

Personal Data (Privacy) Ordinance

**Proposed Revisions to the
Code of Practice on Consumer Credit Data**

Report on Public Consultations held in 2007 and 2011

21 March 2011



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

Table of Content

Preface	1
Part I – Background	2
<i>Introduction</i>	<i>2</i>
<i>Key Features of the Financial Services Industry’s Proposal</i>	<i>2</i>
Part II – The Public Consultation Exercise	5
<i>The Consultation Document</i>	<i>5</i>
<i>Consultation Activities</i>	<i>6</i>
<i>Submissions Received</i>	<i>7</i>
Part III – Public Views on Justifications for the Proposals.....	9
<i>Potential for More Favourable Terms and Pricing on Credit Facilities</i>	<i>9</i>
CCF’s Justification.....	9
Views Received – Supporting.....	9
Views Received – Against	10
Face-to-Face Interview Results.....	12
<i>Promoting Long Term Stability of Property Market and Benefitting the Economy... 13</i>	
CCF’s Justification.....	13
Views Received – Supporting.....	13
Views Received – Against	14
HKMA’s Further Views.....	16
Face-to-Face Interview Results.....	17
<i>Promoting Responsible Borrowing and Lending and Better Risk Management..... 18</i>	
CCF’s Justification.....	18
Views Received – Supporting.....	19
Views Received – Against	20
Face-to-Face Interview Results.....	20
<i>Safeguarding the Stability of Hong Kong’s Economic and Financial Systems..... 21</i>	
Face-to-Face Interview Results.....	21
<i>The Commissioner’s Observations and Conclusions</i>	<i>21</i>
More Favourable Terms and Pricing for Consumers.....	21
Promote Responsible Borrowing and Lending	22
Responsible Borrowing and Lending lead to Stability of Property Market and Banking System.....	23

Part IV – Public Views on Privacy Issues	24
<i>Issue 1 – Types of Mortgage Loans Proposed to be Covered</i>	24
Overview	24
Views Received – Supporting.....	24
Views Received – Against	25
HKMA’s Further Views.....	28
Views of Overseas Personal Data Protection Agencies.....	29
Face-to Face Interview Results	30
Public Perception on Proposed Sharing of Mortgage Data	33
The Commissioner’s Observations and Conclusions	34
<i>Issue 2 – Types of Mortgage Data Proposed to be Contributed and Shared</i>	36
Positive Mortgage Data.....	36
Overview.....	36
Views Received – Supporting.....	37
Views Received – Against.....	40
Face-to Face Interview Results.....	41
Negative Mortgage Data	43
Overview.....	43
Views Received – Supporting.....	43
Face-to Face Interview Results.....	43
The Commissioner’s Observations and Conclusions	44
Positive Mortgage Data.....	44
Negative Mortgage Data.....	45
Summing Up	45
<i>Issue 3 – Contribution of Pre-existing Mortgage Data</i>	45
Overview	45
Views Received – Supporting.....	46
Views Received – Against	47
Views of Overseas Personal Data Protection Agencies.....	50
Face-to Face Interview Results	50
The Commissioner’s Observations and Conclusions	53
<i>Issue 4 – Use of Mortgage Count on or after Implementation</i>	55
Overview	55
Views Received – Supporting.....	56
Views Received – Supporting but with Reservations.....	56

Views Received – Against	57
Views of Overseas Personal Data Protection Agencies.....	57
Face-to Face Interview Results	58
The Commissioner’s Observations and Conclusions	59
<i>Issue 5 – Transitional Period</i>	60
Overview	60
Views Received – Supporting.....	60
Views Received – Supporting but with Reservations.....	61
Views Received – Against	61
Face-to Face Interview Results	61
The Commissioner’s Observations and Conclusions	62
<i>Issue 6 – Implementation Safeguards</i>	62
Overview	62
Views Received – Against	63
Views Received – Supporting.....	64
Face-to Face Interview Results	69
The Commissioner’s Observations and Conclusions	70
Part V – The 2007 Public Consultation Exercise.....	74
<i>Background</i>	74
<i>Respondents to the 2007 Consultation</i>	74
(A) Technical Amendments as a Result of the Expiration of the Transitional Period	75
The Proposed Amendments.....	75
Views Received from the Consultation	75
Commissioner’s Observations and Conclusions.....	75
(B) Amendments relating to “Write-Off Account” Data	76
The Proposed Amendments.....	76
Views Received from the Consultation	78
The Proposed Clause 3.4A	78
The New Definition of “Terminated Account” under the Proposed Clause 1.26	79
The Proposed Amendment to Clause 2.1.3 and 2.2	79
The Proposed Amendments to Clause 3.8.2.2	79
The Proposed Amendments to Clause 3.10.5.1	79

Commissioner’s Observations and Conclusions.....	80
The Proposed Clause 3.4A	80
The Proposed Amendments to Clause 1.26	81
The Proposed Amendments to Clauses 2.1.3 and 2.2	81
The Proposed Amendments to Clauses 3.8.2.2 and 3.10.5.1	81
(C) Miscellaneous Amendments	82
The Proposed Amendments	82
Clause 2.7 – Updating of Account Data.....	82
Clause 3.2 – Retention of Account General Data	82
Schedule 2 item (B) – Account Repayment Data	83
Typographical Error in Clause 2.6	83
Views Received from the Consultation	83
The Proposed Amendments to Clause 2.7	83
The Proposed Amendments to Clause 3.2	84
The Proposed Addition of Item (B) in Schedule 2 to the Code	84
Commissioner’s Observations and Conclusions.....	84
The Proposed Amendments to Clause 2.7	84
The Proposed Amendments to Clause 3.2	85
(D) Other Comment Received	85

Appendices

Appendix A: Profile of Household Interviewees	86
Appendix B: Household Interview Questionnaire	89
Appendix C: List of Parties Interviewed by Policy 21 Limited	97
Appendix D: List of Organizations and Individuals with Written Submissions	98
Appendix E: Public Perception on the Proposed Sharing of Mortgage Data.....	100
Appendix F: Extract of Senior Counsel’s Advice on Sharing of Mortgage Data for Credit Assessment	106
Appendix G: List of Respondents who Submitted Written Comments	113

Preface

This report comprises the findings and conclusions of two rounds of public consultation conducted by the Privacy Commissioner for Personal Data (“the Commissioner”) in 2007 and 2011 respectively on the proposed revisions to the Code of Practice on Consumer Credit Data (“the Code”).

Consultation in January/February 2011

On 5 January 2011, the Commissioner published a consultation document on the “Sharing of Mortgage Data for Credit Assessment” in response to the proposals made by the financial services industry. The purpose is to seek public views on the proposed sharing of positive mortgage data for residential properties as well as both positive and negative mortgage data for non-residential properties. The results of the consultation are given in **Parts I to IV** of the present report.

Consultation in May/June 2007

On 22 May 2007, the Commissioner published a consultation paper proposing certain revisions be made to the Code covering three aspects, namely, (a) technical amendments as a result of the expiration on 1 June 2005 of the twenty-four month transitional period during which credit providers were generally barred from accessing positive credit data in the course of renewal or review of existing credit facilities; (b) amendments relating to the retention of the data in respect of write-off accounts due to a bankruptcy order being made; and (c) miscellaneous amendments. The results of the consultation are given in **Part V** of the present report.

This report sets out the views received, for and against, during the respective consultation periods, and the Commissioner’s observations and conclusions. A copy of the report and the submissions received may be downloaded from the PCPD’s website at: http://www.pcpd.org.hk/english/publications/files/CCD_ConsultationReport2011_e.pdf.

Acknowledgement

The Commissioner would like to thank all individuals and organizations who have thoughtfully and generously contributed to the discussion of the important privacy subject of protection of consumer credit data. Their views have been instrumental in his determination on the privacy issues involved.

Office of the Privacy Commissioner for Personal Data

21 March 2011

Part I – Background

Introduction

1.1 The Personal Data (Privacy) Ordinance (“the Ordinance”) provides for comprehensive control on the collection, accuracy, retention, use, security, transparency of policy and practices as well as access and correction of personal data. Section 12(1) and (3) of the Ordinance empower the Commissioner to issue any code of practice for providing practical guidance in respect of any requirements under the Ordinance imposed on data users and to revise the code of practice from time to time.

1.2 The Code was issued by the Commissioner to provide practical guidance to data users in Hong Kong in the handling of consumer credit data. It allows sharing amongst credit providers through the use of a central credit database operated by a credit reference agency (“CRA”) of “positive and negative” credit data of primarily unsecured consumer credit and “negative” credit data of residential mortgage loans. “Negative credit data” generally means information on default in payments. “Positive credit data” means information on loans that are not in default, i.e. an individual’s overall credit exposure and payment pattern.

1.3 Before revising any code of practice, the Commissioner is required under section 12(9) of the Ordinance to consult with such bodies representative of data users to which the code as so revised will apply and such other interested persons as he thinks fit. The Office of the Privacy Commissioner for Personal Data (“PCPD”) commenced a public consultation to seek the views of the public and stakeholders on 5 January 2011 in respect of a proposal made by the financial services industry on the extension of the credit sharing arrangement to mortgage data. The consultation ended on 8 February 2011.

Key Features of the Financial Services Industry’s Proposal

1.4 The proposal is put forward by the Consumer Credit Forum (“CCF”)¹ and supported by Hong Kong Monetary Authority (“HKMA”). It involves extending the existing credit data sharing arrangement to include positive mortgage data in respect of residential properties as well as both positive and negative mortgage data of non-residential properties. The key features of the industry’s proposal are summarised below:

¹ CCF is a joint forum of the Hong Kong Association of Banks, the Hong Kong Association of Restricted Licensed Banks and Deposit-taking Companies, the Hong Kong S.A.R. Licensed Money Lenders Association Ltd. and the Finance Houses Association of Hong Kong Limited.

(a) Mortgage loan types

The industry proposes sharing of positive credit data and negative credit data of mortgage loans granted to consumers to cover mortgage loans on residential, retail, commercial or industrial properties.

(b) Sharing of positive mortgage data

i) Each credit provider that subscribes to the CRA will contribute to the CRA the following personal data on its records relating to each of the borrowers, mortgagors and guarantors with respect to mortgage loans granted to consumers with outstanding indebtedness (the “Contributed Data”):

- (1) Name;
- (2) Capacity (i.e. whether as borrower, mortgagor or guarantor);
- (3) Hong Kong Identity Card number or travel document number;
- (4) Date of birth;
- (5) Gender;
- (6) Correspondence address; and
- (7) Account number, type of the facility, account status and closed date;

ii) the Contributed Data are considered necessary to enable the CRA to identify accurately each individual involved in a consumer mortgage loan and compile the number of mortgage loans by reference to his capacity in which he is involved (i.e. the Mortgage Count);

iii) when responding to an enquiry from a credit provider on an individual, the CRA will provide to the credit provider only the Mortgage Count attributed to that individual (and not the Contributed Data relating to that individual);

iv) a credit provider will obtain an individual’s written consent before making an enquiry with the CRA to access the individual’s Mortgage Count;

v) a credit provider will request access to the individual’s Mortgage Count for the purposes of considering granting of new consumer credit facilities or revising existing consumer credit facilities or in cases of debt restructuring, rescheduling or scheme of arrangement and, after a 24-month transitional period, general portfolio review of the individual’s credit profile and repayment ability on an ongoing basis;

vi) in order to achieve the objective of a comprehensive credit assessment of an individual and understanding his total indebtedness under all consumer

credit granted to him, a credit provider will request access to his Mortgage Count for considering, granting or revising all types of consumer credit facilities (and not only mortgage loans).

(c) Sharing of negative mortgage data

The credit providers will continue to share the same items of negative credit data as currently permitted under the existing Code. The alignment proposed by the industry relating to the types of mortgage loans covered both residential properties as well as retail, commercial and industrial properties.

1.5 To summarize, the types of consumer mortgage data proposed to be shared are positive credit data in respect of residential mortgage loans, and positive and negative consumer credit data in respect of non-residential mortgage loans, as depicted in the table below.

Products (personal accounts only)	Loan Type	Positive Credit Data	Negative Credit Data
Credit cards	Unsecured	Currently shared	Currently shared
Installment loans	Unsecured	Currently shared	Currently shared
Revolving loans	Unsecured	Currently shared	Currently shared
Hire purchase/leasing	Secured	Currently shared	Currently shared
Residential mortgage loans	Secured	Proposed to be shared	Currently shared
Non-residential mortgage loans	Secured	Proposed to be shared	Proposed to be shared

Part II – The Public Consultation Exercise

The Consultation Document

2.1 The basis of the public consultation is a consultation document compiled by PCPD. In this document, the Commissioner highlighted three factors that are central to a solution that strikes a balance between the public interest and the data privacy interest of consumers, namely, the broader public interest, the relevance of additional mortgage data to be used in credit assessment and the individual's rights to data privacy. He also identified **six privacy issues** for consultation. They are as follows:-

- (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 (CRA already holds negative mortgage data in respect of residential properties);
- (2) Whether it is appropriate to restrict, in the manner proposed by CCF, 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 (that is, number of outstanding mortgages) only;
- (3) Whether it is appropriate for the additional mortgage data in respect of pre-existing mortgages at the time of the implementation of the proposal to be contributed to the CRA, with or without prior explicit notification to the consumers;
- (4) 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;
- (5) 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' credit worthiness; and
- (6) What and how additional privacy safeguards should be imposed upon the CRA and the credit providers commensurate with an enlarged credit database and greater sharing and use of the mortgage data.

Consultation Activities

2.2 The consultation period lasted for 5 weeks during which a host of focused promotional and publicity programmes were arranged to ensure that the parties affected or potentially affected by the proposed revisions to the Code were informed and were given the opportunity to voice their opinion on the proposals. These included the following:-

(a) Media Exposure

2.3 A press conference was convened by the Commissioner on 5 January 2011 to explain the proposals put forward by industry, their justifications, and the privacy issues arising from the proposals. News of the consultation exercise were widely reported in the media on the following day, followed by extensive media reports thereafter on the views expressed by many stakeholders, including legislators, bankers, academics and newspaper columnists.

2.4 The Commissioner also attended various media interviews to explain the privacy issues involved and call for public opinion.

(b) Distribution of Consultation Document to Stakeholders

2.5 The consultation document were mailed to all major stakeholders including all Legislative Councilors, political parties, related professional organizations, trade associations and concern groups as well as members of related advisory and standing committees. Solicitation for views on the issues under consultation was made in the covering letter. Follow up calls were subsequently made with a request for interview to discuss the issues.

2.6 Copies of the consultation document are also available online from the website of the PCPD and the Public Enquiry Service Counters of Home Affairs Department.

(c) Public Forum

2.7 In addition, a public forum was organized on 18 January 2011, with invited speakers comprising representatives from the Hong Kong Association of Banks (“HKAB”) and HKMA, Mr. LAW Yuk Kai, Chief Executive of Hong Kong Human Rights Monitor, Mr. Eric CHEUNG Tat Ming, Assistant Professor, Faculty of Law, The University of Hong Kong and the Commissioner. The forum was attended by more than 40 participants and the issues for consultation were fully argued and discussed by the speakers.

(d) Face-to-face Household Interviews

2.8 To reach out to members of the public and interested parties who might not have time to read the consultation documents and/or to express a view, Policy 21 Ltd (“Policy 21”), an independent consultancy firm commissioned by the PCPD, has proactively sought the views of 803 households through face-to-face household interviews, which represented a response rate of around 61% of a stratified random sample selected from a sample listing extracted from the Register of Quarters maintained by the Census & Statistics Department, and could be regarded as representative of all households in Hong Kong. Another sample of respondents with non-residential properties, randomly selected from listings of owners with carparks, retail space, commercial and factory premises available for sales or rent, was enumerated. 74 respondents were interviewed, which represented a response rate of around 45%. A profile of the 877 household interviewees is at **Appendix A**.

2.9 During the face-to-face interviews, the key features of the proposals and the privacy issues involved were fully explained to the respondents. The questionnaire used in the interviews is at **Appendix B**. Using bar charts presented in this report, the percentages of respondents who agreed or disagreed with the proposals are analyzed and compared for respondents with or without mortgages.

(e) Other Activities

2.10 Policy 21 managed to conduct 12 in-depth interviews with representatives of the financial services industry, some academics, and key persons from some professional bodies and human rights groups. A list of the interviewees is at **Appendix C**.

2.11 Further, the Commissioner chaired a meeting with members of the Personal Data (Privacy) Advisory Committee to solicit their views and, upon request, discuss the issues with some members of the Lions Club and the Rotary Club.

Submissions Received

2.12 A total of 56 submissions were received by mail, fax or e-mails from members of the public, Legislative Councilors, District Councilor, political party, academics, members of the legal profession, public organizations, private organizations, professional bodies and associations representing various trades and industries. A complete list of the individuals and organizations that have submitted views in writing is at **Appendix D**. Copies of the written submissions have been uploaded to PCPD’s website (http://www.pcpd.org.hk/english/publications/files/submission_2011_e.pdf). Verbal comments were also received from 10 individuals through the dedicated telephone hotlines. Views gathered through face-to-face household interviews are consolidated and presented in bar charts in this report.

2.13 It is noted that the results of the household interviews do validate the views received from various submissions. For most of the issues where controversy is clearly demonstrated by the difference in views in the submissions, the difference in the percentages of interviewees between those agreeing and those disagreeing with the proposals is small. For very controversial issues like Privacy Issue 3, the difference in the percentages of interviewees between those agreeing and those disagreeing with the proposals is wide. For less controversial issues like Privacy Issue 6, the percentage of interviewees supporting PCPD's proposals is very high.

2.14 This consultation report summarizes all the public views gathered on the proposed revisions to the Code, based on the following:-

- (a) written comments received by mails, fax and e-mails, and comments received through the telephone hotlines;
- (b) comments of invited speakers at the public forum held on 18 January 2011;
- (c) comments reported in the mass media during the consultation period;
- (d) comments from members of the Personal Data (Privacy) Advisory Committee;
- (e) comments of 12 individuals interviewed by Policy 21; and
- (f) views of 803 household members and 74 respondents with non-residential properties gathered in the face-to-face interviews conducted by Policy 21.

Part III – Public Views on Justifications for the Proposals

Potential for More Favourable Terms and Pricing on Credit Facilities

CCF's Justification

3.1 In putting forward the proposals, the CCF expected that the sharing of additional mortgage data would enable credit providers to conduct more accurate credit assessment on individuals based on more comprehensive data. Credit providers may in future factor the additional mortgage data into their respective credit scoring or risk pricing models for granting credit facilities. In the experience with respect to unsecured lending, credit assessment based on more comprehensive data has resulted in more favourable interest rates for borrowers in some cases and more diversified unsecured consumer credit products as a whole.

Views Received – Supporting

3.2 HKMA², in its written submission, pointed out that since the introduction of positive credit data sharing arrangement for unsecured credit facilities in 2003, customers with favourable credit records had been able to obtain loans at lower interest rates. Credit providers were able to offer credit worthy customers the transfer of their outstanding credit card balance to personal loans for which lower interest rates were charged. The Hong Kong Mortgage Corporation Limited (“HKMC”)³ also shared similar views, emphasizing that through comprehensive credit assessment, more favourable terms and pricing might be available to those borrowers with an overall healthy credit profile.

3.3 The Finance Houses Association of Hong Kong Limited⁴ was also optimistic that there would be potential for more favourable terms and pricing on credit facilities. The Hong Kong S.A.R. Licensed Money Lenders Association Ltd., in its written submission⁵, stated that given the present level of interest rates was unexpectedly low, the room for further lowering the mortgage interest rates was not much. Their views were shared by some senior management of several banks who openly responded (and reported by the media) that the room for further lowering the current level of mortgage interest rates was limited. However, should interest rates increased in future, there would be possibilities for banks to offer lower mortgage interest rates, especially to those customers with a healthy credit profile. Besides, apart from mortgage interest rates, banks could offer more favourable terms for other credit facilities.

² Submission of HKMA dated 8 February 2011

³ Submission of HKMC dated 8 February 2011

⁴ Submission of the Finance Houses Association of Hong Kong Limited dated 2 February 2011

⁵ Submission of the Hong Kong S.A.R. Licensed Money Lenders Association Ltd. dated 27 January 2011

3.4 As reported by Sing Tao Daily on 6 January 2011, a representative of the Hong Kong Real Estate Agencies General Association believed that credit providers would be able to more reliably assess the credit worthiness of their clients. As a result, mortgage lending provided to speculators would be reduced and there would be more “users” entering the property market. The mortgage interest rate was expected to be lowered. As reported in Wen Wei Po on 6 January 2011, a representative of the Healthy Budgeting Family Debt Counselling Centre of the Tung Wah Group of Hospitals also believed that for applicants of credit facilities with healthy profile, they might be able to enjoy more favourable terms.

3.5 A member of the public, in his written submission⁶, said that the proposals would help borrowers obtain “fair” treatment by credit providers such that those with better repayment ability would be given more favourable terms in their credit facilities. The Hon. Mr. CHAN Kin Por, Legislative Councilor, in his written submission⁷ pointed out that, based on the experience of consumer credit data sharing since 2003, if banks had better information on the credit profile of their customers, they could tailor-make credit facilities that would best fit the needs of individual customers. Furthermore, through differential interest rates, bank could offer more favourable terms to those with a healthy credit profile. Dr. Billy Mak, Associate Professor, Department of Finance & Decision Sciences, Hong Kong Baptist University, during discussion with Policy 21, also held similar views.

3.6 Democratic Alliance for the Betterment and Progress of Hong Kong (“DAB”) had similar views. In its written submission⁸, DAB pointed out that with increased transparency on borrowers’ loan situations, credit providers could conduct more careful credit assessment and provide their customers with the appropriate loans. Credit providers would then be able to provide better terms to those customers with a healthy credit profile.

Views Received - Against

3.7 Internet Professional Association Ltd (“iProA”), in its written submission⁹, was of the view that to most of the borrowers, the proposals would bring little or no value, other than benefiting the banks. Thus, it was not surprising that banks would support the proposals. A member of the public¹⁰, in his written submission, pointed out that some banks and finance companies in Hong Kong were still charging very high interest rates for credit card loans, even after the introduction of positive credit data sharing for unsecured loans in 2003.

⁶ Submission of WONG Mei Seong, a member of the public, dated 7 February 2011

⁷ Submission of Hon. Mr. CHAN Kin Por, Legislative Councilor, dated 8 February 2011

⁸ Submission of DAB dated 8 February 2011

⁹ Submission of iProA dated 8 February 2011

¹⁰ Submission of Mike GRAY, a member of the public, dated 8 February 2011

3.8 As reported in the Hong Kong Economic Times on 6 January 2011, the Hon. James TO Kun Sun believed that the proposals would let credit providers obtain excessive personal data at the expense of data privacy and for the benefit of credit providers. It was not likely that the public would be benefitted. He suggested that a perfect mechanism should be in place to protect privacy.

3.9 As reported by Sing Tao Daily on 6 January 2011, Professor Eddie HUI Chi Man of the Department of Building and Real Estate, the Hong Kong Polytechnic University, pointed out that there were many local and Mainland property investors who had purchasing power and property buyers were prudent in their investment. Although the proposals would help maintain the orderly development of the property market and reduce credit providers' credit risks, the room for reduction in the mortgage interest rates depended on the speculative activities in the property market.

3.10 The Hong Kong Credit Report Association, in its written submission¹¹ and during discussion with Policy 21, pointed out that interest rates in Hong Kong were at a historically low level. Hence, it was not likely that the proposals would benefit consumers with a healthy credit profile. On the other hand, for those with less healthy credit profile, they would have difficulties in obtaining loans from banks. This group of consumers would be forced to borrow from finance companies, some of which were related to banks, which offered loans at higher interest rates.

3.11 Federation of Hong Kong Industries ("FHKI"), in its written submission¹², questioned if the proposals would bring about more favourable mortgage terms to consumers given credit providers are currently offering very low mortgage interest rates to their clients due to intensive competition. Thus, based on data privacy considerations, FHKI was not supportive of the proposed revisions on the sharing of positive consumer mortgage data.

3.12 Hong Kong Human Rights Monitor, in its written submission¹³, also questioned if the proposals would bring about more favourable credit terms to borrowers, mortgagors and guarantors. The statistics provided by the industry on the lowering of interest rates for unsecured loans after consumer credit data sharing in 2003 could not prove the causal relationship between data sharing and reduction in interest rates. The low interest rates was more likely to be due to prevailing low interest rates in other economies, and increased liquidity in the banking sector.

3.13 Consumer Council¹⁴ stated that its surveys on tax loans were quoted in the consultation document by the CCF to illustrate that reduced interest rates were offered after

¹¹ Submission of the Hong Kong Credit Report Association dated 21 January 2011

¹² Submission of FHKI dated 2 February 2011

¹³ Submission of Hong Kong Human Rights Monitor dated 8 February 2011

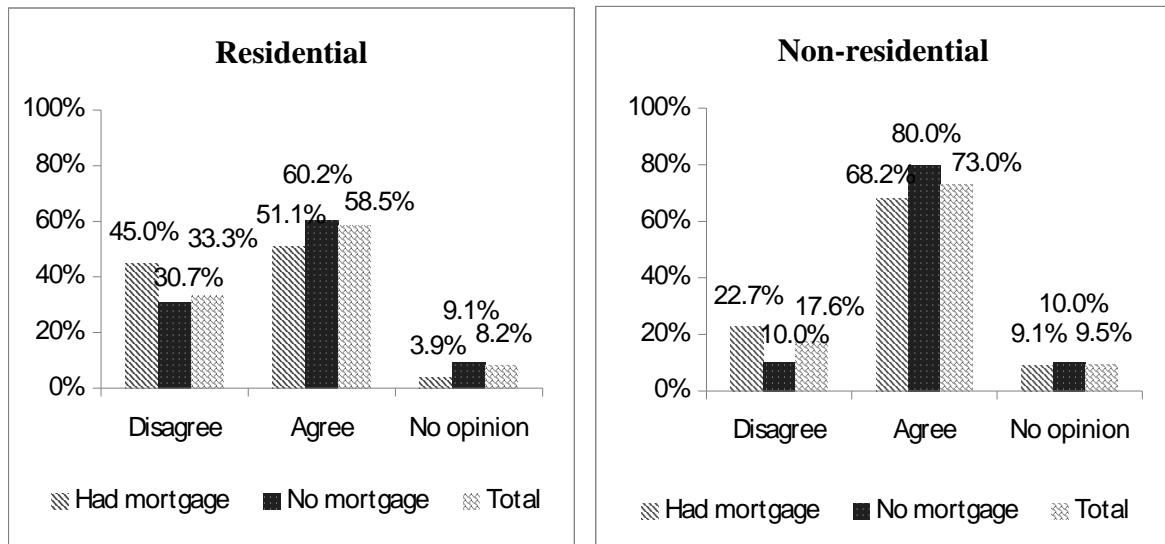
¹⁴ Submission of Consumer Council dated 10 February 2011

the introduction of positive credit data sharing on unsecured lending. It was quoted that the tax loans were as low as 1.62% - 2.66% in 2009 which compared favourably with the rates of 3.20% - 8.16% in 2004. Consumer Council clarified that it had not come to any conclusion what would have brought about lower interest rates, let alone any relationship between interest rate and the sharing of consumer credit data. It suggested that the financial services industry should explain in more explicit terms to demonstrate how the benefits arising from the sharing of consumer mortgage data could be passed on to consumers. Consumer Council further clarified that the interest rates for a \$100,000 tax loan reported by the Council should be in the range of 2.58% - 7.48% in 2009 (instead of 1.62% -2.66% as stated in paragraph 4.8, Part IV of the consultation document) as compared to 3.20% - 8.16% in 2004. If the range quoted was meant to demonstrate the reduction in interest rates between 2004 and 2009, the reduction should be in the range of only 0.62% - 0.68% (instead of 1.58% - 5.5% as implied from paragraph 4.8, Part IV of the Industry Proposal in the consultation document).

Face-to-Face Interview Results (Q.1(a) of questionnaire at Appendix B)

3.14 It may be noted from the chart below that views of members of the public interviewed during the consultation period were rather mixed. Based on views expressed by a representative sample of households with or without mortgages, about 59% of them agreed that with comprehensive information to conduct comprehensive credit assessment, credit providers could provide better credit terms and interest rates to their clients. For those who had mortgages, the corresponding percentage was lower (51%) mortgage. Among respondents who had non-residential properties, the percentage who agreed was much higher (73%).

Chart 3:1 Percentage of respondents by whether agreed that credit providers would provide better terms and interest rates to their customers with additional mortgage data



Promoting Long Term Stability of Property Market and Benefitting the Economy

CCF's Justification

3.15 In putting forward the proposals, CCF pointed out that as of August 2010, residential property prices had surged about 47% since 2009, mainly due to record-low mortgage interest rates. A drop in Hong Kong's property prices would likely cause significant impact on borrowers, mortgagors and guarantors. Although the current delinquency rate for mortgage loan repayment is relatively low, debt servicing ratio for high risk customers would increase substantially should interest rates move back to historical levels. According to CCF, the sharing of more comprehensive mortgage data would benefit the economy by permitting credit providers to assess credit applications taking into account a customer's Mortgage Count.

Views Received – Supporting

3.16 HKMA¹⁵ anticipated that the proposals would help strengthen the credit risk management of credit providers and deter borrowers from overstretching themselves, and in turn would be conducive to the general stability of the banking system. It was important to guard against the risk of any property bubble forming and subsequently bursting, especially at times when asset bubble burst was coupled with a significant interest rate increase. The banking industry may be exposed to significant negative impact in the event of a plunge in property prices and a surge in interest rates.

3.17 HKMA¹⁶ has advised that they are very concerned about the significant negative impact to which the banking industry may be exposed in the event of a plunge in property prices and a surge in interest rates. The HKMA's judgment is that the negative impact on individual authorized institutions ("AIs") with sizeable property exposures could be considerable possibly creating a domino effect on other banks with similar property loan portfolios and ultimately affecting confidence in the banking system. HKMA strongly believes that, with positive mortgage data sharing, the market will have greater confidence that AIs can more accurately assess the repayment ability of borrowers. Such market confidence in the capability of AIs in the management of their credit risk would be important during a financial crisis affecting the property market. HKMA is of the view that the enhancement of the sharing of mortgage data is of general long term benefit for the maintenance of the banking and financial stability of Hong Kong.

3.18 HKMC¹⁷ shared similar views as HKMA, reiterating that comprehensive credit assessment would promote responsible borrowing and lending, minimize credit default due

¹⁵ Submission of HKMA dated 8 February 2011

¹⁶ Letter of HKMA dated 16 February 2011 [*confidential, not for publication*]

¹⁷ Submission of HKMC dated 8 February 2011

to overborrowing, reduce potential bankruptcy cases, reduce risk of asset bubble and thereby promote long-term stability of the property market.

3.19 The Hong Kong Association of Restricted Licence Banks and Deposit-taking Companies (“the DTC Association”), in its written submission¹⁸, expected that the proposals would benefit both credit providers and consumers, and the community and the economy as a whole. Representatives of several banks and finance companies were also of the view that the proposals would enable credit providers to accurately assess the repayment ability of borrowers, resulting in lower delinquency rates. The proposals would thus be conducive to maintaining the stability of the banking system and the economy.

3.20 The Hon. Mr. CHAN Kin Por¹⁹ stressed that the stability of the financial system was important to Hong Kong being an international financial sector. The proposals would help credit providers in conducting more comprehensive and objective credit assessment of their clients, further strengthening credit providers’ credit risk management. This would help maintain the stability of the financial system in general and the banking industry in particular. Furthermore, the proposals would prevent excessive borrowing of speculators, to the benefit of both credit providers and their clients.

3.21 DAB²⁰ also pointed out the proposals would help reduce the risk of asset bubble due to speculative activities in the property market, benefitting the long-term healthy development of the economy.

Views Received – Against

3.22 Society of Hong Kong Real Estate Agents Limited, on the other hand, in its written submission²¹, disagreed with the proposals and cautioned that if consumer credit data were not used properly, it would seriously affect consumers concerned. Furthermore, the role of HKMA, in its efforts to maintain the stability of the banking industry, is to regulate banks and not consumers. There are a number of measures to control risks, like limiting the proportion of bank deposit that could be used for mortgage loans, setting the upper limit of the mortgage loan margin. “Stabilizing the property market and protecting banks” should not be used as a pretext to shift the responsibility of credit management from credit providers to consumers by invading their privacy.

