

政策 21 有限公司

香港九龍長沙灣道 928-930 號

時代中心 11 樓 1101-02 室

對於「共用按揭資料作信貸評估」諮詢文件的意見

就是否容許分享個人客戶的額外按揭資料(即住宅物業的正面按揭資料, 及非住宅物業的正面及負面按揭資料), 本行認同香港銀行公會 2011 年 1 月 21 日就題述公眾諮詢文件提出的意見, 支持更全面地分享信貸資料。

更全面地分享信貸資料有利於金融市場及整體經濟的穩定、銀行業的健康發展及安全營運、和鞏固及加強香港的國際金融中心地位。香港作為一個主要金融中心, 應該而且必須符合國際市場, 例如: 美國、英國、加拿大、澳洲、新加坡和中國內地等較好的做法, 這些地區早已有全面的信貸資料庫, 分享的資料範圍較業界所建議的更廣。透過分享額外按揭資料, 將有助信貸機構更全面及客觀地評估客戶的信貸狀況, 尤其是在現時活躍的物業投資環境中。我們相信, 增加信貸資料的透明度, 對借款人、存戶及銀行都是更好的保護。

在尊重個人私隱的同時, 我們認為也要在公眾利益及私隱間取得適當的平衡。對於私隱專員在諮詢文件中就私隱的幾點關注, 我們認為業界已作出充份考慮。包括: (1) 業界有需要分享非住宅物業按揭資料, 因為這樣才可以全面地反映客戶的信貸情況, 特別是香港的特殊情形, 不少客戶分散投資在非住宅物業, 例如商廈、店舖及工業樓宇等, 近幾年尤其顯著。(2) 業界有需要提供客戶現有按揭物業宗數, 以便反映客戶所有樓宇按揭數量。當中已充份考慮私隱的問題; 客戶的相關資料, 只有在其向金融機構辦理貸款並授權有關機構向資料庫查閱信貸報告的前提下, 才會被分享。另外, 由於樓按屬較長年期的貸款, 若只分享新造按揭資料, 可能要等待長達 30 年, 資料庫才可反映客戶真實的按揭數目, 這是極不合適的做法。(3) 業界有需要在評估客戶的信貸申請時, 獲取額外按揭資料作參考, 這樣才可以了解客戶的整體信貸情況, 讓借貸雙方均可負責任地進行借貸。(4) 現時在香港提供服務的信貸資料機構已運作接近 30 年, 受私隱條例監管, 記錄良好, 且在其他國家(例如: 美國)也有營運信貸資料庫, 具豐富的營運經驗及完善的保安技術及系統, 安全性高。相信該司會繼續按法例要求(包括私隱條例), 安全營運。



我們相信，從社會經濟發展的全局來看，個人貸款是現代社會推動經濟發展的一個重要手段；建立按揭正面資料庫，有助個人信貸健康發展，對社會、公眾及經濟均有正面作用。

中國銀行(香港)有限公司

二零一一年一月二十七日

Subject: The Sharing of Mortgage Data for Credit Assessment Consultation Document
From:
Date: Mon, 7 Feb 2011 15:05:36 +0800
To: Consultation2011@pcpd.org.hk
CC:

Dear Sirs,

The Sharing of Mortgage Data for Credit Assessment Consultation Document

We refer to the Sharing of Mortgage Data for Credit Assessment Consultation Document published by the Office of the Privacy Commissioner for Personal Data in January 2011. We are grateful to share with you our opinions and express our support to the Industry Proposal.

1. The Sharing of Mortgage Data proposed by the Industry Proposal aims at facilitating a more comprehensive credit assessment of consumers, thereby promoting responsible lending and borrowing and reducing the risk of over-borrowing by consumers. The extension of data contribution to cover positive data of residential mortgages and both positive and negative data of non-residential mortgages is necessary and not excessive in order to allow a credit provider to understand a consumer's total indebtedness and the overall credit position of the consumer based on verified information.
2. Since the amount of positive mortgage data to be contributed by credit providers to the CRA represents the minimum data necessary to enable the CRA to identify accurately each individual involved in a consumer mortgage loan and compile the mortgage count by reference to the capacity in which he is involved. And also, a credit provider is allowed access to the mortgage count only and only after having obtained the written consent of the customer after the implementation of the Industry Proposal. Furthermore, credit providers are required to use the mortgage count for purposes relating to credit assessment and risk management (and not marketing or other purposes). This restricted scope and manner of data contribution and access represents the minimum necessary to make implementation of the Industry Proposal practicably feasible and to achieve its intended effect in a timely and efficient manner.
3. If data relating to pre-existing mortgages are not contributed to the CRA, the mortgage count database will be of limited value for a number of years until all pre-existing mortgages are fully repaid. As the mortgage count on that database does not reflect the actual number of existing and outstanding mortgages of a consumer, it may hinder the credit providers to assess the consumers' overall indebtedness.
4. In order to achieve the principal objectives of the Industry Proposal of promoting responsible lending and borrowing and reducing the risk of over-borrowing by consumers, it is necessary for a credit provider to understand the overall credit position of a consumer. Accordingly, it is necessary for the credit provider to access the mortgage count of a consumer for the purpose of assessing applications for all consumer credit (and not only mortgage loans).
5. We are in support to set a 24-month transitional period, as it enables consumers to review and restructure their existing indebtedness as they consider appropriate.
6. We think appropriate data protection safeguards should be extended to cover the additional contribution and access of data stipulated in the Industry Proposal.

If you have any further questions, please do not hesitate to contact us.

Yours faithfully,

The Bank of Communications, Hong Kong Branch

c.c. Hong Kong Monetary Authority
The Hong Kong Association of Banks
The DTC Association

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China Construction Bank (Asia)

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February 7th, 2011

Policy 21 Limited
Room 1101-02, Times Tower,
928-930 Cheung Sha Wan Road,
Kowloon, Hong Kong.

Dear sirs,

Re: The Sharing of Mortgage Data for Credit Assessment Consultation Document

We refer to subject consultation document published by the Office of the Privacy Commissioner for Personal Data in January 2011.

Through the Hong Kong Association of Banks, we have submitted our comments and views to the industry proposal of expanding the sharing of mortgage data. Please be advised that we are in strong support of the sharing of mortgage data which will facilitate a comprehensive credit assessment of the consumer and hence benefits responsible lending and reduce the risk of over-borrowing by the consumers. Such practice is also in line with other Asian economies such as Singapore, Taiwan and Mainland China whereby their credit bureaux have in place comprehensive credit data which covers residential mortgage loans.

We urge the Privacy Commissioner to support the industry proposal which shall benefit the economy and community of Hong Kong as a whole.

Yours faithfully,

China Construction Bank (Asia) Corporation Limited

Confidential

8 February 2011

Privacy Commissioner
Office of the Privacy Commissioner
for Personal Data, Hong Kong
12/F, 248 Queen's Road East
Wanchai
Hong Kong

Dear Sirs,

Re: The Sharing of Mortgage Data for Credit Assessment

We refer to the Sharing of Mortgage Data for Credit Assessment Consultation Document published by the Office of the Privacy Commissioner for Personal Data in January 2011 (the "Consultation Document").

General

The Consultation Document discusses the proposed extension of the existing credit data sharing system to include both positive and negative mortgage data in respect of residential as well as non-residential properties (the "Proposal"). Our Bank welcomes this discussion and would like to provide our views through this submission.

We generally support expanding the current regulatory regime to enhance credit providers' credit risk management and market enhancement to promote the financial stability of Hong Kong. With the implementation of the Proposal, the consumer credit database would become more comprehensive. Credit providers would be provided with a clearer picture on the overall credit position of the borrowers. The enhanced consumer credit report from the credit reference agency ("CRA") would aid the credit providers to more accurately assess the repayment ability of the borrowers during the credit approval process. Lower delinquency and loss rates would likely result, as credit providers could identify and reduce the risk of exposure to any indiscriminate borrowing or borrowers with excessive indebtedness.

We have the following views on the data privacy issues arising from the Consultation Document:-

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Issue 1 – Types of mortgage loans to be covered

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)

We agree that the principal objective of the Proposal is to enhance the comprehensiveness of the consumer credit database for credit assessment of consumers. Extension on the contribution of the positive data of residential mortgages, and both positive and negative data of non-residential mortgages, is considered appropriate from our perspective, as this would allow a credit provider to properly understand the total indebtedness of a consumer based on verified data.

Issue 2 – Types of data to be contributed by credit providers to the CRA and to be accessed by credit providers: Positive and Negative

Whether it is appropriate to restrict the amount of positive mortgage data contributed by the credit providers to the CRA in line with the latter's operational needs, and to restrict the access of such data by credit providers (upon the credit applicants' written consent) to the Mortgage Count (that is, number of outstanding mortgages) only

Section 6 of the Industry Proposal on Sharing of Positive Mortgage Loans Consumer Credit Data through Credit Reference Agency ("Industry Proposal") sets out the proposed items of contributed data to be provided by credit providers to the CRA. It is our belief that this is the minimum data contribution to achieve the objectives, mainly for enhancing the comprehensiveness of the consumer credit database for credit assessment of borrowers.

Moreover, financial institutions can only access to the consumer's positive mortgage data after obtaining the consumer's consent.

Issue 3 – Contribution of pre-existing mortgage data by credit providers to the CRA

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

According to Section 6.2 the Industry Proposal, for existing Mortgage Loans and Mortgage Loan applications received by an FI before the implementation date (tentatively, 1st April 2011), the financial institution will contribute the above data on a best-effort basis, subject to the data being electronically available on its system.

We are of the view that mortgage data relating to pre-existing mortgages are useful for allowing CRA to

DahSingBank,Ltd

compile the overall existing mortgage count of a consumer. However, for financial institutions with the mortgage data not readily electronically available on their system, they will have to spend a big effort for the input and verification of the mortgage data before contribution to CRA. We thus support that financial institutions are only required to provide such data on a best effect basis.

Furthermore, we are of the view that the contribution of mortgage data of pre-existing mortgages to TU by credit providers for compiling the mortgage count is a lawful purpose directly related to the original purpose for which such data were collected and relates directly to a core activity of credit providers. Moreover, under the current requirements stated in the Code of Practice issued by the Privacy Commissioner (the "Code") and Supervisory Policy Manual IC-6 issued by the Hong Kong Monetary Authority ("IC-6"), upon application for consumer credit, financial institutions should have already notified the individual that their data may be so supplied to a credit reference agency.

We are of the view that credit providers should have the right on releasing pre-existing mortgage data to TU, and are not required to give notification to the customers before contributing mortgage data of their pre-existing mortgages.

Issue 4 – Use of Mortgage Count for general credit assessment on or after implementation

Whether it is appropriate to permit, subject to the customers' 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.

The principal objective of the Proposal is to allow credit providers to have a better understanding and more comprehensive picture on the overall credit position of the borrowers. Accordingly, our view is that the credit providers should be allowed to access the mortgage count of a consumer for the purpose of assessing applications for all consumer credit, not only mortgage loans.

Issue 5 – Transitional period

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.

We have no comment whether 24 months is an appropriate transitional period for the purposes of general portfolio reviews of consumers' credit worthiness.

Issue 6 – Implementation safeguards

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.

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The use and sharing of consumer credit data through a credit reference agency is currently bound by the requirements as stipulated in the Code, IC-6 and the relevant guidelines issued by HKAB. Credit providers are required to put in place necessary internal procedures and controls to comply with the applicable requirements. Given that these existing requirements are continuously complied by relevant financial institutions, we believe that the data privacy of the consumers is adequately protected.

Should you have any questions, please do not hesitate to contact our

Yours faithfully,

For and on behalf of
Dah Sing Bank, Limited

The DTC Association

(The Hong Kong Association of Restricted Licence Banks and Deposit-taking Companies)

存款公司公會 (香港有限牌照銀行及接受存款公司公會)

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Our Ref.: 20110201

2nd February, 2011 (Wed)

By Post and Email

Policy 21 Limited

Room 1101-02, 11/F., Times Tower,

928-930 Cheung Sha Wan Road,

Kowloon,

Hong Kong

Dear Sirs,

The Sharing of Mortgage Data for Credit Assessment Consultation Document

The purpose of Industry Proposal on the Sharing of Mortgage Data is intended to promote responsible lending and borrowing of credit providers and consumers respectively. Its main objective is to facilitate comprehensive credit assessment by credit providers and reduce the risk of over-borrowing by consumers. The Proposal stipulates to expand the sharing arrangement on positive and negative mortgage data. Only mortgage count of a consumer is allowed to access by credit providers. The scope and manner of data contribution appears the minimum necessary for practicable implementation in view of the concern for data privacy. We are of the view that the sharing of mortgage data is benefiting both credit providers and consumers, and the economy and community as a whole. We thereby give our support to the Industry Proposal on The Sharing of Mortgage Data for Credit Assessment.

We would also like you to note that we have seen the submission of the *Hong Kong Association of Banks (HKAB)* to you on the same subject and dated Friday 21st January, 2011. We support the views expressed thereat.

Thank you for your kind attention,

Yours Sincerely

香港信貨機構聯會有限公司
The Finance Houses Association of Hong Kong Limited

FROM THE OFFICE OF:
CHAIRMAN
VICE-CHAIRMAN
SECRETARY
TREASURER

*PLEASE REPLY TO:

Ref: / /

2 Feb 2011

By Post and Email:

Consultation2011@pcpd.org.hk

Policy 21 Limited
Room 1101-02, 11/F, Times Tower,
928-930 Cheung Sha Wan Road,
Kowloon, Hong Kong

Dear Sirs,

The Sharing of Mortgage Data for Credit Assessment Consultation Document

We refer to the Sharing of Mortgage Data for Credit Assessment Consultation Document. We are grateful for the opportunity to share our views. Being a member of the Consumer Credit Forum, we have participated in the discussion process for the financial services industry's proposal. We strongly recommend the Privacy Commissioner to support this industry proposal.

As mentioned in the industry proposal, the benefits of extending mortgage data sharing includes the potential for more favourable terms and pricing on credit facilities, and facilitating responsible lending and better risk management.

The financial services industry fully recognizes the public's concern for data privacy. The proposed sharing scope is therefore restricted to a mortgage counter only while other countries have more comprehensive data sharing on mortgage loans. In order to realise the intended effect of the industry proposal, it is necessary for credit providers to contribute data on existing mortgage loans as well as new loans.

Regarding the 6 specific issues mentioned in the consultation paper, our views are the same as that stated in the response letter issued by the Hong Kong Association of Banks on 21 Jan 2011. Please refer that document for details.

If you have any further questions, please do not hesitate to contact us.

Yours faithfully,

The Finance Houses Association of Hong Kong Limited

c.c. Hong Kong Monetary Authority
The Hong Kong Association of Banks

Subject: THE SHARING OF MORTGAGE DATA FOR CREDIT ASSESSMENT
CONSULTATION DOCUMENT

From:

Date: Tue, 8 Feb 2011 16:57:05 +0800

To: <Consultation2011@pcpd.org.hk>

We write in response to the subject document (the "Document") published by the Office of the Privacy Commissioner for Personal Data in January 2011 and would wish to provide our views as follows:

We are a Bank duly licenced in Hong Kong with normal mortgage lending business, and are therefore both a user and a contributor of data contemplated in the Document. We are in support of the specific submission by The Hong Kong Associations of Banks (in which we are a member) dated 21 January 2011 to the consultation exercise. In particular, we believe that the proposed expansion in sharing of mortgage data would be conducive to a more healthy credit risk management environment both to consumers and mortgage lenders, and will bring Hong Kong more in line with the practices of major international markets.

Please feel free to contact the undersigned should further clarification is needed.

For and On Behalf Of
Fubon Bank (Hong Kong) Limited,
12/F, Central Tower, 28 Queen's Road Central, Hong Kong

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21 January 2011

By Post and Email: Consultation2011@pcpd.org.hk

Policy 21 Limited
Room 1101-02, 11/F, Times Tower,
928-930 Cheung Sha Wan Road,
Kowloon, Hong Kong

Dear Sirs,

The Sharing of Mortgage Data for Credit Assessment Consultation Document

1. Introduction and key points in support of the industry proposal
 - 1.1 We refer to the Sharing of Mortgage Data for Credit Assessment Consultation Document published by the Office of the Privacy Commissioner for Personal Data in January 2011 ("**Consultation Document**"). We are grateful for the opportunity to provide our views and appreciate the efforts of the Privacy Commissioner to conduct this consultation.
 - 1.2 We strongly urge the Privacy Commissioner to support the financial services industry's proposal to expand the sharing of mortgage data (the "**Industry Proposal**"). In the course of discussing the Industry Proposal, we have expressed our views on behalf of our members. In this submission, we would like to reiterate our views in support of the Industry Proposal and address the data privacy issues highlighted in Part V of the Consultation Document.
 - 1.3 We reiterate the following key points in support of the Industry Proposal:
 - (a) the Industry Proposal is intended to benefit both consumers and credit providers, and the economy and community of Hong Kong as a whole, and is supported by the Hong Kong Monetary Authority ("**HKMA**");
 - (b) the principal objective of the Industry Proposal is to facilitate comprehensive credit assessment of consumers thereby promoting responsible lending and borrowing and reducing the risk of over-borrowing by consumers;

Chairman Bank of China (Hong Kong) Ltd
Vice Chairmen The Hongkong and Shanghai Banking Corporation Ltd Page 1 of 6
Standard Chartered Bank (Hong Kong) Ltd

主席 中國銀行(香港)有限公司
副主席 香港上海滙豐銀行有限公司
渣打銀行(香港)有限公司



- (c) in order to achieve this objective, a credit provider will need to understand a consumer's total indebtedness;
- (d) for the purpose of facilitating understanding of a consumer's total indebtedness, the Industry Proposal stipulates:
 - (i) expanding the existing consumer credit data sharing arrangement to cover the sharing of positive and negative data of residential and non-residential mortgage loans; and
 - (ii) allowing a credit provider to access the mortgage count of a consumer for assessing an application of any consumer credit (and not only mortgage loan application);
- (e) in order to realise the intended effect of the Industry Proposal in a timely and efficient manner, it is necessary for credit providers to contribute data on the existing mortgage loans to the credit reference agency, TransUnion Limited ("TU"), to enable TU to compile the existing mortgage count of a consumer. We must stress that the Industry Proposal has taken into account public concern for data privacy by requesting the contribution of limited items of mortgage data to TU. Further, a credit provider is allowed access to the mortgage count only and only after having obtained the written consent of the customer after the implementation of the Industry Proposal. Credit providers are required to use the mortgage count for purposes relating to credit assessment and risk management (and not marketing or other purposes). If the mortgage count data base is void of the existing mortgage count and only reflects information relating to mortgage loans granted after implementation of the Industry Proposal, the effectiveness of the Industry Proposal, not only in facilitating more comprehensive credit assessment but also in prompting preventive measures where there are early signs of over-borrowing, will be significantly reduced and delayed;
- (f) reputation of a financial institution is an invaluable asset to it and financial institutions are committed to access and use the mortgage count for its intended purpose and not for marketing or other unauthorized purposes;
- (g) the adequacy of the measures against improper access or use of the mortgage count has to be assessed having regard, not only to the existing safeguards against improper handling of consumer credit data and the additional measures that the Privacy Commissioner is minded to prescribe under the Code on Practice on Consumer Credit Data, but also the revisions (including increase in penalty and liability for breach of



requirements) being proposed to the Personal Data (Privacy) Ordinance which apply to personal data generally; and

- (h) credit bureaux in other economies in Asia such as Singapore, Taiwan and Mainland China already have in place comprehensive data bases of both positive and negative data with respect to residential and non-residential mortgage loans, and the credit providers in those economies are sharing a significantly larger amount of personal data compared to what is stipulated in the Industry Proposal.

1.4 The financial services industry fully recognizes the public's concern for data privacy and has framed the Industry Proposal in scope and manner of data contribution and access with these considerations in mind. The industry genuinely believes that the proposed scope and manner represent the minimum necessary to make implementation of the Industry Proposal practicably feasible and to achieve its intended effect in a timely and efficient manner. The industry is of the view that the Industry Proposal has struck an appropriate balance in the circumstances between the need to promote responsible lending and borrowing for the interest of the economy as a whole and the individual's right to data privacy.

2. Response to the data privacy issues

Data Privacy Issue 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).

Response:

The principal objective of the Industry Proposal is to facilitate comprehensive credit assessment of consumers, thereby promoting responsible lending and borrowing and reducing the risk of over-borrowing by consumers. In order to achieve this objective, a credit provider will need to understand a consumer's total indebtedness and the overall credit position of the consumer.

Omission of positive data of residential properties or exclusion of non-residential properties from the Industry Proposal will 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, mortgage data in respect of non-residential properties must be included in order to show the total indebtedness of a consumer.

We would reiterate that the proposed extension of data contribution to cover



positive data of residential mortgages and both positive and negative data of non-residential mortgages should be considered in light of the objectives of the Industry Proposal and giving due regard to the limits imposed by the financial services industry on the scope and manner of data contribution and access. The extension is necessary and not excessive in order to allow a credit provider to understand the total indebtedness of a consumer based on verified information.

Data Privacy Issue 2

Whether it is appropriate to restrict the amount of positive mortgage data contributed by the credit providers to the CRA in line with the latter's operational needs, and to restrict the access of such data by credit providers (upon the credit applicants' written consent) to the Mortgage Count (that is, number of outstanding mortgages) only.

Response:

We are pleased to note that the Privacy Commissioner is inclined to confirm in the affirmative for this privacy issue. The amount of positive mortgage data to be contributed by credit providers to TU represents the minimum data necessary to enable TU to identify accurately each individual involved in a consumer mortgage loan and compile the mortgage count by reference to the capacity in which he is involved. A credit provider is allowed to access from TU only the mortgage count of a consumer (having obtained the consumer's consent). This restricted scope and manner of data contribution and access represents the minimum necessary to make implementation of the Industry Proposal practicably feasible and to achieve its intended effect in a timely and efficient manner.

Data Privacy Issue 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.

Response:

Mortgage data relating to pre-existing mortgages are necessary in order to allow TU to compile the overall existing mortgage count of a consumer. The overall existing mortgage count is necessary to allow the Industry Proposal to achieve its intended effect in a most timely and efficient manner. If data relating to pre-existing mortgages are not contributed to the TU, the mortgage count data base will be of limited value for a number of years as the mortgage count on that data base does not reflect the actual number of existing and outstanding mortgages of a consumer. As the tenor of mortgage loans typically lasts for 10 to 30 years, it may take up to 30 years (i.e. after all pre-existing mortgages are fully repaid) for the mortgage count data base to reflect the actual mortgage count.



Based on legal advice obtained by us, the contribution of mortgage data relating to pre-existing mortgages is within the ambit of data protection principle 3 of the Personal Data (Privacy) Ordinance. The contribution by credit providers of mortgage data of pre-existing mortgages to TU for compiling the mortgage count is a lawful purpose directly related to the original purpose for which such data were collected and relates directly to a core activity of credit providers. Accordingly, we are of the view that credit providers are not required to give notification to the customers before contributing mortgage data of their pre-existing mortgages.

We would also emphasize that a credit provider will have to obtain the consumer's express consent after the implementation of the Industry Proposal before accessing the consumer's mortgage count from TU.

Data Privacy Issue 4

Whether it is appropriate to permit, subject to the customers' 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.

Response:

In order to achieve the principal objectives of the Industry Proposal of promoting responsible lending and borrowing and reducing the risk of over-borrowing by consumers, it is necessary for a credit provider to understand the overall credit position of a consumer. Accordingly, it is necessary for the credit provider to access the mortgage count of a consumer for the purpose of assessing applications for all consumer credit (and not only mortgage loans).

Data Privacy Issue 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.

Response:

We support the Privacy Commissioner's view that a transitional period will enable consumers to review and restructure their existing indebtedness as they consider appropriate. A 24-month transitional period was adopted when credit data sharing was last expanded in 2003. A relatively lengthy 24-month period was adopted then considering that was the first time when positive data sharing was introduced and the consumer credit market was less mature. Now that the consumer credit market is more mature and that the sharing of positive data has been implemented for more than seven years, we are of the view that a 24-month



period is more than adequate for the Industry Proposal. A lengthier transitional period is likely to further reduce the motivation for consumers to take timely action to address possible over-borrowing.

Data Privacy Issue 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.

Response:

We fully recognize the public's concern for data privacy and agree that the safeguards for protecting data privacy under the existing consumer data sharing regime should be appropriately extended to cover the additional contribution and access of data stipulated in the Industry Proposal. These safeguards are principally specified in the Code of Practice on Consumer Credit Data (the "**Code of Practice**"). There are also comparable measures in the Supervisory Policy Manual (SPM) IC-6 issued by the HKMA and credit providers which are authorized institutions ("**AIs**") are required to follow them. AIs and other credit providers have put in place necessary internal procedures and controls to comply with the applicable requirements. In addition to providing appropriate training and guidance to the relevant staff, credit providers will maintain access log and other records and conduct annual compliance audit to ensure that their data management practices are adequate and effective to ensure compliance with the Code of Practice, SPM IC-6 and their internal policies and procedures.

These existing safeguards have been implemented satisfactorily through the years in connection with the existing consumer data sharing arrangement.

If you have any further questions, please do not hesitate to contact us.

Yours faithfully,

c.c. Hong Kong Monetary Authority
The Hong Kong Association of Restricted Licensed Banks and Deposit-taking Companies
The HKSAR Licensed Money Lenders Association
The Finance Houses Association of Hong Kong



The Hong Kong S.A.R.
**LICENSED
MONEY
LENDERS**
ASSOCIATION LTD.

