequent

basis its password controls which help to ensure that only authorized staff are allowed access to a CRA's database.

III THE HANDLING OF CONSUMER CREDIT DATA BY CREDIT REFERENCE AGENCIES

Collection of consumer credit data by CRA

Scope of data to be collected

- 3.1 A CRA may, for the consumer credit reference service which it provides, collect the following items of personal data²³²²:
- 3.1.1 general particulars of an individual as follows: name, sex, address, contact information, date of birth, Hong Kong Identity Card Number or travel document number;
 - 3.1.2 consumer credit data as permitted to be provided by a credit provider to the CRA under clause 2.4, including the identity of the credit provider and the date of the providing of such data;
 - 3.1.3 public record and related data, being data in official records that are publicly available relating to any action for the recovery of a debt or judgements for monies owed entered against the individual, and any declaration or discharge of bankruptcy appearing on official records or as notified to the CRA by the individual pursuant to clause 3.3.2;
 - 3.1.4 watch list data, being a list of credit providers who wish to be notified and provided information to assist in debt collection if an individual in default has reappeared in the system;
 - 3.1.5 file activity data, being record of a credit provider accessing an individual's personal data held by the CRA under the consumer credit reference service provided;
 - 3.1.6 credit score data, being the score that results or resulted from applying consumer credit scoring to an individual;
 - 3.1.7 notification by the Transport Department under clause 3.10.2;
 - 3.1.8 any other type of personal data as described in Schedule 3 subject to the conditions therein mentioned, as may from time to time be amended by the Commissioner.

²³²² If a CRA, for the consumer credit reference service which it provides, collects personal data other than those permitted under clause 3.1, this will give rise to a presumption of contravention of DPP1(1) under section 13(2) of the Ordinance.

Retention of consumer credit data by CRA

Retention of account general data

3.2 Where a CRA has collected from a credit provider any account general data ~~(comprising of account general data and account repayment data)~~, the CRA may thereafter retain the same account general data in its database for ~~so long as there remain in such database any account repayment data relating to the same account.~~²⁴²³ the following periods ~~:-~~

3.2.1 in relation to account general data of residential mortgage loan, for so long as there remain in such database any account repayment data relating to the same account; or

3.2.2 in relation to account general data of all other accounts, for so long as there remain in such database any account repayment data relating to the same account or until the termination of the account, whichever is later.

Retention of account repayment data revealing default period in excess of 60 days

3.3 Where a CRA has collected from a credit provider any account repayment data relating to an individual that reveal a material default, the CRA may thereafter retain the account repayment data in its database until the earlier of²⁵²⁴:

3.3.1 the expiry of 5 years from the date of final settlement of the amount in default (~~including or final~~ settlement of the amounts payable pursuant to a scheme of arrangement with the credit provider); or

3.3.2 the expiry of 5 years from the date of the individual's discharge from bankruptcy, as notified to the CRA by such individual and evidenced by the relevant certificate of discharge issued by the Court of First Instance or by a written notice from the Official Receiver stating that the Official Receiver has no objection to a certificate of discharge being issued to the individual,

irrespective of any write-off by the credit provider of the amount in

²⁴²³ If a CRA retains in its database any account general data beyond the period permitted under this clause 3.2, subject to clause 3.7, this will give rise to a presumption of contravention of DPP2(2) under section 13(2) of the Ordinance.

²⁵²⁴ If a CRA retains in its database any account repayment data described in this clause 3.3 beyond the period permitted for the retention of such data under this clause, subject to clause 3.7, this will give rise to a presumption of contravention of DPP2(2) under section 13(2) of the Ordinance.

default in full or in part at any time after such default occurred (if such be the case).

Retention of account repayment data not revealing default period in excess of 60 days

3.4 Subject to Clause 3.4A, where ~~Where~~ a CRA has collected from a credit provider any account repayment data that do not reveal a material default, the CRA may thereafter, in respect of each individual item of data collected, retain the same in its database for a period of 5 years from the date of creation of such data, provided that if the account is in the meantime terminated, then subject to clause 3.5.2, the CRA may continue to retain the account repayment data in its database until the expiry of 5 years after account termination²⁶²⁵.