3.23 The Hong Kong Institute of Surveyors, in its written submission²², added that unless alternative effective ways could not be identified, the disclosure of personal data should always be used a last resort. The privacy interests of the individual should be

¹⁸ Submission of the DTC Association dated 2 February 2011

¹⁹ Submission of Hon. Mr. CHAN Kin Por, Legislative Councilor, dated 8 February 2011

²⁰ Submission of DAB dated 8 February 2011

²¹ Submission of Society of Hong Kong Real Estate Agents Limited dated 7 February 2011

²² Submission of the Hong Kong Institute of Surveyors dated 7 February 2011

respected at all times. It is noted that while the Institute did not explicitly oppose the proposals, it did not voice its support of the proposals.

3.24 The Hong Kong Credit Report Association²³ commented that the long-term stability of the property market depended on government land supply and housing policies. The proposals could only play a supplementary role. When the property prices were rising together with speculative activities, the sharing of positive consumer mortgage data would not be effective in abating increases in property prices and speculative activities. This was because speculators had cash and did not have to rely on mortgage loans.

3.25 The Hong Kong Credit Report Association also pointed out that even in 2003 when the property prices crashed, with many mortgagors having negative asset values, the default rate for mortgage loans was very low. Besides, banks only provided mortgage loans up to 70% of the property value. Citing the example of USA where positive consumer mortgage data sharing had been implemented for a number of years, the banks there still suffered huge losses from their mortgage loans in 2008 financial crisis because they did not lend prudently.

3.26 During a discussion with Policy 21, Professor Rolf WEBER from the University of Zurich, University Distinguished Visiting Professor at the Faculty of Law, the University of Hong Kong, questioned if the sharing of mortgage data would lead to stability in the property market. Citing the experience in Europe, he explained that governments would adopt different policies to tackle the problems of asset bubbles and to stabilize the property market by way of, for example, increases in interest rates and reduction in the margin of mortgage loans, which were likely to be more effective. He added that banks should also adjust and adopt a more conservative mortgage loan policy.

3.27 As reported in the Hong Kong Economic Journal on 6 January 2011, Professor Raymond SO Wai Man of the School of Business, Hang Seng Management College, pointed out that the proposals were not related to government's measures to stabilize the property market. The mortgage credit database could not be used to slow down the hot property market activities.

3.28 Privacy Hong Kong²⁴ pointed out that a mortgage loan could be distinguished from other loans in that it was secured by the value of the property to be mortgaged. Unlike an unsecured consumer credit loan, a mortgage loan was capable of giving the credit provider a source of rental income even after default of the loan had occurred. Thus, a credit provider's risk exposure would be contained and lessened.

²³ Submission of the Hong Kong Credit Report Association dated 21 January 2011

²⁴ Submission of Privacy Hong Kong dated 8 February 2011

3.29 Hong Kong Human Rights Monitor²⁵ questioned the causal relationship between the expansion of consumer credit data sharing in June 2003 and the subsequent improvement in the overall loan delinquency and credit card bad debt. As the economy of Hong Kong improved alongside the world's economic recovery from its trough in 2003, it was natural that consumer credit default and bankruptcy rates would drop as well.

3.30 Referring to the 2006 report of the Australian Law Reform Commission (“ALRC”) *“Review of privacy – credit reporting provisions: issues paper”*, Hong Kong Human Rights Monitor stated that even the ALRC in Australia had questioned whether the expansion of consumer credit data sharing would really help risk management by credit providers and enhance responsible borrowing.

3.31 Taking similar views of Privacy Hong Kong, Hong Kong Human Rights Monitor pointed out that mortgage loans were secured credit, and hence credit risk of credit providers was low, and thus questioned the need for further expanding consumer credit data sharing at the expense of the privacy of consumers. Even though credit providers might not have complete information about the credit profile of their clients, they would not run into serious problems if they had exercised care in approving mortgage loans. Problems would likely arise only if credit providers were making too much lending, were not careful enough in property valuation and did not fully understand the implications of rapid increase in property prices.

HKMA's Further Views

3.32 In response to the opponents' views presented above, HKMA has made further submissions to the Commissioner after the public consultation period.

3.33 In response to the comment that credit providers can rely on the security of the mortgage loans to mitigate possible losses in the event of a default, HKMA²⁶ pointed out that although mortgage loans were collateralized, the repossession and subsequent liquidation of the repossessed properties which formed the collateral would only be undertaken as a last resort by credit providers, as selling such properties in a depressed market would only cause prices to slump further. From a risk management perspective, HKMA was of the view that it was crucial that credit assessment should not be conducted merely based on the availability of collateral. Credit providers should first and foremost assess the applicants' repayment ability. Given the current low interest rate environment, some property buyers might over-leverage themselves irresponsibly by making excessive mortgage borrowings to finance their property investments or speculative activities. Introducing positive mortgage data sharing, which would help facilitate more accurate assessment of borrowers' repayment abilities, could help promote responsible borrowing

²⁵ Submission of Hong Kong Human Rights Monitor dated 8 February 2011

²⁶ Letter of HKMA dated 17 February 2011

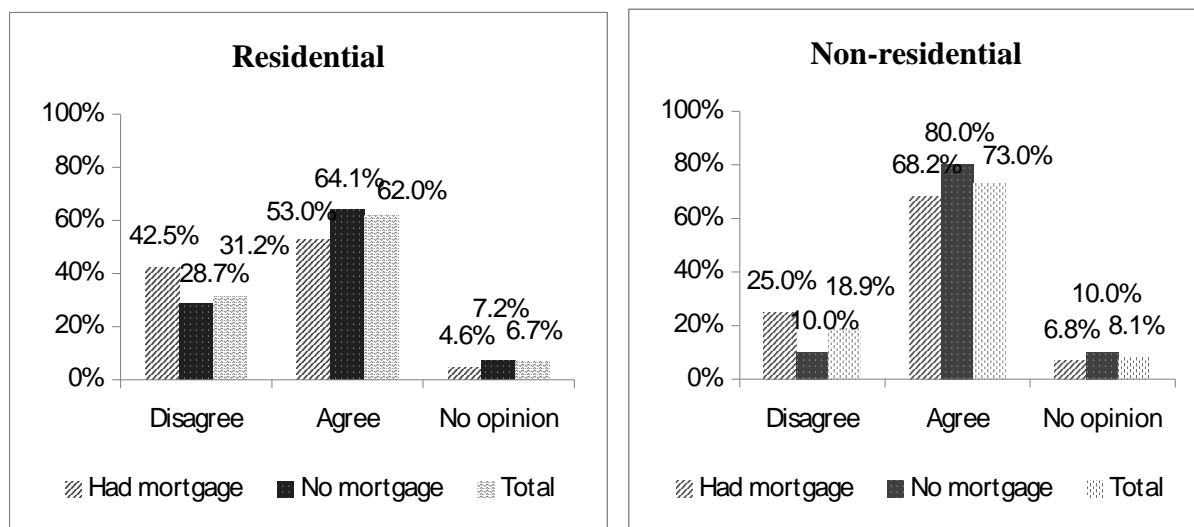
and lending, thereby reducing the risk of overborrowing by consumers and increasing their ability to withstand the pressure of interest rate hikes coupled with a fall in property prices during the next downturn.

3.34 In response to the comment that properties could generate rental income to offset the credit provider’s risk exposure, HKMA²⁷ clarified that very few repossessed properties were rented out to generate rental income. Banks were not in the business of managing a portfolio of properties for rental purposes. Under Section 88(1) of the Banking Ordinance, authorized institutions were not allowed to hold any interest in land in excess of 25% of their capital base. There was thus a strong incentive for banks to ensure repossessed properties would be disposed of in the market, rather than renting them out.

Face-to-Face Interview Results (Q.1(b) of questionnaire at Appendix B)

3.35 As shown in the chart below, members of the public interviewed during the consultation period were quite positive. About 62% of members of the public agreed that promoting responsible borrowing and lending would be conducive to the long-term stability of the property market. The corresponding percentage was lower (53%) for those with mortgage loans, with 43% of them disagreeing. The percentage who agreed was much higher (73%) for respondents who had non-residential properties.

Chart 3:2 Percentage of respondents by whether agreed that promoting responsible borrowing and lending would be conducive to the long-term stability of the property market



²⁷ Letter of HKMA (Meena DATWANI) dated 25 February 2011

Promoting Responsible Borrowing and Lending and Better Risk Management

CCF's Justification

3.36 In the views of CCF, effective risk management is the hallmark of any successful financial institution. For over a quarter of a century, Hong Kong has provided a conducive environment for consumer credit data sharing. This has allowed the consumer lending market to mature and evolve – benefiting consumers, credit providers and the overall economy of Hong Kong. With the on-going growth in the financial services sector, against the backdrop of a stable and robust economic environment, quality and comprehensive data are necessary to encourage continued prudent growth in the consumer lending market and help minimize financing on speculative activities. It is thus considered appropriate and timely to extend the consumer credit data sharing arrangement to cover both positive and negative data relating to mortgage loans.

3.37 Moreover, although the delinquency rate of mortgage portfolio is at a historical low level, this is largely attributed to the exceptionally low interest rate environment. With interest rates expected to rise over time, the repayment ability of customers holding multiple mortgages will inevitably be affected, increasing the likelihood of default. Credit providers would be in a position to better assess customers' credit status with the availability of comprehensive mortgage data.

3.38 To illustrate the effect of interest rate increases on the borrowers' repayment ability, CCF²⁸ pointed out that if interest rate rises by 2% from 1% to 3%, the debt-to-income ratio (DTI) will be increased from the current cap of 50% to a level of 60%. If the interest rate further increases by 2% from 3% to 5%, the DTI will be increased from 60% to 72%. Further, the lower the monthly income of a consumer, the more significant will be the negative impact of the increase of interest rate on him.

Table showing results of stress test conducted based on the following assumptions:

Mortgage loan amount: HK\$1,000,000

Mortgage tenor: 20 years

Interest Rate: HIBOR + 0.7% = 1% per annum

Monthly income of borrower: HK\$9,200

²⁸ Letter of CCF dated 9 February 2011

Before interest rate increase			After interest rate increase		
Interest Rate (per annum)	Monthly mortgage instalment payment	DTI	Interest Rate (per annum)	Monthly mortgage instalment payment	DTI
1%	HK\$4,600	50%	3%	HK\$5,546	60%
3%	HK\$5,546	60%	5%	HK\$6,600	72%

Views Received – Supporting

3.39 HKMA²⁹ added that the proposals would help ensure a level playing field for all loan applicants, thereby creating a more efficient market for consumer lending and borrowing. HKAB³⁰ emphasized that the principal objective of the proposals was to facilitate comprehensive credit assessment of consumers thereby promoting responsible lending and borrowing and reducing the risk of overborrowing by consumers.

3.40 Representatives of several banks also shared similar views as HKMA. They believed the proposals would facilitate responsible borrowing and lending and better risk management, and reduce the risk of overborrowing by consumers. Their views were shared by the Finance Houses Association of Hong Kong Limited³¹ and the Hong Kong S.A.R. Licensed Money Lenders Association Ltd.³² which considered that the proposals would facilitate responsible lending and better risk management. The Commissioner of Insurance³³ was also of the view that the proposals would help credit providers in their credit risk assessment, which in turn would help stabilize the financial industry in Hong Kong.

3.41 A member of the public, in his written submission³⁴, said that once the proposals were implemented, it would be more difficult for borrowers to use mortgage loans for investing or speculating properties. This would reduce the risk of overborrowing by consumers.

3.42 Dr.WONG Kam Chiu, a District Councilor from Wong Tai Sin District, in his written submission³⁵, shared similar views as HKMA. He believed that the proposals would give credit providers more complete information on the credit profile of their clients, promoting responsible lending and facilitating more effective credit risk management. The

²⁹ Submission of HKMA dated 8 February 2011

³⁰ Submission of HKAB dated 21 January 2011

³¹ Submission of the Finance Houses Association of Hong Kong Limited dated 2 February 2011

³² Submission of the Hong Kong S.A.R. Licensed Money Lenders Association Ltd. dated 27 January 2011

³³ Submission of the Commissioner of Insurance dated 18 February 2011

³⁴ Submission of WONG Mei Seong, a member of the public, dated 7 February 2011

³⁵ Submission of Dr.WONG Kam Chiu dated 31 January 2011

proposals would also prevent overborrowing by consumers, as speculators would easily be identified.

3.43 The Hon. Mr. CHAN Kin Por³⁶ also believed that the proposals would increase transparency in credit information, reducing the risk of overborrowing by speculators, benefiting both credit providers and their clients.

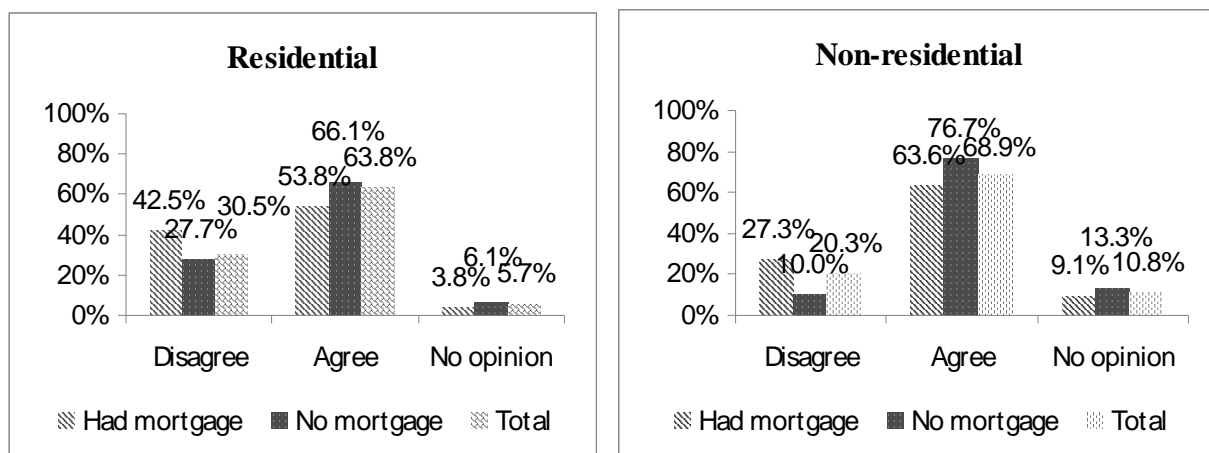
Views Received – Against

3.44 On the other hand, another member of the public³⁷, in his written comments, questioned the reason why credit providers had to share their clients’ credit information since credit providers would in any case ask applicants to disclose their credit information. A representative of Splendor Finance Company Limited, in an article appearing in Ming Pao on 28 January 2011 and during discussion with Policy 21, remarked that mortgage lending was low risk business and there was no practical need to have comprehensive examination of the consumers’ credit situations. Under the current system, it is difficult for those without regular income or who could not provide documentary proof of their income to obtain loans from banks.

Face-to-Face Interview Results (Q.1(c) of questionnaire at Appendix B)

3.45 As shown in the chart below, about 64% of members of the public interviewed during the consultation agreed that more effective credit risk management would reduce speculative activities and promote sustained and stable development of the consumer credit market. The corresponding percentage was lower (54%) for those with mortgage loans, with 43% of them disagreeing. The percentage who agreed was higher (69%) for respondents who had non-residential properties.

Chart 3:3 Percentage of respondents by whether agreed that effective risk assessment would minimize speculative activities and promote sustained and stable development of consumer lending market



³⁶ Submission of Hon. Mr. CHAN Kin Por, Legislative Councilor, dated 8 February 2011

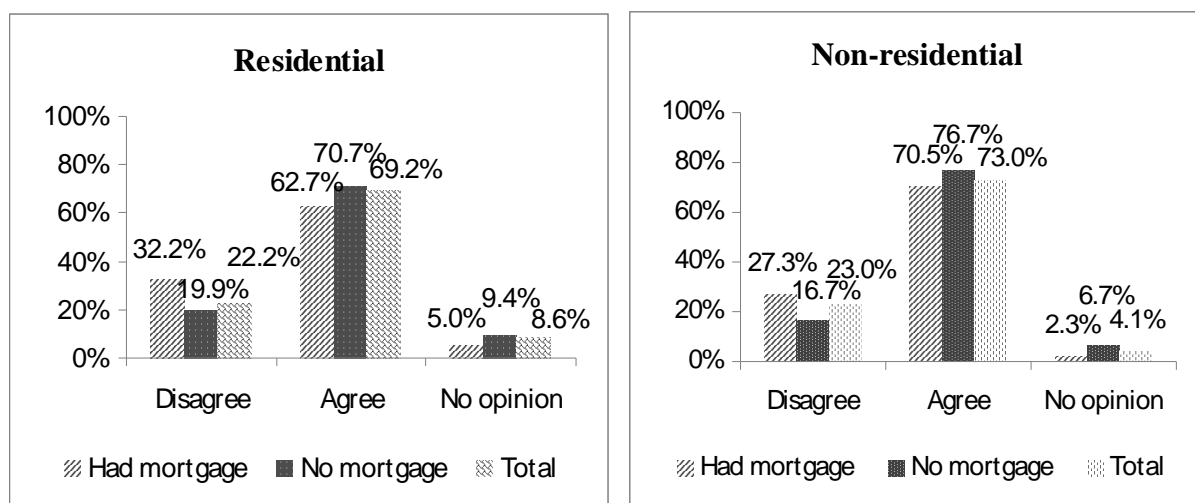
³⁷ Submission of LUI Man Ying, a member of the public, dated 7 February 2011

Safeguarding the Stability of Hong Kong's Economic and Financial Systems

Face-to-Face Interview Results (Q.15 of questionnaire at Appendix B)

3.46 The household interviewees were asked about their general perception towards the end of the interview. More than half (69%) of them agreed that the proposals, through responsible borrowing and better risk management, would reduce speculative activities and lead to stability of the Hong Kong economic and financial systems. The corresponding percentage was lower (63%) for those with mortgage loans, much higher than the percentage (32%) for those who disagreed. The percentage who agreed was higher (73%) for respondents who had non-residential properties.

Chart 3:4 Percentage of respondents by whether agreed that the proposals and through responsible borrowing and better risk management would lead to reduced speculation and stability in economic and financial system



The Commissioner's Observations and Conclusions

3.47 Views expressed by members of the public and related stakeholders as presented above are mixed. Some, especially those from the financial services industry, anticipated that the proposals would benefit consumers in terms of more favourable credit terms and interest rates and help maintain the stability of the property market, the finance sector as well as the economy. Others, on the other hand, questioned if such benefits are realizable and/or significant.

More Favourable Terms and Pricing for Consumers

3.48 More than half of the household interviewees agreed that the proposals would benefit consumers in terms of more favourable credit terms and interest rates. This finding

reflects to a large extent public expectation that the financial services industry would honour their promise in offering consumers more favourable credit terms after the implementation of the proposals.

3.49 Unfortunately, in the course of the consultation, a firm commitment from the credit providers is found lacking. Some of them actually cited that the current interest rates were already very low and there was little room for enhancing customer benefits.³⁸ The best arguments that CCF could come up with are academic. They referred to the fact that after sharing positive consumer credit data on unsecured lending in 2003, more diversified low-interest unsecured consumer credit products have been made available. They pointed out that there would be more room for adjusting mortgage interest rates should the present low interest rate trend reverse. However, not a single credit provider volunteered a definitive undertaking that the credit terms would definitely become more favourable with the implementation of the proposals.

3.50 To conclude, the Commissioner considers that CCF and their supporters have not made out a convincing case that their proposals would benefit the consumers directly and tangibly.

Promote Responsible Borrowing and Lending

3.51 In respect of promoting responsible lending and borrowing through the expansion of consumer credit data sharing, the bulk of views expressed during the consultation are quite positive. The dissenting views mainly focus on the possibility that credit providers could still obtain the credit information from their clients, on the understanding of course that their clients are honest. This begs the fundamental question of why it is necessary to have a consumer credit data sharing system in the first place. If the basic assumption is that all consumer credit applicants would truthfully disclose to the credit provider when applying for credit all his credit information, whether favourable or not to his application, there would not be any need for a CRA. The fact that CRAs are prevalent in advanced economies demonstrates clearly the necessity of having a central consumer credit database whereby credit providers may obtain credit information and where necessary verify the truthfulness of the credit information provided by their customers.

3.52 To conclude, the Commissioner is convinced that the industry proposals will lead to responsible borrowing and lending.

³⁸ See media reports of 10 January 2011 on statements made by Mr. Mark McCombe, the CEO of HSBC.

Responsible Borrowing and Lending lead to Stability of Property Market and Banking System

3.53 There is also the important issue of whether responsible borrowing and lending will serve wider public interests, namely, stabilizing the property market and the banking system.

3.54 In the household interviews, the question was asked as to whether promoting responsible lending and borrowing would curb property speculation, and lead to the long-term stability of the property market and the healthy development of the consumer lending market. More than half of the interviewees agreed.

3.55 However, based on the views and evidence collected from the respondents, the direct causal relationship between responsible borrowing and lending on the one hand and the wider public interests on the other could not be substantiated cogently. Even CCF confessed that "... property prices are affected by internal factors like supply and demand, as well as external factors like the flow of hot money into the Hong Kong economy. Stabilisation of the property market is not the sole or primary reason for the proposal and the proposal is not the solution to curbing speculative activities in the property market".³⁹

3.56 The Commissioner recognizes that there are many other factors which affect the local property market and the stabilization of the Hong Kong banking system. These include (i) the Administration's land, fiscal and monetary policies, (ii) HKMA's exercise of regulatory powers, (iii) credit providers' risk management discipline, as well as (iv) global economic factors beyond Hong Kong's control. It would be difficult to ascertain the exact contribution that responsible borrowing and lending would make.

3.57 Notwithstanding this uncertainty, there was no major disagreement from the respondents that responsible borrowing and lending is one factor in the equation. Given that the banking sector is one of the major economic pillars of Hong Kong, the contribution of responsible borrowing and lending in safeguarding its stability cannot be downplayed, however modest it may be.

3.58 To conclude, the Commissioner is convinced that responsible borrowing and lending is, albeit to some extent only, conducive to stabilizing the property market and the banking system. He notes with comfort that this conclusion is in line with the general perception held by the public (see chart 3:4 above).

³⁹ Letter of CCF dated 28 January 2011

Part IV – Public Views on Privacy Issues

Issue 1 – Types of Mortgage Loans Proposed to be Covered

Overview

4.1 At present, mortgage data available for sharing by credit providers in the CRA are residential mortgage data of consumers who have material defaults in payment (i.e. a default in payment for a period in excess of 60 days). The industry’s proposals are to extend the scope of sharing of consumer credit data to cover both positive and negative mortgage data relating to mortgage loans for residential, retail, commercial and industrial properties in respect of borrowers, mortgagors and guarantors (as opposed to sharing of only negative mortgage data for residential properties with respect to borrowers and guarantors as at present).

4.2 In the consultation document, the Commissioner acknowledges that expanding the scope of mortgage loan types will give a full picture of a borrower’s overall indebtedness for prospective lenders to accurately assess his credit-worthiness. From a data protection perspective, consideration has to be given to whether the inclusion of additional mortgage loan types is necessary and not excessive for the purpose of use of the data, namely, assessment of credit (including mortgage loan) applications and general reviews of borrowers’ credit profiles.

Views Received – Supporting

4.3 In support of the proposals, HKAB⁴⁰ re-iterated that omission of positive data of residential properties or exclusion of non-residential properties would result in an incomplete picture of a consumer’s credit position. In particular, having regard to the trend for consumers to diversify their investment to both residential and non-residential properties, there was a definite need to expand consumer credit data sharing to cover positive data of residential properties as well as the positive and negative data of non-residential properties. HKMC⁴¹, Urban Renewal Authority (“URA”)⁴², Hong Kong General Chamber of Commerce⁴³, the Hong Kong S.A.R. Licensed Money Lenders Association Ltd.⁴⁴, the Commissioner of Insurance⁴⁵ and several banks also voiced their support of the proposals.

⁴⁰ Submission of HKAB dated 21 January 2011

⁴¹ Submission of HKMC dated 8 February 2011

⁴² Submission of URA dated 1 February 2011

⁴³ Submission of Hong Kong General Chamber of Commerce dated 11 February 2011

⁴⁴ Submission of the Hong Kong S.A.R. Licensed Money Lenders Association Ltd. dated 27 January 2011

⁴⁵ Submission of the Commissioner of Insurance dated 18 February 2011

4.4 The Hon. Mr. CHAN Kin Por⁴⁶ pointed out that the clients of credit providers were investing not only in residential but also non-residential properties. In order to fully assess the credit profiles of their clients, it was necessary for credit providers to have more complete information on the mortgage loans of both residential and non-residential properties. Besides, such mortgage credit data would only be shared after obtaining written consent from the clients. This arrangement was considered very fair and reasonable.

4.5 As reported in the 7 February 2011 issue of the Hong Kong Economic Journal, the Hon. Starry LEE Wai King, Legislative Councilor, also supported the proposals, as this would help prevent consumers from overborrowing. She suggested that apart from mortgage count data, more information items could be shared. Nevertheless, there should be proper safeguards to protect data privacy and prevent improper use.

4.6 DAB⁴⁷ also pointed out that prices of non-residential properties had risen significantly, reflecting that speculation in non-residential properties was quite active. There was thus a need for credit providers to have more complete information on the credit profiles of their clients.

Views Received – Against

4.7 A member of the public, in his written submission⁴⁸, objected strongly to the proposals, on the grounds that credit providers already had sufficient information in respect of negative mortgage data required for their assessment of the credit profiles of their clients. Mr. Alvin LEE Chi Wing⁴⁹, District Councilor of the Sha Tin District, cautioned that given lending and borrowing were essentially a business activity, government should refrain from assuming an active role. The role of the Commissioner, on the other hand, should be to protect data privacy of individuals.

4.8 As reported in the 9 February 2011 issue of the Hong Kong Economic Journal, Mr. Roderick B Woo, the former Commissioner, commented that the proposed sharing of consumer positive mortgage data was an unnecessary intrusion into privacy of individuals. Even though only mortgage count data were shared, credit providers might request mortgage applicants to reveal more mortgage information.

⁴⁶ Submission of Hon. Mr. CHAN Kin Por, Legislative Councilor, dated 8 February 2011

⁴⁷ Submission of DAB dated 8 February 2011

⁴⁸ Submission of LUI Man Ying, a member of the public, dated 7 February 2011

⁴⁹ Submission of Mr. Alvin LEE Chi Wing dated 10 February 2011

4.9 FHKI⁵⁰, Society of Hong Kong Real Estate Agents Limited⁵¹ and the Real Estate Developers Association of Hong Kong⁵² also did not support the sharing of positive mortgage data.

4.10 Privacy Hong Kong⁵³ commented that for those concerned with the proper protection of personal data privacy rights, the fundamental question to ask was either :

- (a) whether it was necessary, taking into account the letter and spirit of the Ordinance, to allow the credit providers to collect and disclose their customers' positive mortgage data and to share the data with other credit providers; or
- (b) whether by allowing individuals to keep their privacy in respect of positive mortgage loans which are operating smoothly, substantial harm and damage will be caused to the community at large?

4.11 Privacy Hong Kong was of the view that the rationale for allowing the sharing of positive credit data in 2003 was the dramatic rise in delinquent consumer debts and the number of personal bankruptcies in Hong Kong. These were in turn caused by the fact that too many individuals took on more unsecured loans than they could manage. The strong statistical evidence convinced the then Commissioner that it was necessary to allow credit providers to disclose and share their customers' positive credit data.

4.12 Privacy Hong Kong argued that the rationale for allowing greater credit data sharing in the past does not apply in the present circumstances for further expansion of the sharing scheme as proposed by the CCF. First, while in the case of negative data the borrower can be said to have brought upon himself the disclosure of data because he has defaulted and can be considered a risk in financial terms, the sharing of positive data will only work unfairly against the individual. Secondly, a mortgage loan can last up to and even exceed two decades, meaning that the mortgage data kept is subject to the risk of unauthorized disclosure for a long time. Thirdly, the CCF has revealed that the current delinquency rate for mortgage loan is relatively low, and failed to show that other jurisdictions have benefited from lower default rates after allowing positive mortgage data sharing.

4.13 Hong Kong Human Rights Monitor⁵⁴ re-iterated that personal data privacy was an important human right. Any invasion or restriction of human rights should be based on substantive and clear public interests, and explicitly stipulated and regulated by law to ensure that such invasion or restriction was reasonable and proportional.

⁵⁰ Submission of FHKI dated 2 February 2011

⁵¹ Submission of Society of Hong Kong Real Estate Agents Limited dated 7 February 2011

⁵² Submission of the Real Estate Developers Association of Hong Kong dated 7 February 2011

⁵³ Submission of Privacy Hong Kong dated 8 February 2011

⁵⁴ Submission of Hong Kong Human Rights Monitor dated 8 February 2011

4.14 Hong Kong Human Rights Monitor stressed that any extension of consumer credit data sharing to cover the proposed additional mortgage data would be at the expense of personal data privacy. Thus, the financial services industry should provide clear and substantive proof that there was no other effective alternative to achieve the intended objectives of the proposals.

4.15 Hong Kong Human Rights Monitor pointed out that the main beneficiary of the proposals were credit providers and the CRA. Most data subjects were not aware of details of their personal data kept by the CRA unless they pay a fee to “purchase” their personal data records from the CRA. In the current system, credit facilities applicants had to “opt out” of the data sharing system, rather than “opt in”, otherwise their personal data would be kept by the CRA and shared, until five years after their mortgage loans had been fully repaid. This “opt out” rather than “opt in” arrangement was clearly not appropriate. This arrangement was also not fair, because while credit providers would benefit, the data privacy risks were passed onto consumers.

4.16 Hong Kong Human Rights Monitor further pointed out that, in processing applications for mortgage loans, credit providers would invariably request the applicants to provide information related to their credit profile. If the applicants provided false information in their applications, there were provisions under the current framework to take legal actions against the applicants. As the current legal framework should provide sufficient protection to credit providers, Hong Kong Human Rights Monitor considered that there was no need to expand consumer credit data sharing as proposed by the financial services industry. Besides, credit providers should shoulder credit risk, rather than relying on expanding the scope of consumer credit data sharing, at expense of the privacy of consumers, especially those who were really applying for relatively small amount of credit facilities.

4.17 Consumer Council⁵⁵ pointed out that the financial services industry had promised back in 2002 not to include positive consumer mortgage data on residential properties when lobbying for extending the range of positive consumer credit information. The Council further commented that the financial services industry had not clearly demonstrated the extent of the problems, for instance, whether there was substantial number of consumers causing the purported problems of holding multiple properties or identified the root cause of the problems which called for the inclusion of all mortgage loan types in the CRA database.

4.18 The Council was concerned that the proposals would expose the majority of consumers to unnecessary detailed scrutiny. It was of the view that the financial services industry should explain more on the need of including all mortgage loan types, given that,

⁵⁵ Submission of Consumer Council dated 10 February 2011

as stated in the consultation document, “a predominant element of mortgage loans is residential loans which typically represent the largest borrowing of a private individual”.

4.19 The Law Society of Hong Kong⁵⁶ doubted whether the expanded sharing of mortgage data was sufficiently justified. It noted that even during the worst of the Asian crisis, losses due to mortgage defaults were not material.

4.20 Hong Kong Bar Association⁵⁷, in its written submission, pointed out that the mortgage count data would not of themselves provide a more comprehensive credit assessment of a borrower. The credit providers would still have to ask the individual borrower for details of each mortgage in the borrower’s mortgage count. The justification for the proposals depended on:

- (a) The importance to the assessment of individuals’ creditworthiness of the additional types of data it was proposed to collect and share;
- (b) the degree to which borrowers were not truthful about the matters to which the additional data related.

However, no evidence was presented by the financial services industry on the extent to which individuals were taking on mortgages in relation to non-residential property or delinquency rates in relation to such mortgages (and hence the importance of this to their creditworthiness). Nor was there any evidence presented by the financial services industry on significant problem of borrowers being untruthful about the number of mortgages they had.

4.21 In the absence of proper supporting evidence, Hong Kong Bar Association was of the view that the case for saying the additional data proposed to be collected were “necessary and not excessive” did not begin to be made out, for the purposes of assessing the creditworthiness of borrowers. Unless and until such a case was made out on the basis of compelling evidence, the proposals should be rejected because it had not been shown that Data Protection Principle (“DPP”) 1 would be complied with. It might well be convenient for credit providers to be able to assess additional mortgage data, including mortgage count, but convenience could not outweigh the serious implications on data protection and privacy.

HKMA’s Further Views

4.22 HKMA, in response to stakeholder views gathered largely from the media and the Internet, have made further submissions to the Commissioner after the public consultation period.