香港持牌放債人公會

January 27, 2011

Our Ref.: 000

Policy 21 Limited
Room 1101-02, 11/F., Times Tower
928-930 Cheung Sha Wan Road
Kowloon, Hong Kong

BY POST AND FAX

Dear Sirs,

The Sharing of Mortgage Data for Credit Assessment Consultation Document
(the "Consultation Document")

We refer to the Consultation Document published by the Office of the Privacy Commissioner for Personal Data on 5 January, 2011 and write to submit our comments as follows:

General Comments

The Executive Committee of the Association is generally supportive of the financial services industry's proposal as set out in the Consultation Document for the following reasons:

1. A comprehensive credit database which shows the financial well-being of a borrower would facilitate a comprehensive credit assessment of the borrower thereby promoting responsible lending and borrowing, and reducing the risk of over-borrowing;
2. The proposal is a great step forward in bringing the credit data sharing arrangements in Hong Kong more in line with those in other major economies in Asia such as Singapore, Taiwan and PRC where comprehensive databases of both positive and negative data relating to residential and non-residential mortgage loans are shared through their credit bureau; and
3. A more efficient mortgage loan market resulting from better transparency of the total indebtedness of borrowers would in the long run help to lower the risk premium as well as the interest rate, and benefit both borrowers and lenders.

Specific Comments

Our views on the six privacy issues raised in paragraph 5.24 of the Consultation Document are as follows:

Issue 1 – Types of mortgage loans to be covered

We consider a comprehensive credit database containing, inter alia, positive mortgage data in respect of residential properties and both positive and negative mortgage data in respect of non-residential properties is necessary for an effective credit assessment of a borrower.

Issue 2 – Types of data to be contributed by credit providers to the CRA and to be accessed by credit providers: positive and negative

The amount of positive mortgage data provided by credit providers to TU represents the minimum data necessary for TU to identify correctly each individual involved and to compile the mortgage count of the individual concerned. Only the mortgage count of a borrower with the borrower's consent is made accessible by the credit provider. This restricted scope and manner of data contribution and access represent the minimum necessary to make it feasible for the proper implementation of the industry proposal.

Issue 3 – Contribution of pre-existing mortgage data by credit providers to the CRA

If the mortgage data for pre-existing mortgages are not contributed and shared, the mortgage database will be of lower value for quite a number of years, probably up to 10 before the pre-existing mortgages are fully repaid.

Issue 4 – Use of Mortgage Count for general credit assessment on or after implementation

To reduce the risk of over-borrowing by borrowers, credit providers should assess the overall credit position of borrowers. Therefore, it is necessary for the credit provider to access the mortgage count of a borrower in assessing credit applications for all consumer credit not only mortgage loans.

Issue 5 – Transitional period

A 24-month transitional period was adopted when positive credit data sharing was first launched in 2003. Now that the consumer credit market has become much more matured than seven years ago, we believe that a 24-month transitional period before access to the additional mortgage data is allowed for general portfolio reviews, is more than adequate.

Issue 6 – Implementation safeguards

We are fully aware of the public's concern for data privacy and agree that the safeguards for protection of data privacy under the existing consumer credit data sharing arrangement should be extended to cover the use and access of mortgage data. We believe that credit providers should have adopted necessary internal control and procedures to ensure compliance with the Code of Practice on Consumer Credit Data. We also believe that

credit providers would provide additional training to their staff to comply with the requirements of data protection and implement such system control and procedures to safeguard the integrity of contribution and access of mortgage data.

Thank you for your attention.

Yours faithfully,

Subject: [SPAM] The Sharing of Mortgage Data for Credit Assessment

From:

Date: Thu, 13 Jan 2011 14:14:46 +0800

To: <Consultation2011@pcpd.org.hk>

CC:

Dear Sirs,

Further to the issuance of your consultation document dated 8th February 2011, we would like to take this opportunity to raise a number of concerns that have been previously raised with HKAB but which have not obtained detailed answer.

Our businesses main focus in Hong Kong concentrates currently on the international mortgage financing. We are the booking centre of the mortgage accounts referred by other offices overseas and therefore well over 50% of our customers are in fact not residents of Hong Kong. The HKAB have confirmed that it will remain necessary to report all positive mortgage data no matter which country of residency the customer is located as long as the mortgage is booked with Lloyds TSB Bank plc Hong Kong Branch "LTSBHK". We have however questioned with the HKAB the effective usage of the data in which we believe these customers would be highly unlikely to ever obtain further mortgages in Hong Kong.

The purpose of the mortgage data sharing is to protect Hong Kong registered financial institutions to be able to review customer's credit record comprehensively which we fully respect and support this objective. Conversely LTSBHK wish to express our concern that this activity will release unnecessary customer information as mentioned above.

We hope this concern will be reflected, considered and feedback to HKAB before the final paper is issued.

Thanks.

Lloyds TSB Bank plc, Hong Kong Branch | Lloyds TSB Pacific Limited

26/F, Oxford House, Taikoo Place, Quarry Bay, Hong Kong | Office:

| Fa

Website: www.lloydstsb.com.hk

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Please consider the environment; do you really need to print this email?

Our Ref: _____

敬啟者：

對《共用按揭資料作信貸評估諮詢文件》的意見

經研究個人資料私隱專員公署發出的《共用按揭資料作信貸評估諮詢文件》（下稱《諮詢文件》），本行有如下意見，提請 參酌。

本行認同香港銀行公會二零一一年一月二十一日就《諮詢文件》提出的意見，支持更全面地分享按揭資料（即包括住宅物業的正面按揭資料及非住宅物業的正、負面按揭資料），以利香港金融市場及整體經濟的穩定、銀行業的健康發展及安全營運，並鞏固及加強香港的國際金融中心地位。

在尊重個人私隱的同時，本行認為也要在公眾利益及私隱間取得適當的平衡。對於《諮詢文件》中就個人私隱的幾點關注，本行認為業界已作出充份考慮。包括：

個人私隱的關注點	業界考慮
1. 業界分享客戶非住宅物業按揭情況	<p>近年不少客戶分散投資在非住宅物業，例如商廈、店舖及工業樓宇等，故業界有需要分享非住宅物業按揭資料，以更全面地評估客戶的信貸情況。</p> <p>業界在評估客戶的信貸申請時，獲取更全面的按揭資料，了解客戶的整體信貸情況，這不但有利於業界平衡信貸風險，對保持良好信貸紀錄的客戶而言，也可獲業界提供更有利的借貸條款。因此，借、貸雙方均會獲益。</p>
2. 業界分享客戶現有物業按揭宗數	<p>相關的資料，只有在客戶向金融機構辦理貸款並授權有關機構向資料庫查閱其信貸報告的前提下才被分享。</p> <p>由於樓宇按揭屬較長年期的貸款，若只分享新做按揭資料，可能需時數十年，資料庫才累積客戶的所有按揭資料，這對業界全面評估客戶借貸情況並不合適。</p>

Our Ref.:

個人私隱的關注點	業界考慮
3. 資料庫營運機構對客戶資料的保安	<p>目前在香港提供個人信貸資料庫服務的機構已運作近 30 年，受《個人資料（私隱）條例》監管，過往紀錄良好，具豐富的營運經驗及完善的保安技術及系統，安全性高。業界與該機構一直保持良好溝通，對其繼續提供符合法例要求的服務抱有信心。</p>

本行相信，更全面地分享按揭資料，增加信貸資料的透明度，將有助個人信貸的健康發展，對本港整體社會有正面作用。對個人私隱的關注，業界已作充份考慮，在公眾利益及私隱間取得適當的平衡。而業界使用的資料庫營運機構，具豐富經驗及先進技術，一直保持良好紀錄，有能力繼續提供符合法例要求的服務。

此致

政策 21 有限公司

南洋商業銀行有限公司

二零一一年二月二日

Subject: Submission on the Consultation Document on The Sharing of Mortgage Data for Credit Assessment

From

Date: Mon, 7 Feb 2011 12:20:56 +0800

To: <Consultation2011@pcpd.org.hk>

CC:

Dear Sirs,

We refer to the Sharing of Mortgage Data for Credit Assessment Consultation Document published by PDPO in Jan 2011 and the letter of HKAB dated 21 Jan 2011.

We strongly agree that the sharing of positive mortgage data is conducive to maintaining stability of banking system and reducing the risk of over-borrowing by consumers. Both the consumers and credit providers will reap the benefit under the Industry Proposal which has already struck a sufficient balance between the interest of the whole economy and the personal data privacy. We highly appreciate and agree with the view and/or response expressed by HKAB under its said letter which has eased the concerns about the data privacy issues when implementing the Mortgage Data sharing.

Regards
PrimeCredit Limited



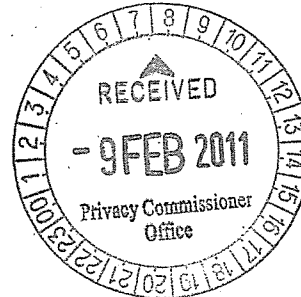
PUBLIC BANK (HONG KONG)

大眾銀行(香港)

(A subsidiary of Public Bank Berhad, Malaysia 馬來亞大眾銀行附屬公司)

Date: 8 February 2011.

To: Policy 21 Limited
Room 1101-02, 11/F, Times Tower,
928-930 Cheung Sha Wan Road,
Kowloon, Hong Kong



Dear Sirs,

Re: The Sharing of Mortgage Data for Credit Assessment

We refer to the Sharing of Mortgage Data for Credit Assessment Consultation Document published by the Office of the Privacy Commissioner for Personal Data in January 2011 ("the Consultation Document").

General

Our Bank welcomes PCPD's public consultation on the Consultation Document. We believe the extended coverage of residential and non residential credit data sharing would increase the transparency of the borrower's credit information to help financial institutions to make prudent credit assessments. As a credit provider, we could foresee a lower delinquency rate and loss rate after implementation. This will be beneficial to the industry, the borrowers and the community as a whole.

We would like to share our views on the data privacy concerns raised out in the Consultation Document:

Issue 1 – Types of mortgage loans to be covered

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)

We agree that the extension on the contribution of the positive data of residential mortgages and both positive and negative mortgage data in respect of non-residential properties is necessary and is not excessive so as to provide a complete picture and a more comprehensive reflection of the borrower's total debt outstanding and

Page 1 of 3

**PUBLIC BANK (HONG KONG)****大眾銀行 (香港)**

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creditworthiness.

Issue 2 – Types of data to be contributed by credit providers to the CRA and to be accessed by credit providers: Positive and Negative

Whether it is appropriate to restrict the amount of positive mortgage data contributed by the credit providers to the CRA in line with the latter's operational needs, and to restrict the access of such data by credit providers (upon the credit applicants' written consent) to the Mortgage Count (that is, number of outstanding mortgages) only.

Section 6 of the Industry Proposal on Sharing of Positive Mortgage Loans Consumer Credit Data through Credit Reference Agency sets out the proposed scope of positive mortgage data to be shared. We believe it is the minimum data necessary, and not excessive, to enable a credit provider to have a full picture of the total indebtedness of a consumer.

Issue 3 – Contribution of pre-existing mortgage data by credit providers to the CRA

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.

Mortgage data relating to pre-existing mortgages are necessary in order to allow TransUnion Limited ("TU") to compile the overall existing mortgage count of a consumer. This information is crucial to a credit provider. Without the mortgage count data, the actual number of existing and outstanding mortgages of a consumer cannot be reflected. We are of the view that the contribution of mortgage data relating to pre-existing mortgage data is complied with the data protection principle 3 of the Personal Data (privacy) Ordinance and customer notification is not required before contributing their pre-existing mortgage data.

Issue 4 – Use of Mortgage Count for general credit assessment on or after implementation

Whether it is appropriate to permit, subject to the customers' 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.

In order to avoid over-borrowing by consumers, and promote responsible lending and borrowing, it is necessary for a credit provider to have an overall understanding of the



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大眾銀行(香港)

(A subsidiary of Public Bank Berhad, Malaysia 馬來西亞大眾銀行附屬公司)

credit position of a consumer.

We are of the view that the credit providers to evaluate not only mortgage loan applications but also to access other new customer credit applications for review and renewal of the consumers' existing credit facilities.

Issue 5 - Transitional period

Whether 24 months is an appropriate transitional period before access to the additional mortgage data is allowed for the purpose of general portfolio views of consumers' credit worthiness.

We have no specific comments on the proposed transitional period.

Issue 6 - Implementation Safeguard

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.

There are measures under the existing consumer credit data sharing arrangement to protect data privacy. These measures are principally specified in the Code of Practice the Supervisory Policy Manual IC-6 (SPM IC-6) issued by the HKMA and the relevant guidelines issued by HKAB. Given that the existing mechanism is already in place for accessing CRA, we believe the consumer's privacy was properly safeguarded.

Should you have any questions, please do not hesitate to contact

Yours faithfully,

For and on behalf of

Public Bank (Hong Kong) Limited

Subject: The Sharing of Mortgage Data for Credit Assessment
From
Date: Tue, 8 Feb 2011 08:13:32 +0800
To: consultation2011@pcpd.org.hk
CC:

Dear Sirs:

We are writing to express our full support of the financial services industry's proposal to expand the sharing of mortgage data. Our views on the subject consultation document are in line with the submission given to you by The Hong Kong Association of Banks dated 21 January 2011.

If you have any further questions, please do not hesitate to contact us.

Thank you very much and with best regards,

Shanghai Commercial Bank Limited

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永亨銀行
WING HANG BANK, LTD.

8 February 2011

Policy 21 Limited
Room 1101-02, 11/F, Times Tower,
928-930 Cheung Sha Wan Road,
Kowloon, Hong Kong

Dear Sirs,

The Sharing of Mortgage Data for Credit Assessment Consultation Document

We refer to the Sharing of Mortgage Data for Credit Assessment Consultation Document published by the Office of the Privacy Commissioner for Personal Data in January 2011 and strongly support the financial services industry's proposal to expand the sharing of mortgage data (the "Industry Proposal").

We in particular would wish to express our view in support of the Industry Proposal with regard to the financial stability of Hong Kong, the inclusion of pre-existing mortgages, and the appropriateness of the privacy safeguards (including the need to notify or obtain the consent of the customer with respect to disclosure of information).

(a) **The financial stability of Hong Kong**

Credit data sharing arrangement has been an important pillar of the financial infrastructure in leading financial centres for prudent risk management and comprehensive consumer credit data sharing arrangement has been a major risk management tool in many other jurisdictions which already have in place comprehensive data bases of both positive and negative data with respect to residential and non-residential mortgage loans and the credit providers in those jurisdictions are sharing a significantly larger amount of personal data compared to what is proposed in the Industry Proposal. The Industry Proposal, by proposing to extend the sharing of consumer credit data to credit facilities granted to individuals secured by a charge on property (whether residential, retail, commercial or industrial property) will enhance the value of credit information available to lenders in making lending and pricing decisions since such credit information will better reflect the overall healthy credit profile of the individual borrower as well as his total debt outstanding and creditworthiness, thereby minimising the incidence of default. By promoting responsible lending and borrowing and reducing the risk of over-borrowing by consumers, the Industry Proposal will best serve the broader public interest in strengthening a healthy lending environment while preserving the stability of Hong Kong's financial markets and the economy as a whole. The Hong Kong



Monetary Authority ("HKMA") as banking supervisor has, for a long time, been emphasising the need to assess and manage credit risks, not just through the requirement of adequate security in support of bank loans, but also on the basis of relevant information concerning the creditworthiness of borrowers. By helping to ensure that financial resources are channelled to those who are in a position to make effective use of them, reliable credit information will not only increase the effective working of the banking system, it will also enable differential pricing to reflect different degrees of risk taken by banks in extending loans. The HKMA is therefore in support of the Industrial Proposal.

(b) The inclusion of pre-existing mortgages

As the principal objective of the Industrial Proposal is to enhance the comprehensiveness of Hong Kong's financial infrastructure for prudent risk management and due to the typically relatively long tenure of mortgage loans it will take some time to build up the mortgage count data base, it is necessary to include data relating to pre-existing mortgages. Otherwise, the mortgage count on the data base will not reflect the actual number of existing and outstanding mortgages of a consumer for some time, thereby limiting its usefulness.

(c) The appropriateness of the privacy safeguards (including the need to notify or obtain the consent of the customer with respect to disclosure of information)

The Industry Proposal has taken into account public concern for data privacy and struck an appropriate balance between the need to promote responsible lending and borrowing for the interest of the economy as a whole and the individual's right to data privacy. To address public concern for data privacy, only limited items of mortgage data will be required to be contributed to the credit reference agency, TransUnion Limited ("TU"). In addition, any access by a credit provider is subject to the written consent of the customer and limited to the mortgage count only, and use of the mortgage count must be for purposes relating to credit assessment and risk management only. Further, data obtained through TU will continue to be well protected under the Code of Practice on Consumer Credit Data (Code of Practice) issued by the Privacy Commissioner, the Supervisory Policy Manual IC-6 (SPM IC-6) issued by the HKMA in the form of statutory guideline under the Banking Ordinance, and the Code of Banking Practice jointly issued by HKAB and the DTCA. In particular, the Code of Practice not only limits who can access to an



永亨銀行
WING HANG BANK, LTD.

individual's data held by TU and the purposes for which a credit provider can use a credit report, it also requires TU to have appropriate measures to safeguard the security of consumer data and protect them from unauthorised access or change, including measures for the retention and deletion of data and the maintenance of a log of all incidents involving actual or suspected breach of security. Consumers also have the right to access their records kept by TU and to correct any wrong or out of date information contained in the records. Comparable security and data protection measures in the SPM IC-6 are required to be effectively complied with by financial institutions regulated by the HKMA. It is also expected that the revisions (including increase in penalty and liability for breach of requirements) being proposed to the Personal Data (Privacy) Ordinance will further strengthen the protection of personal data generally.

If you have any questions concerning our foregoing submission, please do not hesitate to contact us.

Yours faithfully

Wing Hang Bank, Limited

香港
保險業監理專員

香港金鐘道六十六號
金鐘道政府合署二十一樓



COMMISSIONER OF INSURANCE
HONG KONG

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In reply please quote this ref.

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Your ref.

電話

Tel.: (

18 February 2011

Mr Allan Chiang
Privacy Commissioner for Personal Data
Office of the Privacy Commissioner for Personal Data
12/F
248 Queen's Road East
Wanchai
Hong Kong

Dear Allan,

Sharing of Mortgage Data for Credit Assessment

Thank you for your letter of 5 January.

While the insurance industry is not directly involved in the provision of mortgage loans, some insurance companies are involved in the business of mortgage insurance and reinsurance. We are very supportive of the proposed extension of the credit data sharing system to include both positive and negative mortgage data. We believe such would help credit providers in their credit risk assessment, which in turn would help stabilize the financial industries in Hong Kong.

My apologies for overlooking your deadline.



消費者委員會 CONSUMER COUNCIL
香港 · HONG KONG

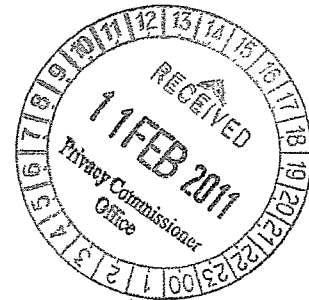
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COUNCIL MEMBER OF
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來函編號 YOUR REF.

本函編號 OUR REF.

10 February 2011

Mr. Allan CHIANG, SBS
Privacy Commissioner for Personal Data
Office of the Privacy Commissioner for Personal Data
12/F, 248 Queen's Road East
Wanchai, Hong Kong



Dear Allan,

Re: Sharing of Mortgage Data for Credit Assessment

Thank you for inviting the Council's views on the captioned consultation.

Attached please find the Council's views for consideration of your office.

Wishing you a happy & prosperous year of the Rabbit.

Yours sincerely,

Consumer Council

Consumer Council

Submission to The Office of the Privacy Commissioner for Personal Data on “The Sharing of Mortgage Data for Credit Assessment”

1. The Consumer Council (the Council) is pleased to submit its views concerning the consultation document issued by the Office of the Privacy Commissioner for Personal Data (PCPD) on sharing of mortgage data for credit assessment in Hong Kong.

2. This submission sets out the concerns that consumers may have in relation to the financial services industry’s proposal (the proposal) of greater sharing of mortgage data for general credit assessment and the Council’s responses to the issues raised in the consultation document, for the consideration of the PCPD.

General views

3. The objective of the proposal as stated in the consultation document is to promote responsible lending by credit providers and responsible borrowing by consumers, thereby reducing the risk of over-leveraging on residential or non-residential property mortgages as security for the consumers’ indebtedness.

4. The Council appreciates the public interest to be served in preserving the stability of Hong Kong’s financial markets and the economy as a whole. However, it is equally important to strike an appropriate balance between the public interest and an individual’s interests in data privacy and protection.

5. The Council is of the view that the proposed expansion of consumer credit data sharing has wider implications for consumers as far as their valuable financial assets and personal assets are concerned and go beyond simply enhancing the assessment of credit risk.

6. The Council feels that in considering the proposal, there are important areas that the industry and the regulators need to address in order to have a complete and fair evaluation of the proposal.

Issue 1 – Types of mortgage loans to be covered

7. From a consumer protection perspective, the Council is of the view that the proposal to extend the scope of sharing of consumer credit data to cover additional mortgage data, namely, positive mortgage data in respect of residential properties, and both positive and negative mortgage data in respect of non-residential properties, will inevitably increase the range of information in the consumer credit reporting system.

Concerns over data concentration

8. Given the problems that arose in the past of leakage of personal information that used for marketing purposes, consumers will be concerned as greater disclosure and use of consumer credit data will put their information at risk of abusive use, to the detriment of their interests.

9. The Council is concerned that too much consumer mortgage data than necessary is to be disclosed by credit providers to the credit reference agency (CRA) to the disadvantage of consumers, particularly since the credit reference database will be a lucrative source of marketing information.

Justifications for inclusion of additional mortgage data

10. Notwithstanding the above concerns, the consultation document does not clearly demonstrate the extent of problems, for instance, whether there is a substantial number of consumers causing the purported problems of holding multiple properties or identify the root cause of the problems which call for the inclusion of all mortgage loan types in the CRA database.

11. The Council is concerned that requiring the sharing of credit information to the extent proposed by the industry may expose a majority of consumers to unnecessary detailed scrutiny. The industry should explain more on the need of including all mortgage loan types, in light of the statement in Part IV of the industry's proposal that "a predominant element of mortgage loans is residential loans which typically represent the largest borrowing of a private individual". The industry should also go into the anticipated impact of greater sharing of mortgage data to the property market.

Issue 2 – Types of data to be contributed by credit providers to the CRA and to be accessed by credit providers: Positive and Negative

12. The Council acknowledges that the industry has taken into consideration public concern by limiting the types of data items to be contributed and accessed under the proposal.

13. The Council considers that a solution may be needed to help develop a healthy mortgage lending environment conducive to the stability of Hong Kong's financial markets and the economy as a whole. To strike an appropriate balance between the public interest and data privacy interest of consumers, the collection of mortgage data should be kept to the minimum necessary, with safeguards (such as upon the credit applicants' written consent) in place to prevent information from being misused.

Public assurance on the extent of data sharing

14. Whilst noting that the proposed data sought represents a minimum amount of data necessary for the purpose of assessing the credit risk of consumer credit applicants, the Council is concerned that the sharing would open up the floodgate and that the coverage of the data sharing will

progressively extend to collection of more mortgage loan data. One would recall the industry's promise back in 2002 of not including positive residential mortgage data when lobbying for extending the range of positive consumer credit information.

15. In light of such background, the Council strongly requests that a public assurance be given by the industry that use of the proposed data will 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 represents the purpose(s) for which the data are collected and used.

Effect of Mortgage Count on credit score

16. As regards the use of Mortgage Count by credit providers and the CRA, the Council urges that the industry and the CRA to clarify the implication of the additional mortgage data would have on consumer credit scoring. For instance, whether a high count of outstanding mortgages would simply in itself be construed as a high risk factor in the compilation of credit scores.

17. The Council is concerned that the use of Mortgage Count may result in a "mislabeling" of an individual's credit-worthiness, since a high or low Mortgage Count has no direct bearing to the extent of his indebtedness, and simply looking at a high Mortgage Count may adversely affect his credit standing. Putting into the credit database information that will have any labeling effect on consumers should be critically examined. In any case, greater transparency of the consumer credit scoring system is required to ensure a fair credit assessment will be conducted.

Minimum amount of Contributed Data

18. To be in line with the principle that data should be kept to the absolute minimum necessary to fulfill the purpose(s) for which they were collected, the Council considers that the proposed Contributed Data in respect of items (c) and (g) should be adjusted to limit the amount of mortgage loan data provided to the CRA. For instance, it may not be necessary to supply the full HKID Card number or the mortgage account number to the CRA.

Issue 3 – Contribution of pre-existing mortgage data by credit providers to the CRA

19. With regard to the industry's view that there is no need to obtain the explicit consent of the customers as the additional mortgage data are to be used for a lawful purpose directly related to the core activity of credit providers and the original purpose for which they were collected, even in the absence of prior notification. The Council is unable to concur with the said industry view.

Prior explicit notification must be given

20. The industry's interpretation of "directly related purpose" is in a much

broader context than what the public may have perceived. The Council shares the PCPD's view that it may 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.

21. An analogy can be drawn from the lesson learnt in the Octopus Rewards incident with the consuming public astonished to find that their data had been transferred and sold for purposes beyond what they could have reasonably contemplated. It also came as a surprise to the public that some banks had transferred and sold their clients' credit data to third parties other than for banking purposes.

22. In view of rising public demand for adequate privacy protection for consumers, the Council therefore sees 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 is 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.

Enabling consumers to retain control of personal data

23. Apart from consumers being informed of the use of the data, the Council considers that adoption of a consent-based approach is appropriate to uphold the individual's rights to control his personal data. A consumer, being the subject of the additional mortgage data concerned, should have the right to choose whether to allow his data to be shared. The Council is of the view that choice should be made available to applicants applying for a consumer credit facility before their mortgage data are contributed for sharing.