3.4A Where the account general data relating to an individual reveal a status of write-off due to a bankruptcy order being made against the individual, the CRA may retain in its database the account repayment data at the time of write-off until the earlier of:

3.4A.1 the expiry of 5 years from the date of final settlement of the outstanding amount at the time of write-off (or final settlement of the amount payable pursuant to a scheme of arrangement made through the Official Receiver with the credit provider); or

3.4A.2 the expiry of 5 years from the date of the individual's discharge from bankruptcy, as notified to the CRA by such individual and evidenced by the relevant certificate of discharge issued by the Court of First Instance or by a written notice from the Official Receiver stating that the Official Receiver has no objection to a certificate of discharge being issued to the individual.

Deletion of data after account termination pursuant to individual's request

3.5 Notwithstanding clause 3.4, if a CRA has collected any account data from a credit provider and within 5 years after the termination of the account the CRA receives from the credit provider a request under clause ~~2.15~~2.14 for the deletion of the account data from its database, the CRA shall:

3.5.1 verify from its database as soon as reasonably practicable that there has not been, within 5 years immediately before account

²⁶²⁵ If a CRA retains in its database any account repayment data described in this clause 3.4 beyond the period permitted for the retention of such data under this clause, subject to clause 3.7, this will give rise to a presumption of contravention of DPP2(2) under section 13(2) of the Ordinance.

termination, any material default (whether or not such default period fell entirely within those 5 years); and

3.5.2 having thus verified from its database, delete as soon as reasonably practicable from its database any account data relating to such terminated account²⁷²⁶,

provided that if the CRA discovers from its database that there has apparently been a material default within 5 years immediately before account termination, the CRA shall then clarify the matter with the credit provider as soon as reasonably practicable. The CRA shall, in the meantime, be under no obligation to delete the account data until it shall have clarified the matter with the credit provider²⁸²⁷.

Retention of other consumer credit data

3.6 Where a CRA has collected any consumer credit data other than account data, it may thereafter retain such data in its database for the following periods²⁹²⁸:

3.6.1 public record and related data under clause 3.1.3, except data relating to a declaration or discharge of bankruptcy: the period of 7 years from the date of the event shown in the official record;

3.6.2 public record and related data under clause 3.1.3 relating to a declaration or discharge of bankruptcy: the period of 8 years from the relevant declaration of bankruptcy;

3.6.3 credit application data under clause 2.4.2: the period of 5 years from the date of the reporting of the application;

3.6.4 credit card loss data under clause 2.4.4: the period of 5 years from the date of report of the loss of the credit card;

²⁷²⁶ If the CRA, having received instructions from the credit provider, fails to verify from its database as soon as reasonably practicable that there has not been, within 5 years immediately before account termination, any material default on the account, or, having so verified, fails to delete the account data as soon as reasonably practicable from its database, this will give rise to a presumption of contravention of DPP2(1) and/or DPP2(2) under section 13(2) of the Ordinance.

²⁸²⁷ If the CRA, having discovered from its database that there has apparently been a material default on the account within 5 years immediately before account termination, fails to clarify the matter with the credit provider as soon as reasonably practicable, this will give rise to a presumption of contravention of DPP2(1) under section 13(2) of the Ordinance.

²⁹²⁸ If a CRA retains in its database any consumer credit data described in this clause 3.6 beyond the period permitted for the retention of such data under this clause, subject to clause 3.7, this will give rise to a presumption of contravention of DPP2(2) under section 13(2) of the Ordinance.

- 3.6.5 file activity data under clause 3.1.5: the period of 5 years from the date of creation of such data;
- 3.6.6 credit score data under clause 3.1.6: until the end of the next business day following the date of creation of such data;
- 3.6.7 general particulars of an individual: for as long as there are other consumer credit data related to the individual contained in the database of the CRA.

Retention of exempted data

- 3.7 For the avoidance of doubt, notwithstanding any provision to the contrary in the Code, in a situation where exemption from DPP3 under section 62 of the Ordinance applies to certain consumer credit data held by the CRA (including, for example, such data used or to be used by the CRA for the development of a consumer credit scoring model intended to be of general application), the data may continue to be retained by the CRA for so long as such exemption applies.

Use of consumer credit data by CRA

Providing of credit report

- 3.8 In response to the seeking of access by a credit provider to consumer credit data relating to an individual pursuant to clause 2.9 ~~or 2.10~~, a CRA may provide to the credit provider a credit report on the individual. The credit report may contain any of the consumer credit data relating to the individual permitted to be collected and retained by the CRA, subject to the following constraints which apply to particular categories of consumer credit data³⁰²⁹:
 - 3.8.1 credit application data under clause 2.4.2, credit card loss data under clause 2.4.4 and file activity data under clause 3.1.5: confined to such data created for not more than 2 years; and
 - 3.8.2 account data under clause 2.4.3 and the derivatives deriving directly from such account data:
 - 3.8.2.1 the credit report shall not reveal the identity of the credit provider who provided such account data or the account number, unless the credit report is to be provided to that same credit provider;

³⁰²⁹ If, in the absence of any applicable exemption, a CRA uses any consumer credit data otherwise than in a way permitted under clause 3.8 or 3.10, this will give rise to a presumption of contravention of DPP3 under section 13(2) of the Ordinance.

