

**Information Paper for the
Legislative Council Panel on Financial Affairs**

Protection of Consumer Credit Data

Purpose

Pursuant to the request by the Panel vide the Clerk to Panel's letter of 8 December 2003 attaching a complaint about the use of consumer credit data by an authorized institution (AI), this paper reports on the actions taken and to be taken by the Hong Kong Monetary Authority (HKMA) in relation to the protection of consumer credit data.

2. It should first be noted that contrary to what is suggested by the press report attached to the Clerk to Panel's letter under reference, the subject complaint is not related to positive data sharing. The subject incident related to the complaint actually took place in July 2003, before the commencement of positive data sharing on 4 August 2003¹.

Review of the HKMA's guideline

3. The subject complaint was received by the HKMA in late August 2003². Since all complaints are treated in strict confidence, the HKMA cannot disclose the details of the complaint. Suffice it to say that upon receipt of the complaint, the HKMA has reviewed its guideline on the sharing and use of consumer credit data through a CRA (a copy of the guideline is attached at the Annex). In particular, we have assessed whether the guideline has set out clear and specific requirements in respect of the following areas:-

- (i) the circumstances under which an AI may access the database of the CRA;
- (ii) the procedures that should be followed by an AI in accessing the CRA database; and
- (iii) how an AI should handle the consumer credit data obtained from the CRA.

¹ While the revised Code of Practice on Consumer Credit Data, which allows a wider range of consumer credit data to be shared amongst credit providers, came into effect from 2 June 2003, it was not until 4 August 2003 that AIs were ready and started to share positive consumer credit data.

² Since August the HKMA has not received any complaint relating to AI's use of consumer credit data held by a credit reference agency (CRA).

4. The assessment indicates that the requirements specified in the guideline are generally adequate and effective for the purpose of protecting consumer credit data. In relation to (i) above, sections 2.8 – 2.10 of the Code of Practice on Consumer Credit Data (the Code) have already specified the circumstances under which an AI may access the CRA database³. Without repeating the provisions of the Code, paragraph 4.2.1 of the HKMA's guideline states that AIs should have clear and comprehensive policies and procedures to ensure compliance with the Code. In particular, the policies and procedures should be designed to guard against unauthorised access to the CRA database.

5. With regard to (ii) above, paragraph 5.2 of the guideline draws AIs' attention to the requirement of the Code to give proper notification to a customer at the time of application for credit. Paragraph 5.3 further provides that AIs' policies and procedures should set out clearly when the notification should be made, the manner in which the notification is to be made and the type of information to be included in the notification.

6. As for (iii), paragraph 4.4 of the guideline specifies that consumer credit data obtained from the CRA should be properly safeguarded. AIs should ensure that access to CRA credit reports should be on a need to know basis. There should also be restrictions on how such reports may be duplicated, copied or circulated.

7. Nonetheless, the assessment also suggests that, in the light of the recent complaint, it may be desirable if the guideline can provide some guidance on when an AI may access the CRA database for the purpose of assessing the creditworthiness of a customer referred by an intermediary. In this regard, the HKMA notes that the incident has been brought to the attention of the Office of the Privacy Commissioner for Personal Data (PCO). It will take into account the views of the PCO in determining the need for providing such guidance to AIs.

Compliance with the guideline

8. Section 4.7 of the guideline requires AIs to conduct a compliance audit at least annually to verify whether their data management practices are adequate to ensure compliance with, inter alia, the requirements of the guideline. In addition, the HKMA will ensure compliance in the course of its supervision of AIs. The first round of on-site examinations covering over 40 AIs has already been started in December 2003 and is expected to be completed in early 2004.


³ In general, a credit provider is permitted to access a consumer's credit data held by the CRA in the course of (i) considering any grant of new credit to the consumer; and (ii) reviewing or renewing the existing credit facilities granted to the consumer. During the two-year transitional period, access for the purpose of conducting a review or renewal of existing credit facilities is more restricted. Please refer to sections 2.9 and 2.10 of the Code for more details.