Issue 4 – Use of Mortgage Count for general credit assessment on or after implementation of the industry proposal

24. While understanding that expanding the scope of mortgage loan data will give a full picture of a borrower's overall indebtedness for prospective lenders to accurately assess his credit-worthiness, the Council queries whether such sharing of additional mortgage information is necessary for evaluation of loan applications other than mortgages, e.g. new consumer credit applications, or for review and renewal of the consumers' existing credit facilities.

Level of disclosure should be in line with degree of credit risk

25. As stated in the consultation document, the total value of outstanding residential mortgage loans as of 30 June 2010 exceeded HK\$679,545 million which is much larger than credit card lending with the total amount of receivables exceeding HK\$74,463 million for the same period. The size of non-mortgage credit facilities to be considered by credit providers is relatively small compared to the size of mortgage loans.

26. For that reason, the Council doubts if the availability of mortgage data is absolutely necessary for the purpose of processing, for example, an application for credit card involving a relatively small amount of credit facilities compared to mortgage loans.

Issue 5 – Transitional period

27. The industry has proposed a transitional period of 24 months before allowing access to the additional mortgage data for the purpose of general portfolio reviews. The Council is of the view that if the industry's proposal to extend the range of data is adopted, a transitional period of 24 months at the minimum would be required. Consumers should be given the chance to manage and re-arrange if necessary their credit portfolio during the transitional period when any mortgage data collected by the CRA could not be accessed and used.

Prevention of calling up loans

28. The Council believes that imposing a transitional period helps forestall the occurrence of sudden calling up of loans which may have a significant impact on the economy. It therefore urges that credit providers should give sufficient time for their borrowers, in particular those who have heavily over-borrowed and would need to work out a realistic repayment schedule with their lending institutions. This will serve the stated objective of the proposal of maintaining the stability of Hong Kong's financial markets.

Clarification of access conditions

29. The consultation document proposes restricting credit providers from accessing and using the data concerned for the purposes of review of existing credit facilities of borrowers except where there is a relevant need to do so. It is however not clear as to the circumstances (e.g. when a direct request is made by an individual or when the credit provider becomes aware of an individual's financial difficulties) in which the credit providers can have immediate access and use of mortgage data during the transitional period.

30. To avoid uncertainty, the Council suggests that the circumstances should be made specific rather than left to the judgment of credit providers, to allow access during the transitional period only where a customer is applying for new credit or seeking a debt restructuring.

Issue 6 – Implementation safeguards

31. As regards the proposed compliance audit, the Council supports the PCPD's proposals to require the CRA to carry out an independent privacy compliance audit within 6 months after implementation of the proposal and also periodic IT security audits. It also supports that those 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 interface with the system to prevent abusive access.

32. Apart from the above, the Council considers that adequate data protection safeguards and restriction should be put in place to ensure the protection of the consumers' privacy interests, if the industry's proposal is adopted. The Council sets out in the subsequent paragraphs a number of proposed additional privacy safeguards for the consideration of the PCPD.

Disclosure of compliance results

33. Due to the wide range of consumer credit data held in the hands of a single CRA, there is high expectation of rule compliance. The Council is of the view that it is necessary to take a positive approach to ensure the integrity and security of the data that there is no misuse of the data. The Council therefore invites the PCPD to consider making the compliance results available for the public's information.

34. As far as the Council is aware, the HKMA discloses the state of compliance of the banking industry with respect to the Code of Banking Practice for the public's information. The Council believes the PCPD making similar disclosure will help to enhance public confidence in the operation of the credit reference agency and the credit reporting system.

Transparency is needed both ways

35. In relation to the argument advanced by the industry that credit providers are handicapped by the lack of mortgage data in their assessment of consumer credit applications, the Council is of the view that consumers likewise are disadvantaged because they understand very little about the consumer credit reporting system, and are not given to know how their information is being portrayed to credit providers.

36. As a matter of fact, consumers rarely know about or check what goes into their own credit reports until after they have been turned down or otherwise encountered a problem. The Council believes that enhancing transparency of the consumer credit reporting system is of paramount importance to ensure a fair credit assessment.

Provision of free consumer credit report

37. The Council believes that there is the need to impose additional privacy safeguard obligations upon the CRA and the credit providers (particularly since the regulatory requirements applicable to different financial institutions are not homogenous) upon implementation of an enlarged credit database and greater sharing and use of the mortgage data. The Council re-iterates its proposal in previous submissions that consumers be provided with free access to their credit report on a regular basis.

38. Whilst citing the comprehensive consumer credit data sharing arrangements in other economies to support their case for greater sharing of

mortgage data in Hong Kong, the industry has not disclosed the safeguards available in these economies to protect consumers' privacy interests.

39. Upon a quick search, the Council found that consumers in Australia are entitled to free copies of their credit reports. In the US and Canada, consumers can get free annual copies of their credit reports. To the knowledge of the Council, the provision of free credit reports is stipulated in these countries' privacy laws. In contrast, Hong Kong's access fee (\$99-\$200 for a credit report) would discourage consumers from checking their reports to ensure accuracy of the information contained. The Council trusts that the industry and the CRA should be able to give thorough information to the public about means to access consumer credit reports in other jurisdictions.

40. The Council considers that consumer rights will be greatly enhanced if measures are introduced for consumers to have free copy of their credit report on an annual basis. With the provision of credit reports with data requestor list included, consumers will be in a better position to know whether or not information in their report is complete and accurate, and whether there has been any abusive access.

Posting of dispute statement

41. Furthermore, consumers should be allowed to add a brief statement about any information in their report if there has been a dispute over their credit status and the dispute is not resolved. The brief qualifying statement will afford consumers the chance to explain the circumstances giving rise to negative information in their consumer credit report.

Other comments

42. The Council appreciates that the PCPD has taken the initiative to also highlight in the consultation document not data privacy-related matters to convey a bigger picture for the relevant privacy matters to be considered by the general public. In advocating for consumer interests, the Council would like to provide the following views for the consideration of the PCPD.

Respective roles of lenders and borrowers

43. Whilst recognizing that borrowers have the responsibility and obligation to provide relevant information to facilitate prudent lending in a healthy lending and borrowing relationship, the Council believes it is crucial for the lenders to take on an equal share of responsibility in ensuring prudent lending. However, the Council notes it is quite common in the industry for lenders to encourage over-borrowing by consumers, as evidenced in the offer of tax loans (e.g. X times the tax amount payable).

44. The Council is of the view that prudent lending is a prerequisite for preserving a healthy lending environment in Hong Kong.

Effectiveness of the proposal in bringing benefits to consumers

45. With regard to the effectiveness of the proposal in bringing about more favourable loan terms and pricing to consumers, the Council's surveys on tax loans were quoted in the consultation document to illustrate that reduced interest rates were offered after the introduction of the positive credit data sharing on unsecured lending. It is 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. The Council would like to point out that it had not come to any conclusion in its survey reports what would have brought about lower interest rates, let alone any relationship between interest rates and the sharing of consumer credit data.

46. Further, to put record right, 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 the consultation document) as compared to 3.20%-8.16% in 2004. If the range quoted was meant to compare the respective lowest interest rates, the ranges should be as low as 1.62%-2.66% in 2009 and 2.12%-3.65% in 2004 (instead of 3.20%-8.16% in 2004 as quoted in the consultation document).

47. The industry has made repeated representations that the sharing of credit data will provide benefits to consumers (such as bring about lower interest rates). The Council urges upon the PCPD to seek from the industry explanation of consumer benefits in more explicit terms to demonstrate how the benefits to lenders of sharing mortgage data will be passed on to consumers.

**Consumer Council
February 2011**



地 產 代 理 監 管 局
ESTATE AGENTS AUTHORITY

Your Ref: [REDACTED]
Our Ref: [REDACTED]

7 February 2011

Mr Allan Chiang
Privacy Commissioner for Personal Data
Office of the Privacy Commissioner for Personal Data
12th Floor, 248 Queen's Road East
Wanchai
Hong Kong

Dear Mr Chiang,

Sharing of Mortgage Data for Credit Assessment

Thank you for your letter dated 5 January 2011 addressed to [REDACTED] of the Estate Agents Authority (EAA) inviting the views of the EAA on the above subject as mentioned in the Consultation Document therewith attached. [REDACTED] has passed your letter to the undersigned to reply.

As the regulator of the estate agency trade, the EAA takes the view that the 6 privacy issues as mentioned in the Consultation Document for consultation do not appear to have implications for estate agents and as such, we do not propose to give specific views thereon. That said, we trust that any relaxation in the sharing of credit data would be protected by more stringent privacy safeguards by your Office.

Yours sincerely,

c.c. CEO, EAA



HONG KONG MONETARY AUTHORITY
香港金融管理局

Ref:

8 February 2011

Policy 21 Limited
Room 1101-02, 11/F, Times Tower,
928-930 Cheung Sha Wan Road,
Kowloon, Hong Kong

Dear Sirs,

The Sharing of Mortgage Data for Credit Assessment Consultation Document
("Consultation Document")

The Office of the Privacy Commissioner for Personal Data (PCO) published a consultation paper on the sharing of mortgage data for credit assessment on 5 January. The Hong Kong Monetary Authority (HKMA) welcomes the PCO's public consultation.

The HKMA fully supports the industry proposal for sharing of mortgage data for credit assessment as it would further strengthen credit risk management of credit providers and is therefore conducive to the general stability of the banking system in Hong Kong, which is crucial to the interest of depositors as well as the financial stability and economic development of Hong Kong as a whole. Given that mortgage loans account for about 40% of "Loans for Use in Hong Kong" of the banking sector, any credit problems associated with such loans would have far-reaching implications for overall banking stability. The HKMA therefore takes the view that enhancement to the sharing of mortgage data is necessary for the maintenance of banking and financial stability in Hong Kong in the longer term. In fact, the sharing of positive mortgage data has been in place in many other jurisdictions for many years including US, UK, Taiwan and Singapore. The principal objective of the industry proposal, which involves sharing of information on the number of mortgaged properties only rather than details of such properties in order to mitigate potential privacy concerns, is to promote responsible borrowing and lending and to reduce the risk of over-borrowing by consumers.

As pointed out in the Consultation Document, at a macro level, it is recognised that the expansionary fiscal measures and the easing of monetary policies adopted in a number of countries would result in a surge in global liquidity and possible inflow of

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hot money into Hong Kong, thereby increasing the risk of an asset bubble. It is therefore important to guard against the risk of any possible property bubble forming and subsequent bursting. Some may argue that the mortgage loan portfolios of banks have demonstrated relatively low delinquency ratios during the Asian Financial Crisis. Notwithstanding this, it is worth noting that the current interest rate environment is exactly opposite to that prevailing during the Asian Financial Crisis. When an asset bubble burst is coupled with a significant interest rate increase rather than persistent interest rate drop, mortgage borrowers would find it harder to weather through the downturn due to much higher repayment burden. Therefore, the market performance of the mortgage portfolio in the last round of market downturn could be very different from the situation that Hong Kong may face in the next round of adjustment. To mitigate such risks, the proposal will help credit providers to substantially improve their credit assessment and ought to deter borrowers from over-stretching themselves.

At a micro level, it is worth pointing out that borrowers are already currently required to declare whether they have any other outstanding mortgages when applying for a loan from an authorised institution. Therefore, in practical terms, the proposed positive mortgage data sharing, which only involves sharing of information on the number of mortgages, will not result in borrowers providing additional personal information to a potential lending institution, and such information will, under the proposed framework, only be accessible by a credit provider from the CRA when it makes an enquiry, with the consent of the customer, upon receipt of a credit application. At the same time, the proposed arrangement will enable credit providers to conduct more complete and accurate assessment of the repayment ability of all applicants and not just those who have made full disclosure to the lending institutions. This will help ensure a level playing field for all loan applicants, thereby creating a more efficient market for consumer lending and borrowing. The arrangement will also help deter borrowers from providing false information or omitting information on mortgages they already have when applying for a loan from a credit provider.

As regards benefits to customers, as an example, since the introduction of the Consumer Credit Reference Agency in 2003 which provides positive credit data in relation to personal loans and credit card advances, customers with favourable credit records have been able to obtain loans at lower interest rates. Since then, the rollover rate of credit cards (that is, the percentage of total outstanding balance of credit card lending to the total credit card receivables) has dropped from 54% to 25% while the non-credit card lending market has been growing rapidly. This is because credit providers have been able to offer credit worthy customers outstanding credit card balance transfer services whereby they transfer such balances to personal loans. Generally speaking, the interest rate for personal loans is much lower than that of credit card advances. That shows that consumers have benefited as a result.

On the whole, we consider the proposal, which have been developed after taking into account views from different stakeholders, has struck a right balance between individuals' right to data privacy and the broader public interest.

Please refer to the Annex for HKMA's comments on the six privacy issues raised in the Consultation Document.

Yours faithfully,

c.c. The Chairman, Consumer Credit Forum
The Chairman, HKAB
The Chairman, DTCA
FSTB

Encl.

Issue 1 – Types of mortgage loans to be covered

The HKMA considers that it is necessary and not excessive for the CRA to hold the additional mortgage data as proposed (i.e. positive mortgage data of residential properties, and both positive and negative mortgage data of non-residential properties contributed by the credit providers) based on the following:-

- Property investors / speculators not only invest / speculate in residential properties (but also in non-residential properties). Indeed, if the mortgage loans were confined to residential mortgages, there is a likelihood that investors / speculators would invest / speculate in the non-residential sector given the loophole. Therefore, to achieve the principal objective of the proposal, it is necessary to share both mortgage data of residential and non-residential properties. Excluding non-residential properties from the proposed scheme would render the mortgage database much less useful.
- The proposed scope covering non-residential properties is in line with that adopted in advanced economies such as the US, UK, Canada and other Asian markets such as Mainland China, Taiwan and Singapore.
- Regarding sharing of negative data of non-residential properties, if positive mortgage data of non-residential properties would be shared, it is a natural extension that the negative data of non-residential mortgages should also be covered to allow a comprehensive picture to be obtained from the CRA database. Otherwise, the system would become very confusing and difficult to operate.
- The HKMA supports that sharing of negative mortgage data of non-residential properties is appropriate and necessary to give a full picture of borrowers' total indebtedness.

Issue 2 – Types of data to be contributed by credit providers to the CRA and to be accessed by credit providers: Positive and Negative

- The HKMA is pleased to note that the Office of the Privacy Commissioner for Personal Data (PCO) is of the view the proposed types of data items to be contributed and accessed under this Issue represent the minimum amount of data necessary for the purpose of assessing the credit risk of consumer credit applicants.
- The HKMA believes the industry proposal is a well-balanced one after taking views from different stakeholders into consideration. In fact, the current proposal (being the revised version following discussions with the PCO) has substantially reduced the range of data items to be shared as compared with the original industry proposal forwarded to the PCO in October 2009.
- The HKMA is well aware of the need to keep the proposed data items to be shared and accessed to a minimum. The current proposal is a “bare-bones” approach involving a simple mortgage count.

Issue 3 – Contribution of pre-existing mortgage data by credit providers to the CRA

- The HKMA is of strong view that it is essential to include the pre-existing mortgage data; otherwise, there will be a big loophole in the arrangement and effectively defeat the purpose of the proposal. At present, the loan tenor of most newly approved mortgages is between 20 to 30 years. Even though some mortgage borrowers may make an early repayment of their mortgage loans for different reasons (such as switching to another property or other investment considerations), it will take not just a few years but many years for the CRA database to be able to serve its intended purpose if existing mortgage data is excluded from the database. To carve out existing mortgage data will also create a special class of mortgage borrowers whose mortgage data will not be known to credit providers. This will significantly impede the effectiveness of the database in enhancing overall financial stability in Hong Kong.
- The HKMA notes that the industry has obtained legal advice from solicitors and Senior Counsel on this issue. According to the legal advice obtained, the contribution of mortgage data relating to pre-existing mortgages is within the ambit of data protection principle 3 of the Personal Data (Privacy) Ordinance. The contribution by credit providers of mortgage data of pre-existing mortgages to a CRA for compiling a mortgage count is a lawful purpose directly related to the original purpose for which such data were collected and relates directly to a core activity of credit providers. The HKMA understands that the industry has already forwarded the legal advice to the PCO for reference. In view of this, there are no legal impediments for including pre-existing mortgage data in the database of the CRA. For this reason, from a legal perspective, we are of the view that prior notification to customers before contributing such data to the database is not necessary. It is also important to note that a credit provider will only be able to access such positive mortgage information in the future with the consent of the borrower.

Issue 4 – Use of Mortgage Count on or after implementation

- It would not be desirable to stipulate that access to the types of credit data is to be constrained by the types of loans applied for. The utmost consideration of a bank when deciding whether to approve a loan application is the applicant's repayment ability, which will definitely be affected by all the loans (including mortgages, credit card debts and unsecured loans) the applicant already has. At present, when bank customers apply for credit cards or unsecured loans, banks will ask customers to declare information on their outstanding mortgage loans.
- It is relatively easier for borrowers to apply for a credit card debt or unsecured loan than to obtain a mortgage. Some borrowers might use cash advances from credit card to service their mortgage payment or to partly finance their mortgage down payment. It will be a loophole in the arrangement if the borrowers' total indebtedness could not be assessed.

Issue 5 – Transitional period

- Based on the reasons stated below, the HKMA considers that the proposed 24-month transitional period is appropriate.
- There was also a 2-year transitional period when the positive credit database of credit card and unsecured loans was introduced. In light of the experience last time, a 2-year period is considered appropriate. The last experience also showed that when the 2-year transitional expired, there was no large scale loan termination or debt collection measures on the part of banks.

Issue 6 – Implementation safeguards

- The Code of Practice on Consumer Credit Data (Code) which was last updated in June 2003 stipulates requirements on data security and system integrity safeguards by credit providers and CRA. CRA is also required to commission an independent auditor to conduct a compliance audit on an annual basis. In our view, the necessary safeguards have already been built into the Code. The HKMA has no objection to the proposal of the PCO in the Consultation Document that the CRA should commission an independent compliance audit within 6 months from the implementation date.
- There are also comparable security and data protection measures in the SPM IC-6 (this is a statutory guideline issued by the HKMA) which authorized institutions need to observe in relation to the sharing and use of the consumer credit data through a CRA, and AIs will not be able to access such data for marketing purposes. AIs, as credit providers, will maintain access log and other records and conduct annual compliance audit to ensure that their data management practices are adequate and effective to warrant compliance with the Code of Practice on Consumer Credit Data, SPM IC-6 and their internal policies and procedures. While SPM IC-6 has already specified that AIs should have clear and comprehensive policies and procedures for the sharing and use of consumer credit data through a CRA to ensure compliance with the requirement of the Code, the HKMA will amend SPM IC-6 to cater for the changes associated with the positive mortgage data proposal so that the same set of supervisory requirements will apply to the sharing of mortgage data.



HONG KONG MONETARY AUTHORITY
香港金融管理局

Banking Conduct Department

銀行操守部

Ref:

17 February 2011

Policy 21 Limited
Room 1101-02, 11/F, Times Tower
928-930 Cheung Sha Wan Road
Kowloon, Hong Kong

Dear Sir/Madam,

The Sharing of Mortgage Data for Credit Assessment Consultation Document
("Consultation Document") – Supplementary Submission

Further to our letter of 8 February 2011 providing you with the HKMA's views on the Consultation Document, I am writing to provide you with supplementary information in relation to the positive mortgage data sharing proposal (the industry proposal) to dispel a few misconceptions we noticed in a press report in the Hong Kong Economic Journal dated 9 February 2011 quoting the former Privacy Commissioner, Mr Roderick Woo, on his views in relation to the industry proposal. We feel obliged as the banking regulator in Hong Kong with knowledge of the actual situation during the property downturn from 1997 to 2003 to correct any misconceptions created by his comments.

First, there is a comment saying that mortgage loans, unlike other unsecured consumer credits, are secured by properties and thus credit providers can rely on the security of the mortgage loans to mitigate possible losses in the event of a default. As such, sharing of positive mortgage data is not necessary. This comment fails to recognize that the intended purpose of the industry proposal is for better credit assessment to facilitate prudent lending and more effective credit risk management by credit providers, thereby preventing over-borrowing by consumers and over-lending by credit providers.

This is because although mortgage loans are collateralised, we have to recognize that repossession and subsequent liquidation of the repossessed properties which from 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. Indeed, there is concrete evidence from the last financial crisis to show that not only did borrowers suffer but credit providers also suffered losses when borrowers defaulted on mortgage loans that were in negative equity. Furthermore, from a risk management perspective, the HKMA is of the view that it is crucial that credit assessment should not be conducted merely based on the availability of collateral. Rather, regardless of whether a new loan

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is collateralised, the credit provider when deciding whether to approve a loan application should first and foremost assess the applicant's repayment ability. Given the current low interest rate environment, some property buyers may over-leverage themselves irresponsibly by making excessive mortgage borrowings to finance their property investments or speculative activities. Introducing positive mortgage sharing, which helps facilitate more accurate assessment of borrowers' repayment ability, could help promote responsible borrowing and lending, thereby reducing the risk of over-borrowing by consumers and increase their ability to withstand the pressure of interest rate hikes coupled with a fall in property prices during the next downturn.

Another misconception relates to the risk of improper disclosure of the positive mortgage data given the long tenor of mortgage loans. Our previous study indicated that although the mortgage may be for 20 years the effective tenor of mortgage loans is generally 7 to 8 years because mortgage borrowers normally dispose of their mortgaged properties for one reason or another after 7 to 8 years. The important point is that the data is not held for longer than necessary as provided in Data Protection Principle 2. In addition, we have to emphasize that the necessary safeguards have already been built into the Code of Practice on Consumer Credit Data (Code) which was issued by the Office of the Privacy Commissioner for Personal Data to prevent misuse of consumer credit data. The Code specifies that access to consumer credit data can be made only for legitimate purposes such as assessing credit applications, conducting credit reviews and monitoring borrowers who are in default. Section 2.12 of the Code further provides that a credit provider is prohibited from accessing the consumer credit data of an individual held by a credit reference agency (CRA) for direct marketing purpose. In view of these safeguards already built into the Code, we believe that the Code achieves an appropriate balance between the use of consumer credit data and the privacy of borrowers. Similar safeguards will no doubt be applied to positive mortgage data sharing when the Code is amended. It is also important to note that a credit provider will only be able to access the proposed positive mortgage data in future with the consent of the borrower.

Above all, I wish to reiterate that the industry proposal strikes an appropriate balance between individuals' right to data privacy and the broader public interest. I hope you find the above supplementary information helpful to the public consultation exercise.

Yours faithfully,

c.c. The Chairman, Consumer Credit Forum
The Chairman, HKAB
The Chairman, DTCA
FSTB

The Hong Kong Mortgage Corporation Limited
香港按揭證券有限公司

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8 Finance Street Central Hong Kong
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Your Ref:

8 February 2011

Mr. Allan Chiang
Privacy Commissioner for Personal Data
Office of the Privacy Commissioner for Personal Data
12th Floor, 248 Queen's Road East
Wanchai
Hong Kong

Dear Mr. Chiang

Sharing of Mortgage Data for Credit Assessment Consultation Document
(the "Consultation Document")

Thank you for your letter of 5 January 2011 inviting us to share our views on the Consultation Document. The HKMC's response to the Consultation Document is set out in the *Annex*.

The HKMC supports the financial industry's proposal on the Sharing of Positive Mortgage Loans Consumer Credit Data through Credit Reference Agency issued by the Consumer Credit Forum on 25 October 2010 in relation to expanding the existing scope of credit data sharing arrangement to:

- (i) cover the sharing of positive and negative data of residential and non-residential mortgage loans; and
- (ii) allow a credit provider to access the mortgage count of a consumer for assessing an application of any consumer credit.

The additional mortgage data will enable credit providers to conduct more comprehensive credit assessment on consumers thereby promoting responsible lending and borrowing behaviour and benefiting both the credit providers and the consumers through:

The Hong Kong Mortgage Corporation Limited
香港按揭證券有限公司

- Lower funding costs of performing borrowers - The credit providers can factor in the additional mortgage data into its credit scoring or risk-based pricing models. More favourable terms and pricing may be available on offer to those borrowers with an overall healthy credit profile.
- Lower delinquency rate - more comprehensive credit assessment may minimize credit default due to over-borrowing and hence reduce potential bankruptcy cases.
- Promote long-term stability of the property market – credit providers can assess loan applications after taking into account the mortgage count of a consumer, thereby reducing the risk of asset bubble in the property market as a result of indiscriminate borrowing by consumers.

Subject to obtaining the prior written consent from the HKMC, we do not object to the provision of additional mortgage data to the credit reference agency (“CRA”) in respect of mortgages that have been sold / transferred by credit providers to the HKMC. This arrangement will allow credit providers to access consumers’ credit data in the HKMC’s sizable mortgage portfolio and will undoubtedly help ensure the integrity of the CRA’s database.

Last but not least, as it is evident that over the last 13 years the HKMC has in its possession a substantial number of mortgage loans and envisages, over time, that it will continue to play an important role in the mortgage market, we recommend that the Privacy Commissioner should review the category of credit provider in a more comprehensive manner and consider whether it should be expanded to include the HKMC in due course.

We look forward to hearing your view on our suggestion.