3.8.2.2 the credit report shall not contain:

3.8.2.2.1 in relation to ~~an active~~ a terminated account, any account repayment data created more than 2 years before the ~~date of providing the credit report~~ account termination date; or

3.8.2.2.2 in relation to an account other than a terminated account, any account repayment data created more than 2 years before the ~~account termination date~~ of providing the credit report;

unless there has been any material default or write-off due to a bankruptcy order being made against the individual within 5 years before the providing of the credit report, in which case, the credit report may contain, in addition to the account repayment data described in clause 3.8.2.2.1 or 3.8.2.2.2 (as the case may be), also the default data relating to such material default or material defaults and/or the outstanding balance at the time of such write-off; and

~~3.8.2.3 the credit report, if provided at any time during the transitional period, shall not contain any account data other than the account data described in clause 2.10.5, 2.10.6 or 2.10.7, unless the credit report is provided to a credit provider who has confirmed to the CRA, pursuant to clause 2.11.1 above, that the access has been made under any of the circumstances provided for in clause 2.10.1, 2.10.2, 2.10.3 or 2.10.4; and~~

~~3.8.2.4~~ 3.8.2.3 without prejudice to the generality of clauses 3.8.1, 3.8.2.1, ~~3.8.2.2~~ and ~~3.8.2.3~~ 3.8.2.2 above and for the avoidance of doubt, in the case of the individual being a guarantor to the repayment of a consumer credit provided to another person, the credit report of such individual may contain, in addition to the consumer credit data relating to the individual as borrower, also the account general data and the remaining available credit or outstanding balance of the guaranteed credit facility relating to that other person.

Disclosure of disputed data

3.9 If any consumer credit data provided by a credit provider to a CRA are accompanied by an indication of the existence of a dispute over the data,

then, in subsequently disclosing such data in a credit report, the CRA shall also reveal in the credit report the existence of the dispute³¹³⁰.

Other uses of consumer credit data

3.10 In addition to disclosure in a credit report pursuant to clause 3.8, a CRA may, in providing a consumer credit reference service, use any consumer credit data relating to an individual held in its database³²³¹:

3.10.1 to provide notice and information to a credit provider on a watch list, when new data of the individual in default have appeared in the system, to assist in debt collection action;

3.10.2 to provide notice to a relevant credit provider and to the Transport Department where an individual who has received credit in relation to a motor vehicle has been the subject of advice from the Department that it has received an application from the individual for a duplicate vehicle registration document;

3.10.3 to provide a report to insurers in relation to insurance cover for property related to a consumer credit transaction;

3.10.4 for reasonable internal management purposes, such as the defence of claims and the monitoring of the quality and efficiency of its service; or

3.10.5 to carry out consumer credit scoring, provided that the CRA shall not, in carrying out such scoring, take into account:

3.10.5.1 in relation to an ~~active~~—account other than a terminated account, any account data created more than 5 years before the carrying out of the scoring; or

3.10.5.2 in relation to a terminated account, any account data created more than 5 years before account termination.

³¹³⁰ If a CRA, in disclosing in a credit report any consumer credit data known to be subject to a dispute, fails to reveal in the credit report the existence of such dispute, this will give rise to a presumption of contravention of DPP2(1) under section 13(2) of the Ordinance.

³²³¹ For the consequence of a CRA using any consumer credit data in its database otherwise than in a way permitted under clause 3.10, see Note ~~30-29~~ to clause 3.8 above.

Data security and system integrity safeguards by CRA

Measures to take in preparation for providing consumer credit reference service

- 3.11 On or before providing consumer credit reference service to a credit provider, a CRA shall take appropriate measures, including the following, to safeguard against any improper access to or mishandling of consumer credit data held by it³³³²:
- 3.11.1 enter into a formal written agreement with the credit provider as subscriber for such service, which shall specify:
 - 3.11.1.1 the duty of both parties to comply with the Code in providing and in utilizing the consumer credit reference service;
 - 3.11.1.2 the conditions under which the credit provider may access consumer credit data held by the CRA;
 - 3.11.1.3 the controls and procedures to be applied when such credit provider seeks access to the CRA's database;
 - 3.11.2 establish controls to ensure that only data to which a subscriber is entitled are released;
 - 3.11.3 train staff in relation to the Ordinance and the Code and, in particular, good security practice;
 - 3.11.4 develop written guidelines, and disciplinary or contractual procedures in relation to the proper use of access authorities by staff, external contractors or subscribers;
 - 3.11.5 ensure that adequate protection exists to minimize, as far as possible, the risk of unauthorized entry into the database or interception of communications made to and from the database.