⁵⁶ Submission of the Law Society of Hong Kong dated 8 February 2011

⁵⁷ Submission of Hong Kong Bar Association dated 17 February 2011

4.23 In response to the observation that Hong Kong had not suffered material losses even during the worst of the Asian crisis (1997 to 2003), HKMA⁵⁸ pointed out that during that period, mortgage interest rates were coming down from 11% to 2% and this substantially eased the burden of borrowers in meeting mortgage repayments. Given the abnormally low interest environment at the moment, the mortgage interest rates are expected to rise. If this process coincides with a downward adjustment in the property market, which most likely will be the case, this would adversely affect the repayment ability of mortgage borrowers as well as their will to continue servicing their mortgage loans. The potential value at risk of mortgage loans could be substantial and could have far reaching implications for the stability of the banking sector.

4.24 In response to the comment that there is no evidence on the extent of untruthfulness on the part of the borrowers in disclosing the mortgage data to the credit provider, HKMA⁵⁹ pointed out that in the absence of positive mortgage data sharing, the current arrangement was to rely upon the honesty and correctness of information provided by loan applicants, which obviously had loopholes and there was no way of checking the data accuracy. HKMA⁶⁰ further pointed out that there was no requirement under DPP1 that the purpose for which the data were to be collected had to be substantiated or validated by evidence. DPP1(1) simply requires that data collection was for a lawful purpose, which was directly related to a function or activity of the data user.

4.25 In response to the comment that mortgage data would be kept for over 20 years, HKMA⁶¹ clarified that as indicated by their previous study, the effective tenor of mortgage loans was generally 7 to 8 years because mortgagors normally disposed of their mortgaged properties for one reason or the other after 7 to 8 years. The important point was that the data would not be held for longer than necessary as provided in DPP2.

Views of Overseas Personal Data Protection Agencies

4.26 In the course of the consultation, views of personal data protection agencies in other economies were sought. According to the Office of the Australian Information Commissioner, the Privacy Act 1988 (Cth) (“Privacy Act”) only specifically regulates data sharing in relation to loans that are ‘intended to be used wholly or primarily for domestic, family or household purposes’ (see Part IIIA of the Privacy Act). These types of loans are generally referred to as ‘consumer credit’. Consumer credit would include residential mortgage loans. Generally, the Privacy Act only permits ‘negative’ data to be shared in relation to consumer credit.

⁵⁸ Letter of HKMA dated 23 February 2011

⁵⁹ Letter of HKMA (Meena DATWANI) dated 25 February 2011

⁶⁰ Letter of HKMA (Arthur K. H. YUEN) dated 25 February 2011

⁶¹ Letter of HKMA dated 17 February 2011

4.27 Recently, the Australian Government has accepted the Australian Law Reform Commission’s recommendation, and proposed to allow additional categories of positive data to be shared. Draft legislation to permit the sharing of the additional positive data, along with other changes to the regulation of consumer credit data sharing in the Privacy Act, was released by the Government in January 2011 and scheduled for passing in 2012.

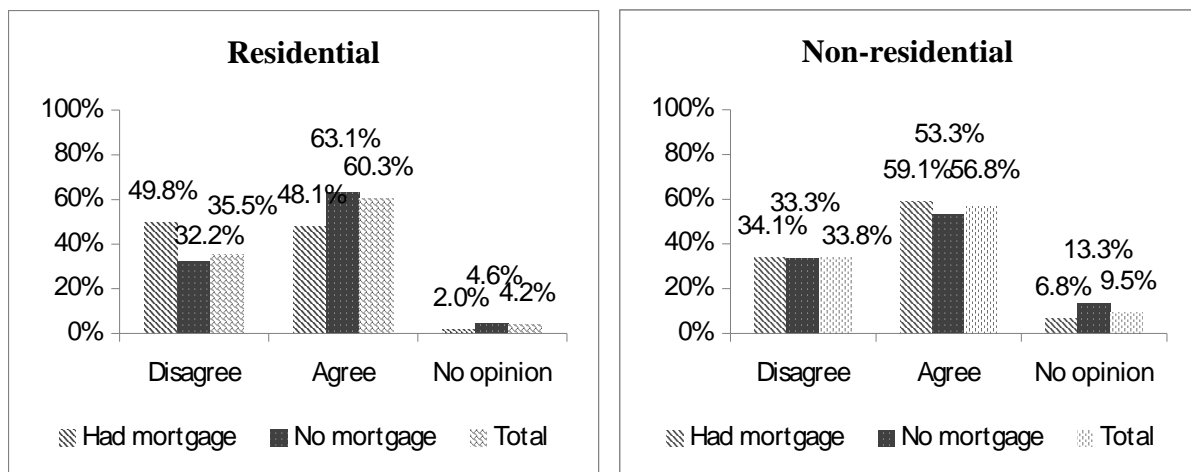
4.28 According to the New Zealand Office of the Privacy Commissioner, there is no differentiation between mortgages and any other types of consumer credit such as personal loans, trade credit and credit cards and between residential and non-residential properties. At the moment, sharing of negative data is allowed. Nevertheless, the Office has been persuaded to change its mind about sharing of positive data and the primary justifications for supporting positive data sharing include:

- (a) new economic evidence demonstrating public benefits and benefits to individuals;
- (b) changes in industry attitudes which now favour positive data reporting and are pressing its case to include positive data.

Face-to Face Interview Results

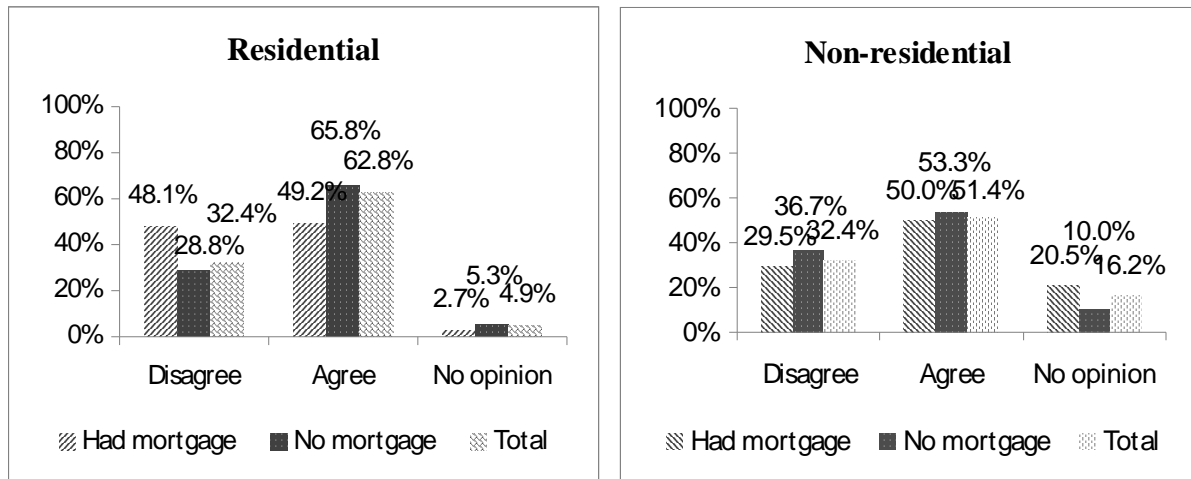
4.29 Views of members of the public interviewed during the consultation period were rather mixed. About 60% of them agreed that the proposed sharing of positive mortgage data for residential properties was necessary. The corresponding percentage was slightly less than half (48%) for those with mortgage loans, slightly lower than the percentage (50%) for those who disagreed. The percentage who agreed was slightly lower (57%) for respondents who had non-residential properties.

Chart 4:1 Percentage of respondents by whether the proposed sharing of positive mortgage data for residential properties was necessary



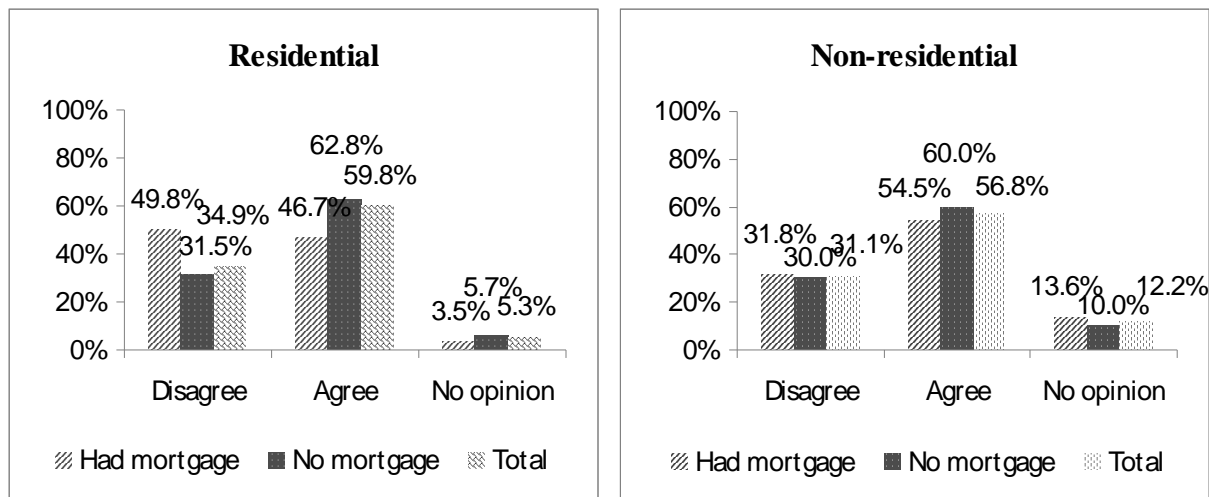
4.30 Slightly higher proportion (63%) of respondents agreed that the proposed sharing of positive mortgage data for residential properties was not excessive. The corresponding percentage was slightly less than half (49%) for those with mortgage loans, slightly higher than the percentage (48%) for those who disagreed. The percentage who agreed was much lower (51%) for respondents who had non-residential properties.

Chart 4:2 Percentage of respondents by whether the proposed sharing of positive mortgage data for residential properties was not excessive



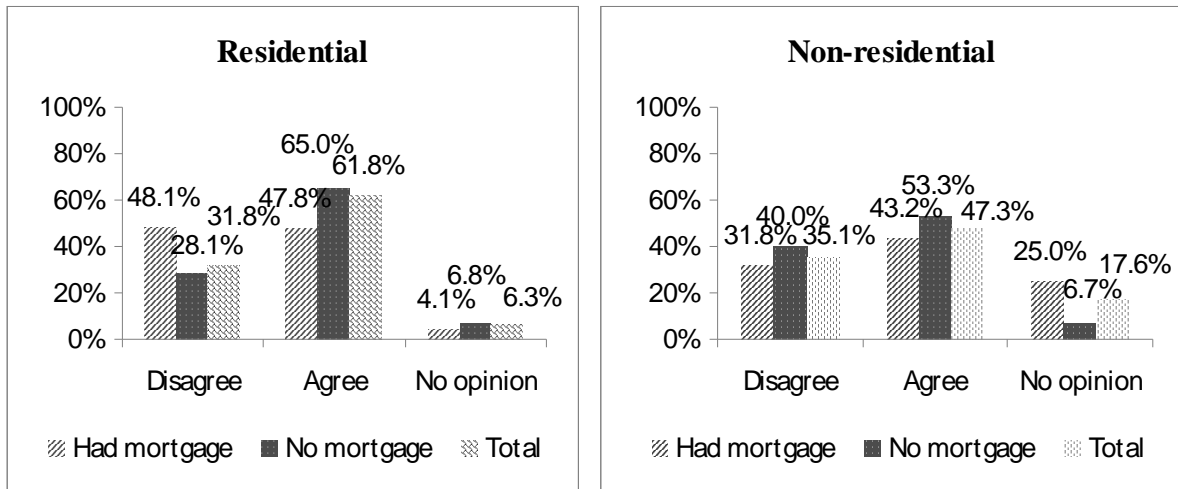
4.31 As regards the proposal sharing of positive consumer mortgage data for non-residential properties, about 60% of respondents agreed that the proposed data sharing for non-residential properties was necessary. The corresponding percentage was less than half (47%) for those with mortgage loans, slightly lower than the percentage (50%) for those who disagreed. The percentage who agreed was slightly lower (57%) for respondents who had non-residential properties.

Chart 4:3 Percentage of respondents by whether the proposed sharing of positive mortgage data for non-residential properties was necessary



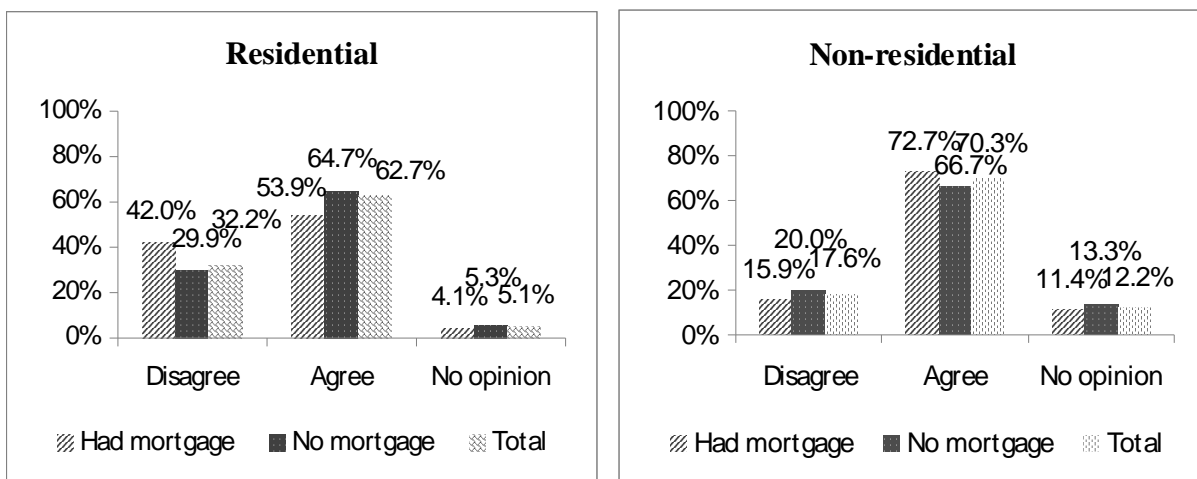
4.32 Slightly higher proportion (62%) of respondents agreed that the proposed sharing of positive consumer mortgage data for non-residential properties was not excessive. The corresponding percentage was less than half (48%) for those with mortgage loans, more or less the same as the percentage (48%) for those who disagreed. The percentage who agreed was much lower (47%) for respondents who had non-residential properties.

Chart 4:4 Percentage of respondents by whether the proposed sharing of positive mortgage data for non-residential properties was not excessive



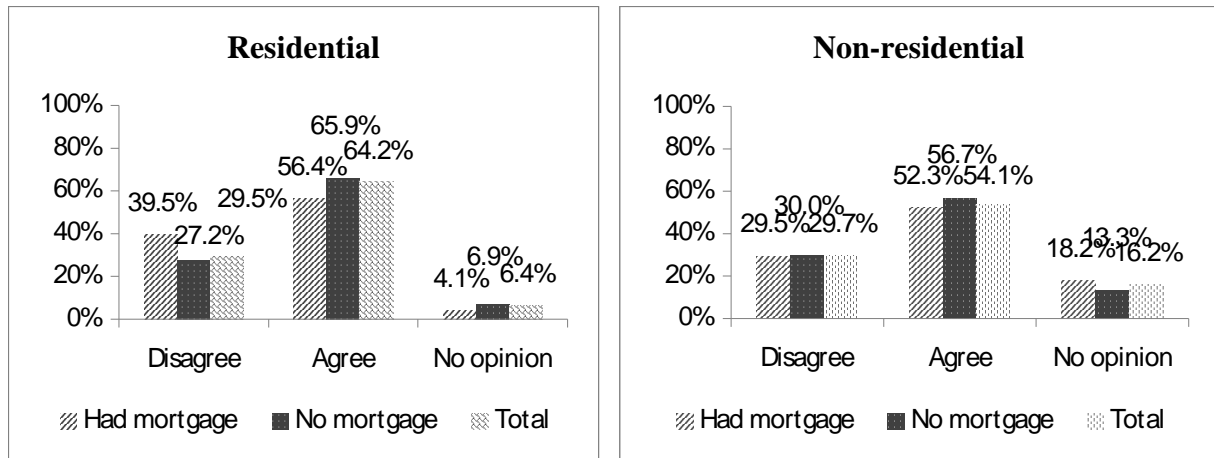
4.33 As regards the proposed sharing of negative consumer mortgage data for non-residential properties, about 63% of respondents agreed that the proposed data sharing for non-residential properties was necessary. The corresponding percentage was slightly more than half (54%) for those with mortgage loans, higher than the percentage (42%) for those who disagreed. It is worth noting that the percentage who agreed was much higher (70%) for respondents who had non-residential properties.

Chart 4:5 Percentage of respondents by whether the proposed sharing of negative mortgage data for non-residential properties was necessary



4.34 Slightly higher proportion (64%) of respondents agreed that the proposed sharing of negative consumer mortgage data for non-residential properties was not excessive. The corresponding percentage was more than half (56%) for those with mortgage loans, higher than the percentage (40%) for those who disagreed. The percentage who agreed was about 54% for respondents who had non-residential properties.

Chart 4:6 Percentage of respondents by whether the proposed sharing of negative mortgage data for non-residential properties was not excessive



Public Perception on Proposed Sharing of Mortgage Data (Q.16 of questionnaire at Appendix B)

4.35 Towards the end of the household interviews, respondents were asked about whether, balancing public interests and data privacy, consumer credit data sharing should be extended to cover positive mortgage data for residential properties as well as positive and negative mortgage data for non-residential properties. The majority of the respondents indicated support. For those with mortgage loans, more than half of them supported the sharing of positive mortgage data for residential properties as well as positive and negative mortgage data for non-residential properties, with the exception of positive mortgage data for car parks. Detailed analysis are shown in the bar charts of **Appendix E**.

4.36 The above survey findings show that the public in general is supportive of the proposed extension of consumer credit data sharing to cover positive mortgage data for residential properties, as well as positive and negative mortgage data for retail, commercial and industrial properties and car parks. This may reflect members of the public believe that the proposal will result in responsible borrowing on the part of consumers, or in better credit risk management on the part of credit providers, or both. In general, the public is less resistant to the sharing of negative mortgage data than the sharing of positive mortgage data. Also, people without mortgages are generally more receptive to mortgage data sharing than people with mortgages.

Issue 1: The Commissioner's Observations and Conclusions

4.37 The provisions of the Ordinance relevant to consideration of this privacy issue are those of DPP1(1) in Schedule 1 of the Ordinance, reproduced as follows:

"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."*

4.38 In the context of the CCF proposal, the person collecting the additional mortgage data could be either the credit provider to whom a consumer applies for mortgage, or the CRA. In the former case, the credit provider collects the mortgage data from the CRA for the purpose of credit risk assessment of its clients (in respect of (i) new mortgage loan applications, (ii) new applications for other credit facilities, (iii) renewal of existing credit facilities and (iv) general review of borrowers' credit profiles). The purpose of credit risk assessment is clearly lawful and directly related to its function, namely, granting credit. In the latter case, the CRA collects mortgage data from credit providers on a continuous basis for the purpose of creating credit profiles of consumers and this is also clearly lawful and directly related to its function, namely, providing consumer reference services for credit providers in their credit risk assessment. The two steps of data collection involve contribution and access of mortgage data. For simplicity sake, they could be combined and labeled as sharing of mortgage data for the ultimate purpose of credit risk assessment.

4.39 The question at issue is whether the sharing of positive mortgage data in respect of residential properties, and both positive and negative mortgage data in respect of non-residential properties is *necessary* and *not excessive* for the purpose of credit risk assessment.

4.40 While the Commissioner notes that the proposed sharing of mortgage data has the support of more than half of the household interviewees and many respondents, he also appreciates the strong arguments put forward by opponents of the proposal that the requirements of '*necessary* and *not excessive*' are not met. These opponents insisted that ample facts and figures must be produced to prove the case for sharing of more mortgage data. Specifically, it was pointed out that evidence set out below has not been made available:

- (a) the experience in other jurisdictions that sharing of positive mortgage data has indeed led to lower default rate;
- (b) statistics showing the gravity of the problem (if any) that borrowers are not truthful in providing their credit information while making credit applications; and
- (c) statistics showing the extent that individuals' investment is shifting from residential property to non-residential property, and the delinquency rates in relation to non-residential mortgages.

4.41 Since a determination on this issue should be based on the legal requirements under DPP1(1), the Commissioner has considered the advice from a Senior Counsel engaged by him. In respect of the meaning of the word "necessary" under DPP1(1)(b), the Commissioner agrees with the Senior Counsel's views that "*.... these words ('necessary' and 'excessive') should be given their everyday ordinary meaning. The word 'necessary' in the context of something being necessary for a particular purpose would normally carry the connotation that the thing is indispensable and without which the purpose could not be achieved. However in the context of a mortgage or facilities application, although it is often said that certain information is necessary, it could not be taken too literally in the sense that without that information, the application could not be processed at all. ...it is sufficient to satisfy the requirement of being necessary if the information concerned is of such nature that it is generally accepted that it is information that the credit provider would consider to be highly relevant without which the credit provider would find it hard to make an informed decision.*" Paragraphs (17) to (20) in the extract of the Senior Counsel's views at **Appendix F** are relevant.

4.42 On this basis, the Commissioner does not agree with the opponents' view that the additional mortgage information proposed could not be *necessary* for the purpose of credit risk assessment until real evidence is produced to prove the causal relationship between the absence of such information and the adverse consequences it will bring about. In view of the wider public interest implications of the CCF's proposal, the Commissioner considers that he should adopt an *anticipatory* approach in making a determination on this privacy issue. This is different from the *remedial* approach adopted in 2003 when the decision to allow credit providers to disclose and share their customers' positive credit data for unsecured loans was made after a spate of delinquent consumer debts and personal bankruptcies caused by many consumers' over-commitment in unsecured loans. In coming to this view, the Commissioner has taken particular note of HKMA's portrayal of the risk of possible property bubble forming and subsequent bursting (such as paragraphs 3.17 and 4.23 above), and the results of the stress test conducted by CCF on the effect of interest rate increases on the consumer's debt-to-income ratio (paragraph 3.38 above).

4.43 Taking into account (a) the conclusion in Part III of this report that sharing of additional mortgage data would result in responsible borrowing and lending which in turn is conducive to stabilizing the property market and the banking system and (b) the importance of mortgage loans in the Hong Kong's finance sector as they represent 40% of

the banks' lending market and probably the most substantial part of a consumer's credit portfolio, the sharing of positive mortgage data for residential properties and both positive and negative mortgage data for non-residential properties should *be necessary and not excessive*. In adopting this view, the Commissioner takes comfort from the fact that in U.S.A., U.K. and Canada, both positive and negative mortgage data are being shared. In Australia, draft legislation to permit sharing of the additional positive data was released by the Government in January 2011 and scheduled for passing in 2012. In all these four jurisdictions, non-residential mortgages are not considered as consumer credit loans and hence data-sharing are not regulated as such. The current CCF proposal is to include non-residential mortgage data in consumer credit data sharing. The Commissioner sees no objection to this proposal, as both residential and non-residential mortgage data relate to the consumer's total indebtedness. The Senior Counsel engaged by the Commissioner also sees no logical distinction between the two types of data for credit assessment purposes (see paragraph (20) in Appendix F.)

4.44 To conclude, the Commissioner finds that the sharing of positive mortgage data in respect of residential properties, and both positive and negative mortgage data in respect of non-residential properties is *necessary and not excessive* for the purpose of credit risk assessment.

4.45 This determination is made subject to two caveats. First, the actual items of mortgage data to be shared must be limited to the absolute minimum required to satisfy the purpose of sharing. This is the subject of Issue 2. Secondly, the amount of the credit for which the risk assessment is made should be large enough to deserve sharing of the additional mortgage data. This is the subject of Issue 4.

Issue 2 - Types of Mortgage Data Proposed to be Contributed and Shared

Positive Mortgage Data

Overview

4.46 According to the CCF's proposal, the contributed data in relation to mortgage loans and mortgage loan applications to be provided by credit providers to the CRA are shown below. The contributed data are necessary to enable the CRA to identify accurately each individual involved in a consumer mortgage loan and compile the mortgage count.

- (a) Name;
- (b) Capacity (i.e. whether as borrower, mortgagor or guarantor);
- (c) Hong Kong Identity Card (ID) number or travel document number;
- (d) Date of Birth;
- (e) Gender;

- (f) Correspondence Address; and
- (g) Account number, type of facility, account status and closed date.

The CCF proposes that credit providers will have access to the mortgage count only (and not the contributed data) from the CRA. With this data, the credit provider can check relevant details the customer provides in support of his application for a mortgage loan.

4.47 To align with the treatment under the existing Code, it is proposed that CRA may retain the positive data in its database until the expiry of 5 years after account termination subject to the request from the consumer during the 5 years for deletion of the account data from its database as stated in clause 3.5.2 of the existing Code provided that there has not been any material default (default in payment in excessive of 60 days) within 5 years immediately before account termination.

Views Received – Supporting

4.48 HKMA⁶² explained that the sharing of information on the number of mortgaged properties only was proposed by the financial services industry in order to mitigate privacy concerns. As borrowers currently had to declare whether they had any other outstanding mortgages when applying for a loan from an authorized institution, the proposed sharing would not result in borrowers providing additional personal information to potential lending institution.

4.49 HKAB⁶³ stressed that this restricted scope and manner of data contribution and access represented the minimum necessary to make implementation of the proposals practically feasible. This was shared by the DTC Association⁶⁴, HKMC⁶⁵, Hong Kong General Chamber of Commerce⁶⁶, the Hong Kong S.A.R. Licensed Money Lenders Association Ltd.⁶⁷ and representatives of a number of banks and finance companies.

4.50 TransUnion Limited, in its written submission⁶⁸ and discussion with Policy 21, explained that the data fields including name, HKID card /travel document number, date of birth and correspondence address were the key fields in their system developed in conjunction with credit providers to uniquely identify an individual client. The complicated matching logic using the above key data fields was considered necessary. The removal of any data field would adversely affect the accuracy of their existing matching system. All credit bureaux around the world they knew of used a combination of data

⁶² Submission of HKMA dated 8 February 2011

⁶³ Submission of HKAB dated 21 January 2011

⁶⁴ Submission of the DTC Association dated 2 February 2011

⁶⁵ Submission of HKMC dated 8 February 2011

⁶⁶ Submission of Hong Kong General Chamber of Commerce dated 11 February 2011

⁶⁷ Submission of the Hong Kong S.A.R. Licensed Money Lenders Association Ltd. dated 27 January 2011

⁶⁸ Submission of TransUnion Limited dated 8 February 2011

fields.

4.51 TransUnion Limited also pointed out that at present credit providers did not have a uniform practice in what identity data they contributed. Not all data fields were provided. The practice was also not uniform when consumers provided their personal data to credit providers. It is thus considered necessary to use a combination of fields described above to uniquely identify individual clients. As regards other information items to be contributed, the “account number” was used to identify the mortgage in question as a different “account number” is assigned to a separate mortgage; the “type of facility” was used to identify if the credit account was a mortgage account; the “account status” was used to ascertain if the account was a negative or positive account; the “closed date” was used to define the data retention period beyond which the mortgage data would be deleted; and the “capacity” was used to differentiate between borrower and guarantor.

4.52 TransUnion Limited⁶⁹ explained that a consumer may use more than one identification document when applying for mortgage loans. Hence supplementary personal information is necessary to identify the customer. By way of illustration, the following two records with identical names may refer to the same individual or two different individuals.

Consumer	Bank	Name	HKID Card No.	Travel Document No.
A	X	CHAN Tai-man		Z1123123123
B	Y	CHAN Tai-man	X1234567	

The accuracy of matching the two records to identify the customer will be enhanced if the address and the date of birth are also provided. Further, public records (e.g. Court records) only contain individuals’ names and addresses. If “*CHAN Tai-man owed \$10,000 in delinquent taxes to the Government*” was found in public records, the CRA could not determine whether such public information refers to A or B without including their addresses in the matching exercise. Further examples to illustrate the TransUnion Limited’s matching of identity records are in their submission of 28 February 2011⁷⁰.

4.53 In response to the suggestion of using partial ID numbers in conjunction with other personal information to protect the confidentiality of personal data, TransUnion Limited further explained that partial ID numbers might not result in a correct matching. With a partial ID number, it was not possible to check if there was any error in the data entry of the ID number using the check digit. Not all credit providers could contribute to the CRA the ID numbers of their clients, as their clients might use their travel documents instead. Moreover, their clients might change their names.

4.54 During discussion with Policy 21, Mr. Chester Soong, Convener of Internet

⁶⁹ Letter of TransUnion Limited dated 28 February 2011

⁷⁰ Letter of TransUnion Limited dated 28 February 2011

Security and Privacy Working Group also cautioned that though the use of partial ID numbers in combination with other matching data was theoretically feasible in uniquely identifying an individual, it was not an ideal arrangement. Given that the CRA data would be kept for a fairly long period of time, any changes made to the number system of HKID cards or travel documents would significantly affect the effectiveness of the matching system.

4.55 The Hon. Mr. CHAN Kin Por⁷¹ noted only the mortgage count was proposed to be shared. The data shared was much limited than those in other economies like the USA, UK and Singapore where other mortgage data such as loan amount, loan period and repayment amount were shared. This indicated that the financial services industry had taken due consideration of the data privacy concern. Dr. Billy Mak, Associate Professor, Department of Finance & Decision Sciences, Hong Kong Baptist University, during discussion with Policy 21, pointed out that if consumers were honest in providing information to credit providers, the proposals would not have any impact on them.

4.56 DAB⁷² pointed out that at the moment, consumers had the responsibility to disclose to the credit providers their outstanding mortgages when applying for mortgage loans. Thus, the proposed sharing of mortgage count information had already struck a balance between the requirement of credit providers in credit assessment and the data privacy of consumers. The proposal was also considered appropriate as detailed information such as the amount of outstanding mortgage loans was not shared.

4.57 The Law Society of Hong Kong⁷³ commented that if the kinds of data to be released by the CRA to credit providers were strictly limited to information (on the basis that consent from data subject was obtained beforehand for the release of such data) that was required for the intended purpose of the credit provider, then there would be no excessive use.

4.58 Hong Kong Bar Association recognized that the CRA has “operational needs” to identify the individuals to whom the data relate with reasonable certainty. If “operational needs” corresponded to requirements that were essential for CRA operations, there should be no conflict with the “necessary and not excessive” requirement of DPP1. If, however, operational needs were equated with operational convenience, conflicts with the “necessary and not excessive” requirement of DPP1 would likely arise. With regard to data sharing, restriction to mortgage count only was supported as this was all a credit provider had to know to make its further enquiries with the borrower as to the details of his or her existing mortgage commitments.

⁷¹ Submission of Hon. Mr. CHAN Kin Por, Legislative Councilor, dated 8 February 2011

⁷² Submission of DAB dated 8 February 2011

⁷³ Submission of the Law Society of Hong Kong dated 8 February 2011

Views Received – Against

4.59 However, there were other individuals and organizations holding different views. A member of the public⁷⁴, in his written submission, commented that information items like “address”, “account number” and “account status” should not be contributed, as without such information, it was still possible to identify the number of mortgage loans of individual mortgagors. With more than necessary data contributed by credit providers, there would be a risk of improper use.

4.60 At the public forum organized on 18 January 2011, Mr. Eric CHEUNG Tat Ming, Assistant Professor, Faculty of Law, The University of Hong Kong suggested that only partial ID or travel document number plus one or two identifying fields like surname and date of birth should be sufficient for the CRA to uniquely identify individual mortgagors. Technical advice from experts in information technology should be sought on this viewpoint.

4.61 A discussion was held with Professor Rolf WEBER from the University of Zurich, University Distinguished Visiting Professor at the Faculty of Law, The University of Hong Kong. He remarked that gender was not relevant to the operations of the CRA. Even in cases of default, it was not relevant whether the mortgagors was a male or female.

4.62 iProA⁷⁵ and the Law Society of Hong Kong⁷⁶ expressed worries that the number of mortgage count might be a biased indicator of the credit profile of individuals and could create unnecessarily a “labeling effect” on consumers. At the end of the day, credit providers would require their mortgage applicants to provide more detailed information, based on the mortgage count, leading to further erosion of data privacy of consumers.

4.63 Consumer Council⁷⁷ also urged that the financial services industry and the CRA to clarify the implication that the additional consumer mortgage data would have on consumer credit scoring. The Council was concerned that the use of mortgage count might result in a “mislabeling” of an individual’s credit-worthiness. Greater transparency of the consumer credit scoring system was required to ensure that a fair credit assessment would be conducted.