With kind regards,

Yours sincerely,

The Hong Kong Mortgage Corporation Limited (the “HKMC”)

**Response to the Consultation Document on
“The Sharing of Mortgage Data for Credit Assessment” issued by the
Office of the Privacy Commissioner for Personal Data on 5 January 2011**

Issue 1: Types of mortgage loans to be covered

- 1.1 The **HKMC supports** the extension of the existing scope of consumer credit data to cover both positive and negative mortgage data relating to mortgage loans for residential and non-residential properties and has no objection to the provision of mortgage data in respect of mortgages sold/transferred by credit providers to the HKMC (subject to the HKMC’s prior written consent being obtained).
- 1.2 The inclusion of additional mortgage loan types will allow credit providers to access more comprehensive credit data of potential borrowers and help them to understand the borrowers’ total indebtedness. The credit providers may, armed with more comprehensive credit data, offer more favourable terms and pricing to those potential borrowers with healthy credit profiles and thus, enabling those borrowers to have easier access to the mortgage market.
- 1.3 The additional mortgage data may also facilitate the underwriting process of mortgage insurers such as the HKMC; which will, in turn, enable potential borrower to obtain the necessary mortgage insurance and mortgage finance.
- 1.4 In sum, the sharing of additional mortgage data will not only benefit the credit providers and the consumers, it also promotes long term stability of the financial services industry by reducing over-borrowing and lessening the adverse impact of a drastic drop in property price in Hong Kong.

Issue 2: Type of data to be contributed by credit providers to the CRA and to be accessed by credit providers: Positive and Negative

- 2.1 The **HKMC supports** the proposed items of the Contributed Data (as defined in the Consultation Document) to be provided by credit providers to the CRA as the Contributed Data (positive and negative) are key mortgage data and are necessary for identifying accurately each individual involved in a mortgage loan.

- 2.2 The **HKMC supports** that credit providers should be allowed to access the Mortgage Count in order to facilitate a more comprehensive credit assessment of a consumer.

Issue 3: Contribution of pre-existing mortgage data by credit providers to the CRA:

- 3.1 **HKMC supports** the industry's view that contribution of the Contributed Data from the credit providers to the CRA relating to pre-existing mortgage loans will ensure the integrity and completeness of the CRA's database. If pre-existing mortgage data are not contributed to the CRA, it will reduce the effectiveness of the CRA's database. Nevertheless, it is for the credit providers to satisfy themselves that they have sufficient authority under the existing mortgage or other loan documentation to contribute the relevant data to the CRA. (It is noted that the industry have been advised by Senior Counsel that the contribution of the Contributed Data by credit providers to the CRA is within the ambit of the existing legislation).

Issue 4: Use of Mortgage Count on or after implementation

- 4.1 The **HKMC supports** the industry proposal that the additional mortgage data will be used not only by the credit providers granting those mortgages but all other credit providers for the purposes of assessing the application of, review or renewal of not only mortgage loans but all other credit facilities so that the mortgage count data can be used for credit assessment of an individual's total indebtedness and for preventing over-borrowing.

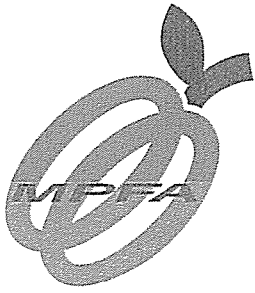
Issue 5: Transitional Period

- 5.1 The **HKMC supports** that the credit providers shall not access the additional mortgage data for general portfolio review of consumers' credit worthiness within the first 24 months after implementation of the proposal so as to allow the mortgage data to be accumulated over a period of time and ensure the reliability of the mortgage database before a credit review of its existing customers should be conducted by the credit providers.

Issue 6: Implementation safeguards

- 6.1 The HKMC agrees with Privacy Commissioner's views that the existing safeguards as provided in the Code of Practice on Consumer Credit Data ("Code of Practice") should be extended to the enlarged mortgage data pool. We also believe that additional measures should be introduced and imposed upon the CRA along the lines suggested by the Privacy Commissioner; for example more frequent compliance audit and IT security management of its information system should be implemented given that the pool of mortgage data will be substantially increased after the proposal is implemented.
- 6.2 Although the HKMC is not currently subject to the Code of Practice, the HKMC has established effective policies, procedures and internal controls to prevent unauthorized access and disclosure of personal data (for example, an Information Security Manual has been developed by external security consultant) and will be able to comply with the privacy safeguards as stated in the Code of Practice should the Privacy Commissioner recognise the HKMC as a credit provider in light of the pool of mortgage data information which the HKMC has from time to time, through the credit providers, contributed to the CRA's database.

The Hong Kong Mortgage Corporation Limited
8 February 2011



強制性公積金計劃管理局
MANDATORY PROVIDENT FUND
SCHEMES AUTHORITY

電話號碼 Tel. No. :
傳真號碼 Fax. No. :
本局檔號 Our Ref. :
來函檔號 Your Ref. :

8 February 2011

Mr Allan Chiang
Privacy Commissioner for Personal Data
Office of the Privacy Commissioner for Personal Data
12/F, 248 Queen's Road East
Wanchai, Hong Kong

Dear Mr Chiang,

**Public Consultation on Privacy Issues of
Sharing of Mortgage Data for Credit Assessment**

Thank you for your letter of 5 January 2011
inviting the MPFA's views on the captioned public consultation.

We have considered the issues raised in the consultation document, and
do not have any comments on the subject.

Yours sincerely,

Corporate Affairs Department

022

Our Ref. :
 Your Ref. :



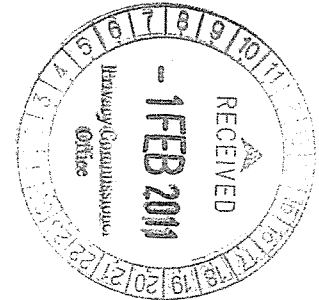
1 February 2011

Office of the Privacy Commissioner
for Personal Data, Hong Kong
12/F, 248 Queen's Road East
Wanchai, Hong Kong

BY FAX & BY POST
(Fax No.2877 7026)

Attn : Mr. Allan Chiang

Dear Sirs,



Re : Sharing of Mortgage Data for Credit Assessment

We refer to your letter dated 5 January 2011
reply thereon.

which was passed to me for

Basically, we agree to the industry's proposal to extend the scope of sharing of consumer credit data to cover both positive and negative mortgage data relating to mortgage loans for residential and non-residential properties. However, as positive data generally refer to information relating to the financial circumstances of an individual that do not involve a failure to repay, more stringent control on the collection, use, security and access of such data is needed to protect the data privacy of an individual.

If the industry's proposal is to be implemented, the CRA will hold a much more voluminous amount of consumer credit data in its information systems. Hence, measures to ensure the compliance to the Code of Practice on Consumer Credit Data and the security management of such data by the CRA are crucial. We think that PCPD's proposed implementation safeguards such as the submission of a bi-annually privacy compliance audit report with extended coverage and periodic IT security audits by the CRA are appropriate.

We hope our views will be helpful to you.

Yours sincerely,





中華人民共和國香港特別行政區
Hong Kong Special Administrative Region of the People's Republic of China



立法會 LEGISLATIVE COUNCIL

陳健波議員 Hon CHAN Kin-por

個人資料私隱專員蔣任宏先生 台鑒：

立法會議員陳健波

就個人資料私隱專員公署「共用按揭資料作信貸評估」諮詢文件的回應

香港作為國際金融中心，本港金融體系的穩定性至為重要。透過分享按揭正面信貸，增加信貸資料的透明度，將有助信貸機構更全面及客觀地去評估客戶的信貸狀況，進一步加強信貸機構在按揭貸款方面的風險管理，絕對有助維持香港銀行及金融體系的穩定，亦防止投機者過度借貸，對借貸雙方以及存戶均有益處。

事實上，本港借貸機構的客戶，其投資的市場已非限於住宅市場，商廈、店舖及工業樓宇更成他們主要的投資項目。為了全面掌握借貸人的信貸情況，借貸機構需要了解借貸人的資料，應涵蓋所有的借貸項目。金融管理局建議將現行的資料庫擴大至所有非住宅的信貸資料，並且要求貸款機構在資料持有人同意下，才可查閱有關資料，建議是非常合理及公道。

同時，金管局建議擴大的信貸資料，只涉及現有承造按揭的宗數，環顧其他推行共用全面住宅按揭資料的國家，如美國、英國及新加坡等，其搜集的資料包括信貸金額、年期、分期還款額等，與之相比，金管局的建議已平衡多方面包括私隱的關注。



中華人民共和國香港特別行政區
Hong Kong Special Administrative Region of the People's Republic of China



立法會 LEGISLATIVE COUNCIL

陳健波議員 Hon CHAN Kin-por

香港無抵押正面信貸資料庫於 2003 年成立，當時旨在回應信用卡欠賬率及個人破產個案不斷上升的問題，根據過去個人信貸資料庫的經驗，銀行間資訊流通，實有助銀行向借貸人提供更切合個人需要的貸款計劃，相關的信貸亦有分層利率，對於一些信貸紀錄良好的借貸人而言，銀行亦能提供更優惠的借貸條款，令他們得益外，做法亦更公道。

公署認為將已清還的按揭貸款資料刪除，實屬合理。不過，對於信貸資料庫不應有追溯期，只可儲存建議生效後新造按揭的資料，本人反對有關的建議，此舉將令銀行無法翻查客戶真正的按揭數目。倘若有關建議落實，資料庫要多等二、三十年才有充足資料作穩健借貸的參考，建議既不合理，更加不切實際，與擴大信貸資料庫的原意完全背道而馳，令是次檢討的意義盡失。

本人原則上支持分享按揭正面信貸的精神，以增加信貸資料透明度，進一步鞏固香港作為國際金融中心之地位。

立法會議員陳健波 謹啟
二零一一年二月八日
(議員辦事處經理 代行)

參考編號 : _____

《個人信貸資料實務守則》的建議修訂
共用按揭資料作信貸評估

FAX: _____

姓名:

李子榮 沙田區議員 / 中區區議員

聯絡號碼:

Tel: _____

Fax: _____

Mobile: _____

請就諮詢文件中的各項議題提出你寶貴的意見:

議題 1 - 所涵蓋的按揭資料類別:

信貸提供及借貸活動純粹是一種商業行為, 政府的角色不宜太深入。個人私隱專員的角色應設法保障個人私隱不被濫用, 而不是向商業機構輸出方便。

議題 2 - 信貸提供者向信貸資料機構提供的資料類別及信貸提供者查閱的資料

類別: 正面及負面信貸資料

信貸資料機構可同時提供正面及負面信貸資料, 信貸提供者當然可減低壞帳風險及對金融界的損害。我所關心的是當時人的資料流動的透明度及是否得到知會。

議題 3 - 由信貸提供者向信貸資料機構提供建議生效日已存在的按揭信貸資料

議題 4 - 在實施日期當日或之後使用按揭宗數資料

議題 5 逾期

議題 6 建議實施時加強私隱保障措施

本人主要關心個人私隱在未得他本人得知或批准的情況下被自由轉售。嚴重侵犯及騷擾當事人，我所持的態度是保守的。信貸提供者若未得借貸人同意而將資料轉售應加強懲處規則。

我們希望可以指名引用閣下就本諮詢文件提交的意見。如閣下不欲在部分或全部意見方面披露閣下的身分，我們樂於尊重閣下的意願，但如沒有提出此項要求，則會假設可將作出閣下的名字公開。意見書所附的個人資料只會用於進行這次公眾諮詢活動，包括用以擬備現有的《個人信貸資料實務守則》的修訂版本，以及與該守則有關的任何說明文件或評論。

「共用按揭資料作信貸評估」意見書

黃大仙區議員黃錦超

首先歡迎個人資料私隱專員公署就擴大中央信貸資料庫的應用，展開公眾諮詢。本人主要有以下四點意見：

- (一)贊成將中央信貸資料庫查核申請人的資料範圍，由現行住宅按揭的負面資料，擴大至其他信貸負面資料，以及住宅及非住宅樓宇的正面資料。因為擴大信貸資料庫用途範圍，可以協助銀行更全面掌握信貸資料，有效管理信貸風險，審慎借款及負責任還款有助保護香港整體金融穩定性，正如而自**2003**年推行中央信貸資料庫後，香港的借貸息率及破產比例亦有所下降。
- (二)現行制度下有不少漏洞，例如銀行不互通資料，令到炒家向一間銀行借錢供第一個物業後，可再分別向其他銀行借錢供第二個物業，他們可向銀行隱瞞自己有其他樓按在身，銀行亦無從查證。而擴大信貸資料庫用途範圍，可以令一些過分借貸的炒家現形，防止客戶過度借貸，有利遏制炒風，對真正用家有利。
- (三)不過，，擴大資料庫應用後，必須有效防止重蹈八達通濫用市民個人資料的覆轍，杜絕被用作直銷或轉售等用途。八達通事件後，市民非常關注私人機構將客戶個人資料用作直銷用途，甚至轉售其個人資料到商業機構情況不少市民向本人反映，擔心擴大資料庫後，會令借貸公司獲取其私隱，令個人資料恐淪為直銷工具。雖然在現行的私隱條例下，可向犯規機構發出違反執行通知，但公眾都關注有關處理手法如無牙老虎，阻嚇力不足。而諮詢文件中，又缺乏業界一旦違反守則的懲處。本人認為應平衡公眾及業界利益，由金管理及私隱公署商量，訂定具體懲罰，完善保障私隱的機，令公眾安心。
- (四)新條例實施後，銀行應讓借貸人清楚了解有關公開資料的細節，並令客戶的私隱得到保障。

Best Regards

Dr. Matthew Wong 黃錦超博士

WTS District Councilor 黃大仙區議員



敬啟者：

共用按揭資料作信貸評估諮詢回應

民建聯贊成政府建立按揭正面信貸資料庫，相信透過增加信貸資料的透明度，對借貸人、銀行和存戶都有好處，亦有利本港整體經濟健康發展。我們的具體看法如下：

1. 提高借款人信貸情況的透明度，將有助信貸機構更審慎地評估，以便負責任地向客戶提供適當的信貸額，減低銀行按揭業務在目前審核資料未完備下，可能因過於進取而招致壞賬的風險，從而更有效管理信貸風險。這不但對銀行業務和金融體系穩定有好處，銀行亦可以向擁有良好按揭信貸狀況的客戶提供優惠，從而降低優質買家的成本。
2. 一旦信貸資料庫有正面按揭資料，借款人以自住名義借入按揭以投資或炒賣物業的難度將會增加。因此，建議若能落實，未來將可減低借款人過度投資的可能。
3. 對樓市投機活動及地產市場的資產泡沫風險，將有抑制作用，長遠有利香港經濟的整體健康發展。
4. 事實上，英國、美國、新加坡及中國內地均有全面的信貸資訊庫，本港作為主要金融中心，應該符合國際市場較好的做法。

對於建議擴大目前信貸資料庫的資料中，同時包括非住宅物業的正面和負面資料，民建聯表示認同。我們認為，近年工業樓宇及商廈價格也隨著大市大幅上升，反映投資炒賣非住宅物業，包括商廈、店舖及工業樓宇等的活動亦相當活躍，因此，此舉將可更全面反映銀行借款人的信貸狀況。

此外，民建聯亦從諮詢文件指出的幾點關注中，提出我們的意見和立場：

(一) 資料庫提供的正面信貸資料，只限披露按揭宗數，不宜披露每項按揭的詳情

目前銀行客戶在申請按揭時，亦有責任向銀行提供個人所有按揭貸款的情況，因此，在平衡個人私穩權益下，現時建議資料庫提供的正面資料，只限於按揭宗數，而不涉及每項按揭詳情，包括具體有多少金額未償還，我們認為也是合適的。

不過，由於樓宇按揭屬較長年期的貸款，只分享新造按揭，可能要等待多達十年甚或更長的時間，信貸提供機構方可透過這正面按揭信貸資料庫，了解到其客戶的相關資料，因此，我們認為，需要借款人提供按揭物業宗數，不應只限於披露新造按揭的資料，而應該設定一個特定的年期，例如過往 10 年或 20 年的宗數，銀行才能充分考慮評估客戶的還款能力。當然，銀行或借貸機構必須先得到借款人申請信貸及書面授權下，才可索取客戶的按揭宗數資料。

(二) 信貸提供機構向信貸資料機構提供在建議實施日期前，已存在的額外按揭資料，是否適當？(針對諮詢文件第 31 頁第 5.34 至 5.38 段)

對於是否應該讓信貸提供機構提供之前已存在的額外按揭資料予信貸資料機構，按民建聯的理解，這已存在的額外按揭資料，主要是指過往的住宅按揭負面資料，如屬實的話，我們認為，原來信貸資料機構應該已存有相關借款人的負面按揭資料，應該毋須額外再作提供。否則，民建聯要求當局須澄清「已存在的額外按揭資料」實際指的是什麼，以方便公眾加以衡量有關安排的適當性。

(三) 在客戶書面同意下，容許信貸提供者查閱額外按揭資料，作為評估按揭貸款申請，亦為評估其他信貸申請及檢討續批安排，這種用途是否適當？

有關安排尚算合理，但處理上必須小心，政府可考慮訂明信貸提供機構在處理什麼類型的貸款申請，以及金額涉及什麼水平時，借貸機構才可向信貸資料機構查閱客戶的「額外按揭資料」，同時，必須經借款人簽署額外一份書面同意書，並且就「額外按揭資料」作出指定的資料類別限制，例如只限於未償還的按揭金額，以求在個人私穩權益與提高個人信貸資料透明度之間取得平衡。

(四) 24 個月的過渡期是否適當？

對於設立 24 個月過渡期，銀行在該段期間，只能對新接的按揭及貸款申請，查閱借款人的正面信貸資料；24 個月過後，才能檢視現有借款人的信貸狀況，此做法與 2003 年時推行個人正面信貸資料庫時一致，民建聯認為可以予以支持。

事實上，兩年時間的過渡期可給予過度貸款／按揭的人士有較充裕時間，調整借貸組合，改善貸款情況，以避免銀行即時調高現有按揭客戶的供款償還條款，從而減少對樓市，以及銀行和客戶之間關係的負面影響或震盪。

(五) 應向信貸資料機構及信貸提供者施加甚麼額外的私隱保障措施，及如何施行，以配合擴大信貸資料庫及增加共用按揭資料程度？

民建聯支持私穩專員建議信貸資料機構在有關措施實施日期後的 6 個月內，自費委託獨立循規審核員，並在循規審核開始後的 3 個月內制訂審核報告，以送交私隱專員。

但我們須指出，目前建議似乎仍然缺乏業界違反個人信貸資料實務守則的懲處。雖然公署指出，實務守則具約束性，一旦違反守則，在現行的私隱條例下可發出違反執行通知。但民建聯要指出，信貸資料機構——環聯資訊是由多間信貸機構所成立的，其與信貸機構之間的業務往來，若只靠沒有直接法律約束力的守則所約束，始終是難以令公眾放心；隨着信貸資料庫的持續擴大，業界在處理及查閱借款人的個人信貸資料操守方面，只受個人信



貸資料實務守則所監管，可能已不大足夠。

我們建議當局應考慮適當增加信貸提供機構處理及索取借款人資料的若干限制，例如查閱次數限制，以作為懷疑異常查閱情況的標準。

此外，我們亦建議政府可參考美國聯邦貿易專員公署所負責執行的相關法令¹，研究是否應制訂法例，以加強保障借款人的個人私隱權益。

民建聯
二零一一年二月八日

¹根據該法令(Fair Credit Reporting Act)第 619 條，任何人如明知而蓄意以虛假理由，向個人信貸報告機構取得有關某人的資料，須根據 United States Codes 第 18 條，處以罰款，或監禁不超過 2 年，或同時受到兩類懲罰。而根據法令第 620 條，個人信貸報告機構的高級人員或僱員，如明知而蓄意將機構檔案的個人資料向未獲授權收取資料的人披露，亦須受到同樣懲罰。



香港工業總會
FHKI

個人資料私隱專員
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蔣先生鈞鑒：

共用按揭資料作信貸評估的諮詢

就擴大現時共用按揭資料作信貸評估的諮詢，工總謹提交下列意見：

- (1) 保障個人私隱能夠提高消費者對企業的信心、改善客戶服務、增強企業的競爭力，有利於構建一個良好的營商環境。因此，工總認為，衡量是否擴大現時共用按揭資料的安排，保障個人私隱是重要的考慮因素。
- (2) 我們擔心，若共用按揭資料也涵蓋正面信貸資料，更多的個人資料會被披露及使用。當有關資料集中於單一資料庫，資料被濫用的風險將大幅增加。此外，目前按揭信貸市場競爭激烈，業界紛紛以低息作招徠，是次建議能否令消費者能夠享受更優惠條件成疑。一旦過多不必要的個人按揭資料被披露，消費者利益反而會受損。基於個人私隱的考慮，我們不贊同擴大目前的機制加入正面信貸資料。
- (3) 對於向信貸資料機構披露非住宅物業的負面按揭資料，我們認為有關的建議值得嘗試，相信把零售、商業或工業物業等非住宅物業按揭的負面資料納入可共用的信貸資料範圍，可協助借款人就信貸作出較全面的評估。此外，區內不少經濟體系早已實施有關的做法。
- (4) 目前，信貸提供者必須通知信貸客戶其個人資料可能提供予信貸資料機構，而就決定信貸申請而考慮信貸報告一事，亦應通知信貸申請人。不過，信貸提供者查閱資料庫，則毋須取得客戶的同意，資料保障的措施尚有不足。有見及此，我們贊成業界的建議，信貸提供者必須獲得到信貸申請人的書面同意，才能查閱信貸資料機構內的按揭資料。

謹請公署慎重考慮上述意見。

2011年2月2日



HONG KONG BAR ASSOCIATION

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17th February 2011

Mr. Allan Chiang
Privacy Commissioner for Personal Data
Office of the Privacy Commissioner for Personal Data
12/F, 248 Queen's Road East
Wanchai, Hong Kong.

Dear Mr. Chiang,

Re: Sharing of Mortgage Data for Credit Assessment

I refer to your letter of 5th January 2011.

Please find enclosed the Response of the Hong Kong Bar Association to the "Privacy Commissioner for Personal Data's Consultation Document: Proposed Revision to the Code of Practice on Consumer Credit Data ("the Code") for the Sharing of Mortgage Data for Credit Assessment, which has been endorsed at the Bar Council Meeting held on 10th February 2011, for your consideration.

Yours sincerely,

cc: Policy 21 Limited, the Consultant
(Rm 1101-02, 11/F Times Tower, 928-930 Cheung Sha Wan Rd, Kowloon)

香港大律師公會

香港金鐘道三十八號高等法院低層二樓

Chairman 主席：

Council Members 執行委員會委員：

Vice Chairmen 副主席：

Hon. Secretary & Treasurer
名譽秘書及財政：

Deputy Hon. Secretary
副名譽秘書：

Administrator 行政幹事：

Hong Kong Bar Association's Response to the
Privacy Commissioner for Personal Data's Consultation Document:
Proposed Revisions to the Code of Practice on Consumer Credit Data ("the Code") for
the Sharing of Mortgage Data for Credit Assessment

Background

1. The consultation document contains a short history of the Code: §§1.6 and 1.7.
2. An alternative account of the circumstances in which the Code was first promulgated and its subsequent amendment is to be found in *Global Privacy Protection The First Generation* (Edward Elgar, 2008), eds Rule & Greenleaf.¹
3. It is important to recognise that the original version of the Code (gazetted in February 1998) was primarily an exercise by the Privacy Commissioner for Personal Data ("the PC") in "ring-fencing" the then relatively undeveloped (as compared with many other economies of similar financial sophistication) and, as a consequence, relatively privacy-benign practices, of Hong Kong's only consumer credit reference agency ("CRA") of significance, Credit Information Services Limited ("CIS").
4. The origins of CIS lay in the sharing between finance companies of data on equipment and vehicle leasing and hire-purchase. This was subsequently expanded, with the involvement of a variety of "Authorised Institutions", to include the sharing of "negative" credit consumer credit data, i.e. data in relation to consumer credit defaults, including credit card defaults.
5. Thus, the situation in 1998 was that (leasing and hire-purchase data aside) the only CRA worth the name in Hong Kong, CIS, held data only in relation to individuals who had defaulted on their consumer credit obligations (the minority of consumer credit users), i.e. it did not hold data in relation to individuals who had not defaulted on their consumer credit obligations (the majority of consumer credit users).
6. Even with regard to individuals who had defaulted on their consumer credit obligations, CIS's coverage fell far short of being complete since the largest retail bank in Hong Kong, HSBC, did not participate in sharing data (whether through CIS or otherwise).

¹ Pages 247 and 248 by McLeish and Greenleaf: copy herewith.

7. In the original (1998) version of the Code the scope of data that was permitted to be provided to, and shared through, any CRA was limited, in essence, to the scope of data that was then being provided to, and shared through, CIS.
8. In this regard (and the other matters it covered), the Code was (as was intended) a “pro-privacy” initiative because (other than in relation to leasing and hire-purchase transactions) it prohibited CIS from collecting “positive” consumer credit data, i.e. data on individuals’ consumer credit applications and obligations irrespective of any default.
9. The irony is that this “pro-privacy” initiative has been leveraged into a mechanism for legitimising “privacy-intrusion” in the following ways.
 - (1) First, by providing (at the instigation of the HKCM) for a CRA to be permitted to collect “positive” consumer credit data in amendments to the Code in 2002 and 2004.
 - (2) Second, because the HKMA first encouraged (in 1998) participation by all Authorised Institutions in sharing consumer credit data (targeting HSBC most importantly) and then (in 2005) required this.
10. It is also noteworthy that in 1998, TransUnion (one of the big three consumer reference agencies in the US) acquired a majority stake in CIS and renamed it TransUnion. It had and still has an effective monopoly of Hong Kong’s consumer CRA business.
11. Since most adults in Hong Kong will have some form of consumer credit (if only in the form of a credit card), permitting the collection of “positive” consumer credit data represented a quantum leap in the number of individuals whose data were collected and held by, and shared through, TransUnion, particularly when this was coupled with the participation of all Authorised Institutions, including HSBC. It also provided TransUnion with the means to engage in profiling across all types of individual borrowers for the purpose of credit-scoring (as a value-added service for the participating institutions) with potentially adverse effects for individuals’ ability to obtain credit, irrespective of any defaults.
12. The proposals contained in the Consultation Document to expand the scope of consumer credit data that credit providers be permitted to provide to TransUnion to

include “positive” consumer credit data in relation to residential mortgages and “positive” and “negative” consumer credit data in relation to non-residential mortgages, represent a further step in the “scope-creep” of consumer credit data that TransUnion would be permitted by the Code to collect and hold for sharing among credit providers.