Measures to take in daily operations

- 3.12 A CRA shall take appropriate measures in its daily operations, including the following, to safeguard against any improper access to or mishandling of consumer credit data held by it³⁴³³.

³³³² If a CRA, in preparation for providing a consumer credit reference service, fails to take any of the measures required under clause 3.11 to safeguard against any improper access to or mishandling of the consumer credit data held by it, this will give rise to a presumption of contravention of DPP4 under section 13(2) of the Ordinance.

³⁴³³ If a CRA, in its daily operations, fails to take any of the measures required under clause 3.12 or 3.13 to safeguard against any improper access to or mishandling of the consumer

- 3.12.1 review on a regular and frequent basis its password controls which help to ensure that only authorized staff are allowed access to its database;
- 3.12.2 monitor and review on a regular and frequent basis usage of the database, with a view to detecting and investigating any unusual or irregular patterns of access or use;
- 3.12.3 ensure that practices in relation to the deletion and disposal of data are secure, especially where records or discs are to be disposed of off-site or by external contractors;
- 3.12.4 maintain a log of all incidents involving a proven or suspected breach of security, which includes an indication of the records affected, an explanation of the circumstances and action taken.

Log of access etc. by credit provider

3.13 Without prejudice to the generality of clause 3.12 above, a CRA shall³⁵³⁴:

- 3.13.1 in the case of there being any suspected abnormal access by a credit provider, report such suspected abnormal access as soon as reasonably practicable to the senior management of the credit provider and to the Commissioner;
- 3.13.2 maintain a log of all instances of access to its database by credit providers, which log shall include:
 - 3.13.2.1 the identity of the credit provider seeking access;
 - 3.13.2.2 the date and time of access;
 - 3.13.2.3 the identity of the individual whose data were so accessed;
 - 3.13.2.4 the circumstances provided for in clause 2.8, ~~2.9~~ or ~~2.10~~2.9 under which the access has been made (as confirmed by the credit provider pursuant to clause ~~2.11~~2.10.1);
 - 3.13.2.5 in the case where the access has been made in the

credit data held by it, this will give rise to a presumption of contravention of DPP4 under section 13(2) of the Ordinance.

³⁵³⁴ For the consequence of a CRA failing to take any of the measures described in this clause 3.13, see Note ~~34~~33 to clause 3.12.

course of the review of existing consumer credit facilities under clause 2.9.1.2, the specific matter or matters provided for in clause 2.9.3, 2.9.4 or 2.9.5 (as confirmed by the credit provider pursuant to clause ~~2.11.22.10.2~~); and

3.13.2.6 instances of reporting by the CRA of suspected abnormal access to the senior management of a credit provider and to the Commissioner,

and shall keep such a log for not less than 2 years for examination by its compliance auditor and/or by the Commissioner, as the case may be.

Compliance audit of CRA

Compliance audit

3.14 As a recommended practice, a CRA shall consider engaging, at its expense, an independent compliance auditor as may be approved (or, at the election of the Commissioner, to be nominated) by the Commissioner, to conduct regular compliance audits on the way in which the CRA provides the consumer credit reference service, including the security of consumer credit data held by the CRA in its database, and the adequacy and efficiency of the measures taken by it to comply with the requirements of the Ordinance and the Code.

The first compliance audit

3.15 The first of such compliance audits shall be carried out within 6 months from the effective date, with a view to having the compliance auditor submit its audit report to the Commissioner for his consideration within 3 months from the commencement of the compliance audit. In addition to the matters mentioned in clause 3.14, the first compliance audit shall address, in particular, the adequacy of the data handling system of the CRA in accordance with the provisions of the Code.

Commissioner's approval of report

3.16 If the Commissioner does not approve the first compliance audit report provided to him, he may, by written notice to the CRA, direct the CRA to take such steps as may be considered necessary for ensuring better compliance with the requirement of the Code and/or the Ordinance, thereafter to arrange for a further compliance audit to be carried out, and for such further audit report to be submitted to the Commissioner for his reconsideration within such period as the Commissioner may

specify.