4.64 Privacy Hong Kong⁷⁸ shared similar views, pointing out that the “mortgage count” would inevitably create a ripple effect. It would trigger a host of enquiries from the credit providers for more mortgage data from the borrower. The intrusiveness into the personal data privacy was incalculable.

⁷⁴ Submission of Tom LAM, a member of the public, dated 7 February 2011

⁷⁵ Submission of iProA dated 8 February 2011

⁷⁶ Submission of the Law Society of Hong Kong dated 8 February 2011

⁷⁷ Submission of Consumer Council dated 10 February 2011

⁷⁸ Submission of Privacy Hong Kong dated 8 February 2011

4.65 Hong Kong Human Rights Monitor⁷⁹ commented that the Code should not allow credit providers to contribute data that were excessive. If only mortgage count data were shared, credit providers should not contribute to the CRA those data items like date of birth, address and account number that were not necessary. Furthermore the contribution of data items such as gender that might contravene provisions in the Sex Discrimination Ordinance should not be allowed.

4.66 Hong Kong Human Rights Monitor was of the view that some of the 15 data items proposed to be contributed by credit providers to the CRA were not necessary for the purposes of uniquely identifying individual mortgagors. Apart from HKID or travel document number, data related to the capacity (i.e. whether as borrower, mortgagor or guarantor) and the mortgage (i.e. account number, type of facility, account status and closed date), other data items were not necessary. Contributing more information than necessary would unnecessarily expose consumers to the risk of information leakage.

4.67 Hong Kong Human Rights Monitor further remarked that even though only the mortgage count data were proposed to be shared, thus minimizing any invasion of data privacy, the proposals would still unnecessarily, unreasonably and disproportionately increase the threat against personal data privacy. As personal data of mortgage applicants were transferred to the CRA for long-term storage, this would expose data subjects to unnecessary privacy risks of data loss, leakage, theft, error and improper use during the transfer, handling, storage and access processes, thus causing business, financial, reputation and emotional harm to the data subjects.

4.68 Consumer Council⁸⁰ stressed that in order to strike an appropriate balance between the public interest and data privacy interests of consumers, the collection of mortgage data should be kept to the minimum necessary, with safeguards in place to prevent information from being misused. It might not be necessary to supply the full HKID Card number or the mortgage account number to the CRA for the purposes of uniquely identifying individual mortgagors.

4.69 In addition, Consumer Council strongly requested that a public assurance be given by the financial services industry that the use of the proposed data would be restricted to provision of the proposed items of contributed data by credit providers to the CRA and the access of only the mortgage count by credit providers from the CRA, which represented the purpose(s) for which the data were collected and used.

Face-to Face Interview Results

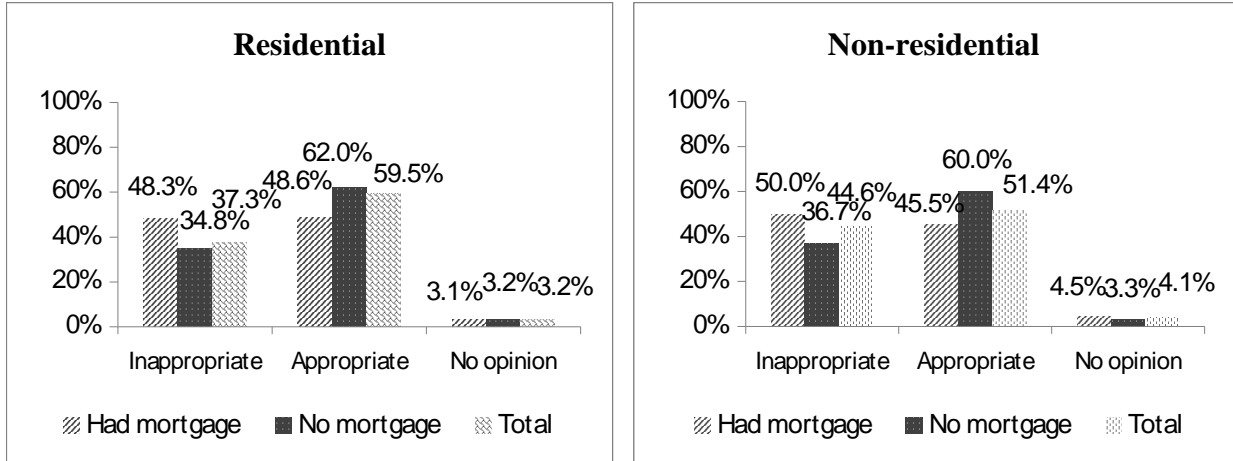
4.70 Views of members of the public interviewed during the consultation period were

⁷⁹ Submission of Hong Kong Human Rights Monitor dated 8 February 2011

⁸⁰ Submission of Consumer Council dated 10 February 2011

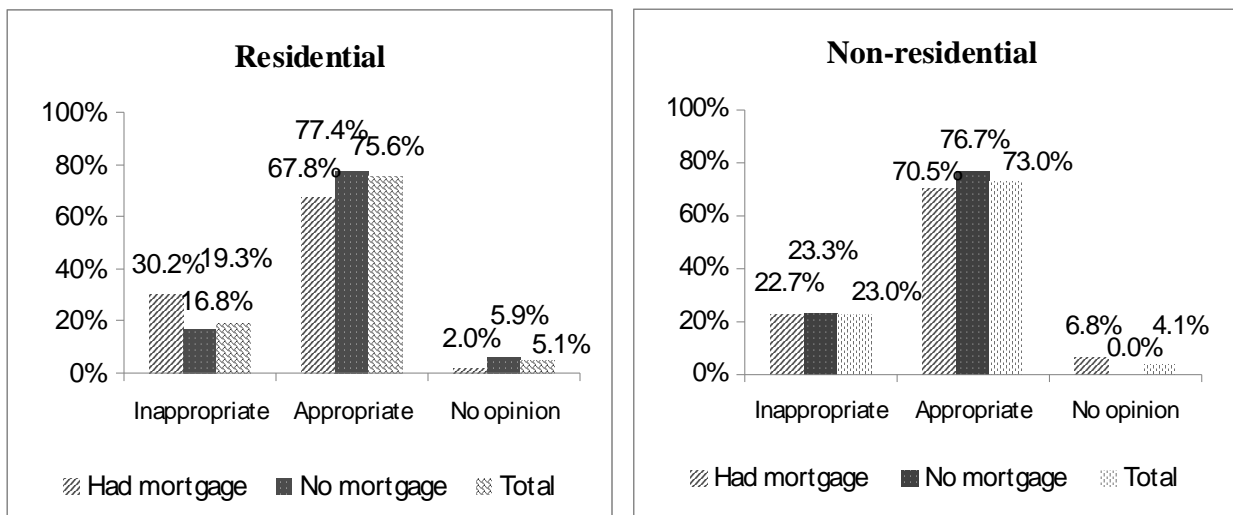
rather mixed. About 60% of them agreed that the proposed contribution of limited number of data items, as shown in the consultation document, by credit providers to the CRA was appropriate. The corresponding percentage was slightly less than half (49%) for those with mortgage loans, slightly higher than the percentage (48%) for those who disagreed. The percentage who agreed was lower (51%) for respondents who had non-residential properties.

Chart 4:7 Percentage of respondents by whether the proposed contribution of the limited number of data was appropriate



4.71 As regards the sharing of data on mortgage count by credit providers after obtaining written consent from the clients concerned, the majority (76%) of respondents agreed that the proposed sharing of mortgage count data was appropriate. The corresponding percentage was 68% for those with mortgage loans, much higher than the percentage (30%) for those who disagreed. The percentage who agreed was also quite high (73%) for respondents who had non-residential properties.

Chart 4:8 Percentage of respondents by whether the proposed sharing of data on mortgage count after obtaining written consent from the clients was appropriate



Negative Mortgage Data

Overview

4.72 As for the sharing of negative data of non-residential mortgages, the financial services industry proposes that credit providers would share the same items of negative credit data as currently permitted under the Code for residential mortgages, i.e. account general data (as stated in Schedule 2 of the Code) and default data (being the amount past due (if any) and number of days past due; and date of settlement of amount past due (if any)). Such data would only be contributed by credit providers if there was a material default in payment of the mortgage loan. (i.e. a default in payment for a period in excess of 60 days). To align with the treatment under the existing Code, it is proposed that CRA may retain the negative data in its database until the expiry of 5 years from the date of final settlement of the amount in default (including settlement of the amounts payable pursuant to a scheme of arrangement with the credit provider) as stated in clause 3.3 of the Code.

Views Received – Supporting

4.73 Two members of the public⁸¹, in their written submissions, voiced their support of the proposals on the understanding that the proposed data sharing was limited to negative mortgage data. The Hon. Mr. CHAN Kin Por⁸² supported the proposed extension of data sharing to cover negative mortgage data for non-residential properties. He believed that this would help credit providers to conduct more comprehensive credit assessment. Similar arrangement was also implemented in a number of economies overseas. Several organizations including URA⁸³, FHKI⁸⁴, iProA⁸⁵, the Commissioner of Insurance⁸⁶ and Hong Kong General Chamber of Commerce⁸⁷ also supported such an extension of consumer credit data sharing.

Face-to Face Interview Results

4.74 Views of members of the public interviewed during the consultation period were quite positive. About 63% of them agreed that the proposed sharing of negative mortgage data for non-residential properties by credit providers was appropriate. The corresponding percentage was slightly higher (64%) for those with mortgage loans, much higher than the percentage (31%) for those who disagreed. The percentage who agreed was slightly higher (65%) for respondents who had non-residential properties.

⁸¹ Submissions of Ada CHAN and Tom LAM, two members of the public, dated 27 January 2011 and 7 February 2011 respectively

⁸² Submission of Hon. Mr. CHAN Kin Por, Legislative Councilor, dated 8 February 2011

⁸³ Submission of URA dated 1 February 2011

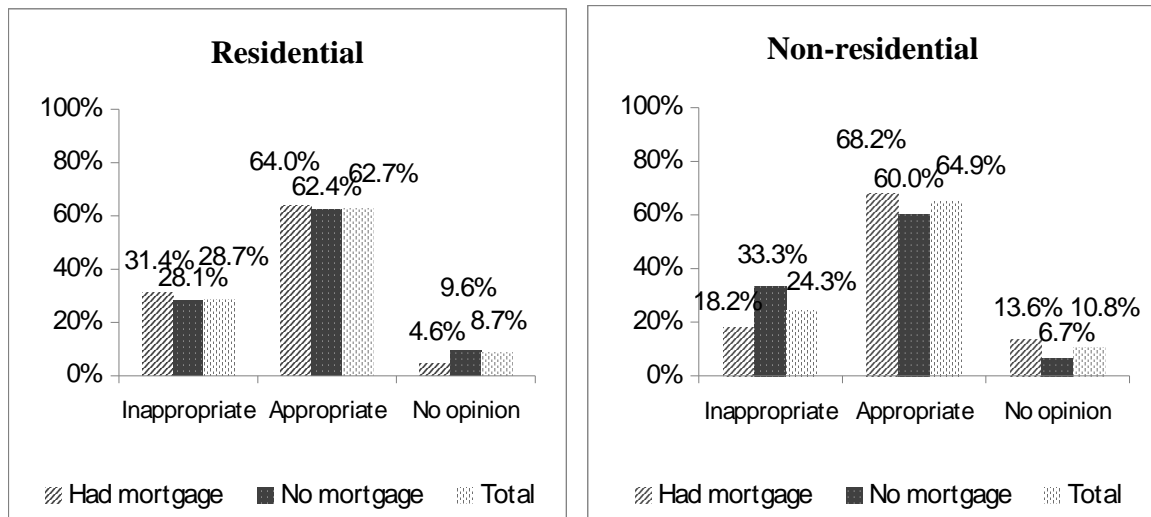
⁸⁴ Submission of FHKI dated 2 February 2011

⁸⁵ Submission of iProA dated 8 February 2011

⁸⁶ Submission of the Commissioner of Insurance dated 18 February 2011

⁸⁷ Submission of Hong Kong General Chamber of Commerce dated 11 February 2011

Chart 4:9 Percentage of respondents by whether the proposed sharing of negative mortgage data for non-residential properties was appropriate



Issue 2: The Commissioner’s Observations and Conclusions

4.75 The pertinent question here is whether the items of mortgage data collected by CRA and the credit provider as proposed by CCF are not excessive for their respective purposes. The Commissioner notes that CCF’s proposals have the support of over half of the household interviewees.

Positive Mortgage Data

4.76 As regards positive mortgage data, the proposed credit providers’ access to CRA’s data is restricted to the Mortgage Count only. This is indisputably the absolute minimum. The only objection to this arrangement was that the knowledge gained by the credit provider would trigger off further enquiries for details of the existing mortgage(s) from the customer applying for a new mortgage loan. The Commissioner considers this inevitable development not unfair and in any event, the customer is free to choose whether or not to comply with the credit provider’s request for information to evaluate his mortgage loan application. Further, the Commissioner is given to know by TransUnion Limited⁸⁸ that the mortgage count would be used as a separate risk assessment criterion, not to be used in the computation of the individual’s credit score.

4.77 On the other hand, some respondents have doubted the necessity for CRA’s proposed collection of 7 types of positive mortgage data from the credit providers, and suggested that except for the name and Hong Kong Identity Card (“HKID”) number, collection of other types of personal data are excessive having regard to the purpose of

⁸⁸ Letter of TransUnion Limited dated 28 February 2011

collection. This is understandable as the whole purpose of CRA's data collection, as presented by TransUnion Limited, is to identify the customer correctly in the data sharing process and HKID number, being unique, should *prima facie* suffice for this purpose. However, it is understood that an individual may supply his travel document instead of HKID to secure a mortgage loan and for some countries the travel document number does change when the document is renewed. It is therefore necessary for the CRA to use a combination of personal data in order to identify accurately the customer through data matching. Accuracy is important because it is the customer applying for credit who will suffer from a credit report wrongly compiled due to mismatched data. Needless to say, accuracy increases with use of all digits of the HKID number and use of more data in the matching exercise.

4.78 The Commissioner has examined the TransUnion Limited's submission⁸⁹ on its operational needs and is satisfied that CCF's proposed collection of 7 types of positive mortgage data by CRA is not excessive. Further, after due consultation with TransUnion Limited, the Commissioner considers that 'gender' could be deleted from the data collection list as it contributes only marginal enhancement to the reliability of the CRA's customer identification work.

Negative Mortgage Data

4.79 The Commissioner notes there was no dispute as regards CCF's proposal for the credit providers to share the same items of negative data for non-residential mortgages as currently provided under the Code for residential mortgages.

Summing Up

4.80 Summing up, the Commissioner accepts CCF's proposed list of types of mortgage data shared between credit providers and CRA, with the exception of 'gender' as part of the data contributed by credit providers to CRA for customer identification purpose.

Issue 3 - Contribution of Pre-existing Mortgage Data

Overview

4.81 According to the CCF's proposals, customers whose mortgage data are to be contributed to the CRA belong to the following two groups:

- (a) customers to whom a notice was provided before or at the time of mortgage

⁸⁹ Letter of TransUnion Limited dated 28 February 2011

loan application when the lending institution collected personal data from him and that the notice explicitly covered the contribution of data to the CRA as now proposed by the CCF;

- (b) customers to whom no such notice was provided or the notice provided before or at the time of mortgage loan application when the lending institution collected personal data from him did not explicitly cover the contribution of data to the CRA as now proposed by the CCF.

4.82 It is proposed that credit providers would contribute to the CRA mortgage data of pre-existing mortgage loans and mortgage loan applications received before the implementation date of the proposals, with or without prior explicit notification to the customers.

4.83 In putting forward the proposals, the CCF is of the view that even in the absence of prior notification, there is no need to obtain the explicit consent of the customers as the additional mortgage data are used for a lawful purpose directly related to the core activity of credit providers and the original purpose for which they were collected. The financial services industry believes a “directly related purpose” should be determined by whether it is directly related to the original purpose, without imposing a specific time frame for making that determination. Adopting such interpretation, the industry treated ‘*granting and maintaining the mortgage loan*’ as original purposes and ‘*ensuring ongoing creditworthiness of the customer*’ as a purpose directly related to those original purposes.

Views Received – Supporting

4.84 HKAB⁹⁰ stressed that if the mortgage count database was void of the pre-existing mortgage data and only reflected information relating to mortgage loans granted after implementation of the proposals, the effectiveness of the proposals, not only in facilitating more comprehensive credit assessment but also in prompting preventive measures where there were early signs of over-borrowing, would be significantly reduced and delayed. HKMC⁹¹, the Finance Houses Association of Hong Kong Limited⁹², Hong Kong General Chamber of Commerce⁹³, the Hong Kong S.A.R. Licensed Money Lenders Association Ltd.⁹⁴ and representatives of several banks had similar views.

4.85 HKAB explained that as the tenor of mortgage loans typically lasted for 10 to 30 years, it might take up to 30 years (i.e. after all pre-existing mortgages were fully repaid) for the mortgage count database to reflect the actual mortgage count. Furthermore, based

⁹⁰ Submission of HKAB dated 21 January 2011

⁹¹ Submission of HKMC dated 8 February 2011

⁹² Submission of the Finance Houses Association of Hong Kong Limited dated 2 February 2011

⁹³ Submission of Hong Kong General Chamber of Commerce dated 11 February 2011

⁹⁴ Submission of the Hong Kong S.A.R. Licensed Money Lenders Association Ltd. dated 27 January 2011

on legal advice, the contribution by credit providers of mortgage data of pre-existing mortgages to the CRA for compiling the mortgage count was a lawful purpose directly related to the original purpose for which such data were collected. Accordingly, HKAB was of the view that credit providers are not required to give notification to the customers before contributing their pre-existing mortgage data. Such a view was shared by representatives of several banks and finance companies.

4.86 The Hon. Mr. CHAN Kin Por was of the view that if pre-existing mortgage data were not contributed, credit providers would not be able to obtain from the CRA reliable information on the number of outstanding mortgage loans of their clients. It would take 20 to 30 years for the mortgage count database to build up to serve its purpose. This was not considered reasonable and practicable, and would run against the intended objectives of the proposals. Dr. Billy Mak, Associate Professor, Department of Finance & Decision Sciences, Hong Kong Baptist University, during discussion with Policy 21, considered it would be acceptable to share pre-existing mortgage data for the purposes of processing new applications for credit facilities and not for reviewing existing loans.

4.87 HKMA⁹⁵ pointed out that carving out existing mortgage data would significantly impede the effectiveness of the database in enhancing the overall financial stability in Hong Kong. HKMA⁹⁶ also voiced its support of the legal advice obtained by HKAB, pointing out that all the Data Protection Principles should be read together and should be construed purposively to promote the objectives of the Ordinance. DPP3(a) refers to the purpose for which the data were to be used at the time of collection of the data, while DPP3(b) refers to a directly related purpose. In constructing the original purpose, the data user might have informed the data subject the original purpose explicitly, or in the absence of any explicit communication, the original purpose might have been implied. In determining the implied purpose for which the personal data were collected at the time of collection, all circumstances, including the reasonable expectation of the data subjects were relevant. It should be within the reasonable expectation of the customer when applying for a loan that his personal data would be used for creating a credit profile to enable the proper assessment of the credit risk. The transfer of data to the CRA to enable the creation of a credit profile for risk evaluation was within the original purpose albeit such purpose was an implied purpose.

Views Received – Against

4.88 Many other individuals and organizations, on the other hand, held an opposite view. A member of the public⁹⁷, in his submission, remarked that positive mortgage data should only be shared with the explicit consent of the data subjects. iProA⁹⁸ went on to say

⁹⁵ Submission of HKMA dated 8 February 2011

⁹⁶ Letter of HKMA (Arthur K. H. YUEN) dated 25 February 2011

⁹⁷ Submission of Ada CHAN, a member of the public, dated 27 January 2011

⁹⁸ Submission of iProA dated 8 February 2011

that the contribution of pre-existing mortgage data without the explicit consent of the data subjects amounted to a violation of mutual trust between credit providers and their clients.

4.89 As reported in the 7 February 2011 issue of the Hong Kong Economic Journal, the Hon. Ronny TONG Ka Wah, SC, Legislative Councilor, considered that the consumer credit database would benefit both consumers and credit providers. However, he was of the view that pre-existing data should not be contributed, as there was no such understanding when consumers provided their personal information to credit providers in their mortgage loans applications.

4.90 At the public forum organized on 18 January 2011, Mr. Eric CHEUNG Tat Ming, Assistant Professor, Faculty of Law, The University of Hong Kong expressed reservations over CCF's proposals that there was no need to obtain the explicit consent of the customers before the proposed additional mortgage data were contributed and shared not only by the credit providers to which applicants of mortgage loans first provided their personal data, but also by all other credit providers. In any case, the financial services industry failed to provide any court cases to support their views.

4.91 The Law Society of Hong Kong⁹⁹ was of the view that 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 principles of data protection if information previously not provided to the CRA could now be submitted to the CRA without consent from the data subject. This was similar to the bundled consent versus specific consent issue in relation to direct marketing. After the implementation of the proposals, specific consent should be obtained for all pre-existing mortgages.

4.92 Hong Kong Bar Association¹⁰⁰ pointed out that the Commissioner had recently concluded that the provision of personal data of Octopus Rewards Scheme member to third parties for monetary gain did not amount to a "directly related purpose, applying the test of reasonable expectation of members on the use of their personal data". Applying the same test, the transfer of pre-existing mortgage data would be contrary to DPP3 because at the time the data were collected the data subject would not have expected this to occur due to the fact that this was not permitted.

4.93 Hong Kong Bar Association noted the CCF's argument that the original purpose for the data collection was "granting and maintaining the mortgage loan" and the transfer of data to the CRA for "ensuring ongoing creditworthiness of the customer" was directly related to the original purpose. It pointed out that this argument ignored the expectations of the individuals who provided the data concerned to the credit providers at a time when such

⁹⁹ Submission of the Law Society of Hong Kong dated 8 February 2011

¹⁰⁰ Submission of Hong Kong Bar Association dated 17 February 2011

data could not be transferred to the CRA because the Code did not permit this.

4.94 On this basis, Hong Kong Bar Association argued that it would not be sufficient for the purposes of compliance with DPP3 for data subjects to be given “prior explicit notification” of the transfer. What would be required was the “prescribed consent” of the data subjects. By virtue of Section 2(2) of the Ordinance, “prescribed consent” meant, in essence, express consent given voluntarily that had not been withdrawn by notice in writing.

4.95 Privacy Hong Kong¹⁰¹ held views similar to Hong Kong Bar Association. Generally, the purpose of use of the positive mortgage data was fulfilled upon completion of the process of the mortgage loan application by the particular credit provider. Further use of the data would be confined to the subsequent management of the loan account. The transfer to any third parties must be for a purpose directly related thereto, otherwise the prescribed consent of the data subject should be obtained.

4.96 In light of the sensitive nature of positive mortgage data, Privacy Hong Kong was of the view that the data subject should be clearly informed of the purpose of uses and the privacy impact on providing such data for sharing. Any disparity in bargaining power that might arise in a banker-customer relationship should be properly managed and in this respect, a separate and independent consent contained in a clear, easily understood document was desirable.

4.97 Hong Kong Human Rights Monitor¹⁰² emphasized that without the explicit consent of data subjects, the provision and transfer of pre-existing mortgage data as proposed by the financial services industry would contravene the provisions of the Ordinance. For guarantors in particular, their personal data had never been shared under the current Code. To involve them in sharing of pre-existing mortgage data would be even more inappropriate.

4.98 Hong Kong Human Rights Monitor considered the legal opinion cited by the financial services industry in support of the proposals problematic. There was no court case supporting such legal opinion. Besides, borrowers, mortgagors and guarantors, at the time of providing their personal data, could not have contemplated that their personal data would be contributed to the CRA and shared by other credit providers. Such personal data were provided to the credit providers concerned in connection with the processing of the original mortgage loan applications.

4.99 Hong Kong Human Rights Monitor was of the view that “directly related purposes” were those related to the processing of the mortgage loan applications in which

¹⁰¹ Submission of Privacy Hong Kong dated 8 February 2011

¹⁰² Submission of Hong Kong Human Rights Monitor dated 8 February 2011

the personal data of borrowers, mortgagors and guarantors were originally collected. Future credit facilities applications should not be considered as directly related purposes. The use of such personal data for the purposes of “granting and maintaining the mortgage loan” and “ensuring ongoing credit worthiness of the customer” should be confined to activities of the original credit providers, and should not be extended to cover contribution to the CRA and sharing by other credit providers.

4.100 Consumer Council¹⁰³ indicated that the Council was unable to concur with the industry’s view that there was no need to obtain the explicit consent of the customers. The industry’s interpretation of “directly related purpose” was in a much broader context than what the public might have perceived. The Council shared the Commissioner’s view that it might not be within the reasonable contemplation of consumers that data in relation to their pre-existing mortgages and mortgage loan applications would be disclosed to the CRA for consumer credit data sharing.

4.101 In view of rising public demand for adequate privacy protection for consumers, the Council considered it necessary to give prior explicit notification to consumers for the additional mortgage data in respect of pre-existing mortgages to be contributed to the CRA when the proposal was implemented. The notification should clearly spell out the purpose(s) for which consumers’ personal data are to be used, and be presented in a font size easily readable to consumers. The Council considered that the adoption of a consent-based approach was appropriate to uphold the individual’s rights to control his personal data. A consumer should have the right to choose whether or not to allow his data to be shared.

Views of Overseas Personal Data Protection Agencies

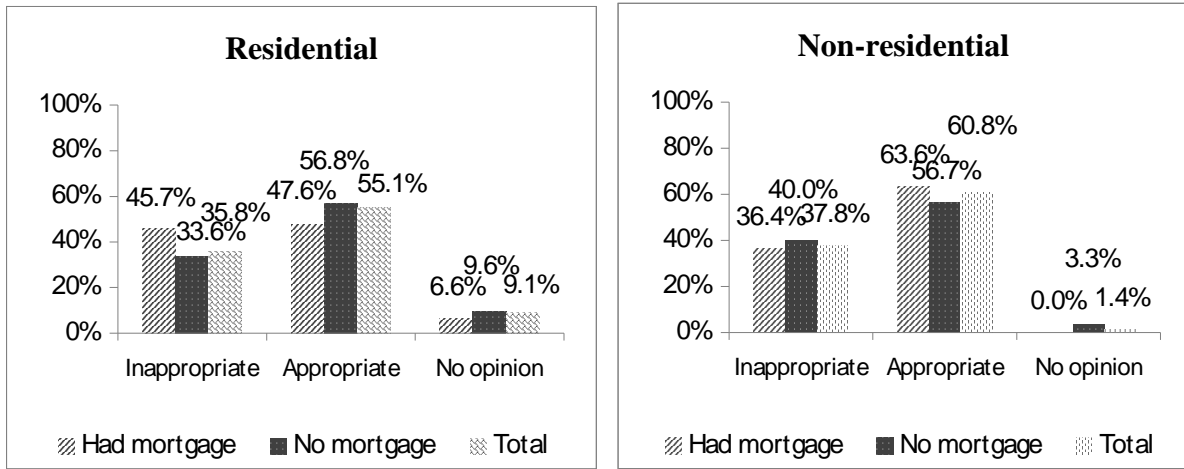
4.102 In the course of the consultation, views of personal data protection agencies in other economies were sought. In their written reply, the UK Information Commissioner’s Office said that when new data was included by the bureaux it was not their practice to backdate the data. Notice was a key component of fair processing of data in the UK to enhance transparency.

Face-to Face Interview Results

4.103 Views of members of the public interviewed during the consultation period were rather mixed in situations where the clients were informed beforehand. About 55% of them agreed that if clients concerned had been informed before implementation of the proposals, the contribution and sharing of pre-existing mortgage data was appropriate. The corresponding percentage was lower (48%) for those with mortgage loans, slightly higher than the percentage (46%) for those who disagreed. The percentage who agreed was higher (61%) for respondents who had non-residential properties.

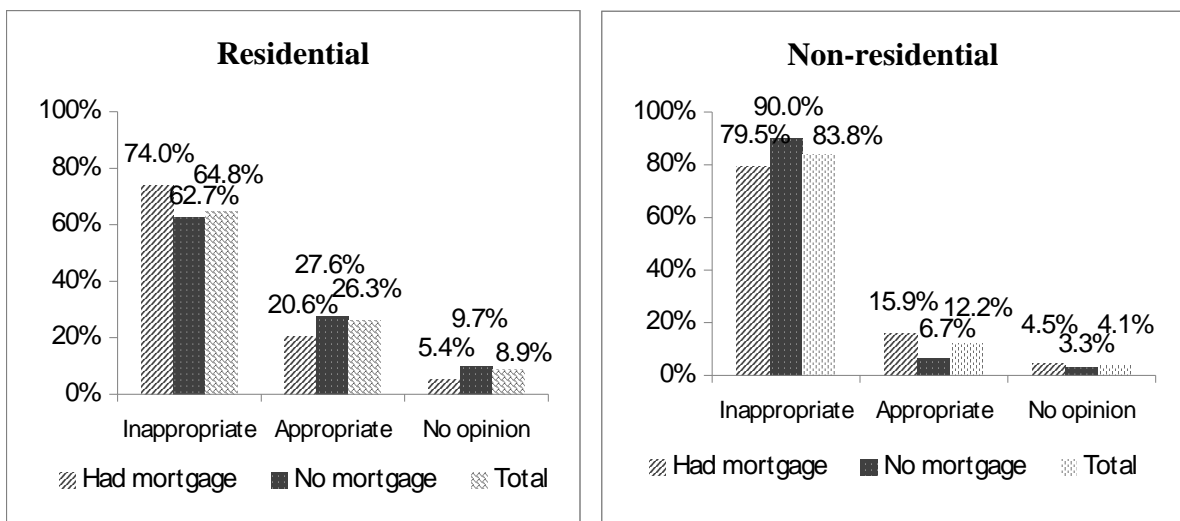
¹⁰³ Submission of Consumer Council dated 10 February 2011

Chart 4:10 Percentage of respondents by whether the contribution and sharing of pre-existing mortgage data, if clients concerned had been informed before the proposals were implemented, was appropriate



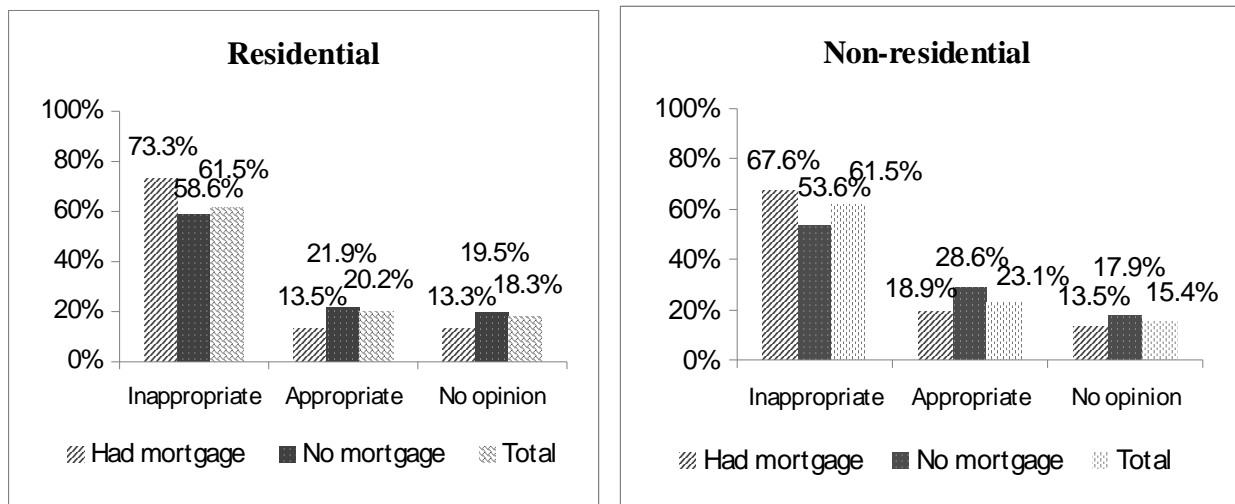
4.104 On the other hand, members of the public were not supportive if they had NOT been informed before implementation of the proposals. Only about 26% of them agreed that if clients concerned had NOT been informed before implementation of the proposals, the contribution and sharing of pre-existing mortgage data was appropriate. The corresponding percentage was even lower (21%) for those with mortgage loans, much lower than the percentage (74%) for those who disagreed. The percentage who agreed was also lower (12%) for respondents who had non-residential properties.