13. The PC is at pains to point out that the proposals in the Consultation Document are being put forward, not by him, but by a body called the Consumer Credit Forum (“CCF”) with the support of the HKMA. The CCF is described as a “joint forum” of the representative bodies of the different groups of credit providers in Hong Kong.
14. As a general rule, consumer credit providers will always argue they should be allowed to engage in the sharing of an ever wider scope of consumer credit data, claiming this increases the efficiency of the credit market and reduces the risk of defaults. The support of the HKMA is also of no surprise given its policy responsibilities and past role in increasing the sharing of consumer credit data through CIS/TransUnion.
15. Increasing the efficiency of the credit market and reducing the risk of defaults are laudable aims, but they are to be balanced against the privacy interests of the individuals whose data it is proposed to share, including individuals who have not defaulted, and may never default.
16. The PC recognises that the proposals in the Consultation Document have “serious implications on data protection and privacy” (§1.16).
17. The PC does not, however, express any views (preliminary or otherwise) on whether the proposals comply with the provisions of the Personal Data (Privacy) Ordinance (Cap 486) (“the Ordinance”) even though:
 - (1) the PC is tasked to “monitor and supervise compliance with the provisions” of the Ordinance (s 8(1)(a)); and
 - (2) by virtue of s 12 of the Ordinance, the purpose of the Code is to provide “practical guidance in respect of any requirements under this Ordinance imposed on data users.”

18. Instead, the PC raises six specific “privacy issues” for consultation (§1.18 & Part V) without specifically identifying the requirements of the Ordinance to which they relate.

Relevant Provisions of the Ordinance

19. The provisions of the Ordinance of greatest relevance to the proposals in the Consultation Document are those of Data Protection Principle 1 (“DPP 1”) and Data Protection Principle 3 (“DPP 3”) in Schedule 1 of the Ordinance.

20. DPP 1 provides (insofar as is most relevant) 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 ...”

21. DPP3 provides:

“3. Principle 3 - use of personal data

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

- (a) the purpose for which the data were to be used at the time of the collection of the data; or
- (b) a purpose directly related to the purpose referred to in paragraph (a).”

22. Pursuant to s 4 of the Ordinance, a data user (i.e. a person who controls the collection, holding, processing and other use of personal data (s 2(1)) is required to comply with the Data Protection Principles, including DPP1 and DPP3.

Issue 1: Types of Mortgage Loan to be Covered

23. In §1.18(a) this issue is expressed as follows:

“Whether it is necessary and not excessive for the CRA to hold the additional mortgage data [that would be] 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).”

24. This issue involves proposals for the consumer credit mortgage data that TransUnion would be permitted to collect to be expanded to include:
 - (1) mortgage data in relation to non-residential property, i.e. car park spaces, retail, commercial and industrial property; and
 - (2) positive mortgage data in relation to both residential and non-residential property.
25. The justification given for these proposed changes (at §4.21) is that they:

“will allow a more comprehensive credit assessment of a borrower and the subsequent calculation of the debt servicing ratio.”
26. However, since it is proposed that the only positive mortgage data to be shared through TransUnion is Mortgage Count, i.e. the total number of mortgage commitments an individual has (including as personal guarantor), the proposed changes would not of themselves provide “a more comprehensive credit assessment of a borrower” or “calculation of the debt servicing ratio”.
27. The lender would still have to ask the individual borrower for details of each mortgage in the borrower’s “Mortgage Count” (e.g. amount of mortgage loan outstanding, repayment amount, loan to value ratio etc) in order to arrive at its credit assessment of the borrower and/or calculate the borrower’s debt servicing ratio.
28. This begs the question of why the credit provider cannot simply ask the borrower for his Mortgage Count in the first place. The answer is the credit provider can and usually does ask the borrower for this. Why, then, go to all the trouble of providing this information through TransUnion with the “serious implications on data protection and privacy” this would entail?
29. The answer is that, in this regard, TransUnion would act as a credit “checking” agency, to confirm (or not as the case may be) that the borrower is being truthful with respect to the Mortgage Count he or she provides to the credit provider.

30. It follows, therefore, that the justification for adding to the data TransUnion may collect as being “necessary and not excessive” in accordance with DPP1(1) should depend on:
- (1) the importance to the assessment of individuals’ creditworthiness of the additional types of data it is proposed to permit TransUnion to collect, hold and share; and
 - (2) the degree (if any) to which borrowers are not truthful about the matters to which the additional data relate.
31. No evidence is presented in the Consultation Document on the extent to which individuals are taking on mortgages in relation to non-residential property or delinquency rates in relation to such mortgages² (and, hence, the importance of this to their creditworthiness). Nor is any evidence presented that there is significant problem of borrowers being untruthful about the number of mortgages they have.
32. In the absence of proper supporting evidence, the case for saying the additional data it is proposed TransUnion be permitted to collect are “necessary and not excessive” (for the purpose of assessing the creditworthiness of the individuals to which the data relate as required by DPP1(1)) does not begin to be made out.
33. Unless and until such a case is made out on the basis of compelling evidence, the proposals to expand the mortgage data TransUnion is permitted to collect must be rejected because it has not been shown that DPP1(1) would be complied with, let alone that the PC’s “serious implications on data protection and privacy” should be overridden. As things stand, the proposals are a “solution” to an unproven problem. It may well be convenient for credit providers to be able to access additional mortgage data, including Mortgage Count, but convenience cannot outweigh the “serious implications on data protection and privacy”.
34. The other “privacy issues” raised in the Consultation Documents are addressed in the following without prejudice to the foregoing conclusion.

² The evidence on delinquency rates for residential mortgage loans (in §4.15) supports the conclusion there is little cause for concern individuals are becoming over-indebted in this regard.

Issue 2: Types of data to be contributed by credit providers to the CRA and to be accessed by credit providers

35. In §1.18(b) this issue is expressed as follows:

“Whether it is appropriate to restrict the amount of positive mortgage data contributed by the credit providers to the CRA in line with the latter’s operational needs, and to restrict the access of such data by credit providers (upon the credit applicants’ written consent) to the Mortgage Count ...”

36. In accordance with DPP1(1), the test to be applied in determining the scope of personal data that credit providers should be permitted to transfer to “the CRA”, i.e. TransUnion (which must correspond to the scope of personal data that TransUnion is permitted to collect from credit providers) is not TransUnion’s “operational needs”, it is whether that scope of data is “necessary and not excessive” for the purpose of assessing the creditworthiness of individuals.

37. It is recognised, of course, that in order for TransUnion to be able to provide its credit reference services it has “operational needs” such as the need to identify the individuals to whom the data relate with reasonable certainty. So long as “operational needs” correspond to requirements that are essential for carrying out TransUnion’s operations there should be no conflict with the “necessary and not excessive” requirement of DPP1(1). If, however, “operational needs” are equated with “operational convenience”, conflicts with the “necessary and not excessive” requirement of DPP1(1) are likely to arise.

38. Assuming for current purposes (contrary to the conclusion reached on Issue 1) that TransUnion should be permitted to collect the additional personal data in relation to mortgages proposed by the CCF, the restriction of access by credit providers to the Mortgage Count only is supported. This is all a credit provider requires to know in order to check the borrower is being truthful about the number of his or her existing mortgage commitments, which is the basis for the credit provider to make its further enquiries with the borrower as to the details of his/her mortgage commitments in order to calculate the debt servicing ratio of the borrower and assess his or her overall creditworthiness.

Issue 3: Contribution of pre-existing mortgage data by credit providers to the CRA

39. This issue is expressed in §1.18(c) as follows:

“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 the prior explicit notification to the consumers.”

40. This issue goes to compliance with DPP3 since “contribute” equates to “transfer” and the “transfer” of personal data is a use of personal data.³
41. By virtue of DPP3, credit providers may not (without the prescribed consent of the data subject) transfer to TransUnion personal data for any purpose other than the purpose for which the personal data were to be used at the time of the collection of the personal data or a purpose directly related thereto.
42. The objection on DPP3 grounds to the transfer to TransUnion of additional types of mortgage data that have already been collected by credit providers is that at the time such data were collected, credit providers were not permitted to transfer the data to TransUnion. On this basis, *ipso facto* the transfer of such data to TransUnion to enable it to provide its credit reference service cannot have been a purpose for which credit providers collected the data concerned.
43. The CCF has anticipated this objection. In §4.25, it states that based on legal advice from solicitors and Senior Counsel “the industry is of the view that the contribution of Contributed Data [i.e. the mortgage data the CCF is proposing that credit providers transfer to TransUnion] by credit providers ... is within ambit of data protection principle 3.” The basis for this conclusion is (it is argued) that the original purpose for the data were/are collected by credit is “granting and maintaining the mortgage loan” whereas the purpose of transferring the data to TransUnion is “ensuring ongoing creditworthiness of the customer”, which is said to be directly related to the original purpose.
44. This argument, however, ignores the expectations of the individuals who provided the data concerned to credit providers at a time when such data could not be transferred to TransUnion because the Code did not permit this.
45. In his own guidance on how he interprets DPP3, the PC says the following:

³ The definition of “use” in relation to personal data in s 2 (1) of the Ordinance refers.

“In assessing whether the act in question is done for a ‘*directly related purpose*’ and thus covered by DPP3(b), the Commissioner will take into account factors such as:

- the nature of the transaction giving rise to the need for using the personal data; and
- the reasonable expectations of the data subject.”⁴ (emphasis supplied)

46. The PC followed this guidance in the recent Octopus case, in which he concluded that the provision of the 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.”⁵
47. Applying the same test here, the transfer of the new types mortgage it is proposed credit providers be permitted to transfer to TransUnion that has already been collected (prior to the proposed change to the Code to permit this) 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 this was not permitted.⁶
48. It should also be noted the PC has no power to derogate from the requirements of the Ordinance in a code of practice: s 12 of the Ordinance.
49. On this basis, 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 is the “prescribed consent” of the data subjects for the transfer of such data to TransUnion. By virtue of s 2(2) of Ordinance, “prescribed consent” means (in summary) express consent given voluntarily that has not been withdrawn by notice in writing.
50. It follows, therefore, that not only has it not been demonstrated that the proposals would comply with DPP1(1) (see response to Issue 1 above), they would also contravene DPP3 if the PC’s own guidance as to its application is followed.

⁴ §7.25 of *Data Protection Principles in the Personal Data (Privacy) Ordinance – from the Privacy Commissioner’s perspective*, Office of the Privacy Commissioner for Personal Data, August 2007.

⁵ §3.40 of the PC’s Report Number R10-9866, 18 October 2010.

⁶ The fact that the scope of consumer credit data that may be transferred to TransUnion has previously been expanded to include data that had already been collected were included (§4.24) does not mean this complies with DPP3.

Issue 4: Use of Mortgage Count for general credit assessment on or after implementation

51. This issue is expressed in §1.18(d) as follows:

“Whether it is appropriate to permit, subject to consumer’ 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.”

52. The proposal that the written consent of data subjects be required prior to access by credit providers to the (proposed) additional mortgage data does nothing to address the DPP3 objection in the above response to Issue 3 since the DPP3 objection relates to the transfer of the (proposed) additional data to TransUnion (which of necessity would precede any access).

53. Once mortgage data are transferred to TransUnion, they may, consistent with DPP3, be used for the purpose for which they were transferred (or a directly related purpose) without any consent (written or otherwise) from the data subject.

54. DPP3 provides for a minimum level of privacy protection with respect to the use of personal data.

55. The proposed requirement for consent under current consideration is to be supported as a further level of privacy protection and is to be welcomed accordingly.

Issue 5: Transitional Period

56. In §1.18(e), this issue is described as follows:

“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.”

57. The written consent proposal considered under Issue 4 includes written consent: “to review ... the consumers’ existing credit facilities”. It is not clear how (if at all) this is considered to differ from “general portfolio reviews of consumers’ credit worthiness.” as referred to in Issue 5.

58. Even if there is a difference of substance, no or no sound justification has been advanced for not making access for the latter purpose subject to prior written consent by borrowers as is proposed for the former purpose.
59. Whether a credit provider wishes to access the (proposed) additional mortgage data “to review ... the consumers’ existing credit facilities” or for “general portfolio reviews of consumers’ credit worthiness” (assuming there is a difference of substance between the two), this should require the prior written consent of the individuals concerned.
60. Accordingly, the proposed transitional period is opposed and a requirement of prior written consent is proposed in its place.

Issue 6: Implementation safeguards

61. This issue is described in §1.18(f) as follows:

“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.”
62. The PC’s proposal (in §5.45) for an independent compliance audit to be carried out by TransUnion within 6 months of the implementation of any changes to the Code arising from the current exercise is supported. The terms of reference of the audit ought to be subject to the PC’s approval as should the terms of reference of TransUnion’s annual overall compliance audits.
63. The PC’s proposal (in §5.46) for periodic IT security audits to be conducted by TransUnion is also supported. A recurrent time period of not less than once a year ought to be set and, again, the terms of reference ought to be subject to the PC’s prior approval.
64. In addition, irrespective of the outcome of this consultation exercise in both cases, credit providers should also be required to undertake annual audits on their compliance with the Code and report to the PC any breaches of the Code by them (whether discovered as a result of the audits or otherwise) within 14 days of their being identified.

本人認為擴大按揭貸款類別的範圍，用於評估信貸申請（包括按揭）及檢討借款人的信貸背景，屬超乎適度，予以反對。

根據諮詢文件 4.15-4.19 及 5.5-5.14，共用正面按揭資料的利處主要包括三個方面：1、達致最佳的借貸條件和息率；2、促進物業市場長期穩定；3、推廣負責任的借貸及最佳的風險管理。本人認為，共用正面按揭資料並不必然帶來上述三大利處：

1、借貸條件和利率並不會顯著改善

目前香港借貸利率已經處於歷史低位，下降空間非常有限，共用正面按揭資料對於信用水平良好的借貸者的利處並不明顯。而對於信用水平較低的借貸者，由於銀行將拒絕其申請，而不得不從財務公司獲得借貸，而財務公司的借貸利率通常高於銀行的借貸利率，因此借貸成本將顯著上升。無論信用水平如何，借貸者都未能從共用正面按揭資料中獲益。

2、物業市場的長期穩定並不依賴於正面按揭資料庫

物業市場的長期穩定主要仰賴政府的土地政策與住房政策，正面按揭資料資料庫僅僅起輔助作用。目前樓價處於上升階段，市場炒賣風氣開始形成，但是共用正面按揭資料無法遏制這一現象。這是因為真正的炒家資金充裕，以現金進行房地產交易，並不需要按揭。政府如果需要維持物業市場的穩定，關鍵在於制定具針對性的土地政策與住房政策。

3、銀行自身的貸款政策已經能夠保證有效的風險管理

2003 年樓宇市場泡沫爆破，不少按揭供款人的樓宇單位變成負資產，但是銀行的呆壞賬數值並不大。根據金融管理局數字，2003 年被撇賬的按揭貸款僅佔平均按揭貸款總額的 0.4%。原因在於香港的銀行提供的最高按揭比例為樓價的七成，超過七成的部分需要購買按揭保險。保守的貸款政策確保了香港銀行體系承受有限的風險，即使在資產大幅貶值的情況下仍能控制按揭業務的損失。反觀美國，即使實行共用正面按揭資料多年，但由於美國的銀行的按揭貸款政策過分寬鬆，就導致了 2008 年的金融海嘯。可見，即使沒有共用正面按揭資料，銀

行只要推行合宜的貸款政策，仍能達到有效的風險管理；即使共用正面按揭資料，如果銀行濫發按揭，借貸風險仍舊難以控制。

綜上，共用正面按揭資料的積極影響並不顯著。相反，共用正面按揭資料帶來的負面影響卻值得關注。

銀行將借助共用正面按揭資料進行客戶“分流”。目前相當部分銀行均開設財務公司，以較寬鬆的貸款審批條件招攬信用水平較低的借款人，但所收取的利息亦較高。共用正面按揭資料將標籤信用水平較低的借款人，銀行得以將這部分人轉介到旗下的財務公司，以賺取較高的利息收入；而銀行自身則接納信用水平較高的借款人，以維持低欠賬率以及穩定的利息收入。最終可能出現的結果是，信用水平在平均值以上的人享受的利息並未顯著下降，而信用水平在平均值以下的人承受的利息將顯著上升。

由於共用正面按揭資料對公眾的利益不顯著，而造成的負面影響值得關注，因此本人反對擴大按揭貸款類別的範圍。

香港信貸報告協會

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Hong Kong General Chamber of Commerce
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11 February 2011

Mr Allan Chiang
Privacy Commissioner for Personal Data
c/o Policy 21 Limited
Room 1101-02
11/F, Times Tower
928-930 Cheung Sha Wan Road
Kowloon
Hong Kong

Dear Mr Chiang,

The Sharing of Mortgage Data for Credit Assessment

The Hong Kong General Chamber of Commerce supports the financial services industry's proposal to expand the existing consumer credit data sharing arrangement to include:

- positive mortgage data, or the count of mortgage facilities ("Mortgage Count") extended to individual consumers where repayment is current, and
- positive and negative credit data relating to non-residential mortgage loans.

We agree with the industry's view that the sharing of positive mortgage data will facilitate credit assessment of consumer credit and bring benefits to both the market and consumers. As witnessed in the introduction of positive credit sharing for unsecured lending, consumers have benefited from financial product innovations and more favourable terms and pricing, as credit providers have been able to conduct effective credit assessment based on comprehensive data. We trust that the industry's proposed extension of credit data sharing relating to mortgage borrowing will bring similar benefits in a more transparent and competitive environment.

The Consultation Document (CD) issued by your office has rightly pointed out that the sharing of more comprehensive mortgage data would promote prudent lending and more sophisticated risk assessment on the part of credit providers, and responsible borrowing by consumers, which would in turn promote long term stability in the property and financial markets.

While we agree with the view that consumer credit information are data that are very personal and private to the individuals concerned, it is important to strike a proper balance between protecting personal privacy and promoting public interest. The crux in achieving such a balance would lie in clearly defining the specific scope of data for sharing and access by credit providers, as well as putting in place safeguards to protect consumers. We trust that the proposals, among others put forward by the industry, as outlined in Paras 4.20 – 4.34 of the CD are well thought out measures that would help strike a fair and reasonable balance between public interest and privacy protection.

As regards the six privacy issues outlined in the CD, our views are as follows:

Issue 1: *Whether it is necessary and not excessive for the Credit Reference Agency (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);*

Chamber View: It is necessary for the CRA to hold the “Contributed Data” as defined in Para 4.2(b)(i) of the CD for the purpose of compiling Mortgage Count data for access by credit providers under specific circumstances (as outlined in 4.29 of the CD).

Issue 2: *Whether it is appropriate to restrict the amount of positive mortgage data contributed by the credit providers to the CRA in line with the latter’s operational needs, and to restrict the access of such data by credit providers (upon the credit applicants’ written consent) to the Mortgage Count (that is, number of outstanding mortgages) only;*

Chamber View: Restricting the access of data by credit providers to Mortgage Count only is an appropriate measure. Coupled with the requirement that a credit provider will have to obtain prior written consent from a customer to access his or her Mortgage Count, we believe these measures will serve to safeguard data privacy while facilitating more effective credit assessment by lenders.

Issue 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;*

Chamber View: In order to enable the CRA to compile useful Mortgage Count data, it is essential that credit providers will contribute data on all pre-existing mortgage loans which are not yet fully paid. As pointed out in the Para 4.24 of the CD, similar steps had been taken by credit providers when sharing of positive credit data regarding unsecured customer credit was last expanded in 2003.

Issue 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;*

Chamber View: It is essential that credit providers are able to access comprehensive credit information when they consider applications for new credit facilities or renewal of existing facilities, irrespective of the kind of credit facilities under consideration. The requirement to obtain prior written consent from customers will serve as a safeguard.

Issue 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;*

Chamber View: We agree with the industry's proposal of introducing a transitional period of 24 months.

Issue 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.*

Chamber View: We are of the view that the existing safeguards imposed on the CRA by the Privacy Commissioner and the Hong Kong Monetary Authority respectively are robust. Any proposed new safeguard should be subject to thorough consultation before implementation.

Should there be any enquiry regarding the Chamber's position and view relating to the CD and related subject matters, please feel free to contact the

Thank you very much,

Yours sincerely,

**Response to the Consultation Document on the Sharing of Mortgage Data for Credit Assessment by
Information Systems Audit and Control Association China Hong Kong Chapter
(ISACA China Hong Kong Chapter)**

11 February 2011

Introduction

On 5 January 2011, the Privacy Commissioner for Personal Data (PCPD) published a Consultation Document on the *Sharing of Mortgage Data for Credit Assessment* and invited stakeholders and the general public to submit views on the privacy implications of the proposed extension of existing credit data sharing system which include both positive and negative mortgage data in respect of residential as well as non-residential properties. Six issues were raised in the Consultation Document and public views on these are invited.

As a professional body on information systems (IS) audit, security and governance, Information Systems Audit and Control Association China Hong Kong Chapter (ISACA China Hong Kong Chapter) would focus the response on "Issue 6 – Implementation Safeguards" as raised in paragraphs 5.44 to 5.47 (pages 38-39) of the Consultation Document by the PCPD

Response to Issue 6 – Implementation Safeguards of the Consultation Document

According to paragraphs 5.44 to 5.47 of the Consultation Document, the PCPD states the following key points on the audit requirements over the Credit Reference Agent (CRA):

1. Privacy compliance audit is a useful tool for the CRA to review and check whether its data management practices are adequate to comply with the requirements of the *Code of Practices for Consumer Credit Data*;
2. Privacy Commissioner recommends the CRA, at its own expense, to commission an independent compliance audit within 6 months from the implementation date of the sharing of mortgage data. Such independent compliance audit will assess the adequacy of protection of the data handling system of the CRA in respect of expanded scope of mortgage data sharing in accordance with the provisions of the Code. Subsequent to the first independent compliance audit, the annual privacy compliance audit of the CRA will also cover the expanded scope of mortgage data; and

3. Periodic IT security audits utilizing industry best-practice principles, such as the *ISO/IEC 27002 Best Practice on Information Security Management* will provide assurance to consumers in the protection of their personal data.

Regarding to the first and second points, we believe that privacy compliance audit would be the effective tool to ensure the security and controls of the CRA in regard to the data management practices as well as the extent of the compliance of the requirements of the existing *Code of Practices for Consumer Credit Data*. 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.

With regard to the third point, we believe that implementing appropriate security safeguard is always necessary to protect information assets, especially when sensitive personal information are 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*, is one of the measures to ensure organizations to protect information assets to a certain level of standards and to enable regulators to oversee security practices of organizations in a consistent manner. By applying information security management best practices, the PCPD may also need to consider the following factors:

1. The information security management best practices provide high-level recommendations to organizations in safeguarding information assets. The complexity of the IT environment among different organizations may vary, where some of the domains on Information Security Management may not be fully applicable to the organizations. Therefore, the PCPD may consider implementing mechanisms that strive a balance between assuring the security safeguards on the CRA and enabling flexibilities to the CRA in utilizing best practices principles on Information Security Management ;
2. The existing *Code of Practices for Consumer Credit Data* does not explicitly require that the compliance audits of the CRA should refer to the industry best practices principles on Information Security Management. Although the CRA might have implemented all practicable steps to protect consumers' credit data in database of the CRA according to the *Data Protection Principle 4 of the Personal Data (Privacy) Ordinance (Cap. 486)*, due to the variances of the assessment criteria, gaps may be identified when upcoming privacy compliance audit is commissioned according to the industry best practices principles on Information Security Management. Therefore, the PCPD may consider implementing mechanisms to evaluate the risks and to keep track of the remediation of the gaps between the CRA's data protection practices and the industry best practices principles on Information Security Management as identified by independent auditors.

Conclusion

As there is an increasing public concerns over personal data privacy, it is important for the CRA to enhanced security protection over the credit data sharing system. By executing the proper compliance audit with appropriate implementation of the Information Security Management best practices principles, this may promote a positive image to the general public on the protection of the sensitive personal data.

About ISACA

With 95,000 constituents in 160 countries, ISACA® (www.isaca.org) is a leading global provider of knowledge, certifications, community, advocacy and education on information systems (IS) assurance and security, enterprise governance and management of IT, and IT-related risk and compliance. Founded in 1969, the nonprofit, independent ISACA hosts international conferences, publishes the ISACA® Journal, and develops international IS auditing and control standards, which help its constituents ensure trust in, and value from, information systems. It also advances and attests IT skills and knowledge through the globally respected Certified Information Systems Auditor® (CISA®), Certified Information Security Manager® (CISM®), Certified in the Governance of Enterprise IT® (CGEIT®) and Certified in Risk and Information Systems Control™ (CRISC™) designations.

ISACA continually updates COBIT®, which helps IT professionals and enterprise leaders fulfill their IT governance and management responsibilities, particularly in the areas of assurance, security, risk and control, and deliver value to the business.

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About ISACA China Hong Kong Chapter

The ISACA Hong Kong Chapter (www.isaca.org.hk) was established in 1982. In 2009 the Chapter expanded the service scope to cover Mainland China and changed its name to ISACA China Hong Kong Chapter. The Chapter has over 3,400 members and is one of the largest chapters in the world.