Regular audits after Commissioner's approval

- 3.17 Upon the receipt of a notice from the Commissioner under clause 3.16, the CRA shall duly comply with the Commissioner's directions, and clause 3.16 shall continue to apply to the CRA until the Commissioner gives his approval to a compliance audit report submitted. From the date of such approval onwards, the CRA shall continue to arrange for compliance audits to be conducted at intervals not exceeding 12 months and, in each instance, for audit reports to be provided to the Commissioner for his consideration and/or comments within 3 months from the commencement of the compliance audit.

Data Access and Correction Request to CRA

Compliance with data access request

- 3.18 As a recommended practice, a CRA shall seek to respond promptly to a data access request in respect of personal data held by it brought by an individual who advises that he has been refused credit by a credit provider to whom a credit report on him has been provided by the CRA. Where such an access request is made at the office of the CRA, the copy of the data held shall, if practicable, be provided forthwith to the individual, or else be dispatched by mail to the individual not later than 3 working days from the date of the request.

Verification with credit provider

- 3.19 Upon receiving a request for correction of consumer credit data provided by a credit provider, the CRA shall promptly consult the credit provider. If the CRA does not receive from the credit provider any written confirmation or correction of the disputed data within 40 days from the correction request, the relevant data shall upon expiry of the 40 days be deleted or otherwise amended as requested³⁶³⁵.

Verification of public record data

- 3.20 Upon receiving a request for correction of consumer credit data being public record data, the CRA shall wherever practicable verify the accuracy of such data by checking the relevant public records. If no such verification is obtained within 40 days from the date of the correction request, the public record data shall upon expiry of the 40

³⁶³⁵ If a CRA fails to respond to a data correction request in accordance with clauses 3.19 or 3.20, this will give rise to a presumption of contravention of section 23 under section 13(2) of the Ordinance.

days be deleted or otherwise amended as requested, except where the individual alleges any inaccuracy in the data which is not apparent on the face of the public records, it shall in that case be incumbent on the individual to provide proof of such inaccuracy³⁷³⁶.

³⁷³⁶ For the consequence of a CRA failing to respond to a data correction request in accordance with this clause, see Note ~~36-35~~ to clause 3.19.

IV GENERAL

No effect on duty of confidentiality

- 4.1 For the avoidance of doubt, nothing in Parts I to III of the Code affects the application of the law of confidentiality in relation to consumer credit data. In particular, in a situation where, under the general law, a credit provider or a CRA owes a duty of confidentiality to an individual in respect of the consumer credit data relating to such individual, none of the provisions in Parts I to III of the Code shall have, or purport to have, the effect of abrogating, limiting or otherwise modifying such duty under the general law.

SCHEDULE 1

Credit providers

- (1) an authorized institution within the meaning of section 2 of the Banking Ordinance (Cap. 155)
- (2) a subsidiary of an authorized institution within the meaning of section 2 of the Banking Ordinance (Cap. 155) (the term “subsidiary” shall have the same meaning as in section 2 of the Companies Ordinance, Cap. 32)
- (3) a money lender licensed under the Money Lenders Ordinance (Cap. 163)
- (4) a person whose business (whether or not the person carries on any other business) is that of providing finance for the acquisition of goods by way of leasing or hire-purchase

SCHEDULE 2

Account data as described in clause 2.4.3

- (A) Account general data, being:
- identity of the credit provider;
 - account number;
 - capacity of the individual (whether as borrower or as guarantor);
 - account opened date;
 - account closed date;
 - type of the facility and currency denominated;
 - approved credit limit or loan amount (as appropriate);
 - repayment period or terms (if any);
 - account status (active, closed, write-off, etc.);
 - facility maturity date (if any);
 - details of any scheme of arrangement, including:
 - the date of the arrangement, the number and frequency of installments, the installment amount, etc.; and
 - in the case of a hire-purchase, leasing or charge account, including:
 - account expiry date, type of security, investigation date, installment amount, etc;
 - particulars for the identification of the motor vehicles, equipment, vessels or the asset secured by the charge, and notification of termination of the charge.
- (B) Account repayment data, being:
- amount last due;
 - amount of repayment made during the last reporting period;
 - remaining available credit or outstanding balance;
 - default data being:
 - amount past due (if any) and number of days past due;
 - date of settlement of amount past due (if any);
 - date of final settlement of amount in material default (if any).