Chart 4:11 Percentage of respondents by whether the contribution and sharing of pre-existing mortgage data, if clients concerned had NOT been informed before the proposals were implemented, was appropriate



4.105 For those who disagreed with the contribution and sharing of pre-existing mortgage data if they had not been informed before implementation of the proposals, their views were sought on the understanding that if pre-existing data could not be shared, credit providers would not have complete information for credit risk assessment, such that the proposals could not achieve the intended objectives. Only about 20% of them agreed that if clients concerned had NOT been informed before implementation of the proposals, the contribution and sharing of pre-existing mortgage data was appropriate. The percentage who agreed was about 23% for respondents who had non-residential properties.

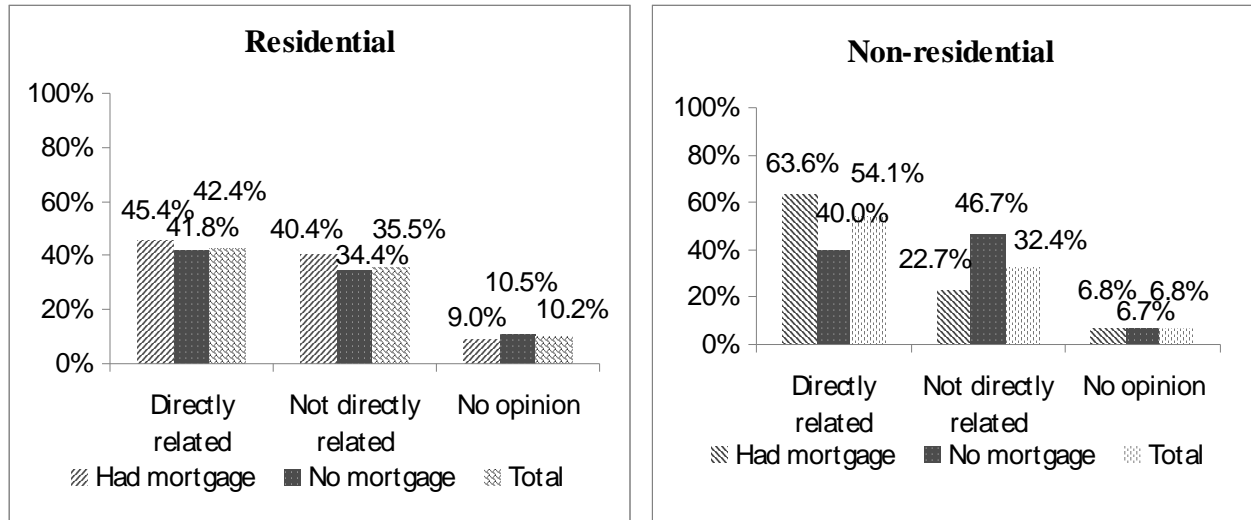
Chart 4:12 Percentage of respondents who disagreed by whether the contribution and sharing of pre-existing mortgage data, if clients concerned had NOT been informed before the proposals were implemented, was appropriate, on the understanding that if pre-existing data were not shared, the effectiveness of the proposals would be affected



4.106 Clearly, the public has high expectation that they should be informed in advance before their personal data are shared. Nevertheless, whether the contribution and sharing of pre-existing mortgage data as proposed by the financial services industry would contravene the provisions of the Ordinance is a legal issue that cannot be determined solely on the basis of public opinion. Indeed, the public is rather confused as to whether the use of pre-existing mortgage data is directly related to the original purpose of processing the applications of mortgage loans in which the data were provided to credit providers.

4.107 As shown in the chart below, while about 42% considered that the use was directly related to the processing of applications for mortgage loans, about 36% considered that it was not directly related. As high as 10% did not have any opinion. For respondents who had non-residential properties, the corresponding percentages were 54%, 32% and 7% respectively.

Chart 4:13 Percentage of respondents by whether the use of pre-existing mortgage data was for a directly related purpose of processing the mortgage loan applications in which the data were provided



Issue 3: The Commissioner’s Observations and Conclusions

4.108 The issue here relates to compliance with the DPP3 which provides that:

“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).”*

Credit providers’ act to ‘contribute’ data to CRA equates to ‘transfer’ of data and according to section 2(1) of the Ordinance, “transfer” of personal data is a use of personal data.

4.109 The Commissioner notes the overwhelming objection to CCF’s proposal for credit providers to contribute to CRA mortgage data received before the date of implementation of the proposed expanded sharing of mortgage data, short of prior notification to the customer of such use of the data when the mortgage data was previously collected or a prescribed consent from the customer under DPP3.

4.110 While the issue is largely an interpretation of the legal requirements under DPP3, the layman’s view, as gauged from the household surveys, is overwhelmingly against the CCF’s proposal.

4.111 CCF has justified its proposal based on the legal advice of solicitors and Senior Counsel¹⁰⁴. In brief, they consider that credit providers' contribution of pre-existing mortgage data is within the ambit of DPP3, arguing that the original purpose of data collection from the customer is "granting and maintaining the mortgage loan" whereas the purpose of contributing data to CRA is "ensuring ongoing creditworthiness of the customer" and therefore directly related to the original purpose.

4.112 In this connection, the Commissioner has sought advice from another Senior Counsel. He agrees with the advice obtained that the purpose of data collection from the customer by the credit provider is to enable the credit provider to consider the original mortgage application, not to enable the credit provider to supply the same whether directly or indirectly to another credit provider in the future for the latter to consider whether to grant any credit to the same customer. Accordingly, the use of the pre-existing mortgage data as proposed by CCF is not in accordance with DPP3 (a) and (b), unless the prescribed consent of the customer is obtained. Relevant extracts of the Senior Counsel's advice is reproduced in the Appendix F.

4.113 In CCF's legal advice, reference was made to disclosure of employees' personal data to the Mandatory Provident Fund ("MPF") providers. Such disclosure was allowed although it would not have been in the reasonable contemplation of the employees as their data were collected before the implementation of the MPF regime. The analogy to the present issue is inappropriate. The use of the employees' personal data by the employer was to comply with a statutory requirement while CCF's proposed use of pre-existing mortgage data is not.

4.114 In support of the CCF proposal, HKMA¹⁰⁵ referred to the decision of the Administrative Appeal Board in *Yuen Bik Chun vs Privacy Commissioner for Personal Data* (AAB No. 41 of 2006). However, as noted in the legal advice obtained by the Commissioner (see paragraph (28) in Appendix F), this case is quite different from the context of the CCF's proposal under consideration and is therefore not helpful to the construction of DPP3 (a) and (b) in the present context.

4.115 The Commissioner shares the concern of the financial services industry and HKMA that the exclusion of the pre-existing positive mortgage data would render the credit database significantly less useful in the immediate future. However, he cannot act beyond the bounds of law to address this deficiency. Given time for CRA to collect new mortgage data, the effectiveness of the credit database will definitely be enhanced. Meanwhile, the Commissioner notes that even if the contribution of pre-existing mortgage data is allowed, the banks would only make arrangements on a best-effort basis, subject to the data being electronically available on their systems. He opines that if the credit

¹⁰⁴ See Annex 2 attached to letter of HKMA (Arthur K. H. YUEN) dated 25 February 2011

¹⁰⁵ Letter of HKMA (Arthur K. H. YUEN) dated 25 February 2011

providers have the will to work together to improve the reliability of credit assessment, they do have means other than sharing data through CRA as CCF originally proposed, albeit less operationally convenient.

4.116 Following the advice of the Senior Counsel he engaged (see paragraphs 31 to 33 in Appendix F), the Commissioner wishes to make a distinction between positive mortgage data and negative mortgage data in considering the CCF's proposals.

4.117 In the case of negative credit data, since the customer is already in default of his repayment obligation, it would give rise to some more serious risks of default if he were to be given further credit or new credit. This justifies the concern by HKMA in the discharge of its function for maintaining or promoting the general stability or effective working of the banking sector. Hence there is a case for saying that the provision of such negative credit data is exempted from DPP3 of the Ordinance (see section 58(1)(f)(ii) & (g), section 58(2) and section 58(3)(b)). For this reason, the Commissioner accepts the CCF's proposal to share pre-existing negative mortgage data of non-residential mortgages. This is in line with the arrangements for sharing pre-existing negative mortgage data for residential mortgages when the Code was last revised.

4.118 However the position is different in the case of positive credit data. By definition the customer has not defaulted in his financial obligation. The concern about the risk of default and the probative value of the data in the context of promoting the stability of the banking sector are much weaker. In the circumstances, the Commissioner decides that a case for exemption under section 58 of the Ordinance has not been made out for positive mortgage data in respect of both residential and non-residential mortgages.

4.119 In short, on grounds of compliance with DPP3, **the Commissioner supports the CCF proposal of sharing pre-existing mortgage data for negative mortgage data but not for positive mortgage data.**

Issue 4 – Use of Mortgage Count on or after Implementation

Overview

4.120 Although the additional data contributed by the credit providers to the CRA relate to mortgage, CCF proposed to allow data access for assessment of both mortgage loans and other credit facilities. According to the CCF, mortgage data proposed to be shared would be accessed by credit providers for any application for new credit facilities or renewal of existing credit facilities, or general portfolio review after customer's written consent is obtained. This would mean that mortgage data provided by borrowers, mortgagors or guarantors in connection with their applications for mortgage loans would be used not only by the credit providers concerned with the mortgage but all other credit providers, in

connection with not only mortgage loans but all other credit facilities obtained by the borrowers, mortgagors or guarantors.

Views Received – Supporting

4.121 HKAB¹⁰⁶ emphasized that in order to achieve the principal objectives of the proposals of promoting responsible lending and borrowing and reducing the risk of overborrowing by consumers, it was necessary for a credit provider to understand the overall credit position of a consumer. HKMC¹⁰⁷ and representatives of several banks and finance companies also shared similar views.

4.122 CCF¹⁰⁸ further elaborated that credit providers had to consider a number of factors in assessing the credit worthiness and repayment ability of their clients. Whether there was overleveraging or overborrowing was not determined by the amount of a single loan in an isolated case, but rather having regard to the total indebtedness and repayment ability of an individual. Also, in accordance with the Supervisory Policy Manual (SPM) IC-6, a statutory guideline issued by HKMA, authorized institutions need to make full use of the consumer credit data from the CRA for assessing credit applications.

4.123 Hong Kong General Chamber of Commerce¹⁰⁹ and the Hong Kong S.A.R. Licensed Money Lenders Association Ltd.¹¹⁰ was also of the view that it was essential that credit providers were able to access comprehensive credit information when they considered applications for new credit facilities or renewal of existing facilities, regardless of the kind of credit facilities under consideration.

Views Received – Supporting but with Reservations

4.124 DAB¹¹¹ commented that while such an arrangement was quite reasonable, it should be handled with care. It was suggested that consideration could be given to specifying the types of credit facilities and the amount of credit involved for which credit providers were allowed to access mortgage data proposed to be shared. In addition, a separate written consent should be obtained from the data subject. The purpose of such safeguards was to strike a balance between personal data privacy and the need to increase the transparency of credit data.

¹⁰⁶ Submission of HKAB dated 21 January 2011

¹⁰⁷ Submission of HKMC dated 8 February 2011

¹⁰⁸ Letter of CCF dated 28 January 2011

¹⁰⁹ Submission of Hong Kong General Chamber of Commerce dated 11 February 2011

¹¹⁰ Submission of the Hong Kong S.A.R. Licensed Money Lenders Association Ltd. dated 27 January 2011

¹¹¹ Submission of DAB dated 8 February 2011

4.125 The Law Society of Hong Kong¹¹² while voicing support for the proposals also suggested that it might be possible to set a threshold and only if the loan amount or facility limit reached this threshold amount could mortgage data be accessed by the credit provider. So long as when the data were collected, it was made clear to the consumers that the collected information might be used for the evaluation of loans or other credit facilities, and the consumers were clearly made aware of the potential extent of disclosure and agreed to such disclosure, the additional mortgage data could be used for the assessment of other credit facilities.

Views Received – Against

4.126 iProA¹¹³, on the other hand, strongly disagreed with the use of the mortgage count for non-mortgage applications. In their views, this would only expose unnecessary privacy data to credit providers and unnecessarily enrich their own database for future cross-selling activities. iProA also questioned the reasons why an application for credit cards which involved a relatively small amount of credit facilities compared to mortgage loans had to be subject to the same assessment criteria. iProA was thus of the view that the proposed additional types of mortgage data to be shared were excessive for the purposes of credit assessment and general reviews of borrowers' credit profiles.

4.127 Consumer Council¹¹⁴ also queried whether such sharing of additional mortgage information was necessary for evaluation of loan applications other than mortgages. As stated in the consultation document, the size of non-mortgage credit facilities to be considered by credit providers was relatively small compared to the size of the mortgage loans. Dr. Billy Mak, Associate Professor, Department of Finance & Decision Sciences, Hong Kong Baptist University, during discussion with Policy 21, pointed out that as the amount of credit facilities required for credit cards was normally much smaller than the amount of mortgage loans, there was not a need to access mortgage data for the purpose of processing credit card applications.

Views of Overseas Personal Data Protection Agencies

4.128 In the course of the consultation, views of personal data protection agencies in other economies were sought. In their written reply, the UK Information Commissioner's Office indicated that mortgage data were used when considering all other credit facilities. In their opinion, the mortgage data were clearly relevant data to help a lender decide whether it would be prudent to lend more money to a consumer.

¹¹² Submission of the Law Society of Hong Kong dated 8 February 2011

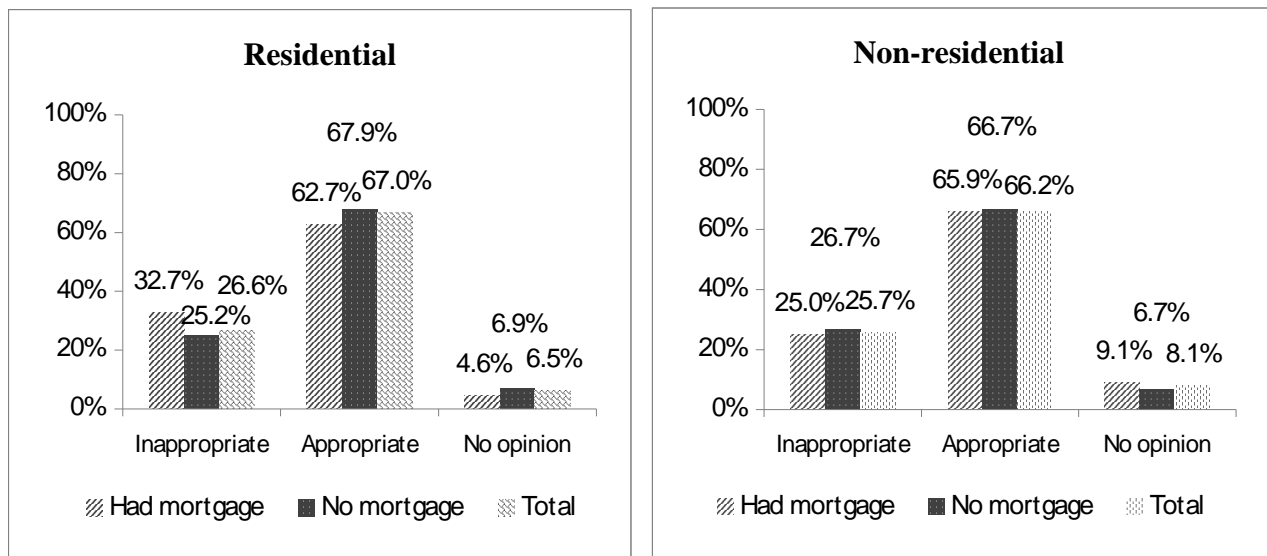
¹¹³ Submission of iProA dated 8 February 2011

¹¹⁴ Submission of Consumer Council dated 10 February 2011

Face-to Face Interview Results

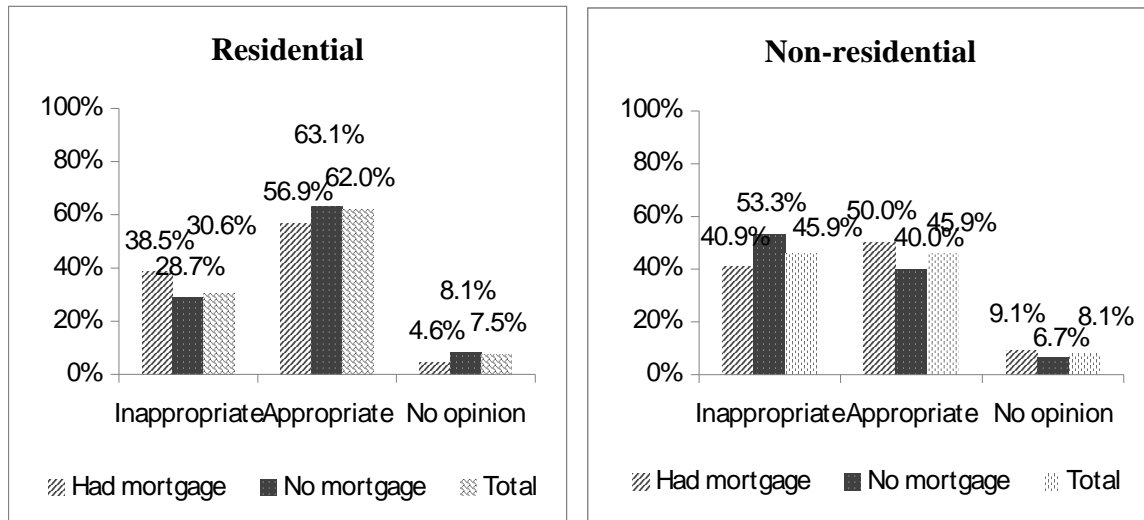
4.129 Views of members of the public interviewed during the consultation period were quite supportive. More than half (67%) of them agreed that after implementation of the proposals, with written consent of clients, credit providers’ access of the additional mortgage data for the purpose of processing applications for mortgage loans was appropriate. The corresponding percentage was slightly lower (63%) for those with mortgage loans, much higher than the percentage (33%) for those who disagreed. The percentage who agreed was slightly lower (66%) for respondents who had non-residential properties.

Chart 4:14 Percentage of respondents by whether after implementation of the proposals, with written consent of clients, credit providers’ access of the additional mortgage data for processing applications for mortgage loans was appropriate



4.130 As regards the use of the additional mortgage data for the purposes of processing applications for credit facilities other than mortgage loans and renewal/review of all credit facilities, more than half (62%) of them agreed that after implementation of the proposals, with written consent of clients, credit providers’ access of the additional mortgage data was appropriate. The corresponding percentage was lower (57%) for those with mortgage loans, much higher than the percentage (39%) for those who disagreed. However, less than half (46%) of respondents who had non-residential properties agreed, with about the same proportion of them disagreeing.

Chart 4:15 Percentage of respondents by whether after implementation of the proposals, with written consent of clients, credit providers' access of the additional mortgage data for processing applications for other credit facilities and review/renewal of all existing credit facilities



Issue 4: The Commissioner's Observations and Conclusions

4.131 This issue relates back to DPP1(1) as regards whether the additional mortgage data collected would be excessive for CCF's further proposed purposes of assessing new non-mortgage credit applications as well as review and renewal of the consumers' existing credit facilities.

4.132 CCF have argued that this is a non-issue as credit assessment has to take into account the overall indebtedness of the customer irrespective of the amount of credit being applied for or reviewed. According to the statutory guideline issued by HKMA, they need to make full use of the database in their credit decisions.

4.133 The Commissioner notes that well over half of the household interviewees did not find it objectionable for the additional mortgage data to be used for such purposes, with the understanding that their written consent would be sought in advance.

4.134 Notwithstanding the HKMA statutory guideline and the lack of substantial objection from the public on the comprehensive use of the mortgage data, the question of whether collection of the data for all credit assessment, renew/review purposes can be taken as not excessive has to be determined under DPP1(1).

4.135 The Commissioner notes that under the current credit assessment practice, credit providers generally do not require detailed financial data (such as mortgage data) in processing applications for some credit facilities (such as tax loan). Further, overall loan

delinquency and credit card bad debt have since 2003 improved significantly without the benefit of sharing positive mortgage data. Also, both the number of personal bankruptcies and the average amount of indebtedness have dropped. **He concludes therefore that sharing of positive mortgage data for credit assessment of non-mortgage related credit facilities, irrespective of the amount of the credit, would be excessive.** However, he sees no objection extending the existing arrangement of sharing negative data for non-mortgage credit applications/renewals/reviews from residential mortgages to non-residential mortgages.

4.136 The Commissioner considers that a threshold amount of the credit facility involved should be set under which no access to positive mortgage data by the credit provider should be allowed. He had asked for CCF's proposal to define such a threshold but in vain. Pending CCF's submission of such a threshold to the satisfaction of HKMA and PCPD, he would restrict the sharing of positive mortgage data to mortgage loan application and review of existing mortgage loans only. TransUnion Limited has confirmed that compartmentalization of the data sharing arrangement to serve this purpose is feasible.

Issue 5 - Transitional Period

Overview

4.137 The concept of a transitional period is that during the period, credit providers are prevented from accessing and using the mortgage data for the purposes of review of existing credit facilities of borrowers except for those circumstances where immediate access is required because the customer is in financial difficulties and in need of debt restructuring.

4.138 A transitional period would offer borrowers an additional level of safeguard in the knowledge that any mortgage data collected by the CRA could not be accessed and used during the transitional period other than new applications for credit facilities and prescribed exceptional circumstances indicated above. This may be beneficial to those who have over-borrowed in that it would offer a long period of time in which they would be able to re-assess their situation and revise their repayment schedules in consultation with their lending institutions. Furthermore, the transitional period would facilitate the credit providers to come to a better judgment in terms of the extent to which their own credit recovery strategies were efficacious. Those strategies would include debt relief plans and/or the restructuring of non-performing loans.

Views Received – Supporting

4.139 HKAB¹¹⁵ explained that a relatively lengthy 24-month period was adopted in 2003,

¹¹⁵ Submission of HKAB dated 21 January 2011

considering that was the first time when positive data sharing was introduced covering unsecured loans. At the moment, the consumer credit market was more mature and that the sharing of positive data had been implemented for more than seven years. Thus, a transitional period of 24 months was considered more than adequate. Representatives of several banks also shared similar views, pointing out that a transitional period of 24 months was sufficient to enable customers to review and restructure their existing indebtedness.

4.140 DAB¹¹⁶ supported the 24-month transitional period, noting that this would allow those who had overborrowed sufficient time to restructure their loan portfolio, preventing credit providers from changing their credit terms to become less favourable. This would also avoid any negative impact on the property market and the relationship between credit providers and their clients. Dr. Billy Mak (Associate Professor, Department of Finance & Decision Sciences, Hong Kong Baptist University), iProA¹¹⁷, Hong Kong General Chamber of Commerce¹¹⁸, the Hong Kong S.A.R. Licensed Money Lenders Association Ltd.¹¹⁹ and Consumer Council¹²⁰ also agreed with the proposals.

Views Received – Supporting but with Reservations

4.141 The Law Society of Hong Kong¹²¹ suggested that in deciding what circumstances where immediate access was required because the customer was in financial difficulties and in need of debt restructuring, some guidelines should be set on which the credit providers could base their judgment and the credit providers should be obliged to set out their reasons in writing and provide a copy to the data subjects.

Views Received – Against

4.142 On the other hand, Hong Kong Bar Association¹²² stressed that whether a credit provider wished to access the (proposed) additional mortgage data “to review the consumers’ existing credit facilities” or “for general portfolio review of customers’ credit worthiness”, this should require the prior consent of the individuals concerned. Thus, the proposed transitional period was opposed and a requirement of prior written consent was proposed in its place.

Face-to Face Interview Results

4.143 Views of members of the public interviewed during the consultation period were

¹¹⁶ Submission of DAB dated 8 February 2011

¹¹⁷ Submission of iProA dated 8 February 2011

¹¹⁸ Submission of Hong Kong General Chamber of Commerce dated 11 February 2011

¹¹⁹ Submission of the Hong Kong S.A.R. Licensed Money Lenders Association Ltd. dated 27 January 2011

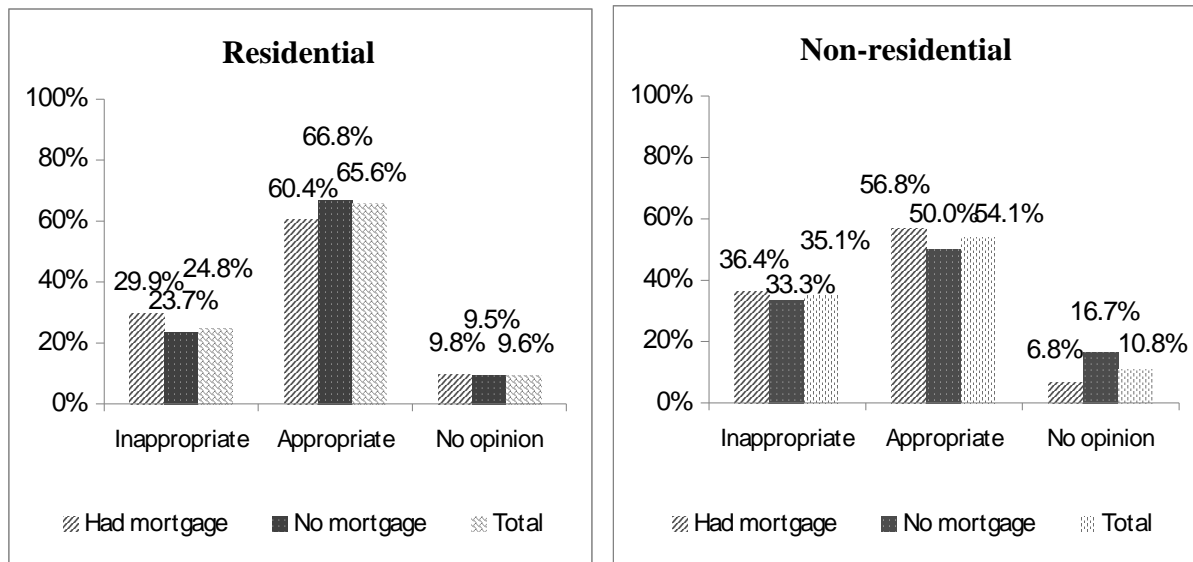
¹²⁰ Submission of Consumer Council dated 10 February 2011

¹²¹ Submission of the Law Society of Hong Kong dated 8 February 2011

¹²² Submission of Hong Kong Bar Association dated 17 February 2011

quite supportive. More than half (66%) of them agreed that the transitional period of 24 months was appropriate. The corresponding percentage was lower (60%) for those with mortgage loans, much higher than the percentage (30%) for those who disagreed. The percentage who agreed was lower (54%) for respondents who had non-residential properties.

Chart 4:16 Percentage of respondents by whether the transitional period was appropriate



Issue 5: The Commissioner’s Observations and Conclusions

4.144 **There is overwhelming support for CCF’s proposal to incorporate a 24-month transitional period before access to the additional mortgage data is allowed for general portfolio reviews of consumers’ credit-worthiness.** CCF has confirmed that written consent for data access will be sought from the customers. **The Commissioner is pleased to accept the proposal.** Given his determination under Issue 4, access to mortgage count for the general portfolio review after the transitional period will be limited to review of existing mortgage loan only. As regards the access to additional mortgage data during the transitional period, the Commissioner finds justification for such access when the customer is in financial difficulties and in need of debt restructuring.

Issue 6 – Implementation Safeguards

Overview

4.145 At present, measures to protect personal data under the consumer credit data sharing arrangement are incorporated in the Code. The CRA is required to carry out

compliance audit annually and the audit report has to be submitted to the Commissioner for consideration and/or comments. In view of the expansion of the database if the industry's proposal is adopted, the Commissioner recommends the CRA, at its own expense, to commission an independent compliance audit within 6 months from the implementation date, with a view to having the compliance auditor submitting to the Commissioner an audit report no later than 3 months from the date of commencement of the compliance audit. The first compliance audit shall address, in particular, the adequacy of the data handling system of the CRA in respect of the expanded scope of mortgage data sharing in accordance with the provisions of the Code. Thereafter, the annual privacy compliance audit of the CRA will also cover the expanded scope of mortgage data.

4.146 In addition, given the CRA holds all the consumer credit data in its information systems, the IT security management of its information systems and all its associated controls are critical to the confidentiality, integrity and accountability of the consumer credit data being entrusted. Due to the sensitivity of these consumer credit data, the level of expectation on their security is high. Periodic IT security audits utilizing industry best-practice principles, such as the ISO/IEC 27002 Best Practice on Information Security Management ("ISM") will, as noted in the consultation document, provide assurance to consumers in the protection of their personal data.

4.147 Public views were sought as regards what and how additional privacy safeguards should be imposed upon the CRA and the credit providers consequent to an enlarged credit database and greater sharing and use of the mortgage data.

Views Received – Against

4.148 As regards the need for improvement on the part of the credit providers, HKMA¹²³ pointed out that according to Section 4.7 of the SPM IC-6 which deals with the requirement of compliance audit, authorized institutions are required to conduct a compliance audit at least annually to verify whether their data management practices are adequate to ensure compliance with the requirements of the Code, SPM IC-6 and internal policies and procedures regarding the sharing of consumer credit data. The audit report should assess the overall effectiveness of the data management practices in ensuring compliance with the Code and the SPM IC-6. The report should cover issues like security breaches or violations, management's responses and recommendations for improvement.

4.149 Similar to the 2003 practice, HKMA indicated they would be prepared to conduct a special round of on-site examinations at an appropriate time to selectively assess individual authorized institutions' compliance with the revised Code and other relevant requirements in relation to positive mortgage data sharing.

¹²³ Letter of HKMA dated 16 February 2011 [*Confidential, not published*]

4.150 HKAB¹²⁴ reiterated that the various safeguards currently in force had been implemented satisfactorily through the years in connection with the existing consumer data sharing arrangement. Representatives of several banks and finance companies shared similar views, contending that the current data protection safeguards, as governed by the Code, SPM IC-6 and guidelines of HKAB, were sufficient and that their clients' privacy were adequately protected. The CRA had been in operation for more than 30 years, with good track record and whose data protection practices were closely monitored by PCPD.

4.151 TransUnion Limited¹²⁵, the only consumer CRA in Hong Kong, explained that they had complied with the Code in conducting annual compliance audit by independent auditors. So far, TransUnion Limited had submitted 7 compliance audit reports with no significant findings by auditors and there was also no significant comment from PCPD. In addition, there were periodic reviews conducted by dedicated team from their company headquarters and there was no significant finding from these reviews. The audit principles adopted followed ISO 17799. There were also annual financial audits which covered data security at the system and network levels. Given the CCF's proposals involved the gathering of incremental data which were not significant compared to the size of the existing database, TransUnion did not support the PCPD's proposals. Furthermore, TransUnion Limited clarified that they had not transferred and did not have plans to transfer consumer credit data outside Hong Kong whether or not there was any express prohibition.

4.152 Hong Kong General Chamber of Commerce¹²⁶ was of the view that the existing safeguards imposed on the CRA by the Commissioner and HKMA were robust. Hence, any proposed new safeguard should be subject to thorough consultation before implementation. The Hong Kong S.A.R. Licensed Money Lenders Association Ltd.¹²⁷ also believed that credit providers should have adopted necessary internal control and procedures to ensure compliance with the Code.

Views Received – Supporting

4.153 On the other hand, HKMC¹²⁸ voiced support of the Commissioner's suggestions that additional measures should be introduced and imposed upon the CRA. URA¹²⁹ shared similar views, noting that more stringent control on collection, use, security and access was necessary to protect data privacy. Estate Agents Authority¹³⁰ also expected that any relaxation in the sharing of credit data would be protected by more stringent privacy

¹²⁴ Submission of HKAB dated 21 January 2011

¹²⁵ Submission of TransUnion Limited dated 8 February 2011

¹²⁶ Submission of Hong Kong General Chamber of Commerce dated 11 February 2011

¹²⁷ Submission of the Hong Kong S.A.R. Licensed Money Lenders Association Ltd. dated 27 January 2011

¹²⁸ Submission of HKMC dated 8 February 2011

¹²⁹ Submission of URA dated 1 February 2011

¹³⁰ Submission of Estate Agents Authority dated 7 February 2011

safeguards. Dr. Billy Mak, Associate Professor, Department of Finance & Decision Sciences, Hong Kong Baptist University, also shared similar views.