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8 February 2011

Office of the Privacy Commissioner
for Personal Data, Hong Kong
12/F, 248 Queen's Road East
Wanchai, Hong Kong

Attn. Mr. Allan Chiang
Privacy Commissioner for Personal Data

Dear Mr. Chiang,

Sharing of Mortgage Data for Credit Assessment

We refer to your letter of 5 January 2011 inviting views on the subject. On behalf of Internet Professionals Association, I'd like to submit our response in regard to the six privacy issues as follows:

Issue 1 (Types of mortgage loans to be covered)

As mentioned in the consultation paper, in a lending and borrowing relationship, it is acknowledged that the borrower has an equal share of responsibility and obligation to provide relevant information to enable prudent lending. We feel that these additional mortgage loan types are excessive for the purpose of assessment of credit (including mortgage loan) applications and general reviews of borrowers' credit profiles.

Issue 2 (Types of data to be contributed by credit providers to the CRA and to be accessed by credit providers: Positive and Negative)

For the positive mortgage data

First of all, a HKID or travel document number is a unique identifier for any individual in Hong Kong. On the other hand, people can change correspondence address from time to time, so why is correspondence address needed? It is excessive data collection and is not necessary.

Secondly, we think the whole additional information is not necessary and is excessive for the purpose of use. The fact is if it is only 'number of mortgage count' that can be accessed by credit providers from CRA, it will only create 'biases' towards the borrowers and create unnecessarily 'labeling effect'. For example, if a borrower has a count of 5 mortgages in CRA database, but all have been fully paid; when he applies for an extra mortgage, the credit providers will only get a count of 5 from CRA, what conclusion can be drawn or what meaning can be derived? The potential borrower has 5 outstanding mortgages (but all repaid) or what? How will a single count give a full picture of a borrower's overall indebtedness for prospective lenders? Without the actual outstanding amount but just solely based on a single mortgage count, it would be very hard for the lender to accurately assess a borrowers' credit-worthiness. At the end of the day, the credit provider has to get the full picture of those 5 mortgages from the borrower which means more privacy data will be exposed to credit providers.

At the other extreme, for the same example cited above, after the credit provider get the details of those 5 mortgages and decide to lend the money, the credit provider can at the same time label this borrower as 'very rich client' in their own system and can cross- sell financial products such as 'Accumulator' to him later. How do we plug this hole?

How about those who have no mortgage and therefore do not have any count in the CRA? Will they be labelled as 'poor client' and deserve a 'higher' lending rate?

For the negative mortgage data

Agree with the proposed arrangement.

Issue 3 (Contribution of pre-existing mortgage data by credit providers to the CRA)

We don't think it is reasonable to collect data from pre-existing mortgage owners as they have already given all the necessary documents to the credit provider. The original lending is supposed to be processed on a prudent basis. Contribution of pre-existing mortgage data without the explicit consent of the customers is a violation of mutual trust.

The industry argument is 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. In other words, the industry has denied all previous so- called prudent lending practices and the measures do not achieve what it is supposed to claim.

We suspect CRA and the finance community just want to get as much data as possible in the shortest period and that is not the original purpose.

Issue 4 (Use of Mortgage Count on or after implementation)

We strongly disagree with the use of the mortgage count for non-mortgage applications; this will only expose non-necessary privacy data to credit providers and unnecessarily enrich their own database for future cross-selling activities.

The positive side of accessing the Mortgage Count as suggested by the Industry is that lower and more competitive rates can be provided for positive consumers. However, the industry is silent on the negative impact, whereas in case of adverse financial market conditions, banks have to tighten credit limits and may force guarantors and borrowers to sell their properties prematurely in order to minimize their own risks if the Mortgage Count indicates their consumers have several to many properties.

Why would an application for credit cards which involve a relatively small amount of credit facilities compared to mortgage loans have to be subject to the same assessment criteria? There is no such need and is considered excessive data collection.

Issue 5 Transitional period

A cooling period of 24 months is reasonable.

Issue 6 Implementation safeguards

A privacy compliance audit is necessary and we support the Privacy 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 is very important: the objective is to ensure there is no data leakage such as unlawful access or massive data copying by "authorized" personnel. The idea of using ISO standard is good. The computer system should be implemented with access control using the ISO standard where it can monitor/ log the user activities when accessing privacy data. The periodic IT security audit can then check the log file and see if there is 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 make consumers' data vulnerable.

There is skepticism that the entire proposed database is inclined towards banks' favor

because once this system is established, banks have the advantage of determining the “wealth status” of their customers, and labeling them in their internal system for cross-selling financial products to the proven rich. On the other hand, individuals who have no credit records in the proposed system and have not owned properties before may be treated less favorably (or more favorably?) by banks.

As far as privacy is concerned, we believe that consumers, especially “rich” ones, would be particularly sensitive to privacy and would object to the proposal because the Hong Kong Monetary Authority has already done a good enough job to safeguard mortgagors from over-borrowing through imposing limits of 70% or lower mortgage-to-property valuation ratios. To most of the borrowers, the proposal brings little to no values, other than benefiting the banks. It is not surprised that ALL banks are inclined to support the proposal with various reasons.

Yours sincerely,

Internet Professional Association



Your Ref:
Our Ref:

VIA FAX (2877 7026)

27 January 2011

Mr Allan Chiang
Privacy Commissioner for Personal Data
Office of the Privacy Commissioner for Personal Data
12/F, 248 Queen's Road East,
Wanchai, Hong Kong

Dear Mr Chiang

Sharing of Mortgage Data for Credit Assessment

Thank you for your letter of 5 January 2011 addressed to

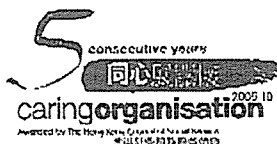
We have consulted our member companies on the above document. And they have no comments.

Thank you anyhow for inviting our views.

Yours sincerely



c.c. Governing Committee Members



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THE HONG KONG INSTITUTE OF
SURVEYORS

COPY

Your Ref: PCPD/CR(O)26/185/155

7 February 2011

By Fax (2877 7026)
& By Post

Mr Allan Chiang
Privacy Commissioner for Personal Data
Office of the Privacy Commissioner
for Personal Data, Hong Kong
12/F, 248 Queen's Road East
Wanchai
Hong Kong



Dear Mr Chiang,

Sharing of Mortgage Data for Credit Assessment

We refer to your letter dated 5 January 2011 and thank you for inviting the Institute to give our views on the proposed sharing of mortgage data for credit assessment in respect of residential as well as non-residential properties.

We welcome an effective, efficient and risk controllable financial market to support our property and housing market. Meanwhile, we would expect that unless alternative effective ways cannot be identified, the disclosure of personal data should always be a last resort. The privacy interests of the individual should be respected at all times.

Thank you for your attention.

Yours sincerely,

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

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

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

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

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

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

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個人資料(私隱)條例 《個人信貸資料實務守則》的建議修訂 共用按揭資料作信貸評估諮詢文件 2011年2月

前言

1. 個人資料私隱專員(私隱專員)於2011年1月發表諮詢文件,就金融服務業界建議擴大現時共用信貸資料安排方面的個人信貸資料保障,諮詢有關方面及市民大眾意見。
2. 金融服務業界建議擴大目前的信貸資料共用安排至(i)允許有限度共用給予消費者住宅及非住宅物業的按揭貸款的正面信貸資料,及(ii)延伸現行共用住宅按揭貸款的負面信貸資料以包括非住宅按揭貸款。若要落實建議,《個人信貸資料實務守則》(《實務守則》)將有必要修改。私隱專員在諮詢文件中指出,「業界的建議對資料保障及私隱有重大影響」,並提出6項私隱議題諮詢公眾。¹
3. 是次諮詢前公眾對有關的議題了解不多,更缺乏討論,而私隱專員規定的公眾諮詢期卻只有約5個星期,比一般公共政策的2至3個月諮詢期為短,更跨越農曆年假。儘管私隱專員強調是因為公署工作眾多、排期緊密所致,但這並不是背離慣常公眾諮詢期的充分理據,公署本來可以採取多工同期進行,但它卻選擇只考慮自己的方便,背離了正常的公共諮詢和決策程序,捨棄了促進公眾認識私隱問題的機會,犧牲了公眾參與討論的權利,令人失望。我們希望這不是因為私隱專員受了香港金融管理局(金管局)和金融服務業界的壓力,為了盡早落實它們的建議而所作的妥協,草草諮詢和通過有關的安排。人權監察促請私隱專員延長諮詢期,並加強有關宣傳,提供更多的資料和分析,以增加市民對建議及其對私隱的潛在傷害的認識,並且確保日後的諮詢都會有充足的時間,而非倉卒了事。

國際人權標準

4. 聯合國《公民權利和政治權利國際公約》(《公約》)第17條指出:
「一. 任何人之私生活、家庭、住宅或通信,不得無理或非法侵擾,其名譽及信用,亦不得非法破壞。
二. 對於此種侵擾或破壞,人人有受法律保護之權利。」
5. 根據聯合國人權事務委員會通過的一般性意見第16號:

¹ 諮詢文件第1.16段及1.18段。

「7. 既然所有人都在社會中生活，對隱私的保護就必然是相對性的。但是，有關的公共當局只有在知道有關一個人私生活的這種資料為依據《公約》所了解的社會利益所必不可少時才可要求提供這種資料…」

「8. 甚至在符合《公約》的干涉方面，有關的立法必須詳細具體說明可以容許這種干涉的明確情況。只有依法指定的當局在逐一個案的基礎上才能就使用這種授權干涉作出決定……」

「10. 以電腦、資料庫及其他儀器收集或儲存私人資料 不管是由公共當局或民間個人或機構 必須由法律加以規定。各國必須採取有效措施來確保有關個人私生活的資料不會落到法律未授權接受、處理和使用的人手裏，並永遠不會用來作不符合《公約》的事。為了使私生活受到最切實的保護，人人都應有權以明白易懂的方式確定是否個人資料存放在自動資料檔案中，如果是這樣，那麼有哪些資料，其目的為何。人人也都有權確定哪些公共當局或民間個人或機構控制或可以控制其檔案。如果這種檔案中有不正確的個人資料，或以違法方式收集或處理，則人人有權要求改正或消除。」

6. 個人資料私隱權利是一項重要的個人權利，若要對此加以侵擾或限制，必須有實質而明確的重大公眾利益考慮，並以法律對有關限制加以訂明和規管，令侵擾或限制合理而合乎比例。儲存於資料庫的個人資料，必須輔以適當及充足的保障措施，確保資料庫內的個人資料準確無誤，及資料當事人的個人資料權利獲得最高程度的保護。

《個人資料(私隱)條例》下的個人資料原則

7. 《個人資料(私隱)條例》(《私隱條例》)(香港法例第486章)由1996年12月起實施，目的是在個人資料方面保障在世人士的私隱。
8. 《私隱條例》下有6項的保障資料原則，包括：
 - 收集資料的目的及方式：訂明須以合法及公平的方式收集個人資料，以及列明資料使用者在向資料當事人收集個人資料時，應向該當事人提供的資料；
 - 個人資料的準確性及保留期間：訂明所保存的個人資料必須是準確和最新的資料，而保存期間不得超過實際需要；
 - 個人資料的使用：訂明除非獲得資料當事人同意，否則個人資料只可用於在收集資料時所述明的用途或與其直接有關的用途；
 - 個人資料的保安：訂明須採取適當保安措施保障個人資料〔包括其存在形式令查閱或處理並非切實可行的資料〕；
 - 資訊須在一般情況下可提供：訂明資料使用者須公開所持有的個人資料類別，以及該等個人資料所作的主要用途；
 - 查閱個人資料：訂明資料當事人有權查閱及改正其個人資料。²
9. 《實務守則》是落實《私隱條例》的指引，並不能抵觸《私隱條例》，以及其他法律。因此私隱專員也不能在《實務守則》中，授權金融服務業界在沒有資料當事人的同意下，向信貸資料機構提供他們的個人資料，因為這樣的資料披露或轉移會違反《私隱條例》；信貸提供者追溯地向信貸資料機構提供借款人、按揭人或擔保人的個人信貸資料，而這些資料又是在

² 保障資料原則全文見《私隱條例》附表一。

擴大共用信貸資料安排前收集的，亦會違反《私隱條例》，信貸資料機構收集、處理、儲存和披露這類資料同樣亦會違反《私隱條例》，因此私隱專員亦不能藉修改《實務守則》，以容許信貸提供者和信貸資料機構做這種違法的行爲；至於擔保人的個人信貸資料從來都沒有包括在香港的共享信貸資訊系統內，《實務守則》更不可以准許信貸提供者追溯地將資料當事人在共享系統擴大前提供的個人資料轉移給信貸資料機構，又或容許信貸資料機構收集、儲存和披露擔保人的這類資料；《實務守則》也不應准許金融服務業界向信貸資料機構提供過度的資料；假使信貸資料機構只可披露按揭宗數下，則《實務守則》便不應容許信貸資料機構收集諸如個人的出生日期、通訊地址、帳戶號碼等不必要的資料。當然，私隱專員亦不應容許信貸資料機構收集和儲存違反《性別歧視條例》的資料項目，包括借款人、按揭人或擔保人的性別。

公眾利益存疑 不應貿然擴大資料庫

10. 就有關公眾利益的考慮，諮詢文件指出「金融業界鑑於消費者任意地借貸，以及信貸提供者無法辨識借款人所需承擔的債項已超出他們所能償還的，建議在信貸提供者之間共用個人的正面按揭貸款資料，提高信貸提供者所作的信貸風險評估的完整性及準確性，並透過一個更有效率的信貸市場，以及減低房地產市場的資產泡沫風險，從而帶來經濟效益。」³
11. 諮詢文件大篇幅引用業界提供的、有嚴重問題的資料和分析，私隱專員並無分析和評論這些資訊和分析，彷彿專員同意業界的論據和意見，無法站在合理地維護私隱的立場，協助公眾了解問題。⁴基於這些資料，諮詢文件進一步指稱，在香港共用無抵押貸款正面信貸資料的好處包括：
 - 良好借款人的息率下降；
 - 降低拖欠帳款及損失比率；及
 - 破產比率大幅下降。⁵

而將共用信貸資料擴展至額外按揭的潛在好處就包括：

- 達至更佳的借貸條件和息率的潛在可能；
- 促進物業市場長期穩定；及
- 推廣負責任的借貸及更佳的風險管理。⁶

可是諮詢文件缺乏對建議的全面審視，並無提供確切的資料證明建議能達到上述的目標，以及有否其他不侵擾個人私隱權利的方法以達至上述的目標。諮詢文件對擴大共用信貸資料的私隱及其他金融層面上的潛在風險並無詳細解釋和分析，亦無充分地羅列和闡釋反對的資料和意見。

12. 香港人權監察認為，將共用信貸資料擴展至額外按揭必然有損個人資料私隱權利。若基於公眾利益而必須落實一項對個人權利有所侵犯的措施或政策前，相關機構必須實質及明確地證明，並無其他有效的辦法達至相關的目的，並應就該有損人權的措施或政策會如何達至更佳的公眾利益及其估量，提供相關數據及證據作嚴謹的論證，而非如諮詢文件般簡單而概括表

³ 諮詢文件第 1.14 段。

⁴ 對照之下，金融服務業界並無向公眾清楚解釋它們在審批信貸申請時，會如何運用按揭宗數這項資料去評估信貸申請者的財務狀況及還款能力。例如一名有 10 宗小額按揭的申請者，與一名只有一宗，但大額的按揭，在信貸申請者不知道有關按揭的金額時，會如何作出評估。

⁵ 諮詢文件第 4.7 段至第 4.11 段。

⁶ 諮詢文件第 4.15 段至第 4.18 段。

示「如果建議措施有助於發展一個可穩定香港金融市場和整體經濟的健全按揭貸款環境，則該建議便符合公眾的利益。」⁷

13. 事實上，人權監察對建議措施能否真正為資料當事人，即借款人、按揭人及擔保人提供優惠存有疑問。金融服務業界在諮詢文件中引述消費者委員會 2009 年的一項調查，稅貸的實際年利率可低至 1.62% 至 2.66%，相比在 2004 年無抵押貸款正面信貸資料可共用之前的 3.2% 至 8.16% 為低，但事實上有關的數字並無證明利率降低與共用正面信貸資料的直接因果關係，利率調低很大程度只是近年本地息率跟隨外圍經濟體系的普遍低息和本地銀行銀根充裕而已。⁸與金融服務業界在諮詢文件中的說法相反，最近東亞銀行物業按揭部主管錢偉倫向傳媒指出「實際上現時按揭業務競爭激烈，按息再減價空間低」，借款人、按揭人及擔保人犧牲了私隱，但卻未必會因此而得益。⁹
14. 諮詢文件亦引述金融服務業界指，自從 2003 年 6 月擴大共用個人信貸資料後，更多個人獲得個人信貸，但整體拖欠貸款及信用卡壞賬情況卻大為改善，而破產比率亦保持平穩。¹⁰同樣地，諮詢文件並無解釋當中的因果關係，而且引用 2003 年底，即擴大共用個人信貸資料後的數據，這並不能顯示擴大共用個人信貸資料導致了真正改善整體拖欠貸款及信用卡壞賬的情況。事實上，2003 年香港因沙士和世界經濟衰退而陷入谷底，拖欠個人貸款和個人破產的情況甚為嚴重，其後香港與世界經濟的狀況逐步改善，從谷底回升，整體拖欠貸款及信用卡壞賬的情況理應有所改善，個人破產比率下降，更多個人獲得個人信貸，亦是理所當然，未必與擴大共用個人信貸資料有因果關係。
15. 澳洲法律改革委員會於 2006 年發表的《回顧私隱—信用報告的規定：問題文件》就曾質疑擴大信貸資料庫是否對信貸提供者管理風險及提供負責任的借貸有真正幫助，並指出擴大共用信貸資料有可能導致借貸上升，特別是中下階層的市民。¹¹人權監察質疑，擴大共用信貸資料對借款人、按揭人及擔保人的個人資料私隱進一步被侵犯下，他們的得益卻並不確實及顯著，最終他們的犧牲，只會服務了金融服務業界，成為業界減低營運風險的手段，以及方便了他們查核行政工作的措施。
16. 人權監察必須指出，信貸資料庫已溫水煮蛙地一再擴展膨脹，我們有理由擔憂，當局和業界今天說建議對改善風險管理和金融體系的健全有效，但建議一旦獲得通過落實，日後當局和金融服務業界又會指建議實施後成效不彰，須進一步犧牲私隱，擴大共用信貸資料庫，最終令信貸資料庫內的個人資料及可向信貸提供者提供的個人資料會持續和無限量地擴張，香港人的私隱不斷地受到蠶食。
17. 諮詢文件指出，現時信貸提供者的風險主要源自信貸申請者及信貸提供者的「資料不對稱」：信貸提供者未能完全知道申請者的個人信貸記錄。

⁷ 諮詢文件第 1.17a 段。

⁸ 諮詢文件第 4.8 段。

⁹ 明報：「銀公：信貸庫增按揭資料 可助降息」，2011 年 1 月 6 日。

¹⁰ 諮詢文件第 4.10 段及 4.11 段。

¹¹ 澳洲法律改革委員會：《回顧私隱—信用報告的規定：問題文件》第 6.42 至第 6.45 段，2006 年 12 月。

18. 人權監察必須指出，當信貸申請人申請按揭信貸，本身會有物業、舖位或其他物品作抵押，若信貸申請者未能償還貸款，信貸提供者有權收回已被抵押的物品等。由此可見，本身而言有抵押的信貸按揭本身風險已經較低。人權監察再次質疑金融服務業界是否有真正須要進一步損害私隱，擴大信貸資料庫，以減低本身已經不高的風險。
19. 人權監察認為，既然所有揭貸款都有物業和實物資產作為抵押，風險管理應以物業價值作為基礎，如果每宗按揭都是謹慎地批出，縱使信貸提供者不能完全掌握借款人的按揭宗數，以至借款人償還能力出了問題，也因有物業等抵押，不致出現重大問題。如果出現重大問題，都必然是金融服務業界借貸比率偏高、信貸提供者在估價時不謹慎和對急速上升的樓價和抵押品價值沒有充分的認識等錯誤所致，以及金管局失職，未能及時降低按揭借貸比率，以及監管不力所造成，不應誇大因「資料不對稱」造成的額外風險。
20. 事實上擴大共用信貸資料，很可能會引致借貸增加，借款人負債上升，尤其按揭的貸款和債務的增加，亦會增加樓市泡沫爆破時的社會代價，與拒絕擴大共用信貸資料相比，未必更為有利。當然，金融服務業界可能會因為借貸增加和借款人負債上升而受惠，但金管局不應因為行業利益而犧牲市民的私隱。
21. 事實上，除了物業抵押保障，現時已有一定的法律框架減低因為「資訊不對稱」而為信貸提供者帶來的影響，每當信貸申請者向信貸提供者申請借貸，信貸提供者都會要求申請者提供其本身的按揭資料及其他財務狀況，並作聲明證實所提供的資料準確無誤，而信貸提供者除可循民事程序向提供虛假資料的信貸申請者追討損失外，作假的借款人、按揭人或擔保人，亦會觸犯以欺騙手段取得財產、使用偽造或虛假的文件、發假誓等刑事罪行，可以受到刑事制裁。
22. 若信貸提供者認為目前的法律框架無效，他們應對此加以說明和論證。人權監察認為，有關的法律框架已經足以保障信貸提供者，若有不足，那也可通過修訂刑法和刑罪的最高罰則，而加強保障。
23. 信貸提供者有必要地承擔尋求和查核借款人、按揭人或擔保人個人資料、以及評估和承擔風險的責任，而不應依賴不斷擴充信貸資料庫以達至該目的，尤其連累其他只有小額信貸申請的人士，以及信用卡的申請人的私隱，也受到強制的牽連和侵犯。
24. 綜合上述原因，人權監察反對業界建議擴大信貸資料安排，包括有關借款人、按揭人及擔保人的住宅、零售、商業及工業物業的正面及負面按揭資料中建議新增的資料。
25. 澳洲法律改革委員會於 2006 年發表的《回顧私隱—信用報告的規定：問題文件》曾提出其他擴大信貸資料庫以外的選擇，人權監察參考澳洲的經驗後在此列出其他的建議，希望業界及私隱專員可加以考慮：
 - 加強公眾教育，確保信貸申請者保存其本身的準確和完整信貸記錄；
 - 鼓勵及時履行信貸合同，未按時償還貸款（尤其是小額）只反映疏忽或爭議而不是無力償還；

- 要求信貸申請人在申請信貸時由其提交的個人及信貸資料作聲明；
- 加強理財教育，鼓勵消費者作明智的消費及信貸選擇。

建議若落實的補救措施

26. 若最終私隱專員不當地決定接納金融服務業界的建議，擴大信貸資料安排，私隱專員亦需注意以下事項，以盡可能地保護信貸申請者的個人資料私隱。
27. 金融服務業界建議信貸提供者向信貸資料機構提供多達 15 項的個人資料項目，作為信貸資料機構準確識別每名有個人按揭貸款的人士，以及計算按揭宗數之用。人權監察認為，要準確識別每名有個人按揭貸款的人士和計算按揭宗數，並不需要完全收集建議的 15 項資料，若因為信貸資料機構對資料庫的保障不足而令這些敏感資料外洩，可以造成資料當事人的嚴重後果。
28. 若要識別每名有未償還債務的人士，只要身分證號碼或旅遊證件號碼其中一項已經足夠。若信貸資料機構需要彙編每名未還清按揭信貸的信貸申請人的按揭宗數，以及按規定只提供按揭宗數予有關的信貸提供者，則只需要同時包括其身分(即借款人、按揭人或擔保人)和區別按揭宗數而必要的信貸資料(即貸款者、信貸種類、帳戶狀態及結束日期中必要的資料)。
29. 至於其他諸如姓名、出生日期、性別、地址、電話和帳戶號碼等，均與弄清按揭宗數無關，屬無必要提供、收集、儲存及過度侵犯私隱的資料項目。信貸資料機構收集這些不必要甚至不合法的資料，令我們有理由質疑金融服務業界是否先讓信貸資料機構收集和儲存這些資料，以方便日後進一步擴大可取得的個人信貸共用資料而鋪路。
30. 人權監察更要指出，信貸資料機構無論是搜集和儲存性別資料，還是在信貸報告中提供性別資料，都有違《性別歧視條例》。
31. 業界亦應重新檢討，信貸提供者是否有必要向信貸資料機構提供全部 15 項的個人資料。私隱專員與金管局都應把好關，以及把握機會檢討信貸資料機構收集和儲存的原有資料項目，不能容許未有確實和充分證明有必要的項目，進入或保留在有關的信貸資料系統中，以防止系統無理地侵犯私隱，以及不斷藉機膨脹。
32. 關於由信貸提供者向信貸資料機構提供建議生效日已存在的按揭信貸資料，人權監察同意私隱專員指出，「貸款機構在借款人/按揭人/擔保人申請按揭貸款之前或之時，沒有明確告知他們有關使用及轉移其個人資料，包括向信貸資料機構資料庫提供資料，故此不能確定他是否能合理期望他的按揭信貸資料隨後會被提供予信貸資料庫及被共用」。¹²
33. 人權監察認為，除非信貸提供者獲信貸資料者的明確同意，將其在建議生效日已存在的按揭信貸資料提供予或轉移至信貸資料機構之類的第三者，否則將會違反《私隱條例》限制個人資料只限用於收集目的(包括披露和