SCHEDULE 3

Types of personal data a credit reference agency may collect under clause 3.1.8 and the conditions (if any) subject to which such collection may take place

APPENDIX I
Personal Data (Privacy) Ordinance
Schedule 1

DATA PROTECTION PRINCIPLES

1. Principle 1 - purpose and manner of collection of personal data

(1) Personal data shall not be collected unless-

- (a) the data are collected for a lawful purpose directly related to a function or activity of the data user who is to use the data;
- (b) subject to paragraph (c), the collection of the data is necessary for or directly related to that purpose; and
- (c) the data are adequate but not excessive in relation to that purpose.

(2) Personal data shall be collected by means which are-

- (a) lawful; and
- (b) fair in the circumstances of the case.

(3) Where the person from whom personal data are or are to be collected is the data subject, all practicable steps shall be taken to ensure that-

- (a) he is explicitly or implicitly informed, on or before collecting the data, of-
 - (i) whether it is obligatory or voluntary for him to supply the data; and
 - (ii) where it is obligatory for him to supply the data, the consequences for him if he fails to supply the data; and
- (b) he is explicitly informed-
 - (i) on or before collecting the data, of-
 - (A) the purpose (in general or specific terms) for which the data are to be used; and
 - (B) the classes of persons to whom the data may be transferred; and
 - (ii) on or before first use of the data for the purpose for which they were collected, of-
 - (A) his rights to request access to and to request the correction of the data, and
 - (B) the name and address of the individual to whom any such request may be made,

unless to comply with the provisions of this subsection would be likely to prejudice the purpose for which the data were collected and that purpose is specified in Part VIII of this Ordinance as a purpose in relation to which personal data are exempt from the provisions of data protection principle 6.

2. Principle 2 - accuracy and duration of retention of personal data

(1) All practicable steps shall be taken to ensure that-

(a) personal data are accurate having regard to the purpose (including any directly related purpose) for which the personal data are or are to be used;

(b) where there are reasonable grounds for believing that personal data are inaccurate having regard to the purpose (including any directly related purpose) for which the data are or are to be used-

(i) the data are not used for that purpose unless and until those grounds cease to be applicable to the data, whether by the rectification of the data or otherwise; or

(ii) the data are erased;

(c) where it is practicable in all the circumstances of the case to know that-

(i) personal data disclosed on or after the appointed day to a third party are materially inaccurate having regard to the purpose (including any directly related purpose) for which the data are or are to be used by the third party; and

(ii) that data were inaccurate at the time of such disclosure, that the third party-

(A) is informed that the data are inaccurate; and

(B) is provided with such particulars as will enable the third party to rectify the data having regard to that purpose.

(2) Personal data shall not be kept longer than is necessary for the fulfillment of the purpose (including any directly related purpose) for which the data are or are to be used.

3. Principle 3 - use of personal data

Personal data shall not, without the prescribed consent of the data subject, be used for any purpose other than-

(a) the purpose for which the data were to be used at the time of the collection of the data; or

(b) a purpose directly related to the purpose referred to in paragraph (a).

4. Principle 4 - security of personal data

All practicable steps shall be taken to ensure that personal data (including data in a form in which access to or processing of the data is not practicable) held by a data user are protected against unauthorized or accidental access, processing, erasure or other use having particular regard to-

- (a) the kind of data and the harm that could result if any of those things should occur;
- (b) the physical location where the data are stored;
- (c) any security measures incorporated (whether by automated means or otherwise) into any equipment in which the data are stored;
- (d) any measures taken for ensuring the integrity, prudence and competence of persons having access to the data, and
- (e) any measures taken for ensuring the secure transmission of the data.

5. Principle 5 - information to be generally available

All practicable steps shall be taken to ensure that a person can-

- (a) ascertain a data user's policies and practices in relation to personal data;
- (b) be informed of the kind of personal data held by a data user;
- (c) be informed of the main purposes for which personal data held by a data user are or are to be used.

6. Principle 6 - access to personal data

A data subject shall be entitled to-

- (a) ascertain whether a data user holds personal data of which he is the data subject;
- (b) request access to personal data-
 - (i) within a reasonable time;
 - (ii) at a fee, if any, that is not excessive;
 - (iii) in a reasonable manner; and
 - (iv) in a form that is intelligible;
- (c) be given reasons if a request referred to in paragraph (b) is refused;
- (d) object to a refusal referred to in paragraph (c);
- (e) request the correction of personal data;
- (f) be given reasons if a request referred to in paragraph (e) is refused; and
- (g) object to a refusal referred to in paragraph (f). ”