4.154 A member of the public¹³¹, in his written submission, opined that given that the CRA had good track record and that only mortgage count data were shared, with the privacy safeguards and requirements proposed by the Commissioner, the data privacy of consumers concerned should be adequately protected. DAB¹³², apart from supporting the proposals of the Commissioner, suggested that considerations should be given to suitably increasing the restrictions placed on credit providers in accessing and using consumer credit data. For instance, restrictions could be placed on the number of credit reviews that could be conducted within a specified period of time.

4.155 Another member of the public¹³³, in his written comment, questioned if there was any assurance that the CRA would not disclose consumer credit data to CRA's shareholders or parties outside Hong Kong. Dr. WONG Kam Chiu¹³⁴, a District Councilor from Wong Tai Sin District, added that the Commissioner in consultation with HKMA, should draw up a data protection mechanism with provisions for penalty for any breaches of the Code. After the implementation of the proposals, credit providers should publish details on consumer credit data that would be shared. Mr. Alvin LEE Chi Wing¹³⁵, District Councilor of the Sha Tin District, also expressed concern over the transparency of the transfer and use of the proposed additional consumer mortgage data and whether the data subjects were fully informed.

4.156 DAB¹³⁶ pointed out that as business transactions between the CRA and credit providers were only regulated by the Code which had no legally binding powers, public confidence was lacking. With the expansion of consumer credit sharing as proposed, the current system of regulation by the Code was clearly not quite sufficient. DAB suggested that considerations could be given to introducing legislation, making reference to the Fair Credit Reporting Act¹³⁷ enforced by the US Federal Trade Commission, in order to strengthen data privacy rights of borrowers.

¹³¹ Submission of WONG Mei Seong, a member of the public, dated 7 February 2011

¹³² Submission of DAB dated 8 February 2011

¹³³ Submission of Mike GRAY, a member of the public, dated 8 February 2011

¹³⁴ Submission of Dr. WONG Kam Chiu dated 31 January 2011

¹³⁵ Submission of Mr. Alvin LEE Chi Wing dated 10 February 2011

¹³⁶ Submission of DAB dated 8 February 2011

¹³⁷ According to Fair Credit Reporting Act, Section 619, any person who knowingly and willfully obtains information on a consumer from a consumer reporting agency under false pretenses shall be fined under title 18, United States Code, imprisoned for not more than 2 years, or both. And according to Section 620, any officer or employee of a consumer reporting agency who knowingly and willfully provides information concerning an individual from the agency's files to a person not authorized to receive that information shall be fined under title 18, United States Code, imprisoned for not more than 2 years, or both.

4.157 Dr. K. P. CHOW¹³⁸, a member of the Standing Committee on Technological Developments of PCPD, supported the Commissioner's proposal that a privacy compliance audit be conducted annually to ensure the data handling system and process of CRA were in line with the Ordinance. He also supported the idea that an IT security audit be conducted at the same time as the privacy compliance audit to ensure the confidentiality, integrity and accountability of personal data stored in the IT systems used by CRA were enforced. He pointed out that if an IT system that stored personal data was vulnerable, it already violated DPP4. Thus, consideration should be given to conducting penetration test (a common test in IT security audit) in the privacy compliance audit.

4.158 iProA¹³⁹ was of the view that a privacy compliance audit was necessary and supported the Commissioner's recommendation to the CRA in conducting an independent compliance audit annually and performing the audit within 6 months after the implementation. Periodic IT security audit was very important, the objective of which was to ensure there was no data leakage such as unlawful access or massive data copying by "authorized" personnel. The idea of using ISO standard was good.

4.159 iProA further suggested that a computer system should be implemented with access control using the ISO standard where it could monitor/ log the user activities when accessing data. The periodic IT security audit could then check the log file and see if there was any unlawful access of data. As a safeguard, all computers used by CRA staff should not be equipped with connectors (such as USB ports etc) to external devices. Similarly, the CRA system should not allow any data export functions which would make consumers' data vulnerable.

4.160 Information Systems Audit and Control Association China Hong Kong Chapter ("the Association"), in their written submission¹⁴⁰, believed that the privacy compliance audit would be an effective tool to ensure the security and control of the CRA in regard to data management practices as well as the extent of compliance with the requirements of the existing Code. Besides, by commissioning compliance audit in an appropriate manner, such as periodical compliance audit as well as special audit, specific privacy risk areas would be effectively addressed in a timely manner.

4.161 Furthermore, the Association considered that implementing appropriate security safeguard was always necessary to protect information assets, especially when sensitive personal information was kept in database such as the CRA. Performing IT audits by utilizing industry best practices, such as *ISO/IEC 27002 Best Practice on Information Security Management*, was one of the measures to ensure organizations to protect

¹³⁸ Submission of Dr. K. P. CHOW, a member of the Standing Committee on Technological Developments, dated 18 February 2011

¹³⁹ Submission of iProA dated 8 February 2011

¹⁴⁰ Submission of Information Systems Audit and Control Association China Hong Kong Chapter dated 11 February 2011

information assets to a specified level of standards and to enable regulators to oversee security practices of organizations in a consistent manner.

4.162 The Association noted that the existing Code did not explicitly require that the compliance audits of the CRA should refer to the industry best practices principles on Information Security Management. It was suggested that PCPD might consider implementing mechanisms to evaluate the risks and to keep track of the remedies for the gaps between the CRA's data protection practices and the industry best practices principles on Information Security Management as identified by independent auditors.

4.163 The Law Society of Hong Kong¹⁴¹ stressed that it was important to ensure that sufficient safeguards were in place to secure all information gathered, and stringent procedures in relation to the disclosure of collected information to credit providers must be put in place.

4.164 The Law Society of Hong Kong emphasized that stringent procedures, not only strict controls, should be instituted for (a) 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, (d) use of data by credit providers. Penalties for breaches should also be set out clearly.

4.165 The Law Society of Hong Kong further suggested that the CRA should keep records of (a) what information had been received, (b) from whom, and (c) when and what information was given, to whom and when. Furthermore, only a limited number of people of the CRA and credit providers should be authorized to gain access and access should be traceable.

4.166 The CRA should also take greater steps to make it easier for data subjects to review their credit data kept by the CRA. Apart from visiting physically a site at an inconvenient location, it should be possible for data subjects to review information held by the CRA on line. Credit providers should be required to notify data subjects on every occasion that they accessed personal data. The most ideal arrangement would be to ensure that a copy of each data request (and the corresponding reply from the CRA) was sent to the data subject.

4.167 The Law Society of Hong Kong drew attention to the fact that there was nothing in the Code to prohibit the transfer of personal data overseas though more international financial institutions (which were more likely to transfer data overseas) would have set out internal procedures and guidelines on transfer of personal data overseas.

¹⁴¹ Submission of the Law Society of Hong Kong dated 8 February 2011

4.168 Hong Kong Bar Association¹⁴² supported the Commissioner's proposal for an independent compliance audit to be carried out by the CRA within 6 months of the implementation of any changes to the Code. The terms of reference of the audit should be subject to the Commissioner's approval, as should the terms of reference of CRA's annual overall compliance results.

4.169 Hong Kong Bar Association also supported the Commissioner's proposal for periodic IT security audits to be conducted by the CRA. A recurrent time period of not less than once a year should be set, and again the terms of reference should be subject to the Commissioner's prior approval. In addition, credit providers should also be required to undertake annual audits on their compliance with the Code and report to the Commissioner any breaches of the Code by them within 14 days of their being identified.

4.170 Hong Kong Human Rights Monitor¹⁴³ stressed that for personal data stored in any database, there should be appropriate and adequate safeguards to ensure that the data were accurate and that the privacy interests of individuals were protected. While supporting the Commissioner's proposal as a minimum requirement, it was suggested that if the proposals were implemented, credit providers should strengthen their data protection safeguards and let the public know the additional protection measures introduced. Adequate training of good quality should be provided to staff of the CRA to ensure that they would handle consumer credit data with utmost care. Any data leakage should not be acceptable.

4.171 Consumer Council¹⁴⁴ also supported the Commissioner's proposals. The Council agreed with the Commissioner that the audits should not be limited to the credit database system, but should also apply to the relevant stakeholders involved in the system including the staff of the CRA and the credit providers that interfaced with the system to prevent abusive access. The Council also suggested PCPD to consider making the compliance results available for public information,

4.172 The Council anticipated that consumers would be disadvantaged because they understood very little about the consumer credit reporting system, and were not given to know how their information was being portrayed to credit providers. Given consumers rarely knew about or checked what went into their own credit reports until after they had been turned down in an application for credit facilities or otherwise encountered a problem, the Council believed that enhancing transparency of the consumer credit reporting system was of paramount importance to ensure a fair credit assessment.

4.173 To this end, the Council recommended that consumers should be provided with free access to their credit report on a regular basis. The Council remarked that while citing

¹⁴² Submission of Hong Kong Bar Association dated 17 February 2011

¹⁴³ Submission of Hong Kong Human Rights Monitor dated 8 February 2011

¹⁴⁴ Submission of Consumer Council dated 10 February 2011

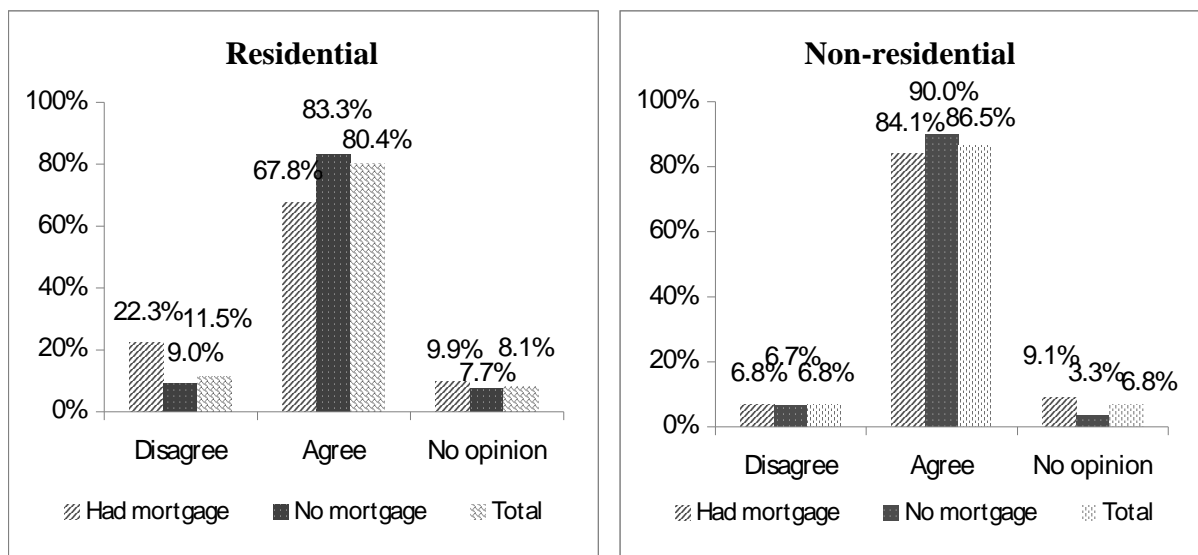
comprehensive consumer credit data sharing arrangements in other economies to support the proposals, the financial services industry had not disclosed the safeguards available in these economies. For example, in Australia, consumers were entitled to free copies of their credit reports. In USA and Canada, consumers could get free annual copies of their credit reports. In Hong Kong, the access fee of \$99 - \$200 for a credit report would discourage consumers from checking their reports to ensure accuracy of the information contained.

4.174 The Council further suggested that consumers should be allowed to add a brief statement about any information in their report if there had been a dispute over the credit status and the dispute was not resolved. The brief qualifying statement would afford consumers the chance to explain the circumstances giving rise to negative information in their consumer credit report.

Face-to Face Interview Results

4.175 Views of members of the public interviewed during the consultation period were very supportive. The majority (80%) of them agreed that credit providers and the CRA should introduce extra data protection measures, following the proposed expansion of the coverage of the consumer credit database and the extension of consumer credit data sharing. The corresponding percentage was lower (68%) for those with mortgage loans, much higher than the percentage (22%) for those who disagreed. The percentage who agreed was higher (84%) for respondents who had non-residential properties.

Chart 4:17 Percentage of respondents by whether agreed that credit providers and the CRA should introduce extra data protection measures



Issue 6: The Commissioner's Observations and Conclusions

4.176 Security of personal data is governed by DPP4 which is reproduced below:-

“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.”*

Also, DPPs 2, 5 and 6 are relevant as they relate to (i) accuracy and duration of retention of personal data, (ii) transparency of privacy policies and practices, and (iii) access to personal data respectively.

4.177 The consultation exercise has aroused the community's interest in the existing system of sharing of consumer credit data between the CRA and the credit providers. Apparently, public awareness and perceived importance of personal data privacy are much higher than it was in 2003. People are generally concerned about whether TransUnion Limited, the only consumer CRA in Hong Kong, is measuring up to their expectations. Notwithstanding TransUnion Limited and many of the banks have responded to the consultation and said they believed they have done a good job in the protection of personal data in the course of sharing consumer credit data, the consensus view collected supports the Commissioner's suggestions that additional privacy safeguards should be imposed upon the CRA consequent to the proposed enlarged credit database and greater sharing of the mortgage data.

4.178 The Commissioner acknowledges the views of TransUnion Limited and the banks that the sharing of consumer credit data has been in operation smoothly with no significant problems regarding data privacy protection, and that the systems in place should be sufficient to meet the changes arising from implementation of the CCF proposals, particularly as the amount of additional mortgage data to be handled is small compared to the size of the existing database. Indeed, an inspection of the TransUnion Limited's personal data systems conducted by PCPD in 2010 in accordance with section 36 of the Ordinance has identified no major irregularities. However, as the nature of the additional

data proposed to be shared is highly personal and sensitive and there would be greater sharing and use of the database under the new arrangement, the Commissioner considers that additional privacy safeguards are necessary. Given that CRA is not subject to the regulatory and supervisory control of HKMA on the sharing of personal data because it is not an authorized institution, an objective industry standard for ISM has to be identified for the CRA to comply.

4.179 The bulk of the opinion expressed by the public and related stakeholders points to the need to introduce more stringent measures to protect data against unauthorized use or access, including but not limited to those proposed by the Commissioner in the consultation document, following industry best practices and standards. Furthermore, they have also asked for improvement in CRA's operations as regards access to their personal data as well as accuracy and retention of data.

4.180 In order to establish a reasonably practicable and sufficient IT security safeguard, the Commissioner will require the CRA to adopt the principles of the ISO/IEC 27002 Best Practice on Information Security Management ("ISO/IEC 27002"). ISO/IEC 27002 is an international standard that provides best practice recommendations on ISM. It covers 12 areas of ISM from governance to physical security. Under each area there are a number of control objectives in ISM which are wide enough to address all the technical advice given in the submissions. There are many ways by which an objective may be achieved. This allows flexibility for the CRA to work out the implementation details.

4.181 As TransUnion Limited has disclosed that their internal IT security audit principle follows ISO 17799, which is equivalent to the ISO/IEC 27002 standard, the Commissioner sees no major issue for TransUnion Limited to formally adopt the control objectives of the ISO/IEC 27002 standard.

4.182 At present, the CRA should commission, at its own expense, an independent compliance auditor as may be approved or nominated by the Commissioner, to conduct regular compliance audits on the CRA's operations, including the security of consumer credit data held by the CRA and the adequacy and efficiency of the measures taken by it to comply with the requirements of the Ordinance and the Code. Taking into account the general feedback and expert advice collected during the public consultation exercise, **the Commissioner will revise the Code to incorporate the following additional post-implementation safeguards:**

- (a) **The CRA should arrange an independent compliance audit which should commence after 6 months but within 7 months from the implementation date, with a view to submitting to the Commissioner an audit report on the sharing of the additional mortgage data no later than 3 months from the date of commencement of the compliance audit.**

- (b) To ensure a reasonably practicable IT security arrangement is in place, its regular compliance audits should include an audit on the IT security arrangement of the CRA covering the control objectives of the ISO/IEC 27002 Best Practice on Information Security Management (or its equivalent as approved by the Commissioner).**
- (c) The CRA should not transfer the consumer credit data held by it to any place outside Hong Kong unless the purpose of use of the data for such transfer is the same as or directly related to the original purpose of collection of the data.**

4.183 The Commissioner notes that under the existing Code, clauses 1.25 and 3.13 have addressed the suggestion that occurrence of access to consumer credit data should be restricted, and clauses 2.6 and 3.9 have addressed the concern over disputed data.

4.184 The Commissioner notes that TransUnion Limited's practice is to provide a free copy of the credit report to any consumer whose application for credit facilities was turned down by a credit provider. He will incorporate this practice as a requirement under the Code.

4.185 The Commissioner understands from TransUnion Limited that it does offer a service to facilitate consumers viewing their credit reports online, and another service to notify the consumer of access of their credit data by credit providers.

4.186 The Commissioner further notes HKMA's undertaking to conduct post-implementation on-site examinations to selectively assess individual authorized institutions' compliance with the revised Code and other relevant requirements in relation to positive mortgage data sharing.

4.187 During the consultation, concerns were raised that the expanded data sharing might result in abusive use of the consumer credit data by credit providers for direct marketing. In this respect, clause 2.12 of the current Code has already prohibited credit providers from accessing the consumer credit data of an individual held by the CRA for the purpose of offering or advertising the availability of goods, facilities or services to such individual. This clause is expressly made subject to clauses 2.9 and 2.10 so that a credit provider may in the course of consideration of new grant of facilities initiated by the individual or review or renewal of the existing credit facilities use the consumer credit data obtained from the CRA. Recently, the Commissioner has in the course of dealing with a compliance check received arguments from a credit provider who submitted that the structure of the Code allows for an interpretation that a credit provider may, for the purpose of offering new credit facilities to its customers, access the credit report of the customers even in the situation where the consumer has not made any application for the grant of the new facilities. In the Commissioner's view, this interpretation runs directly contrary to the

original intention of prohibiting the access of the consumer credit data for direct marketing and should not be allowed. In this connection, the Commissioner decides to make amendments to clauses 2.9 and 2.12 in order to remove any doubt on their interpretations.

4.188 In the course of the public consultation exercise, many views were expressed which fall outside the jurisdiction of PCPD. These include:

- (a) increase the transparency of the operations of the CRA and the credit providers as regards sharing and use of consumer credit, and how such data are used to evaluate customers' credit worthiness;
- (b) CRA to provide free annual credit reports to consumers and legislate as required to achieve this objective;
- (c) promote responsible borrowing by consumers through public education;
- (d) amend the Ordinance to include provisions for penalty for any breaches of the Code;
- (e) express unease over the fact that TransUnion Limited, the only consumer CRA in Hong Kong which holds important and sensitive credit information of Hong Kong consumers, is a commercially run enterprise, the shareholders of which include an overseas company (56.25%) and 6 Hong Kong-based banks (37.5%) and suggest the Government should consider assuming a more proactive regulatory role.

The Commissioner will pass these views to relevant authorities and organizations for follow up, including the Government and TransUnion Limited.

Part V – The 2007 Public Consultation Exercise

Background

5.1 The last revisions to the Code, which took effect on 2 June 2003, introduced the sharing of positive credit data amongst credit providers through the CRA. The revised 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 the access for the purpose of reviewing existing credit facilities were restricted to certain prescribed circumstances. As this transitional period has expired on 1 June 2005, 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 certain clauses of the Code have to be deleted and/or rewritten. In addition, since the last revisions of the Code, it has appeared that certain clauses of the Code could be refined in light of practical experience in implementing the Code. Against this background, the PCPD published the *Consultation Paper on Amendments to Code of Practice on Consumer Credit Data* (“the 2007 Consultation Paper”) on 22 May 2007 proposing further revisions be made to the Code.

5.2 Broadly speaking, the proposed amendments to the Code in the 2007 Consultation Paper can be divided into three categories, namely (a) technical amendments as a result of the expiration of the transitional period; (b) amendments relating to the retention of the data in respect of write-off accounts due to a bankruptcy order being made; and (c) miscellaneous amendments.

Respondents to the 2007 Consultation

5.3 The public consultation ended on 29 June 2007. Eight written submissions were received within the consultation period. Another 2 submissions were received after the consultation period, making a total of 10 submissions¹⁴⁵. A list of the respondents is shown in **Appendix G** and a summary of their profiles is provided below:

¹⁴⁵ The written submissions are available at PCPD’s website at www.pcpd.org.hk

Respondent	Number
Statutory/Public Sector Organizations	2
Banking and Finance Sector	2
Trade Associations	4
Private Sector Company	1
Private Sector Organization	1
Total number of submissions	10

(A) Technical Amendments as a Result of the Expiration of the Transitional Period

The Proposed Amendments (see 2007 Consultation Paper for details)

5.4 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. It was proposed to:-

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

Views Received from the Consultation

5.5 Consumer Council expressly stated that it has “no objection” to the proposed amendments under this category. Other respondents made no comment in this regard.

Commissioner’s Observations and Conclusions

5.6 As the proposed amendments represent the necessary revisions of the Code as a result of the expiration of the transitional period and that there were no objections received from the respondents, the Commissioner will revise the Code as proposed.

(B) Amendments relating to “Write-Off Account” Data

The Proposed Amendments (see consultation paper for details)

5.7 In light of the working experience with the Code since its last revision in June 2003, it may be necessary to alleviate operational difficulties encountered by the financial services industry in relation to data of accounts which were written off as a result of bankruptcy prior to the occurrence of any material default.

5.8 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.

5.9 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.

5.10 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 practice, the financial services 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.

5.11 Based on the statistics published by the Official Receiver’s Office, it was observed that the number of bankruptcy orders reached a peak in 2002 and 2003. The statistics provided by HKAB showed a similar rising trend of accounts written off by credit providers where no material default occurred (some 37,000 of such accounts in 2002 and some 130,000 in 2003). HKAB 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 by the CRA for 5 years, i.e. a shorter retention period applicable to accounts with no material default. Thereafter, the credit providers will 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 short retention period of these data would defeat the spirit of the credit data sharing arrangement because in relation to customers who have gone bankrupt but who are

not otherwise in material default, their data will not be available to a credit provider at an earlier date than the data in relation to a material default. 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 judgment regarding an individual's credit-worthiness may therefore be impaired.

5.12 To remedy this deficiency, it has been proposed to the PCPD by HKAB that the Code should be amended so as to allow this type of data to be retained in the CRA database as if they were account repayment data that reveal a material default.

5.13 Generally speaking, the rationale behind the issue 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, the PCPD is cognizant of the fact that default in the consumer lending situation can arise through a number of factors or events 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 fulfill his credit obligations 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.

5.14 On the basis of not going beyond what is strictly necessary for the purpose of enabling better credit assessment by credit providers, the following amendments were proposed:-

- (i) 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;
- (ii) 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.

5.15 As a result of the above substantial amendments, other consequential amendments are required as follows (see 2007 Consultation Paper):-

- (i) amend clauses 2.1.3 and 2.2 to make reference to write-off account;
- (ii) add a new clause 2.1.3A after clause 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;
- (iii) add “*subject to clause 3.4A*” at the beginning of clause 3.4;
- (iv) amend the 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;
- (v) amend 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”.

Views Received from the Consultation

The Proposed Clause 3.4A

5.16 The proposed amendment seeks to ensure treatment of “write off accounts” due to making of a bankruptcy order is in line with that of accounts with material default.

5.17 The Hong Kong Credit Report Association supported the proposal.

5.18 HKMA welcomed the proposed amendments in general but raised the point that the proposed amendment seemed to suggest that a bankruptcy is not a “material default”. HKMA suggested the definition of “material default” be amended to include bankruptcy.

5.19 HKAB shared the same view with HKMA and further pointed out that the wording of proposed clause 3.4A should be consistent with the existing clause 3.3.2.

5.20 Consumer Council was of the view that it was debatable as to what extent early write-off of account data due to bankruptcy could infer material defaults in a bankrupt’s all other accounts. The Council believed this called into question whether it would be appropriate to allow the CRA to retain all the account repayment data in its database until 5 years after final settlement of the accounts as if there were cases of material default. The Council considered a longer retention period of “write off account data” may defeat the purpose of shortening the discharge period under the Bankruptcy Ordinance to allow a bankrupt start afresh after discharge.

The New Definition of “Terminated Account” under the Proposed Clause 1.26

5.21 HKAB suggested that under the proposed definition of “terminated account”, “repayment” should exclude payment by refinancing.

The Proposed Amendment to Clause 2.1.3 and 2.2

5.22 HKAB considered the wordings in both clauses suggest a written off balance, except in the case of bankruptcy, is not a default, would be in conflict with the definition of “terminated account”. The wording may give the impression that customers can ask credit provider to write off the account to avoid the retention of their delinquent data on record.

The Proposed Amendments to Clause 3.8.2.2

5.23 To mirror the proposed clause 3.4A, it was proposed that the current clause 3.8.2.2 be amended to allow the credit report to contain account data relating to write-off due to bankruptcy orders as if there were material default data. TransUnion Limited commented that this amendment would lead to less data being shown on credit report for account written off due to bankruptcy. TransUnion Limited submitted that under the current Code, accounts written off due to a bankruptcy order being made are treated as terminated account whether or not with material default being shown. Such accounts would be classified as account other than a terminated account under the newly defined “terminated account”. Under the revised clause 3.8.2.2.2, a credit report would only show the account repayment data of such accounts that can be shown on the credit report within two years before date of enquiry. Given that those accounts would not be updated by members of the financial services industry, practically no repayment data can be shown if the credit report is to be provided two years after the date of the write-off. According to TransUnion Limited, the number of accounts with no account repayment data being allowed to be shown in the credit report provided two years after write off is about 1,000,000. HKMA also noted the potential effects that could be brought by these proposed amendments, and was of the opinion that further limiting the use of information of write-off accounts due to bankruptcy is not conducive to prudent lending by credit providers and this would bring a negative impact in the maintenance of the stability of the banking industry.

The Proposed Amendments to Clause 3.10.5.1

5.24 With similar effects as to the proposed amendments to clause 3.8.2.2, TransUnion Limited submitted that the amount of account repayment data of an account written off due to a bankruptcy order being made would be further limited in their use of such data for carrying out credit scoring. TransUnion Limited explained that certain individuals with accounts so written off for more than five years old will be reclassified under the “lower risk” category and the complete credit profile of such individuals would not be reflected,

and this will then affect the credit decision made by the credit providers. According to TransUnion Limited, its database stored about 300,000 of such accounts relating to 130,000 individuals. These potential effects were also noted by HKMA.

Commissioner's Observations and Conclusions

The Proposed Clause 3.4A

5.25 Regarding the views of HKMA and HKAB as mentioned in paragraphs 5.18 and 5.19 above, it is to be emphasized that under the Code, the term “material default” is defined as a default in payment for a period in excess of 60 days and it makes no specific reference to bankruptcy.

5.26 It is the general practice of the financial services industry that accounts will be written off when an individual is adjudged bankrupt and the credit provider will not update the account record as at the time of write-off in the CRA's database save the occurrence of incidents like further repayments being made. Failing to update creates a possible situation that actual material default will not be captured in the CRA's database as account repayment data are not further updated upon the making of a bankruptcy order. In fact, after the making of a bankruptcy order, assets distribution shall be determined and supervised by the appointed trustee pursuant to the rules of the Bankruptcy Ordinance. Thus, it is merely the aforesaid practice of the industry that leads to the awkward situation. Revising the definition of ‘material default’ to include bankruptcy will cause confusion.

5.27 In relation to the Consumer Council's opinions as stated in paragraph 5.20 above, the PCPD wishes to reiterate that bankruptcy may even be more important than material default in that it evidences a much more serious financial situation and the Council agreed to this, as stated in its submission. A bankruptcy order would definitely have bearings on all other outstanding accounts of the bankrupt. Even there is no material default in other accounts, the making of a bankruptcy order against an individual denotes the fact that he/she is unable to settle debts in all accounts. Thus, it is justifiable to retain all the account repayment data in the CRA database until 5 years after final settlement as if there were cases of material default.

5.28 As regards the concern that the proposal would defeat the purpose of shortening the discharge period under the Bankruptcy Ordinance, the Council can rest assured that under the new clause 3.4A, the account repayment data have to be deleted upon the expiry of 5 years from the date of the individual's discharge from bankruptcy. Hence, the effect of starting afresh after discharge as intended under the Bankruptcy Ordinance will not be affected.

5.29 Concerning HKAB's comments on the consistency of wordings as mentioned in paragraph 5.19 above, the Commissioner will take note of the same in revising the Code.

The Proposed Amendments to Clause 1.26

5.30 The Commissioner agrees with HKAB's comment that repayment by refinancing should be excluded under the proposed definition of 'terminated account' and will take this into account when revising the Code.

The Proposed Amendments to Clauses 2.1.3 and 2.2

5.31 The Commissioner takes note of the concern of HKAB regarding the wordings of the two clauses. However, there are many reasons that account balances are written off apart from default. Besides, it is at the discretion of credit providers when an account should be written off. Thus, the proposed amendments to the clauses would not cause confusion as mentioned by HKAB and their suggestion will thus not be adopted.

The Proposed Amendments to Clauses 3.8.2.2 and 3.10.5.1

5.32 The Commissioner considers that a balance should be struck between the need of CRA to retain and use consumer credit data for credit providers' assessment purposes and the consumers' personal data privacy right. The Commissioner agrees with the HKMA's view that the infrastructure for prudent lending of credit providers is important for the maintenance of the stability of Hong Kong's banking system.

5.33 The Commissioner understands the concerns of HKMA and TransUnion Limited on the effect of further limiting the treatment of data of an account written off due to a bankruptcy order being made under the category of "an account other than a terminated account" as a result of the proposed amendments to clauses 3.8.2.2 and 3.10.5.1 of the Code. However, the Commissioner is of the opinion that the underlying objective for this batch of amendments is to bring the position of written-off account in line with material default account and clauses 3.8.2.2 and 3.10.5.1 were proposed for achieving this objective. To ensure the comprehensiveness of credit reports, members of the financial services industry should consider revising their current practice by doing regular updates after written off. If this is done, the proposed amendments will not affect the existing operation of TransUnion Limited. Regarding the concern of TransUnion Limited and HKMA on credit scoring, since the existing clause 3.10.5 has already allowed a CRA to use any consumer credit data relating to an individual held in its database for carrying out consumer credit scoring, there would not be reduction of data available for credit scoring if the proposals were implemented.

5.34 In any case, the credit report provided by a CRA in accordance with the new clause 3.8 will alert the credit providers by showing the status of the account as "write-off". For the purpose of lending assessment, credit providers may request the data subject to produce relevant data about the write-off. This would enable the credit provider to assess the

potential credit risk equally well.

(C) Miscellaneous Amendments

The Proposed Amendments (see consultation paper for details)

Clause 2.7 – Updating of Account Data

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

5.36 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”.

5.37 It was therefore proposed to amend clause 2.7 to address the above concerns by incorporating a 14-day time limit for the updating in these special circumstances.

Clause 3.2 – Retention of Account General Data

5.38 The present wording used in clause 3.2 suggests that the CRA may retain the account general data for so long as there remains 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 the CRA simply because there is no activity of this account and hence no repayment data. Pursuant to clause 3.4, an account repayment data may be retained by the 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.

5.39 In order to address this problem, it was proposed to amend clause 3.2 to allow a 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 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 cause disadvantage to the individual concerned.

Schedule 2 item (B) – Account Repayment Data

5.40 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 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 was proposed to add this type of information under item (B) of Schedule 2 to be provided by the credit provider to the CRA.

Typographical Error in Clause 2.6

5.41 A typographical error was found in clause 2.6. The word “subsequently” in the clause will be replaced by “subsequent”.

Views Received from the Consultation

The Proposed Amendments to Clause 2.7

5.42 While this proposal was supported by Consumer Council, opposite views from HKMA, HKAB, the Hong Kong S.A.R. Licensed Money Lenders Association Ltd., the Finance Houses Association of Hong Kong Limited, a commercial bank and TransUnion Limited were noticed. Their major concern was on the undue burden of the updating work on the credit providers if the 14-day time limit for updating were introduced. This may have financial implications and bearings on their efficiency, as it is the current practice of the credit providers to adopt a 31-day updating cycle. According to the information received by the PCPD, in order to cope with the proposed amendments to clause 2.7, it would cost TransUnion Limited about HK\$10,000,000 to upgrade their technical infrastructure to meet the suggested 14-day reporting cycle and such costs would have to be shared by the consumer credit industry initially and may ultimately be borne by individual customers. One counter proposal made by those respondents was to specify a maximum time limit of 31 days in clause 2.7.2 to bring this in line with the international practice.