¹² 諮詢文件第 5.37 段。

轉移)，以及資料保密的責任，因此信貸提供者無權向信貸資料機構提供建議生效日已存在的按揭信貸資料，否則將屬違法。

34. 私隱專員在《實務守則》中，亦無權容許業界和信貸資料機構從事這些違反《私隱條例》的非法行為。金管局支持以犧牲和侵犯私隱、以及違反《私隱條例》的手段，服務業界的狹窄利益，實在令人遺憾。
35. 業界指他們徵詢律師及資深大律師的法律意見認為：『就信貸提供者查閱及使用按揭宗數作出準備，信貸提供者向信貸資料機構提供該些資料是在保障資料第 3 原則的範圍內。根據業界的看法，該些資料是用於直接關於信貸提供者核心活動的合法目的，以及與原本收集資料的目的直接有關。在沒有法庭判例的情況下，業界認為「直接有關目的」應取決於是否直接與原本目的有關，而不附帶任何特定的時間框架來加以確定。採用這樣的詮釋，業界視「釐定和維持按揭貸款」為原本目的及「確保客戶的持續值得信貸度」為原本目的直接有關目的。……建議實施後，信貸提供者會向信貸資料機構提供有關在實施日期或之後的按揭貸款申請的該些資料。』¹³
36. 人權監察必須指出，業界的所謂法律意見甚有問題，它既沒有法庭判例支持，也與借款人和按揭人原本同意交出資料的目的有重大差別，借款人、按揭人及擔保人根本連想像這種信貸資料機構介入也不可能的情況下，如何可能同意，如何可能想像「將個人信貸資料轉交給信貸資料機構」作為其中一個資料收集的用途或目的？即使現時業界要將個人信貸資料轉交給信貸資料機構，作准許的信貸資料分享的用途，根據《實務守則》第 2.1 條，也必須在收集個人信貸申請者資料前，給予申請人一分書面聲明予借款人和按揭人，清楚列明可能會將他的信貸資料提供給信貸資料機構，以取得借款人和按揭人知情而明確的同意。業界不應任意擴大原本並不存在的目的。至於擔保人，原本不在同意轉交資料之列，與信貸資料機構無關，將他們的資料也拉進此信貸資料庫，更有追溯地將他們的個人資料納入，更為不當。
37. 即使日後信貸資料庫獲私隱專員支持而擴大，一個借款人、按揭人及擔保人在這之前為申請信貸而提供給信貸提供者的個人資料，也不應被追溯納入信貸資料庫。因為這些資料，原本只是提供給該銀行或財務機構在當時評估其經濟狀況，以審批該次貸款，因此資料當事人並未預期取得信貸後、直至還清貸款後五年之內，信貸提供者會再將他的個人信貸資料轉移給一個有別於信貸提供者的信貸資料機構，供它儲存和整理作信貸報告。
38. 一個資料當事人，在訂立信貸協議時，亦會預期信貸提供者會保存其貸款和還款有關的資料，否則不可能處理息率和還款的有關安排，而貸款協議將無法存在（隱含條款基於必要測試，而非合理或可取測試），因此至少亦可以說信貸合約中至少有隱含條款，資料當事人同意信貸提供者保存和更動該項貸款資料，至還清貸款的一段合理時間為止，但絕不可以說資料當事人同意由一個與評估信貸申請和還款管理無關的第三者、一個他未有預期的信貸資料機構，接收來自信貸提供者與先前信貸申請有關的個人信貸資料，甚至要保存至還清後五年（除非自行主動選擇退出，不許保存有關的正面信貸資料，即 Opt-out），並在保存期間，會由信貸資料機構與來自其他信貸提供者供給該機構的、自己有關的個人信貸資料，合併整理

¹³ 諮詢文件第 4.25 及 4.26 段。

和儲存，不必要地要資料當事人，進一步冒私隱洩露的風險。資料當事人如遇上財政困難或需要，往往在他缺乏討價還價能力的情況下，更被逼「同意」披露，以作債務重組或新申請信貸之用。

39. 因為資料當事人一般不可能預期他們的個人資料會用作信貸資料庫擴大後新用途的目的，因此，他們不可能會明確地、知情地同意信貸提供者日後會將他的個人資料，轉移給信貸資料機構。同時，「直接有關目的」，只限於該項信貸申請，而非所有日後的信貸申請，在沒有新的同意授權下，信貸提供者不可以自行將該先前信貸申請中涉及的人資料，披露或轉移給第三者的信貸資料機構。
40. 即使金融服務業界真的可以視「釐定和維持按揭貸款」為原本目的及「確保客戶的持續值得信貸度」，也只應由信貸提供機構內部進行，不能將所取得的個人信貸資料，提供給信貸資料機構，供共用信貸資料系統之用。
41. 人權監察認同，若業界擴大信貸資料庫的建議一旦不幸得以落實推行，信貸資料機構必須加強私隱保障措拖，私隱專員的兩項建議，包括在措施實施 6 個月內自費委託獨立循規審核員，並在循規審核開始後的 3 個月內制訂審核報告以送交私隱專員、及以資訊科技界最佳實務的原則，定期審核資訊系統保安。人權監察認為，上述兩項只是私隱專員最起碼的建議，信貸資料機構必須採取更多的保障措施，並公佈給公眾知悉。
42. 信貸資料機構必須為員工提供足夠及具質素的培訓，確保每名員工都妥善及謹慎處理資料庫內的個人資料。目前，環聯資訊有限公司是本港一間主要的個人信貸資料機構，曾有報章記者到該公司辦事處申請信貸報告，指出「並非所有職員均核對申請者容貌，批核過程寬鬆，有心人不難蒙混取得報告」。¹⁴ 人權監察認為，有關情況會容易令資料當事人的個人資料外洩，不能接受。

關於信貸資料庫的其他意見

43. 金融服務業界建議信貸資料機構只向信貸提供者披露信貸申請人的按揭宗數，但人權監察仍不支持。雖然建議可對個人資料私隱的傷害減低，但擴充信貸資料庫仍會不必要地、不合理地和不合比例地增加對個人資料私隱的威脅。
44. 人權監察認為，現行機制將信貸申請者的個人資料轉移至作為第三者的信貸資料機構作長期保存，令資料當事人冒不必要的私隱風險，其中可能涉及資料轉移、整理、保存和提取時資料遺失、洩露、盜竊、出錯、不當使用和轉移等問題，進而可以導致其他進一步的業務、財政、名譽和精神等損失。
45. 現行信貸資料庫的得益者主要是信貸提供者和信貸資料機構，而資料當事人，在提交個人資料予信貸提供者一段時間後，多數的資料當事人並不知自己的資料在資料庫中的詳情及內容，除非不時自行付款向信貸資料機構購得自己最新的信貸紀錄，才會知道其個人資料有否錯誤，與及需要自行選擇從資料庫中清除甚麼資料。在現行制度中，亦規定除非信貸申請者自行選擇退出(Opt out)，而非選擇加入(Opt in)，否則其個人信貸資料會在資

¹⁴ 香港經濟日報：「只需 180 元 輕易獲信貸報告」，2009 年 9 月 16 日。

料庫中保存和使用至還清後五年。這種要受損人選擇退出而非加入機制，完全是偏幫信貸提供者，明顯不當。這種讓他人即金融服務業界得益，而要市民自己承受不必要的私隱風險，以及需要自費查閱有關資料以確保資料正確的制度，甚為不公，令人懷疑是偏幫金融服務業界的安排。這種不公平，更是疑似官商勾結的安排，實在不應加以延續和擴大。

46. 在現行安排下，所有信貸申請者，無論他們的貸款額多少，與及過往曾申請信貸，但不打算進一步申請信貸的人士，他們的個人資料都會被放到信貸資料庫當中。人權監察認為，有關做法亦屬不妥，機制應最多只限當大額信貸申請者(例如 10 萬元或以上)申請信貸和同意這樣提供個人信貸資料時，才可以將他的個人資料放到信貸資料庫當中，即業界在處理這類信貸申請時，才可要求所有信貸提供者提供資訊予信貸資料公司，及整理成個人信貸報告，直至至完成還款後即予刪除和銷毀。金管局和金融服務業界既然提出將過往的信貸資料納入共享資料庫，相信業界應有能力作出恰當的行政安排，當信貸提供者提出要求時，盡速提供資料予信貸資料公司和有關的信貸提供者，直至還清該項債務為止，這樣就可以免除牽連並無申請信貸的市民，免卻把他們的個人信貸資料納入信貸資料庫之中。
47. 信貸資料庫同樣持有信用卡持有人的個人資料，人權監察認為信用卡的利息過高，實際上已是用高息抵銷風險，並無充分理由要在信貸資料庫上儲存信用卡持有人的個人資料，進一步協助信用卡發卡機構評估及減低風險，除非在此機制下信用卡持有人可以獲得顯著的利率折扣，但信貸資料公司因此而收集和儲存的資料，只限有關信用卡持有人，不涉他人。人權監察重申，金融服務業界應該側重自行做妥調查及控制風險，不應依賴侵犯個人私隱權利的信貸資料庫，更不應溫水煮蛙地不時尋求擴大共用信貸資訊安排，要求擴大信貸資料庫。金管局也不應只顧業界利益和對金融體系非常有限的改善，而不斷支持侵犯私隱的方案，一再成為香港侵犯私隱的最大鼓吹者。

結論

48. 人權監察重申，沒有充分及明確的證據證明擴大信貸資料庫對公眾利益有重大幫助，建議卻明顯會損害個人資料私隱權利，故此反對擴大信貸資料庫的建議。

The Consultation Document ("the Consultation Document") on the Proposed Revision to the Code of Practice on Consumer Credit Data ("the CCD Code") by the Privacy Commissioner for Personal Data

RESPONSE FROM PRIVACY HONG KONG

A case for concern

1.1 The proposal to revise the CCD Code is to allow the individual's positive mortgage data to be shared among all credit providers who have access to the consumer credit database. This proposal should be of great concern to all who are dedicated to the protection of personal data. Privacy Hong Kong wishes to offer its views to the Privacy Commissioner for Personal Data ("the Privacy Commissioner") who is charged with the guardianship of the individual's rights to personal data privacy under the law.

What is the proposal about?

2.1 At present, an individual's financial information which are uploaded to and accessible from the existing consumer credit database in Hong Kong contains his negative credit data. It also includes his positive credit data other than mortgage information. However, information about any mortgage he has taken out are also disclosed and shared whenever he defaults on his obligations, such as non-payment of the mortgage loan when due. This is called negative mortgage data as opposed to positive mortgage data. Positive mortgage data continue to enjoy privacy protection. Put simply, if an individual honours his obligations under a mortgage loan, his personal data in respect of the loan are respected and cannot be disclosed or shared except for good reasons.

2.2 The Consumer Credit Forum ("CCF") now puts forward a proposal that positive mortgage data of all individuals are to be collected, disclosed and shared by credit providers even if the individual has committed no default. The Hong Kong Monetary Authority ("HKMA") supports that proposal. The CCF says that the proposal has the following beneficial effects :

- (i) Disclosure of such mortgage data will help credit providers to make comprehensive and effective credit assessment and borrowers may in some cases hope to get more favourable terms and pricing on credit facilities;
- (ii) it promotes the long term stability of the property market;; and
- (iii) it facilitates lenders to make better risk management in their lending business in that the credit providers may obtain more relevant information of their customers .

2.3 For those concerned with the proper protection of personal data privacy rights, the fundamental question to ask is either :

- (a) whether it is necessary, taking into account the letter and spirit of the Personal Data (Privacy) Ordinance ("PDPO"), 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?

2.4 It is unfortunate that the Consultation Document does not pose either question directly. It is also unfortunate that the Consultation Document does not trace the history and rationale for the opening up of the consumers' credit data in 1998 when credit providers were allowed to disclose and share their customers' credit data among themselves. The general public would need to have a basic knowledge of these to be in a position to understand fully the present proposal which involves a decision to revise the Code of Practice governing the operation of that database and has a far-reaching privacy impact.

The rationale for allowing the sharing of positive credit data in 2003

3.1 At the turn of the 21st century there was a dramatic rise in delinquent consumer debts and the number of personal bankruptcies in Hong Kong soared. These were caused by the fact that too many individuals took on more unsecured loans than they could manage. The strong statistical evidence convinced the Privacy Commissioner that it was necessary to allow credit providers to disclose and share their customers' positive credit data. The disclosure and sharing were and are still restricted, insofar as mortgage loans are concerned, to loans where borrowers have defaulted on payment. They do not apply to positive mortgage loans. In other words, individuals continue to be protected under the PDPO if they honour their repayment obligations. The concession was considered to be an exceptional move during a disastrous economic downturn, which was clearly and strongly supported by statistical evidence. The rationale behind the permission for negative mortgage data to be disclosed and shared is that the borrower has defaulted and can be considered a risk in financial terms. In other words, he brought upon himself the disclosure and sharing.

What distinguish a mortgage loan from other loans

4.1 A mortgage loan is distinguished from other loans in the following aspects:

- (1) A mortgage loan is secured by the value of the property to be mortgaged. It is not the same as, for instance, the granting of credit on a credit card, which is unsecured loan. In

granting a mortgage loan, the credit provider primarily looks to the security in assessing its risks of loss. This is to be contrasted from his decision in extending an unsecured loan where he needs to have sole regard for the customer's financial credibility. Further, HKMA has in place clear and stringent guidance for the credit providers to follow in extending mortgage loans which usually cannot exceed 70% of the value of the property (as assessed by the credit providers).

(2) A mortgage loan can last, in the majority of residential properties, up to and even exceed two decades. This means that the positive data relating to such loans may be continuously kept, updated and accessible until their deletion by the credit reference agencies for quarter of a century, sometime after the mortgage loan has been fully repaid. This is different from an unsecured loan which usually lasts for one to two years. This gives rise to a greater risk of unauthorized disclosure. From a privacy protection point of view, a decision to allow the disclosure and the sharing of positive mortgage data deserves very serious and careful consideration.

(3) Unlike an unsecured consumer credit loan, a mortgage loan is capable of giving the credit provider a source of rental income even after default of the loan has occurred. A credit provider's risk exposure will thus be contained and lessened. This is no doubt a factor which prudent credit providers will take into account in extending the loan.

4.2 The distinctions are important in that it is the value and the potential income of the property that determine the decision on the part of the credit providers to grant a mortgage loan and not the credibility of the individual concerned. To have the negative mortgage data in the database for credit providers to share is sufficient without being excessive.

Has CCF stated a convincing case?

5.1 The CCF's proposal and reasoning which occupy the entire Part IV of the Consultation Document, argue that "in order to achieve the objective of a comprehensive credit assessment of an individual and understanding of his total indebtedness under all consumer credits granted to him, the types of mortgage loans will have to be aligned for both positive and negative mortgage data sharing to avoid potential confusion to the public (sic)" (para 4.22 of the Consultation Document). Whilst it does not explain what the potential confusion to the public is, the statement demonstrates the general ambition of credit providers as a whole. Universally, data users want to have as much of the individual's personal data they can get.

5.2 The CCF revealed that the current delinquency rate for mortgage loan repayment is "relatively" low (para 4.16 of the Consultation Document). This choice of words is ambiguous because it does not say "low" in relation to what rate. One understanding is that it is low by Hong Kong historical comparison, which begs the question as to what the real case is for ANY change! Perhaps it means low compared to unsecured loans, the data of which are already shared by credit providers, which again argues against the need for change. CCF uses Singapore, Taiwan and China as benchmarks to show that these jurisdictions allow more data to be shared. This is convenient but unfortunate, because there is no privacy commissioner or personal data protection law similar to Hong Kong's PDPO. Moreover, the Consultation Document does not offer any statistics to show that, by having allowed positive mortgage data for disclosing and sharing, these jurisdictions have enjoyed lower default rate than before. In any event, our understanding is that the current default rate in Hong Kong is low compared to other jurisdictions in the region.

5.3 In light of the above, the argument that positive mortgage data are necessary in order to obtain comprehensive credit assessment of an individual is untenable for promoting responsible lending and better risk management and promoting the long term stability of property market. The argument that it will result in more favourable terms and pricing on credit facilities is vague as Mortgage Count alone, without further details to be provided by the individual, might be misinterpreted and work unfairly against the individual. In real life, it is not the "mortgage count", but full particulars of all the mortgage loans in the "mortgage count" that may effectively help the individual to bargain with the credit providers for a better deal. It should be up to the individual to choose whether or not to disclose his positive mortgage data as well as to provide a "mortgage count". In short, the case presented for allowing the collection, disclosure and sharing of positive mortgage data in Hong Kong is negligible and should be an embarrassment to the parties who proposed this change.

The impact of allowing positive mortgage data to be disclosed and shared

A. Long lasting

6.1 The Consultation Document does not highlight the stark reality that with the opening up of the positive mortgage data of individuals, there is hardly anything left that credit providers cannot disclose and share in the area of individuals' financial circumstances. The Privacy 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 (para 5.26 of the Consultation Document). It is hoped that he does not consider in principle that full pictures are to be preferred? If he does, then arguably every

other piece of information can be disclosed and shared in the future. The Privacy Commissioner also says that "from a data protection perspective, consideration has to be given as to whether the inclusion of additional mortgage loan type is excessive for the purpose of use of the data, namely, assessment of credit (including mortgage loan) applications and general reviews of borrowers' credit profiles." An intelligent reader of the Consultation Document will surely ask : Has the Privacy Commissioner given consideration to this question and if so, what is his opinion/conclusion? If the Privacy Commissioner who is charged with the responsibility of determining such issues does not have an opinion then how can the general public be expected to be in a better position to give an opinion? But if the Privacy Commissioner has an opinion, why does he not express it in this public relations exercise? We also question why the Privacy Commissioner asks whether this is excessive, when the acid test is clearly whether it is necessary, a very different test!

6.2 The Privacy Commissioner says in para 5.38 that he "recognizes the need for an appropriate balance between the public concern about rising property prices, the privacy rights of individuals and the duty of confidence normally owed by credit providers to their customers, but reserves his position at this stage". This statement is illogical because it cannot be argued that "the public concern about rising property prices" and "the duty of confidence normally owed by credit providers to their customers" are in conflict with "the privacy rights of individuals". If they are not in conflict, then they should not cause any problem to the Privacy Commissioner in his consideration of how to find the "appropriate balance".

6.3 CCF wants the positive mortgage data to be disclosed and shared by credit providers for considering, granting or revising all types of consumer credit facilities, not only mortgage loans. Due regard should be given to the decision given by the Administrative Appeals Board in AAB No. 39/2008 in favour of the HSBC in accepting that their monthly access to customers' credit report does not fall foul of the restriction for access on "review" of credit facilities purpose under the CCD Code. The decision has exposed the frequency of some credit providers accessing the credit reports of customers. By including more positive credit data for sharing and coupled with the practice of credit providers in frequently accessing the credit data under "review" purpose, an individual's credit data will be subject to close surveillance and monitoring, increasing the privacy risks of unnecessary profiling and data mining activities.

6.4 CCF also wants the Mortgage Count to cover mortgage loans of all types of properties. Many of these mortgage loans, especially those relating to non-residential properties are granted by way of commercial credit facilities which do not fall within the

purview of the CCD Code. The blanket inclusion of all types of mortgage properties is not only unnecessary but runs contrary to the spirit of the CCD Code.

B. Ripple effect

6.5 CCF's refined proposal superficially limits the disclosure and sharing of positive mortgage data to only a "mortgage count". The "mortgage count" will inevitably create a ripple effect. It will start a train of enquiries by the credit providers who have access to the data to ask for more particulars from the customers / potential customers. The intrusiveness into the personal data privacy is incalculable.

6.6 It should be noted that the sharing and use of commercial credit data by Authorized Institutions was expanded in 2008 by HKMA through its Supervisory Policy Manual to cover the provision of credit to SME limited companies and unlimited companies. The disclosure of positive mortgage data for sharing under the CCD Code is likely to lead to the opening up of more credit data of individual directors, sole-proprietors or partners for sharing when commercial credit facilities are applied for. This may not be necessary or desirable as it should be the business turnover and profits, rather than the number of Mortgage Count of these individuals that the credit risk management should target.

Consent of data subjects

7.1 PDPO provides in Data Protection Principle ("DPP") 3 that unless the use of the personal data of a data subject is for a purpose directly related to the purpose of collection of his personal data, the prescribed consent of the data subject is required. It is unlikely to fall within the legitimate privacy expectation of the data subjects, in particular, the existing individual customers of the credit providers that their positive mortgage data would be transferred to credit reference agencies and be used by other credit providers for credit rating. Such use of these positive mortgage data is not for a purpose directly related to the purpose of collection of these data, permitted under DPP3. Generally, the purpose of use of the positive mortgage data is fulfilled upon completion of the process of the mortgage loan application by the particular credit provider and confined to its 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 shall be obtained.

7.2 In light of the sensitive nature of the positive mortgage data, 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 may 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 is desirable. The bundling of the consent with other terms and conditions in the account opening document should not be permitted nor should it be couched in complicated language and printed in too small fonts making it difficult to detect and read. The Octopus case recently handled by the Privacy Commissioner gave insight to data users on the collection of personal data via fair means and it would be disappointing if the lessons learnt from that case about fair collection and consent are to be ignored here.

Full picture and views not presented in the Consultation Document

8.1 The Consultation Document does not explain the setting up of the consumer credit database; why PCPD initially allowed the disclosure and sharing of negative credit data (including negative mortgage data); then subsequently allowed the inclusion of positive credit data. More significantly, the Consultation Document does not precisely set out the privacy impact on personal data protection if positive mortgage data are to be disclosed and shared by the credit providers in addition to negative mortgage data. In para 5.37 and 5.38, the Consultation Document seems to suggest that it is the concern of the public, that such positive mortgage data be disclosed and shared. It puts "public concern" on the opposite side of the scale against the privacy rights of the individuals. This is patently incorrect as public concern should be on the same side of the scale. This raises the question as to why the Consultation Document gives greater concern to the well being of the money lending industry than the protection of personal data?

Supplemental consultation document needed

9.1 It is in the public interest that the Privacy Commissioner does publish a supplemental consultation document setting out all the relevant facts and factors (not fully covered in the current Consultation Document) without which the public cannot be expected to give any meaningful views. In the supplemental consultation document, the history and the rationale and the functions of the consumer credit database should be set out; the impact of having the positive mortgage data being disclosed and accessed should be high-lighted from the perspective of personal data privacy and not weighted in favour of the industry which, like most data users, no doubt wants all the information it can get about all individual customers, current or potential. The Privacy Commissioner has in the past emphasised that in the realm of privacy protection he would not accept consent as valid unless the data subject has been fully informed of the relevant privacy implications, yet the full implications are missing even from the Consultation Document!

9.2 In this Consultation, if the Privacy Commissioner receives no substantial objection to the proposal put forward, the probable reason is that the general public has not been properly informed of and understood all the privacy implications of the proposal. Without a supplemental consultation document to put right the serious material defects of the Consultation Document, the responses received by the Privacy Commissioner will likely produce misleading results, which are favourable to data users but detrimental to the privacy rights of data subjects. The short period of this Consultation coupled with the inadequate public consultation belies the important privacy implications attached to the proposal to revise the CCD Code. The supplemental consultation document should allow the public more time to send in their responses and include more public consultation events, including at least one for non Cantonese speakers.

BACK TO THE FUNDAMENTAL QUESTION

Is collection of mortgage data necessary under the PDPO?

10.1 For reasons stated above, Privacy Hong Kong is gravely concerned that the Privacy Commissioner may be lulled into a false sense of security by thinking that limiting the personal information relating to positive mortgage data to be shared among credit providers is an acceptable compromise. The legitimate sharing of positive mortgage data should be a decision based on principle. From the guardian of privacy rights' point of view, to approve or not approve the sharing of positive mortgage data is a matter of principle. If it is not right, then sharing ought not to be allowed. If in principle it is right, then it is legitimate for credit providers to continue to argue for greater disclosure of the individual's personal data. Once the gate is opened, even if only slightly ajar, further erosion of personal data privacy rights will become a constant threat.

10.2 It is plain from this submission that the disclosure and sharing of positive mortgage data is an unnecessary invasion of the individual's privacy. The proposal is contrary to the collection limitation principle of DPP1. The Privacy Commissioner's proposed compromise of allowing only "Mortgage Count" for the time being opens the sharing of the individual's positive mortgage data requests in future for further and more disclosure of the credit data, other than Mortgage Count as risk management of credit providers is always in favour of complete transparency of a consumer's credit profile.

10.3 Privacy Hong Kong therefore urges the Privacy Commissioner to carefully consider the privacy issues mentioned in this Response and clearly reject CCF's proposal as a matter of principle.

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香港地產建設商會

THE REAL ESTATE DEVELOPERS ASSOCIATION OF HONG KONG

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Tel: 2826 0111 Fax: 2845 2521

By fax (2877 7026) and post

7 February 2011

COPY

Mr. Allan Chiang
Privacy Commissioner for Personal Data
12/F, 248 Queen's Road East
Wanchai
Hong Kong



Dear Mr Chiang,

Sharing of Mortgage Data for Credit Assessment

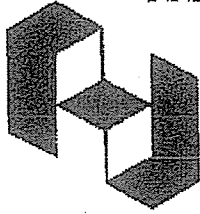
We thank you for your letter of 5 January.

In response to your Consultation Document of January 2011, we do not support the proposed extension of the existing credit data sharing arrangement to include positive mortgage data. We consider the current arrangement is striking the right balance between risk assessment on the one hand and privacy interests on the other.

Yours sincerely

c.c.

SOCIETY OF
HONG KONG
REAL ESTATE
AGENTS LTD
香港地產代理專業協會



香港 九龍長沙灣道 928 - 930 號
時代中心 11 樓 1101 - 02 室
政策二十一有限公司

敬啓者：


有關：共用按揭資料作信貸評估

就個人信貸工作小組及金融管理局建議擴大現時共用信貸機制以涵蓋住宅及非住宅正面及負面貸款的信貸資料，本會對此並不贊同。

按揭信貸資料屬個人私隱，倘若相關資料未被適當應用，對市民的影響就更嚴重。金管局建議增加共用正面按揭信貸資料及非住宅物業負面信貸資料，其中一個重要原因是為保持銀行體系穩定，減低壞帳風險。然而金管局的職責為監管銀行，並非控制市民，要維持銀行體系穩定，就應控制銀行對樓市貸款的比例，例如規定銀行對樓市的所有種類的貸款不得超過銀行本身存款的一定比例(例如三成)，以控制風險，而一直沿用控制銀行審批按揭的準則，例如樓按上限七成或六成，供樓負擔比例不超過五成，已為市民貸款作出一定限制。無論是為保障銀行，抑或穩定樓市，亦不能構成轉移控制風險的責任及出賣市民私隱的理由。

如有任何相關事宜，可隨時與本協會聯絡。

二零一一年二月七日



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環 聯

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Kowloon, Hong Kong

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February 8, 2011

Office of the Privacy Commissioner
For Personal Data
12/F, 248 Queen's Road East
Wanchai
Hong Kong

Attention: Mr. Allen Ting

Fax: 28777026

Dear Sirs,

The Sharing of Mortgage Data for Credit Assessment – Consultation Document

First, we would like to thank you for the opportunity for us to comment on the Consultation Document. As related matters, we also refer to your letters to us addressed to us dated 18 January 2011 and 2 February 2011 on the same subject requesting our response to your questions raised. Please treat this letter as both our response to the specific questions and our submission of comments to you on the Consultation Document.

Please note, however, that our response below is only given to you in the context of the proposals to expand the present scope of credit data to include sharing of positive mortgage data. It is not intended to be our position in a different context and information provided should only be used in conjunction with the relevant proposals and not for any other purposes. Further, information below only contains our present view in response to the proposals and does not constitute definitive undertaking or declaration to do or refrain from doing certain acts if the proposals are adopted.

Your Letter dated 18 January 2011 - Question 6


G. In your capacity as the CRA responsible for processing the Contributed Data, please provide us with supporting information or evidence showing that each item of the Contributed Data to be contributed to you by credit providers is necessary and not excessive for the purpose of customer identification.

The Contributed Data are:

- Name
- Capacity

環聯資訊有限公司

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- HKID Card or travel document number
- Date of Birth
- Gender
- Correspondence Address
- Account number, type of facility, account status and closed date

Our Response

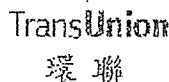
As you are aware, generally as a CRA, other than having to take reasonably practicable steps to ensure that the data subject's data is correctly matched with his existing file, we should also take reasonably practicable steps to ensure that the data contributed is itself accurate. Needless to say, wrong matching of credit information can bring about very detrimental effect on the individual financially or otherwise and induces consumer complaints against different parties involved.

The data fields which are the Name, HKID/Travel Document Number, Date of Birth and Correspondence Address are the key fields of our system developed in conjunction with credit providers to unique identify an individual subject. The data of such subjects may be contributed by different credit providers at different times. Our system has been designed to use the combination of the key data fields that mentioned above with a sophisticated fuzzy matching logic to identify the credit data contributed by different credit providers that belong to the same individual subject and merge the information for the same subject. The complicated logic by using the above key data fields is necessary in order to ensure the credit information as well as the operational calculation of the mortgage count will be linked to the right individual subject. Insufficient credit information will affect the accuracy of the identity and hence the matching of the credit data. Our system has been in place since 2001 and we have achieved a very high accuracy rate with our matching logic. The removal of any data field mentioned above must have an adverse impact on the accuracy of our existing matching system but it is difficult to estimate how much the impact is as we do not have actual empirical data of various scenario. Further, please note that all credit bureau around the world that we know of all use a combination of data fields as part of their matching system in order to enhance the accuracy as much as possible. This is standard credit bureau practice.

Please also note that at the moment, credit providers do not have uniform practice in what identity data they contribute. Moreover, not all data fields are provided. Therefore, the same consumer may have different fields contributed by different credit providers. By way of example only, one credit provider may contribute a consumer's name, HKID number, gender while another may contribute the name, passport number and address. For this reason, our matching system currently contains all the above fields to maintain its accuracy and stability.

環聯資訊有限公司

香港九龍尖沙咀廣東道9號浩康大廈第6層1001室 電話 (852) 2979 3000 傳真 (852) 2890 4589



TransUnion Limited
Suite 1001, Tower 6, The Gateway
9 Canton Road, Tsim Sha Tsui
Kowloon, Hong Kong

Tel (852) 2979 3000
Fax (852) 2890 4589
www.transunion.hk

We would like to provide more information on individual data fields. The data field "account number" is used to identify the same account that has been contributed by the specific credit provider for ongoing monthly update. The data field "type of the facility" is used to identify if the credit account is a mortgage account for special process handling. The data field "account status" is used to differentiate if the mortgage account is a negative account or a positive account for different process handling. The data field of "closed date" is used for data retention period calculation and control. Hence, all these fields are necessary for updating and handling pursuant to the requirements of the Code of Practice on Consumer Credit Data.


The data field Capacity is an industry requirement in order for the mortgage count to be categorized into different capacity level such as number of mortgage count as a borrower, number of mortgage count as a guarantor.

Partial ID

We understand there are concerns regarding the necessity of providing the full set of HKID number as part of credit data file. This also relates to your questions sent to us by email dated 28 January 2011. As mentioned above, as CRA, we need to take reasonably practicable steps to ensure the accuracy of the input data. We currently have in place filter that prevents non-authentic or wrong HKID card number from being entered into our system. For example, HKID card with less than one alphabet and 7 numbers are rejected from our system. Also, current, we are able to ascertain with the full set of HKID number whether the number is genuine as the digit in brackets has a pre-determined relationship with the 6 preceding digits. Any non-authentic HKID number will be rejected. This ensures the HKID number being input is genuine and correct and helps to maintain the accuracy of the data. It also helps the bank to detect any fraud or inaccurate input of HKID.

Only using partial ID for matching is not reliable as there can be many variations with the same partial ID information. Currently, as it is not mandatory under the Code or the law to provide ID, not all of the credit providers provide this field. Partial ID cannot be used for our ID authenticity check. Even if partial ID is used in conjunction with other data fields for matching, the result may still be inaccurate. Note that it is not unusual for individuals with similar names to have similar addresses. We also had cases where individuals with similar names had resided in the same address at different times. Hence, while using only partial ID and relying on other data like name and address will increase the accuracy rate compared to just using the partial ID, in general, the more data fields are used the higher the accuracy.

Please also note that if there are proposals to use only partial ID, the industry should be consulted and data input practice should be made uniform. A long lead time and system



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changes are required not just by us but by credit providers as well. It may not be feasible to make any change concurrent with the current proposals.

Your Letter dated 18 January 2011 - Question 9

To assure the customers that their financial data will be adequately protected, please let us know (i) if you are prepared to follow the advice of the Commissioner indicated above; and (ii) whether and how you will provide further security safeguards.

Our Response

With respect to the proposal in paragraph 5.45 on conducting a compliance audit on the expanded data scope on the adequacy of our data handling system and including the scope in our annual privacy compliance audit, provided we receive more specific guidelines from your office on the scope and adequate comments on the compliance plan, we are happy to adopt this proposal.

With respect to paragraph 5.46 regarding periodic IT security audits, we would like to point out that currently, the following measures are already in place which cover security issues:

1. Pursuant to Clause 3.14 of the Code of Practice on Consumer Credit Data, we have been engaging independent auditors to conduct annual compliance reviews under the Code and the Privacy Ordinance. The reviews specifically cover the security of consumer credit data. We have submitted 7 compliance reviews in the past already and in each review, there have been no significant findings by auditors or there have been no significant comments from PCPD. We do not see the need or justification to impose a compliance review and separate security audit.
2. On a periodic basis, we have a dedicated audit team from our headquarters in the US to conduct onsite audits which covers in particular system security. The audit ensures we comply with global system security standards. We have had no significant findings in the past. The audit principles used by our US team are based on ISO 17799 which we understand is the basis of ISO 27002.
3. Our annual financial audit also extends to data security on a system and network level and we have had no significant findings in the past.

We believe the current audits in place are sufficient to address any system security issue. If it helps to assure public confidence, upon appropriate confidential undertakings by your



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office, we may consider sharing with you our internal US audit reports which is based on ISO 17799. Given that the incremental data is not significant compared to the size of our existing database and on the basis that we have adequate controls and audits in place to address any security concern, we therefore do not support the proposal. We do not have plans at this point to provide further security safeguards in view of the expanded database.

Your Letter dated 2 February 2011

Proposal to include in the Code prohibition against transfer of consumer credit data to place outside Hong Kong by a CRA

Our Response

Please be informed that we have not and do not have plans to transfer consumer credit data outside Hong Kong whether or not there is any express prohibition.

If you have any questions on the above, please do not hesitate to let us know.

Yours faithfully,

For and on behalf of
 TransUnion Limited

cc CCF

c.c.HKMA

c.c. Policy 21 Limited

Fax : 2890 4589

Fwd: Fwd: Re: Sharing of Mortgage Data for Credit Assessment

Subject: Fwd: Fwd: Re: Sharing of Mortgage Data for Credit Assessment

From:

Date: Thu, 27 Jan 2011 10:05:33 +0800

To: Consultation2011@pcpd.org.hk,

Dear

We have received an email response. Please handle it.

Regards

----- Original Message -----

Subject:Re: Sharing of Mortgage Data for Credit Assessment

Date:Thu, 27 Jan 2011 09:30:37 +0800

Fron

To:Hong Kong Office of the Privacy Commissioner for Personal Data
<enquiry@pcpd.org.hk>

My views are:

- Information shared should be on bad credit records only.
- Information on good records should only be shared with the explicit consent of the data subject.
- The data shared, whether good or bad records, should only be kept in the central shared data bank for a reasonable period of time span unless the data subject explicitly agreed for it to be extended.

Ada Chan

>>> "Office of the Privacy Commissioner for Personal Data, Hong Kong"

<enquiry@pcpd.org.hk> 05/01/2011 19:41 >>>

Dear DPOC Member,

I am writing to inform you that we have commenced a public consultation exercise to seek the views of stakeholders and the general public on the privacy implications of the proposed extension of the existing credit data sharing system to include both positive and negative mortgage data in respect of residential as well as non-residential properties. The present system enables the credit providers to share through a credit reference agency both positive and negative credit data for unsecured loans, but only negative credit data for residential mortgage loans.

The proposal to share additional mortgage data of consumers among credit providers has been made by the financial services industry and supported by the Hong Kong Monetary

Authority as a measure that would help credit providers in enhancing the completeness and accuracy of their credit risk assessment, thus creating a more efficient credit market and reducing the risk of asset bubble in the property market as a result of indiscriminate borrowing by some consumers and inability of credit providers to identify borrowers with more indebtedness than they can repay.

I recognize and appreciate the broader public interest that the proposal will serve, namely, that prudent lending and responsible borrowing would help safeguard the overall financial stability of Hong Kong. On the other hand, I must point out that the proposal has serious implications on data protection and privacy. It has been widely acknowledged that consumer's credit information, such as the overall credit exposure and the number of outstanding mortgages, are data that are very personal and private to the individuals concerned. From a data protection perspective, more disclosure and use of customer data is tantamount to greater privacy-intrusion.

The privacy issue here is whether the proposed sharing of mortgage data is necessary but not excessive for its intended purpose of use and what safeguards need to be put in place to ensure data privacy. We need to strike a fair and reasonable balance between the public interest and the privacy interests of the individual so that the former is not fostered unduly at the expense of the latter. For a detailed explanation of the proposal and the privacy issues concerned, please refer to the attached Consultation Document.

Your views are invited on this subject before the conclusion of the public consultation exercise on 8 February 2011. They will be duly taken into account before I finally make a determination on the privacy issues concerned and make appropriate amendments to the Code of Practice on Consumer Credit Data.

Additional copies of the Consultation Document are available at our office and at all Public Enquiry Service Centres of District Offices (by tomorrow afternoon). It is also available on our official website at <http://www.pcpd.org.hk>.

Yours sincerely,

Allan Chiang
Privacy Commissioner for Personal Data

Encl.

--

Office of the Privacy Commissioner for Personal Data, Hong Kong
12/F, 248 Queen's Road East, Wanchai, Hong Kong
Tel: (852) 2827 2827 Fax: (852) 2877 7026
Internet: <http://www.pcpd.org.hk>

香港個人資料私隱專員公署
香港灣仔皇后大道東248號12樓
電話：(852) 2827 2827 傳真：(852) 2877 7026
網址：<http://www.pcpd.org.hk>

Comments from Dr KP Chow, a member of the Standing Committee on Technological Developments, on 6 issues of Consultation Paper

I read through issue 6 in details and it looks good and comprehensive. Following are my comments:

1. I support the idea of privacy compliance audit as a tool to ensure the personal data be properly managed and protected, and only be collected when necessary, and should only be kept for the period of time that is necessary.
2. I support the idea that privacy compliance audit be conducted annually to ensure the data handling system and process of CRA be in line with the Ordinance.
3. I support the idea that IT security audit be conducted to ensure the confidentiality, integrity and accountability of personal data stored in the IT systems used by CRA are enforced.
4. In financial institutions, IT security audit is required to perform annually. Will the Commissioner consider recommending IT security audit be carried out periodically?
5. In the proposal, the IT security best practice ISO/IEC 27002 is included as a reference. Is there any similar "best practice" document for privacy compliance audit to follow? If yes, shall it be included as a reference? Moreover, with such reference, we can ensure the DPPs are properly "audited" in the privacy compliance audit.
6. In practice, should we consider including the IT security audit of systems that hold personal data in the privacy compliance audit, as the DPP 4 states that security of personal data should be ensured. One may argue that penetration test (a common test in IT security audit) is not required in privacy compliance audit. On the other hand, if an IT system that stores personal data is vulnerable, it already violates DPP 4.

KP Chow

COMMENTS

1 When credit sharing was first introduced the Public were promised a reduction in interest rates on Credit cards by the Hong Kong Banks -This has not happened (Aeon Credit is still charging 40% pa in some circumstances - a rate of Usury and one that I hope the HKMA is addressing) Will we have an assurance (monitored by the HKMA) that this will happen this Time

Any reduction in credit risk which this proposal in theory and practice should ensure (and I speak as one who has held over US\$1mm of Lending Authority with a major Global bank) is to be welcomed but should also benefit the debtor

2 As far as I am aware there is only one CRA in HK -TransUnion which is USA owned and operated

Can we be assured this CRA does not disclose data to any external to Hong Kong credit agency or its shareholders
inter alia including proposed mortgagee details

3 Additionally why does A "World City " as Hong Kong brands itself not have its own CRA ??

4. Whilst I obtained the Consultation Document in English

I was unable to locate any public discussions held in English or with Translation facilities available for English and other ethnic minority Language speakers.

Since English is an Official Language I question whether "proper public consultation"

Has been carried out.

Thanks
Mike Gray

First of all let me say if it is a Public Consultation it should provide translation facilities for ethnic minorities including Caucasians and the other official language of Hong Kong -English-otherwise How can this be a a real Public Consultation (The Chamber does have translation capability)

In the absence of such would you Please ask the following question on my behalf

1 When credit sharing was first introduced the Public were promised a reduction in interest rates on Credit cards by the Hong Kong Banks -This has not happened (Aeon Credit is still charging 40% pa in some circumstances - a rate of Usury and one that I hope the HKMA is addressing) Will we have an assurance (monitored by the HKMA) that this will happen this Time Any reduction in credit risk which this proposal in theory and practice should ensure (and I speak as one who has held over US\$1mm of Lending Authority with a major Global bank) is to be welcomed but should also benefit the debtor

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can we be assured this CRA does not disclose data to any external to Hong Kong credit agency or it's shareholders

inter alia including proposed mortgagee details

3 Additionally why does A "World City " as Hong Kong brands itself not have it's own CRA ??

If you cannot do the above Please advise and I will attend personally as 's close to me

Thanks

Mike Gray

Subject: Submission of Comments to CCD Consultation

From:

Date: Mon, 7 Feb 2011 13:06:46 +0800

To:

Submitted by: J Kao

Contact Number

[Issue 1]
(Nil)

[Issue 2]
(Nil)

[Issue 3]
(Nil)

[Issue 4]
(Nil)

[Issue 5]
(Nil)

[Issue 6]
(Nil)

[Other Comments]

I object to the whole concept of this proposal.

I consider this to be the HK Govt to tighten individual freedom and privacy and I treat it with skepticism.

COPY

----- Original Message -----

Subject:The Sharing of Mortgage Data for Credit Assessment

Date:Mon. 7 Feb 2011 02:24:57 +0800 (HKT)

From:

To:enquiry@pcpd.org.hk

The Sharing of Mortgage Data for Credit Assessment

I Strongly against the new proposal

The negative credit data as currently permitted under the existing Code has given sufficient information to bankers to access the creditability of borrowers. If one has no negative records, bankers can use the information from borrowers to access their creditability. That has worked well in the past and present.

Even today, if I did not get the information (which is unimportant to the loan application) to the bankers as they request and yet I am fully met their loan requirement, bankers can still reject my application for loan.

On the other side, I, as consumer, have little protection even that protection is written in law. I saw little action was taken against wealth and most powerful organizations in Hong Kong when they commit the offences. e.g Lehman Brothers case, MTR disclosure of personal data to companies for marketing purpose. I, as ordinary citizen, can hard to flight with them with the given time and resources.

Without time, I have to stop here.

Best regards

Lui Man Ying

7-2-2011

07/02/2011 8:59

7 Feb 1011

關於信貸資料庫之意見書

石：私隱處署署長
 灣仔皇后大道東248號12樓
 by phone: 2827 2827
 FAX: 2877 7026

From: Mr. NG
 Mobile:
 FAX:

敬啟者

(一) 信貸資料庫之儲存資料，應以信匯正式判決 (JUDGEMENT) 為準，而不是非，不可沒判，先以定罪予以登記。
 信貸資料庫不可草率區處，及不理清點息白予以登記。
 否則被害人遭人誣告，整惡是否不公？

(二)

如原告拆銷此有關訴訟，則資料庫應除名 REMOVE 有關記錄。
 (如原告自知理虧或欺詐)
 以免造成原告遭人誣告，而受害受害者或無法取得銀行融資。

(三) 資料庫之信貸人：ID 號，住宅電話，或資產資料，不應外洩，
 以免歹徒利用，構成對其人身安全或治安之威脅。
 (例：歹徒利用渠道，銀行相熟之朋友，親戚，獲悉...等)

上述之不公平情況，希主持公道正義一併致慮之。

專此敬啟
 私隱處署署長 翁譽
 或有關人士



敬啟

Subject: Submission of Comments to CCD Consultation

From

Date: Thu, 6 Jan 2011 10:18:23 +0800

To:

Submitted by: Ngai Wai Pang

Contact Number:

[Issue 1]
Object

[Issue 2]
Object

[Issue 3]
Object

[Issue 4]
Object

[Issue 5]
Object

[Issue 6]
Object

[Other Comments]
(Nil)

Subject: Please help to save our personal data and HK free market

Date: Thu, 6 Jan 2011 11:24:50 +0800

From:

To:

Dear Sir/Madam,

Regarding the current policy on tax penalty and the reivew of positive credit database for personal loan/mortgage information release to banks, I would like to express my views on this topic.

1. HK is famous for its respect to personal privacy. By releasing those personal financial information to banks is totally unacceptable. Why we allow the banks to use our information for their business growth(e.g. cross-sell activities,...). There must a law in place to fine those banks that using our personal data for sales and marketing purpose without our consent before we do such kind of review to release our personal data. Everyday I am receiving over 30 cold calls already, I don't want to receive 50 or 100 in the future(looks like I will be a full time telephone operator soon). Please don't expect the banks will follow the guideline, there MUST have the law to control the banks on how to use our personal data.

2. HK is a worldwide free market. Why there are more and more rules to slow down the whole city? I understand this may not related to PCPD. But if the government continue to control investment activities. We will go socialism sooner or later. Everyone will more to SG or somewhere else. There should have some laws to make sure all the deals are as fair as possible. But not setup some rules that only follow government will or make sure the banks can earn much more. If follow the government logic, if the price of the shampoo go up very high(say \$1000), then government will setup the price control to supermarkets? We should understand that no one in HK is powerful enough to control the whole market(except the government). It really looks like we are going back to the 70's in China.

I do hope that someone can consider the points I mentioned. We want to help to put the government back to the right track. We want to continue to live in this lovely place.

Yours Faithfully,

Peter Lung

Subject: 共用按揭資料作信貸評估
From: Simon Wu
Date: Wed, 9 Feb 2011 05:21:14 +0000
To: <consultation2011@pcpd.org.hk>

本人強烈反對共用按揭資料作信貸評估,因此舉嚴重侵犯本人的私隱,原因如下:

- 1)其目的只有一個:保障貸款機構的利益,並非貸款人的利益.
- 2)即使外國,如美國,有此安排,但貸款機構,房屋貸款機構等仍然出現問題,所以根本無此需要!
- 3)貸款機構所謂好處只是似是而非的東西,例如利率更佳.簡單而言,只會有錢人的利率更佳;窮困,中下層人士及收入不穩定的人的利率永遠不會更佳.你們看看現時真正的貸款情況便知(例如一般銀行私人貸款與財務公司的利率及對象比較,便有很大不同.),所以這只是一小撮人的利益及沒有因果關係!

總括而言,共用按揭資料作信貸評估只是犧牲大部份人的個人私隱,而滿足一小撮金融機構的私利,所以本人強烈反對共用按揭資料作信貸評估.

主題：共用按揭資料作信貸評估

日期：2011年2月7日

意見：①贊成擴大共用負面信貸資料至包括非住宅按揭貸款。

②不贊成擴大共用正面信貸資料至任何按揭貸款。原^{建議}因是共用的資料只是「宗數」，下面④會加以解釋。

③信貸資料機構不應收集和儲存以下三項有關按揭貸款資料：「通訊地址」、「帳戶號碼」和「帳戶狀態」。本人認為沒有以上三項資料也能「準確識別」身份及也能「編制宗數」。信貸資料機構儲存這些資料會增加資料不當使用的風險。

④只共用「宗數」作參考，倒不如不共用任何資料^作參考。

假設人士甲有一宗涉及五千元按揭，又假設人士乙有^合五宗共涉及四千元按揭，信貸提供者如只知人士甲

正面
有一宗和人士乙有~~四~~宗按揭在手，它怎能做到
諮詢文件 5.19 段的內容？即是「~~會~~為借款人（人士乙）
帶來（比人士甲）更有利的條款和價格」。業界
有責任明確顯示出上述情況下，它們要求共用
正面按揭的「宗數」是有用。

還有，如果人士乙所持的按揭是有擔保而人士
甲則沒有。信貸提供者在不能掌握信貸種類而單
憑「宗數」作參考對人士乙不公平。

基於只憑「宗數」作參考可能帶來誤導效果，本人
強烈反對有關使用宗數資料的建議。

意見人：Tom Lam

Subject: [SPAM] Consultation paper on the sharing of mortgage data

From:

Date: Mon, 07 Feb 2011 20:58:41 +0800

To: consultation2011@pcpd.org.hk

Dear Sirs,

I've looked at the consultation paper and the various comments from the media and academics etc .

I must say that i support the proposal of sharing the positive mortgage data as suggested. Being a member of the community, i think the proposal could make us stand "fair and the same" in front of the lenders. When knowing how many properties we have on hand, the lenders can differentiate. This would also help lowering down the "investment/speculative" activities on properties and the majority who just want to have one property for accomodation, and with repayment ability, may be given better consideration of credit. The proposal must be able to review the full properties on hand to differentiate the investors from the users, thus, i support the inclusion of all the existing properties.

I treasure my privacy, but i think that the existing proposal is only reviewing very limited info, just counts of properties as suggested in the consultation paper. With the privacy safeguard and requirements put up by the Privacy Commissioner, and that the company running the credit data sharing does have a good track record, even after the sharing of credit cards data etc back to some years ago, i think that this could be overcome.

To end this, I find the proposal acceptable.

Regards
Wong Mei Seong

Subject: 共用按揭資料作信貸評估

From:

Date: Mon, 7 Feb 2011 10:16:06 +0800 (HKT)

To: Consultation2011@pcpd.org.hk

專員先生你好,

對於增加建議擴大現時共用信貸資料安排方面的個人信貸資料保障,本人是反對的.理由是

1. 增加信貸資料,並不能如外界般如期減低借錢利息。反而會增加利。
2. 在的資料庫資料很多,很多並沒有更新,要個人自己主動更新,請問有多少人會主動去看,,資料不完整,怎有真實的反影。
3. 在申請按揭時,銀行會要求提供個人財務資料,為何要將這些財務資料和其他人分享。

市民

何勇波

2011年2月7日

種類 投訴

詳情

TO HONG KONG MONETARY AUTHORITY.

I OBJECT TO THE IDEA OF SETTING UP MORTGAGE RECORD FOR HONG KONG BANKS.

HONG KONG BANKS ARE USING CREDIT RECORDS TO BLACKMAIL THREATEN INNOCENT PEOPLE.

HONG KONG BANKS CAN ALSO USE MORTGAGE RECORDS TO BLACKMAIL THREATEN INNOCENT PEOPLE.

EVEN IF YOU SET UP MORTGAGE RECORDS, HONG KONG BANKS SHOULD NOT GET DETAIL INFORMATION OF WHAT PROPERTIES YOU HAVE, WHAT BANKS YOU GET MORTGAGES FROM. THE MORTGAGE RECORD JUST SAY, YOU HAVE 5 MILLION MORTGAGE IN TOTAL. THAT IS IT.

YOU PRETEND HONG KONG BANKS TO BE GOOD PEOPLE, BUT HONG KONG BANKS ARE THE WORST OF THE WORST. YOU CANNOT IMAGINE HOW MANY DIRTY NASTY TRICKS THEY HAVE.

上載之檔案

Empty box for uploading files.