The Proposed Amendments to Clause 3.2

5.43 Consumer Council observed that many credit card consumers in Hong Kong would not take the initiative to contact the credit providers to terminate their credit cards even if the cards would no longer be used. Under the proposed clause 3.2, account general data of a consumer's credit card account may be retained by the CRA despite there is no repayment data available. Consumer Council questioned the value of this piece of information to the credit providers.

5.44 For the proposed new clause 3.2.2, HKAB considered the phrase "or until the termination of the account, whichever is later" should be removed since the repayment data would always remain longer than the event of termination.

The Proposed Addition of Item (B) in Schedule 2 to the Code

5.45 It was proposed to add "*date of final settlement of amount in material default (if any)*" under item (B) in Schedule 2 to the Code so that the CRA may use the data to calculate the retention period of account repayment data that reveal a material default after the amount of such default had been settled. Consumer Council agreed to this proposal.

Commissioner's Observations and Conclusions

The Proposed Amendments to Clause 2.7

5.46 Representatives of the financial services industry, HKMA and TransUnion Limited were opposed to the introduction of a maximum time limit of 14 days on updating the CRA database upon the occurrence of certain important events as set out under clauses 2.7.2.1 to 2.7.2.3. PCPD understands the industry's concern that it would be convenient for them to report repayment through the normal 31-day reporting cycle.

5.47 The obligations under clauses 2.7.1 and 2.7.2 are separate, hence two different periods of time for updating are stipulated. For the prescribed circumstances stated in clause 2.7.2, a shorter period of updating than the normal cycle of 31 days would be expected since the credit status of the individual would most likely be adversely affected when the stated events happen. For an individual whose applications for a new credit is refused due to a default in the credit report, it would be unfair to delay his application further if he has to wait for 31 days before he could be able to obtain an updated credit report. Considering the interests of all parties concerned, the Commissioner is of the view that credit providers should generally be obliged to update the account data as soon as possible but **in the case where a request is made by an individual for updating his consumer credit data**, the credit provider shall update the data promptly and in any event not later than 14 days upon receiving the request. The Commissioner considers that this

approach should not impose an undue burden on the credit providers and at the same time would not cause prejudice to the consumers as they would be able to request for an early update of his consumer credit data.

The Proposed Amendments to Clause 3.2

5.48 As to the question raised by Consumer Council on the value to credit providers of an account which has been inactive for a long period of time, the Commissioner notes that an inactive credit account (e.g. a credit card account) may become active again at the wish of the consumer. In addition, when making a credit risk assessment, credit limit already approved to an individual is an important element to be considered by credit providers as it represents a real credit exposure. Hence, the Commissioner accepts the justification raised by the financial services industry and the Code will be revised to incorporate the proposed amendments to clause 3.2.

5.49 As regards HKAB's suggestion that the phrase "or until the termination of the account, whichever is later" be deleted in the proposed revision to clause 3.2, the Commissioner notes that the inactivity of a credit account will produce no repayment data even before account termination. The amendment to this clause is to avoid a situation where the general data of an active account may be deleted by the CRA due to no account activity. As the phrase is necessary to reflect the said situation, the Commissioner will not adopt this suggestion when revising the Code.

(D) Other Comment Received

5.50 A commercial bank suggested the words "...那些具體事宜" proposed under clauses 2.10.2, 2.13.1.2 and 2.13.2 of the Chinese version of the Code be changed to "...哪些具體事宜 ...". The Commissioner agrees to this proposed amendment.

Profile of Household Interviewees

Demographic Characteristics

This appendix presents the demographic characteristics of the random sample of 803 respondents and the sample of 74 respondents with non-residential properties enumerated in the household survey.

2. It may be noted from the table below that slightly more than half (51%) of the 803 respondents were male and the balance of 49% were female. The 803 respondents were distributed across different age groups, with around 21% aged below 30 and 38% aged 50 or above. For the 74 respondents, about 64% of them were male and the balance of 36% female. More than half (64%) of them were in the age range of 30 – 49.

%	803 respondents			74 respondents		
	Had mortgage	No mortgage	Total	Had mortgage	No mortgage	Total
Age						
18-24	2.7	13.7	11.7	0.0	3.3	1.4
25-29	11.6	8.1	8.8	6.8	6.7	6.8
30-39	23.6	15.4	16.9	29.5	30.0	29.7
40-49	36.0	20.8	23.6	47.7	13.3	33.8
50-59	19.8	20.6	20.4	11.4	26.7	17.6
60-69	6.3	20.4	17.8	4.5	16.7	9.5
Refuse to answer	0.0	1.0	0.8	0.0	3.3	1.4
Gender						
Male	53.0	50.8	51.2	70.5	53.3	63.5
Female	47.0	49.2	48.8	29.5	46.7	36.5

Educational Attainment

3. For the 803 respondents, about 37% had lower secondary education or below and 39% had upper secondary education or matriculation. 23% of them had post-secondary level of education. For the 74 respondents, on the other hand, a much higher proportion (62%) of them had post-secondary level of education.

%	803 respondents			74 respondents		
	Had mortgage	No mortgage	Total	Had mortgage	No mortgage	Total
Education level						
Primary or below	9.1	19.0	17.2	0.0	0.0	0.0
Lower secondary	20.0	19.7	19.7	9.1	0.0	5.4
Upper secondary	29.9	31.2	31.0	27.3	30.0	28.4
Form six or form seven	9.0	7.4	7.7	4.5	0.0	2.7
Certificate/ Diploma	10.7	6.6	7.4	4.5	13.3	8.1
Associate Degree	1.9	1.8	1.8	0.0	3.3	1.4
Degree course	18.9	12.5	13.7	54.5	50.0	52.7
Refuse to answer	0.6	1.8	1.5	0.0	3.3	1.4

Economic Activity

4. For the 803 respondents, about 50% were employed and 21% were home-makers. 14% were retirees and 8% were students. For the 74 respondents, on the other hand, the great majority (92%) of them were employed.

%	803 respondents			74 respondents		
	Had mortgage	No mortgage	Total	Had mortgage	No mortgage	Total
Economic activity status						
Employee	63.8	41.7	45.8	56.8	43.3	51.4
Self-employed	5.2	3.4	3.8	31.8	36.7	33.8
Employer	1.9	0.4	0.7	9.1	3.3	6.8
Home-maker	17.5	22.2	21.3	2.3	3.3	2.7
Student	1.4	9.6	8.1	0.0	0.0	0.0
Retired person	5.0	16.6	14.4	0.0	13.3	5.4
Did not work, and looking for a job	2.7	1.8	2.0	0.0	0.0	0.0
Did not work, but not looking for a job	1.3	2.0	1.9	0.0	0.0	0.0
Refuse to answer	1.3	2.1	2.0	0.0	0.0	0.0

5. For the group of 803 respondents who were employed, about 26% were managerial, professional and associate professional workers. 24% were clerical staff and 26% were services workers and shop sales workers. For the group of 74 respondents who were employed, on the other hand, a much higher proportion of them (53%) were managerial, professional and associate professional workers.

%	803 respondents			74 respondents		
	Had mortgage	No mortgage	Total	Had mortgage	No mortgage	Total
Occupation (For those employed, self-employed or employer)						
Managers & administrators	9.1	7.0	7.6	23.3	20.0	22.1
Professionals	19.5	10.5	12.8	32.6	24.0	29.4
Associate professionals	5.3	5.1	5.2	2.3	0.0	1.5
Clerks	26.6	23.6	24.3	16.3	16.0	16.2
Service workers & shop sales workers	19.8	27.8	25.7	16.3	16.0	16.2
Skilled agricultural & fishery workers	0.9	0.6	0.7	0.0	0.0	0.0
Craft & related workers	3.5	6.7	5.9	0.0	8.0	2.9
Plant & machine operators & assemblers	9.1	5.4	6.4	2.3	0.0	1.5
Non-skilled labor	3.5	8.0	6.9	0.0	0.0	0.0
Refuse to answer	2.7	5.3	4.6	7.0	16.0	10.3

6. For the group of 803 respondents who were employed, about 29% were earning less than \$10,000 a month and a further 26% were earning \$10,000 - \$14,999 a month. About 21% were earning more than \$20,000 a month. For the group of 74 respondents who were employed, on the other hand, a much higher proportion of them (62%) were earning more than \$20,000 a month.

%	803 respondents			74 respondents		
	Had mortgage	No mortgage	Total	Had mortgage	No mortgage	Total
Personal income per month (For those employed, self-employed or employer)						
Below \$5,000	1.1	4.1	3.3	0.0	0.0	0.0
\$5,000 – \$9,999	20.2	27.3	25.4	2.3	4.0	2.9
\$10,000 – \$14,999	24.4	26.7	26.1	11.6	20.0	14.7
\$15,000 – \$19,999	16.8	12.0	13.3	11.6	8.0	10.3
\$20,000 or above	28.6	17.7	20.6	65.1	56.0	61.8
Refuse to answer	8.9	12.2	11.3	9.3	12.0	10.3

Household Interview Questionnaire

**Public Consultation:
Proposed Revisions to the “Code of Practice on Consumer Credit Data”
The Sharing of Mortgage Data for Credit Assessment**

Questionnaire Number: _____
Interviewer Number: _____

Hello, I am an interviewer from Policy 21 Ltd. We are commissioned by the Office of the Privacy Commissioner for Personal Data, Hong Kong to conduct a survey to collect views of the public on the proposal. Please rest assured that all information gathered in this survey will be kept strictly confidential and only aggregate statistical analysis will be published. We would like to invite a family member (18 years of age or above) who has sufficient knowledge of this premises to answer the following questions.

First of all, thank you for your cooperation.

[Except those marked “Don’t read out”, please read out all questions and answers. The interviewer may not read out “difficult to tell”, “don’t know”, “not applicable”, “no idea/refuse to answer.”]

Background information

Currently, the Code of Practice on Consumer Credit Data (from here on referred to as “the Code”) allows sharing amongst credit providers (such as banks), through the use of a central credit database operated by a credit reference agency (“CRA”) (currently operated by TransUnion Limited), of “positive and negative” credit data of unsecured consumer credit (such as credit cards and installment loans) and “negative” credit data of residential mortgage loans. “Negative credit data” generally means information on default in payments, while “positive credit data” means information on loans that are not in default, i.e. an individual’s overall credit exposure and payment pattern.

Now, representatives of the financial service industry have suggested expanding the current credit data sharing arrangements by allowing credit providers to:

- (a) Disclose to the CRA positive and negative mortgage data in respect of residential and non-residential properties (including retail, commercial and industrial properties, as opposed to the present arrangement of sharing only negative mortgage data for residential properties);
- (b) Disclose to the CRA the above data in respect of borrowers, guarantors, and mortgagors;
- (c) Disclose to the CRA pre-existing mortgages at the time of implementation of the proposal (i.e. positive data for residential properties and both positive and negative data for non-residential properties) with or without prior explicit notification to the customers concerned;
- (d) (Subject to the customers’ written consent) use the data immediately after the implementation date for credit assessment of applications for both mortgage loans and other credit facilities; and
- (e) (Subject to the customers’ written consent), use the data not earlier than 24 months after the implementation date for review of the customers’ general credit portfolio.

For positive mortgage data, credit providers would only contribute to the CRA limited customers' data required for identity verification. Credit providers may only access individuals' mortgage count.

In relation to contributing and access to the negative mortgage data, it should be restricted to the account general data and default data, including the amount past due, number of days past due and date of settlement of amount past due.

Implementation of the proposal involves two steps. For step 1, credit providers will contribute to the CRA mortgage data of their customers, regardless of whether these customers have or have not applied for loans. In other words, regardless of whether the customers will in future apply for loans, their mortgage data will be uploaded to the CRA database. For Step 2, with the written consent of the customers when they apply for loans, credit providers may access related mortgage data of the customers concerned. Only credit providers specified in the Code may have access to the relevant consumer credit data. Such credit providers include (a) an authorized institution and its subsidiaries within the meaning of section 2 of the Banking Ordinance, (b) a licensed money lender under the Money Lenders Ordinance and (c) a person whose business is that of providing finance for the acquisition of goods by way of leasing or hire-purchase such as finance companies.

Real estate agents, employers, direct marketers and other retailers are prohibited from access to the CRA database. Credit providers are not allowed to access the database for direct marketing purposes.

In general, the CRA may retain credit data for 5 years for credit reporting and scoring purposes. For instance, the account default data may be retained for a period up to 5 years after the final settlement of the amount in default.

According to the Code, the CRA is required to take appropriate security measures to protect consumer credit data from unauthorized access or change.

Part I: The Industry's Proposal

Q.1 With regard to the industry's proposal (please refer to the above background information), do you agree that the proposal would lead to the potential benefits below?

		Strongly disagree	Disagree	Agree	Strongly agree	Difficult to say	No opinion/ refuse to answer
		(1)	(2)	(3)	(4)	(5)	(0)
a	Based on more comprehensive data, the credit provider will conduct more comprehensive credit assessment, hence more favourable terms and pricing on credit facilities could be provided to customer	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b	Through responsible borrowing and lending, the long-term stability of the property market would be promoted	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c	More effective credit risk management which in turn would reduce speculative activities and promote sustained and steady growth of the consumer credit market	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Part II: The PCPD's Public Consultation on 6 privacy issues

From data protection perspective, the basic principle applicable to the collection of personal data is: personal data required to be collected for the purpose of use of the data should be kept to a minimum.

In a lending and borrowing relationship, borrowers equally have the responsibility and obligation to provide related information to enable the lender to reach a prudent lending decision. In relation to the purpose of use of the data, such data should be necessary and not excessive.

Issue 1:

The proposal for expanding consumer credit database to cover positive mortgage data (mortgage count) in respect of residential properties, and both positive and negative mortgage data in respect of non-residential properties for the purposes of assessing new applications for credit facilities (including mortgage loans) and review or renewal of existing credit facilities.

Q.2 For the processing of mortgage loans,		Strongly disagree	Disagree	Agree	Strongly agree	Difficult to say	No opinion/ refuse to answer
		(1)	(2)	(3)	(4)	(5)	(0)
a	do you agree that additional data sharing to cover positive mortgage data on residential properties is (i) necessary (ii) not excessive	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>
b	do you agree that additional data sharing to cover positive mortgage data on non-residential properties is (i) necessary (ii) not excessive	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>
c	do you agree that additional data sharing to cover negative mortgage data on non-residential properties is (i) necessary (ii) not excessive	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>

Q.3 For processing of credit facilities other than mortgage loans,		Strongly disagree	Disagree	Agree	Strongly agree	Difficult to say	No opinion/ refuse to answer
		(1)	(2)	(3)	(4)	(5)	(0)
a	do you agree that additional data sharing to cover positive mortgage data on residential properties is (i) necessary (ii) not excessive	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>
b	do you agree that additional data sharing to cover positive mortgage data on non-residential properties is (i) necessary (ii) not excessive	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>
c	do you agree that additional data sharing to cover negative mortgage data on non-residential properties is (i) necessary (ii) not excessive	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>

Issue 2:

According to the industry’s proposal, in relation to positive mortgage data, credit providers will contribute to the CRA the following limited information to identify the credit applicants:

- (a) Name;
- (b) Capacity (i.e. whether as borrower, mortgagor or guarantor);
- (c) Hong Kong Identity Card number or travel document number;
- (d) Date of birth;
- (e) Gender;
- (f) Correspondence address; and
- (g) Account number, type of the facility, account status and closed date.

Q.4 Do you think the contribution of the above limited information appropriate?

Highly inappropriate	Inappropriate	Appropriate	Highly appropriate	Difficult to say	No opinion/refuse to answer
(1)	(2)	(3)	(4)	(5)	(0)
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

In relation to positive mortgage data, the industry’s proposal suggests that credit providers, with written consent from credit applicants, can access the mortgage count and make further inquiry with the applicants on details of the mortgage(s).

Q.5 Do you think such arrangement for data access appropriate?

Highly inappropriate	Inappropriate	Appropriate	Highly appropriate	Difficult to say	No opinion/refuse to answer
(1)	(2)	(3)	(4)	(5)	(0)
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

In relation to negative mortgage data (related to default in payment in excessive of 60 days), the industry’s proposal suggests that credit providers is allowed to contribute and access negative mortgage data, including account general data and default data (e.g. the amount past due and number of days past due; and date of settlement of amount past due).

Q.6 Do you think such arrangement for data sharing appropriate?

Highly inappropriate	Inappropriate	Appropriate	Highly appropriate	Difficult to say	No opinion/refuse to answer
(1)	(2)	(3)	(4)	(5)	(0)
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Issue 3:

This issue relates to the contribution to the CRA and sharing by credit providers of pre-existing mortgage data of applications or mortgage loans obtained before the implementation of the proposal, with or without prior notification to the customers. According to the industry’s proposal, credit providers may contribute pre-existing mortgage data to the CRA covering borrowers, guarantors and mortgagors. Credit providers can only access the relevant mortgage data upon written consent of the applicants for credit facilities.

Q.7 Do you think it is appropriate to share pre-existing mortgage data that have been contributed to the CRA, if customers have been informed of this sharing arrangement before implementation of the proposal?

Highly inappropriate	Inappropriate	Appropriate	Highly appropriate	Difficult to say	No opinion/refuse to answer
(1)	(2)	(3)	(4)	(5)	(0)
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Q.8 a) Do you think it is appropriate to share pre-existing mortgage data that have been contributed to the CRA, if customers have not been informed of this sharing arrangement before implementation of the proposal?

Highly inappropriate	Inappropriate	Appropriate	Highly appropriate	Difficult to say	No opinion/refuse to answer
(1)	(2)	(3)	(4)	(5)	(0)
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

b) [If the answer to question (a) is either 1, 2, 5, or 0, then please ask the question below]

However, if pre-existing mortgage data cannot be contributed to the CRA and shared, the industry cannot achieve its intended effects. As credit assessment cannot be conducted based on comprehensive credit information about an individual, it is not possible to minimize speculation and achieve government's objective of stabilizing Hong Kong financial system. Taking the above and the merits of the industry's proposal into consideration, do you agree that pre-existing mortgage data should be contributed to the consumer credit database?

Strongly disagree	Disagree	Agree	Strongly agree	Difficult to say	No opinion/refuse to answer
(1)	(2)	(3)	(4)	(5)	(0)
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Q.9 The pre-existing mortgage data was used to process customers' earlier applications for mortgage loans. Currently, the industry proposes to share such data in processing the same customers' future new applications for credit facilities or in reviewing/renewing of existing credit facilities.

a) Do you think that the two respective uses of the mortgage data are related?

Related	Not related	Difficult to say	No opinion/ Refuse to answer
(1)	(2)	(3)	(0)
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

b) Do you think that the two respective uses of the mortgage data are directly related?

Directly related	Not directly related	Difficult to say	Don't know	No opinion/ Refuse to answer
(1)	(2)	(3)	(4)	(0)
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Issue 4:

The industry's proposal is to permit *on and after the implementation date*, with customers' written consent, credit providers to access the additional mortgage data to assess applications for mortgage loans.

Q.10 Do you think such use of the data appropriate?

Highly inappropriate	Inappropriate	Appropriate	Highly appropriate	Difficult to say	No opinion/refuse to answer
(1)	(2)	(3)	(4)	(5)	(0)
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

With the customers' written consent, the credit providers are allowed to access additional mortgage data for the assessment of other applications for credit facilities, or review and renewal of existing credit facilities, including applications involving loan amounts much smaller than mortgage loans (e.g. credit card applications).

Q.11 Do you think such use of the data appropriate?

Highly inappropriate	Inappropriate	Appropriate	Highly appropriate	Difficult to say	No opinion/refuse to answer
(1)	(2)	(3)	(4)	(5)	(0)
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Issue 5:

Effective from the implementation of the proposal, credit providers may use the additional mortgage data collected by the CRA to assess new applications for credit facilities. However, only after the transitional period of 24 months, credit providers may use such data to review or renew existing mortgage facilities. It should be noted that credit providers, in reviewing existing credit facilities, may decide to continue or discontinue the provision of such credit facilities based on updated credit risk on the customers concerned.

Q.12 Is this transitional period arrangement appropriate?

Highly inappropriate	Inappropriate	Appropriate	Highly appropriate	Difficult to say	No opinion/refuse to answer
(1)	(2)	(3)	(4)	(5)	(0)
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Q.13 Is this transitional period of 24 months sufficient?

- (1) too long, my suggestion is _____ months
- (2) too short, my suggestion is _____ months
- (3) sufficient
- (4) difficult to say
- (0) no opinion/ refuse to answer

Issue 6

Q.14 Do you agree that additional privacy safeguards should be imposed upon the CRA and the credit providers to commensurate with an enlarged credit database and greater sharing of the mortgage data?

Strongly disagree	Disagree	Agree	Strongly agree	Difficult to say	No opinion/refuse to answer
(1)	(2)	(3)	(4)	(5)	(0)
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Part III: Overall Comments

Q.15 Do you agree that the expanded sharing of mortgage data, through responsible borrowing and better risk management, would reduce speculative activities and this in turn is conducive to the stability of Hong Kong's economic and financial systems?

Strongly disagree	Disagree	Agree	Strongly agree	Difficult to say	No opinion/refuse to answer
(1)	(2)	(3)	(4)	(5)	(0)
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Q.16 Overall, striking a balance between public interests and data privacy, do you agree that consumer credit data sharing should be extended to cover:

		Strongly disagree	Disagree	Agree	Strongly agree	Difficult to say	No opinion/refuse to answer
		(1)	(2)	(3)	(4)	(5)	(0)
a.	Positive mortgage data on residential properties	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b.	Retail properties (i) positive mortgage data	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	(ii) negative mortgage data	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c.	Commercial properties (i) positive mortgage data	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	(ii) negative mortgage data	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d.	Industrial properties (i) positive mortgage data	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	(ii) negative mortgage data	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e.	Car parks (i) positive mortgage data	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	(ii) negative mortgage data	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Q.17 Do you have any questions regarding this public consultation?

Q.18 Other opinion:

Part IV: Demographic Information of the Interviewee

Q.19 Age:

- (1) 18-24 (4) 40-49
 (2) 25-29 (5) 50-59
 (3) 30-39 (6) 60-69 (0) refuse to answer

Q.20 Gender:

- (1) Male (2) Female (filled in by interviewer)

Q.21 Education attainment:

- (1) No formal education (4) Upper secondary (7) Post-secondary : Associate Degree
 (2) Primary (5) Sixth or Seventh form (8) Post-secondary : Degree course
 (3) Lower secondary (6) Post-secondary : Certificate/ Diploma (0) Refuse to answer

Q.22 What is your economic status?

- (1) Employee (4) Home-maker (7) Does not work, looking for a job
 (2) Self-employed (5) Student (8) Does not work, not looking for a job
 (3) Employer (6) Retired person (0) Refuse to answer

Q.23 Occupation: (Answered by those who are employee, self-employed or employer.)

- | | | |
|--|---|--|
| (1) <input type="checkbox"/> Managers & administrators | (5) <input type="checkbox"/> Service workers & shop sales workers | (9) <input type="checkbox"/> Non-skilled labor workers |
| (2) <input type="checkbox"/> Professionals | (6) <input type="checkbox"/> Skilled agricultural & fishery workers | (0) <input type="checkbox"/> Refuse to answer |
| (3) <input type="checkbox"/> Associate professionals | (7) <input type="checkbox"/> Craft & related workers | |
| (4) <input type="checkbox"/> Clerks | (8) <input type="checkbox"/> Plant & machine operators & assemblers | |

Q.24 Personal income in Hong Kong dollars (answered by those who are employee, self-employed or employer)

What was your income for the previous month, from part-time or full-time jobs? This includes mandatory provident funds, ad hoc income, housing subsidies, bonus income, double-monthly payment (please divide bonus income and double-monthly payment by 12).

- | | | |
|--|--|---|
| (1) <input type="checkbox"/> no income | (4) <input type="checkbox"/> \$10,000 – \$14,999 | (0) <input type="checkbox"/> Refuse to answer |
| (2) <input type="checkbox"/> Below \$5,000 | (5) <input type="checkbox"/> \$15,000 – \$19,999 | |
| (3) <input type="checkbox"/> \$5,000 – \$9,999 | (6) <input type="checkbox"/> \$20,000 or above | |

Q.25 Do you currently own any properties?
(Can select more than one option)

- (1) Residential property
- (2) Non-residential property - retail
- (3) Non-residential property - commercial
- (4) Non-residential property - industrial
- (5) Non-residential property - car parks
- (6) None

Q.26 Do you currently have any mortgages?
(Can select more than one option)

- (1) Residential property
- (2) Non-residential property - retail
- (3) Non-residential property - commercial
- (4) Non-residential property - industrial
- (5) Non-residential property - car parks
- (6) None

Q.27 Do you currently have any other loans? (Can select more than one option)

- (1) Credit card
- (2) Installment payments
- (3) Revolving loan
- (4) Installment payments/ Leasing
- (5) Others, please specify: _____
- (6) None

- This is the end of the questionnaire, thank you for your opinions. -

List of Parties Interviewed by Policy 21 Limited

(in alphabetical order)

Academics

1. Dr. Anne CHEUNG S.Y., Associate Professor, Faculty of Law, The University of Hong Kong
2. Dr. Billy MAK, S. C., Associate Professor, Department of Finance & Decision Sciences, Hong Kong Baptist University
3. Professor Rolf WEBER, University Distinguished Visiting Professor, Faculty of Law, The University of Hong Kong

Professional Associations

4. Hong Kong Credit Report Association
5. Hong Kong Real Estate Agencies General Association
6. Internet Security and Privacy Working Group, Internet Society Hong Kong

Banking and Finance Industry

7. The Bank of East Asia Limited
8. Promise (Hong Kong) Company Limited
9. Splendor Finance Company Limited
10. Standard Chartered Bank (Hong Kong) Limited
11. TransUnion Limited
12. United Asia Finance Limited

List of Organizations and Individuals with Written Submissions

(Submissions can be accessed by visiting

http://www.pcpd.org.hk/english/publications/files/submission_2011_e.pdf)

Banking and Finance Industry

1. Bank of China (Hong Kong)
2. The Bank of Communications Company, Limited
3. China Construction Bank (Asia) Corporation Limited
4. Dah Sing Bank, Limited
5. The DTC Association
6. The Finance Houses Association of Hong Kong Limited
7. Fubon Bank (Hong Kong) Limited
8. The Hong Kong Association of Banks
9. The Hong Kong S.A.R. Licensed Money Lenders Association Ltd.
10. Lloyds TSB Bank plc
11. Nanyang Commercial Bank, Ltd.
12. PrimeCredit Limited
13. Public Bank (Hong Kong) Limited
14. Shanghai Commercial Bank Limited
15. Wing Hang Bank, Limited

Government Department

16. Office of the Commissioner of Insurance

Quasi-Governmental Organizations & Statutory Bodies

17. Consumer Council
18. Estate Agents Authority
19. Hong Kong Monetary Authority
20. The Hong Kong Mortgage Corporation Limited
21. Mandatory Provident Fund Schemes Authority
22. Urban Renewal Authority

Legislative Councilor / District Councilors

23. Hon. Mr. CHAN Kin Por, Legislative Councilor
24. Mr. Alvin LEE Chi Wing, District Councilor, Sha Tin District (The Voice of Middle Class)
25. Dr. WONG Kam Chiu, District Councilor, Wong Tai Sin District

Political Party

26. Democratic Alliance for the Betterment and Progress of Hong Kong

Professional Organizations and Trade Associations

27. Federation of Hong Kong Industries
28. Hong Kong Bar Association
29. Hong Kong Credit Report Association
30. Hong Kong General Chamber of Commerce
31. Information Systems Audit and Control Association China Hong Kong Chapter
32. Internet Professional Association
33. The Hong Kong Federation of Insurers
34. The Hong Kong Institute of Surveyors
35. The Law Society of Hong Kong

Other Organizations / Concern Groups

36. Hong Kong Human Rights Monitor
37. Privacy Hong Kong
38. The Real Estate Developers Association of Hong Kong
39. Society of Hong Kong Real Estate Agents Limited
40. TransUnion Limited

Other Members of the Public

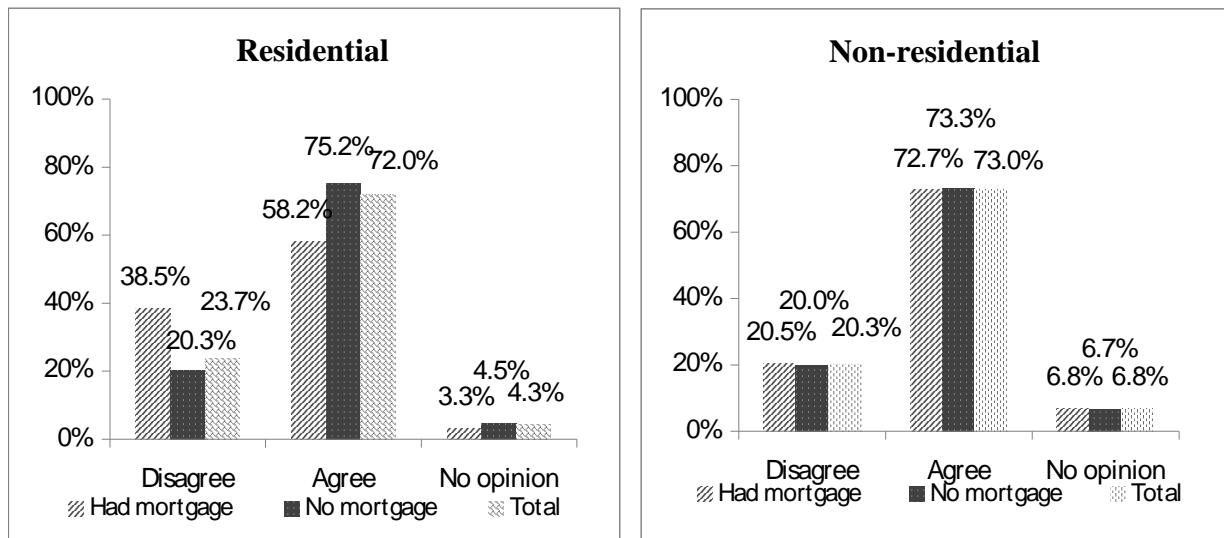
41. Ms. Ada CHAN, a member of the Data Protection Officers' Club
42. Dr. K. P. CHOW, member of PCPD's Standing Committee on Technological Developments
43. Mike GRAY
44. J. KAO
45. Tom LAM
46. LUI Man Ying
47. Peter LUNG
48. Mr. NG
49. NGAI Wai Pang
50. WONG Mei Seong
51. Simon WU
52. 何勇波
53. Anonymous member of the public
54. Anonymous member of the public
(*submission remains confidential at request by the individual*)
55. Anonymous member of the public
(*submission remains confidential at request by the individual*)
56. Anonymous member of the public
(*submission remains confidential at request by the individual*)

Public Perception on the Proposed Sharing of Mortgage Data

Positive Mortgage Data for Residential Properties

Members of the public interviewed during the consultation period were supportive. The majority (72%) of them agreed that, balancing public interests and data privacy, consumer credit data sharing should be extended to cover positive mortgage data for residential properties. The corresponding percentage was much lower (58%) for those with mortgage loans, higher than the percentage (39%) for those who disagreed. The percentage who agreed was 73% for respondents who had non-residential properties.

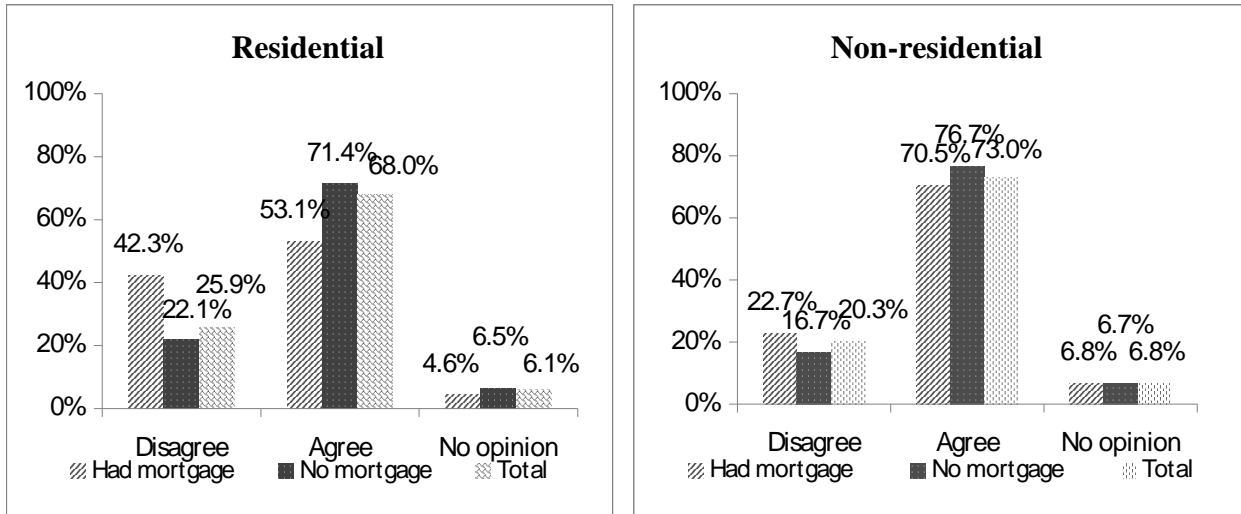
Chart 5:1 Percentage of respondents by whether agreed that consumer credit data sharing should be extended to cover positive mortgage data for residential properties



Mortgage Data for Retail Properties

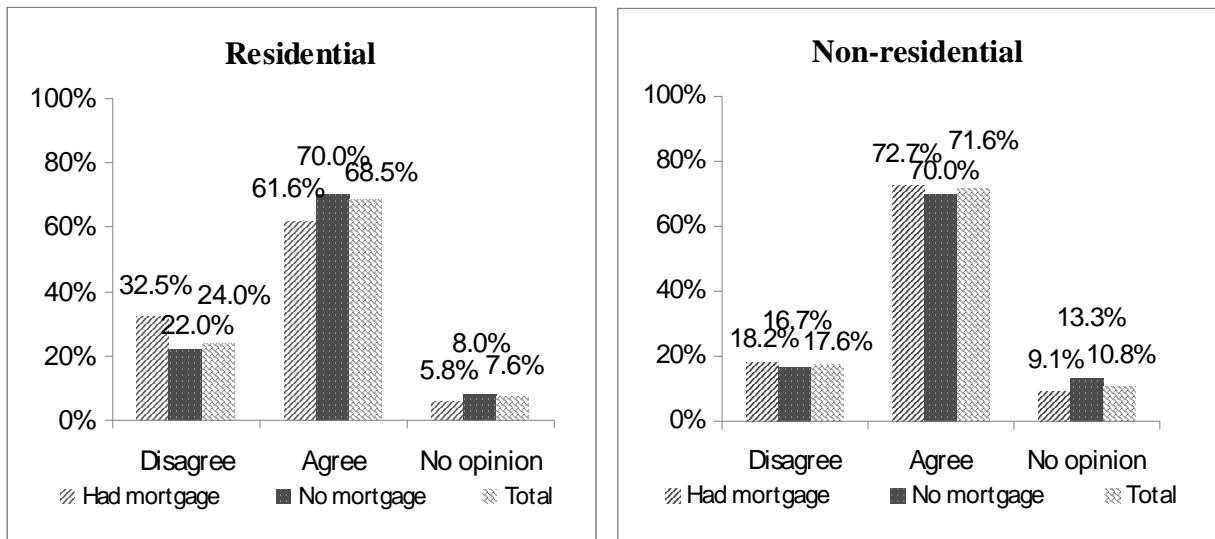
2. Members of the public interviewed during the consultation period were quite supportive. More than half (68%) of them agreed that, balancing public interests and data privacy, consumer credit data sharing should be extended to cover positive mortgage data for retail properties. The corresponding percentage was much lower (53%) for those with mortgage loans, higher than the percentage (42%) for those who disagreed. The percentage who agreed was higher at 73% for respondents who had non-residential properties.

Chart 5:2 Percentage of respondents by whether agreed that consumer credit data sharing should be extended to cover positive mortgage data for retail properties



3. As regards negative mortgage data, more than half (69%) of them agreed that, balancing public interests and data privacy, consumer credit data sharing should be extended to cover negative mortgage data for retail properties. The corresponding percentage was lower (62%) for those with mortgage loans, much higher than the percentage (33%) for those who disagreed. The percentage who agreed was higher at 72% for respondents who had non-residential properties.

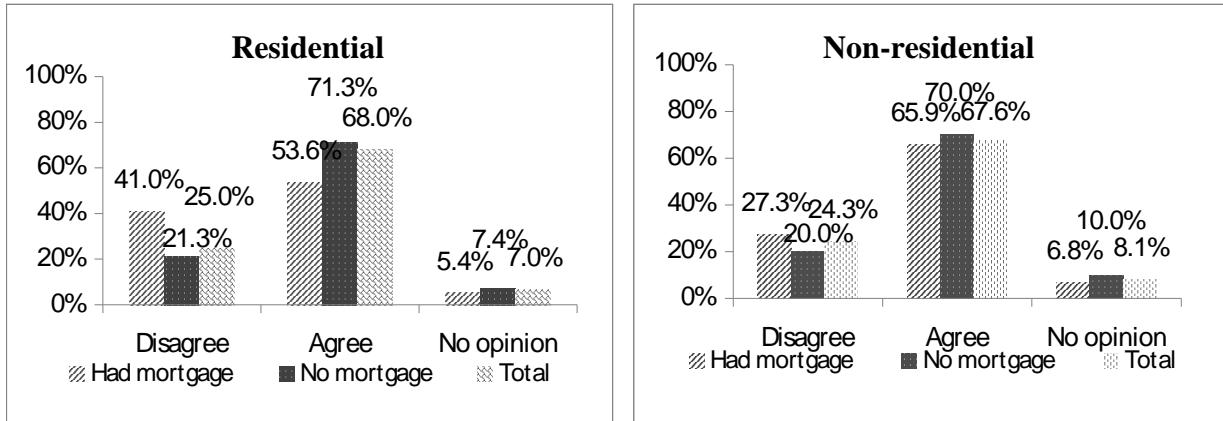
Chart 5:3 Percentage of respondents by whether agreed that consumer credit data sharing should be extended to cover negative mortgage data for retail properties



Mortgage Data for Commercial Properties

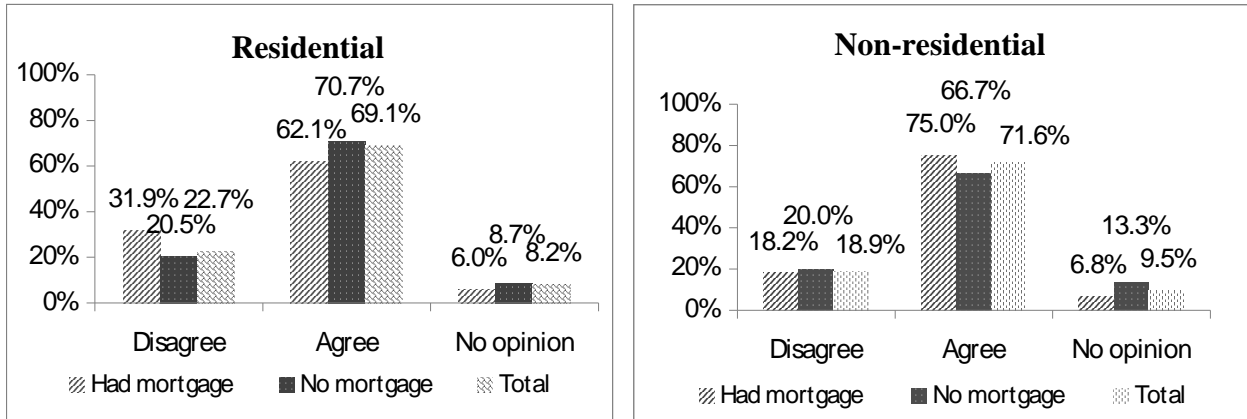
4. Members of the public interviewed during the consultation period were quite supportive. More than half (68%) of them agreed that, balancing public interests and data privacy, consumer credit data sharing should be extended to cover positive mortgage data for commercial properties. The corresponding percentage was much lower (54%) for those with mortgage loans, higher than the percentage (41%) for those who disagreed. The percentage who agreed was 68% for respondents who had non-residential properties.

Chart 5:4 Percentage of respondents by whether agreed that consumer credit data sharing should be extended to cover positive mortgage data for commercial properties



5. As regards negative mortgage data, more than half (69%) of them agreed that, balancing public interests and data privacy, consumer credit data sharing should be extended to cover negative mortgage data for commercial properties. The corresponding percentage was lower (62%) for those with mortgage loans, much higher than the percentage (32%) for those who disagreed. The percentage who agreed was higher at 72% for respondents who had non-residential properties.

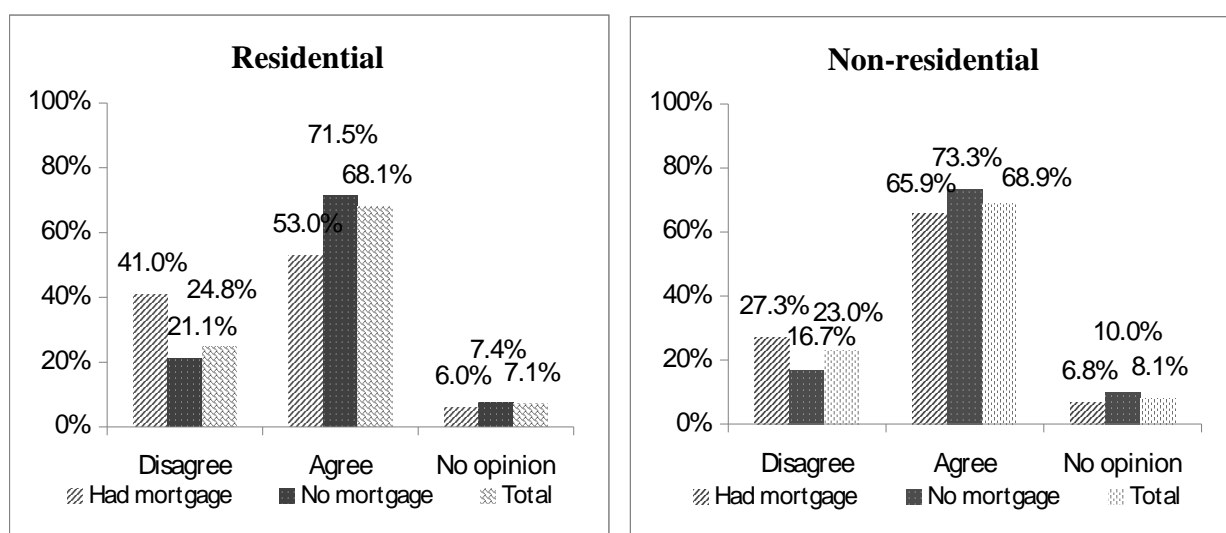
Chart 5:5 Percentage of respondents by whether agreed that consumer credit data sharing should be extended to cover negative mortgage data for commercial properties



Mortgage Data for Industrial Properties

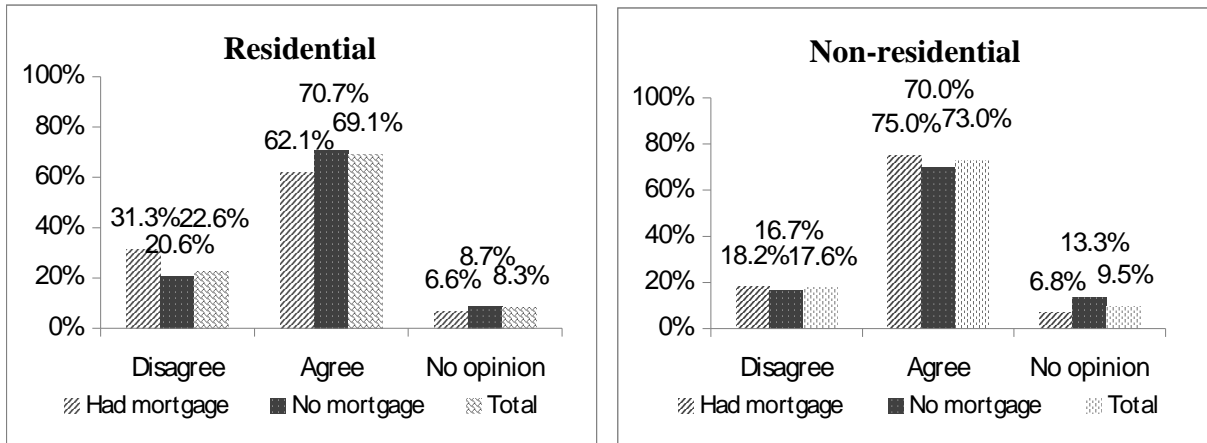
6. Members of the public interviewed during the consultation period were quite supportive. More than half (68%) of them agreed that, balancing public interests and data privacy, consumer credit data sharing should be extended to cover positive mortgage data for industrial properties. The corresponding percentage was much lower (53%) for those with mortgage loans, higher than the percentage (41%) for those who disagreed. The percentage who agreed was 69% for respondents who had non-residential properties, higher than the percentage (41%) for those who disagreed. The percentage who agreed was 69% for respondents who had non-residential properties.

Chart 5:6 Percentage of respondents by whether agreed that consumer credit data sharing should be extended to cover positive mortgage data for industrial properties



7. As regards negative mortgage data, more than half (69%) of them agreed that, balancing public interests and data privacy, consumer credit data sharing should be extended to cover negative mortgage data for industrial properties. The corresponding percentage was lower (62%) for those with mortgage loans, much higher than the percentage (31%) for those who disagreed. The percentage who agreed was higher at 73% for respondents who had non-residential properties.

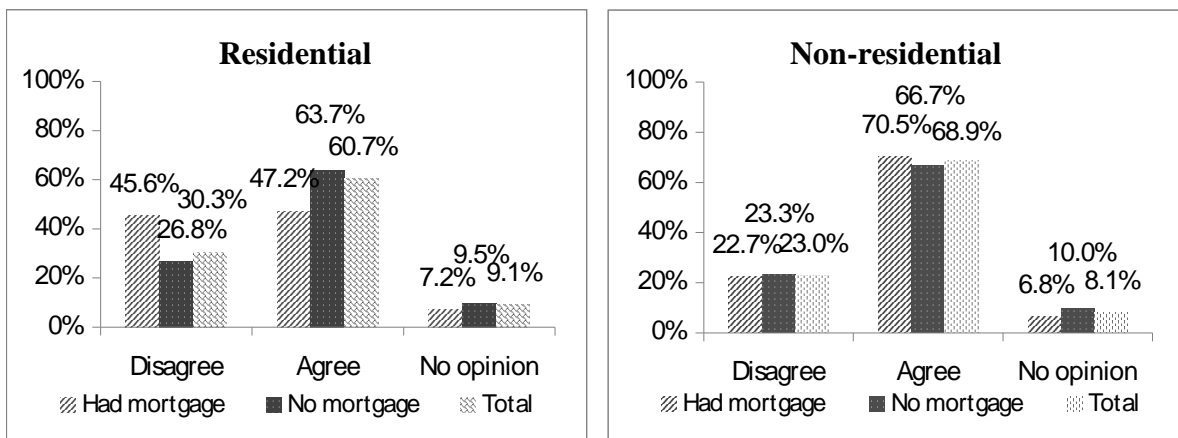
Chart 5:7 Percentage of respondents by whether agreed that consumer credit data sharing should be extended to cover negative mortgage data for industrial properties



Mortgage Data for Car Parks

8. Members of the public interviewed during the consultation period were quite supportive. More than half (61%) of them agreed that, balancing public interests and data privacy, consumer credit data sharing should be extended to cover positive mortgage data for car parks. The corresponding percentage was much lower (47%) for those with mortgage loans, more or less the same as the percentage (46%) for those who disagreed. The percentage who agreed was higher at 69% for respondents who had non-residential properties.

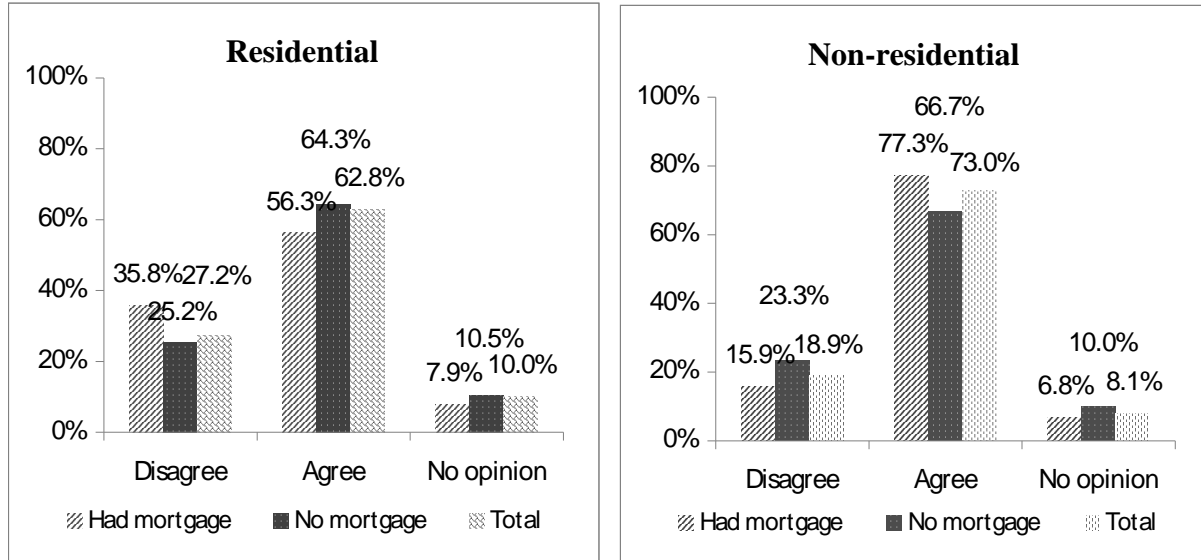
Chart 5:8 Percentage of respondents by whether agreed that consumer credit data sharing should be extended to cover positive mortgage data for car parks



9. As regards negative mortgage data, more than half (63%) of them agreed that, balancing public interests and data privacy, consumer credit data sharing should be extended to cover negative mortgage data for car parks. The corresponding percentage was

lower (56%) for those with mortgage loans, much higher than the percentage (36%) for those who disagreed. The percentage who agreed was higher at 73% for respondents who had non-residential properties.

Chart 5:9 Percentage of respondents by whether agreed that consumer credit data sharing should be extended to cover negative mortgage data for car parks



Observations

10. The above survey findings show that the public in general is supportive of the proposed extension of consumer credit data sharing to cover positive mortgage data for residential properties, as well as positive and negative mortgage data for retail, commercial and industrial properties and car parks. This may reflect members of the public believe that the proposals will result in responsible borrowing on the part of consumers, or in better credit risk management on the part of credit providers, or both. In general, the public is less resistant to the sharing of negative mortgage data than the sharing of positive mortgage data, especially for those who have mortgage loans.

**Extract of Senior Counsel's Advice on
Sharing of Mortgage Data for Credit Assessment**

1. I refer to my instructions dated 26 January 2011 and 2 February 2011.
2. My advice was sought in the context of the Privacy Commissioner for Personal Data's public consultation relating to the proposal by the Consumer Credit Forum ("CCF") to widen the scope of mortgage data sharing.
3. In essence the CCF's proposal was to expand the existing mortgage data sharing arrangement by (i) allowing limited sharing of positive credit data of mortgage loans on both residential and non-residential properties granted to consumers, and (ii) extending the existing sharing of negative credit data of residential mortgage loans to cover non-residential mortgage loans.
4. The proposed sharing of positive mortgage data will be in following manner :
 - (a) Each credit provider that subscribes to TransUnion Limited ("CRA") is to contribute to CRA the following personal data on its records relating to each of the borrowing mortgagors and guarantors with respect to mortgage loans granted to consumers with outstanding indebtedness :
 - (1) Name;
 - (2) Capacity (i.e. borrower, mortgagor or guarantor);
 - (3) H.K.I.C. No. or travel document number;
 - (4) Date of birth;
 - (5) Gender;
 - (6) Correspondence address; and
 - (7) Account number, type of facility, account status and closed date.
 - (b) A credit provider will have to seek the customer's written consent before making an enquiry to CRA. Upon receipt of an enquiry, the CRA will only provide the mortgage count of the customer to the enquiring credit provider. This is without prejudice to the existing practice whereby the credit provider will be provided with a credit report containing other consumer credit data of the customer permitted under the existing Code.

5. According to the CCF, the information set out under § 4(a) (1) to (7) above is necessary to enable the CRA to accurately identify the individual involved in a consumer credit loan so as to enable it to compile the number of mortgage loans by reference to his capacity in which he is involved, i.e. the mortgage count.

* * * * *

17. Thus far the discussion herein in paragraphs 7 to 16 above are of general application to the collection of personal data by the credit provider and the provision of the personal data through the credit provider to the CRA in the context of a mortgage loan application under the existing circumstances and practice. In my view, the position must be the same in relation to a new mortgage loan application if the proposed scheme is implemented. On this scenario, the credit provider will supply to the CRA the additional information set out in paragraph 4(a) above (other than possibly the information on the gender). The purpose of the supply of such data is for the purpose of sharing in accordance with the proposed scheme. The question thus boils down to whether the proposed scheme whereby the credit provider will be supplied with the additional information on the number of mortgages that the data subject has both for residential and non-residential properties and also the negative credit data in relation to both residential and non-residential properties is necessary and not excessive for the purpose of their consideration of the mortgage or other credit application, reviewing of existing facilities and general reviews of the data subject's credit profiles.

18. In order to answer the question posted in the last paragraph, it is necessary to consider what is the meaning of the words "necessary", "adequate" and "not excessive" in the context of Data Protection Principle ("Principle") 1(1)(b) and (c). In my view, these words should be given their everyday ordinary meaning. The word "necessary" in the context of something being necessary for a particular purpose would normally carry the connotation that the thing is indispensable and without which the purpose could not be achieved. However, in the context of a mortgage or facilities application, although it is often said that certain information is necessary, it could not be taken too literally in the sense that without that information, the application could not be processed at all. In my view, it is sufficient to satisfy the requirement of being necessary if the information concerned is of such nature that it is generally accepted that it is information that the credit provider would consider to be highly relevant and without which the credit provider would find it hard to make an informed decision. Thus I do not agree with the view that since under the existing scheme where the additional information as proposed by the CCF is not available, life still goes on without any real evidence that something has gone terribly wrong, this would *expo facto* mean that the additional information proposed could not be "necessary" for the purpose of the credit provider or the CRA. The data would be considered as adequate if the decision maker concerned could make an informed decision based upon those data. In order to say that the data are adequate and not excessive, it does

not mean that the data must be such that they are superfluous, although if the data are superfluous then they must be excessive. In my view, the data could be said to be excessive if and only if without those data a reasonable decision maker would also feel comfortable to make the decision required of him.

19. That being the case, the question of whether certain data are excessive or not would also depend on the nature of the decision required of the data collector, and in this sense an element of proportionality would come in. For instance for a facility of a very small amount and the security offered is from any point of view more than adequate, the information about the number of previous non-defaulting mortgage loans to the credit applicant is probably unnecessary and if available could probably be considered as excessive. The position may well be slightly different in relation to negative credit data of the individual especially when the value of the security given does not exceed the amount of the facility by a very wide margin.

20. On the whole, I am of the view that there is no logical distinction between mortgage of residential and non-residential properties in the context of the supply of information for the purpose of assessing any application for credit or to review of credit terms or to review the credit profiles of the credit applicants. I am also of the view that to collect the positive credit data in the form of the number of outstanding non-defaulting mortgages in respect of both residential and non-residential properties could be said to be “necessary” for the purpose of assessing the credit application, or reviewing the credit terms or reviewing the credit profiles of the credit applicants.

Principle 3(a) & (b)

21. I am asked also to advise on :

- (a) The proper interpretation of Principle 3(a) & (b) in the context of their application to the proposal that the credit provider was to pass on to the CRA the information described in paragraph 4(a) above.
- (b) If the implementation of the proposal is likely to infringe Principal 3(a) or (b),

22. Principle 3 provides :

“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)".

23. When a data subject applies to a credit provider for mortgage or credit facilities, it is likely that he/she would give to the credit provider the information set out in paragraph 4(a) (1) to (7) above. On top of that, he/she would probably also give to the credit provider other information about his/her income, asset and liability. I would consider that it is beyond argument that the purpose for giving such information is to enable the credit provider to make a decision as to whether to grant the facilities and if so on what terms. This would be the purpose for which the data were to be used at the time when the data were collected by the credit provider.

24. If the data subject's application for mortgage facility is successful, then the credit provider would have the further information that the data subject is indebted to the credit provider for the amount of the outstanding mortgage loan. This together with the data provided earlier at the time of the application for credit would be used for the purpose of the credit provider's subsequent review of the facilities granted. Thus the position is that when a credit facility is reviewed, the original data would be used for the purpose of the review and this would be using the data for a purpose directly related to the original purpose of enabling the credit provider to decide whether to grant the facility. From any point of view since it is a review of the same facility which was granted earlier, the purpose of review must be directly related to the purpose of the decision to grant the facility.

25. In my view it is a question of fact in each case as to what is the purpose for which the data were to be used at the time of the collection of the data. However, if one were to generalize on the issue, my view is that at the time when the data subject supplied the data to the credit provider, it would not be a fair conclusion to say that the purpose is to enable the credit provider to supply the same whether directly or indirectly to another credit provider in the future for the latter to consider whether to grant any credit to the data subject let alone to review any such credit from time to time after the same is granted.

26. I do not think that it is right to approach the issue by classifying that the purpose for which the data were used when the same were originally supplied under the existing regime was to "evidence a past, present and future creditworthiness profile" of the data subject. To start with I do not think that the information such as those set out in paragraph 4(a) (1) to (7) above could probably be said to be evidence of any creditworthiness profile. Secondly even if these data are to be considered in conjunction with the information that a certain mortgage facility had been granted to the data subject, such combined data could at the most be said to be collected by the credit provider for the purpose of their consideration of the original mortgage facility application and the subsequent review of the credit so granted. Whether one then calls this a purpose "to evidence a past, present and future creditworthiness profile" is neither here nor there. If it is to be considered as evidencing a creditworthiness profile, then it is plain that the profile is collected for the purpose of the credit provider's consideration of the original mortgage

application and possibly the subsequent review of that facility. It is still an impermissible quantum leap to say that the purpose for the collection of the personal data under the existing regime where it is not expected that the credit provider would pass on such information to the CRA for further distribution to other subscribers of the CRA service is to enable such other subscribers to consider whether to grant credit to the data subject in the future. I simply do not see how one could justifiably say that the deliberation of whether to grant credit to a data subject by one credit provider could be said to be directly related to the deliberation of whether to grant credit by an entirely independent credit provider even though both credit providers are dealing with the same data subject and both credit providers had chosen to subscribe to the same service provided by the same CRA.

27. Nor do I think it helpful to say that there could a number of purposes for which the data were to be used at the time of the collection of the data and the data could be used for any purposes directly related to anyone of the many original purposes. While as a matter of logic and literal interpretation of Principle 3(a) & (b) such contention is undoubtedly right, one has to approach the question in the context of the proposed scheme. Thus while it could be said that the original collection of the personal data is for the purpose of stating a fact about the data subject with a view of introducing himself to the credit provider, this purpose could not be said to be “complete” as it is only part of the overall purpose of enabling the credit provider to consider his application. I just could not see how one can ignore the over-riding purpose that the data were supplied and collected to enable the credit provider to consider the application before him. Unless it is the case where the application is only one of a series of applications, it is difficult to see that the data supplied are also for the purpose of the consideration of some future and probably unforeseen applications. If one can ignore the overall purpose, then one is close to saying that the data collected are for the purpose of getting to know a fact about the data subject and so it could be supplied to any one so long as the recipient is going to use it for the purpose of knowing that same fact about the data subject. This is plainly absurd.

28. I do not think that the decision of the Administrative Appeal Tribunal in *Yuen Bik Chun v Privacy Commissioner for Personal Data* (Administrative Appeal No. 41 of 2006) is helpful to the construction of Principle 3(a) & (b) in the present context. There the personal data were supplied to a management company for the purpose of investigation of a complaint about the strong smell of thinner in the corridor of a building. The management company decided to make a report of the same complaint to the police for the latter to investigate into the complaint and in defiance of the express statement of the data subject not to divulge her personal data to the police should the management company wish to report the matter to the police, the management company did supply her personal data to the police when reporting the matter. The Tribunal held that the provision of the data to the police upon the police’s request was using the data for a purpose directly related to the purpose for which the personal data were collected by the management company. The case is quite different from the context of the scheme under consideration. The management company and the police were expected to investigate into the same complaint.

Here the data are to be supplied to an entirely different credit provider for consideration of an entirely different credit application.

29. It is clear from the wordings of Principle 3 that the personal data collected may be used for any purpose with the consent of the data subject even though such use is not within the wordings of paragraphs (a) & (b). Thus in relation to personal data collected since the implementation of the proposed scheme it would be safe and sufficient for the credit provider to inform the data subject that his personal data may be used in the manner required by the proposed scheme, i.e. apart from the negative credit data, those of his data as set out in paragraph 4(a) above (with the possible exception of the gender information) will be supplied to the CRA who would also supply the same to other credit provider subscribing to the service of the CRA together with the information as to the number of mortgage which had not been fully repaid, and obtain the express consent of the data subject for such use of his data. In general if such notice is given in sufficiently prominent form in the terms for the grant of the credit and the data subject has signed to signify his agreement to those terms, I would consider that there is the prescribed consent by the data subject.

30. In relation to existing data, since I am of the view that the use of such data as proposed by the CCF is not in accordance with Principle 3(a) and (b), it is necessary to obtain their express consent for the use of such data for the purpose of the scheme.

Section 58

31. I am also asked to advise on whether section 58 of the Ordinance has any application to the proposed scheme. The possible relevance of section 58 is whether the arrangement in the proposed scheme would be exempted from Principles 3 & 6 by virtue of its being within the provision of section 58(1)(g) of the Ordinance. Section 58(1)(g) applies to personal data held for the purpose of discharging functions to which this paragraph applies by virtue of subsection (3). The relevant parts of section 58(3) provides :

“(3) Paragraphs (f)(ii) and (g) of subsection (1) apply to any functions of a financial regulator –

- (a) for protecting members of the public against financial loss arising from –
 - (i) dishonesty, incompetence, malpractice or seriously improper conduct by persons –

(A) concerned in the provision of banking, insurance investment or other financial services; ...

- (b) for maintaining or promoting the general stability or

effective working of any of the systems which provide any of the services referred to in paragraph (a)(i)(A) ”

The issue is whether it could be said that the holding of personal data in the proposed scheme is for the discharge of the function by the financial regulators such as the Commissioner of Banking or the Monetary Authority for the purpose of (a) the protection of the public against financial loss arising from the dishonest applicant of credit in concealing his previous financial exposure; or (b) maintaining or promoting the general stability or effective working of the financial market. I do not think that the concealment of the precious financial exposure by a credit applicant is serious enough to give rise to the concern of protecting members of the public from financial loss. However, there may be a case for arguing that the concealment of financial exposure by sufficient number of credit applicants may affect the quality of the lending and the risk undertaken by the financial institution so as to give rise to the concern of the financial regulator on the stability of the financial market.

32. On this issue, I think it is necessary to consider the question of the supply of negative credit data and positive credit data separately. In the case of negative credit data, since the data subject is already in default of his repayment obligation, it would give rise to some more serious risks of default if he were to be given further credit or new credit. If the risk of default in repayment of loans or credit facility is sufficiently wide spread and prevalent, then it could give rise to the concern by the Monetary Authority or the Commissioner of Banking in the discharge of their function for maintaining or promoting the general stability or effective working of banking, investment or other financial services. In the circumstances, there is a case for saying that the provision of such negative credit data is exempted from Principle 3, Principle 6 and section 18(1)(b) of the Ordinance (see section 58(1)(f)(ii) & (g), section 58(3)(b)).

33. However the position is slightly different in the case of positive credit data. By definition the data subject has not defaulted in his financial obligation. The concern about the risk of default is much less strong. It is less easy to make out a case for exemption under section 58 of the Ordinance.

34. Ultimately it is a matter of degree as to the probative value of the positive or negative credit data in the context of the stability of the provision of banking, investment and financial services. There is perhaps no absolute answer to the question. However, I am of the view that logically some distinction could and should be drawn between positive credit data and negative credit data in this context.

List of Respondents who Submitted Written Comments

Statutory/Public Sector Organizations

1. Hong Kong Monetary Authority
2. Consumer Council

Banking and Finance Sector

3. A commercial bank
4. DBS Bank (Hong Kong) Limited

Trade Associations

5. The Finance Houses Association of Hong Kong Limited
6. The DTC Association
7. The Hong Kong Association of Banks
8. The Hong Kong S.A.R. Licensed Money Lenders Association Ltd.

Private Sector Companies

9. TransUnion Limited

Private Organization

10. Hong Kong Credit Report Association