Handling of the subject complaint

9. The HKMA has handled the subject complaint in accordance with its normal procedures. The complaint has been referred to the bank concerned for prompt investigation and direct reply to the complainant. The HKMA has made sure that the AI has addressed all the issues raised by the complainant. Appropriate supervisory actions will be taken if there are any supervisory concerns identified in handling the complaint.

Hong Kong Monetary Authority
December 2003

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This module should be read in conjunction with the [Introduction](#) and with the [Glossary](#), which contains an explanation of abbreviations and other terms used in this Manual. If reading on-line, click on blue underlined headings to activate hyperlinks to the relevant module.

Purpose

To specify the minimum standards that AIs should observe in relation to the sharing and use of consumer credit data through a credit reference agency

Classification

A statutory guideline issued by the MA under the Banking Ordinance, §16(10)

Previous guidelines superseded


This is a new guideline.

Application

To AIs which are involved in the provision of consumer credit

Structure


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- 6. Access during the transitional period
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1. Introduction

- 1.1 In response to the financial industry’s proposal, the Privacy Commissioner for Personal Data (the “PC”) has, pursuant to his power under §12(3) of the Personal Data (Privacy) Ordinance (“PDPO”), approved a revised Code of Practice on Consumer Credit Data (the “Code”) to allow for a wider sharing of consumer credit data. The Code is effective on 2 June 2003.
- 1.2 The Code provides practical guidance to credit providers, including AIs and their subsidiaries within the meaning of §2 of the Banking Ordinance, and credit reference agencies (“CRAs”) on the handling of consumer credit data. It deals with issues relating to the collection, accuracy, use, security, access and correction of consumer credit data. A breach of the requirements under the Code would be accepted as evidence of breach of the relevant data protection principles or provisions under the PDPO unless there is


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evidence that the requirement of the Ordinance was actually complied with in a different way, notwithstanding the non-observance of the Code. The PC may issue an enforcement notice to a data user following investigation of an alleged contravention of the relevant data protection principles and provisions of the PDPO. Contravention of the enforcement notice by a data user after the enforcement notice is served on him would constitute an offence.

- 1.3 The minimum authorization criterion under paragraph 10 of the Seventh Schedule to the Banking Ordinance provides that the MA must be satisfied that an AI has, among others, adequate systems of control. The MA considers that this would include adequate systems of control to enable the AI to manage its credit risk effectively, and to properly protect and use consumer credit data. In this regard, the MA will take into account the extent to which AIs make full use of all relevant information (including that obtained from CRAs) in managing their credit exposure and whether AIs have adequate controls to ensure that their consumer credit data are properly safeguarded.
- 1.4 Failure to adhere to the standards and requirements set out in this module may call into question whether the AI continues to satisfy the relevant authorization criterion under the Banking Ordinance.


2. Definition

- 2.1 The terms used in this module have the following meaning:
- “Consumer credit data” means any personal data concerning an individual collected by an AI in the course of or in connection with the provision of consumer credit, or any personal data collected by or generated in the database of a CRA in the course of or in connection with the providing of consumer credit reference service.
 - “Consumer credit” means any loan, overdraft facility or other kind of credit, including leasing and hire-purchase, provided by an AI to and for the use of an individual as borrower, or

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to and for the use of another person for whom an individual acts as guarantor. AIs should follow the requirements set out in clause 2.4.3.3 of the Code in reporting of account data relating to a residential mortgage loan.


- “Credit reference agency” (“CRA”) means any data user who carries on a business of providing a consumer credit reference service, whether or not that business is the sole or principal activity of that CRA.
- “Debt Relief Plan” means an agreement to be concluded between a Debtor and all Creditors, having an exposure to the Debtor, for partial relief and/or rescheduling of debts owed to those Creditors pursuant to the terms of the Agreement for Debt Relief Plans endorsed by the Hong Kong Association of Banks, the DTC Association, the Finance Houses Association of Hong Kong Limited and the Hong Kong S.A.R. Licensed Money Lenders Association.
- “Effective date” means 2 June 2003.
- “Loan restructuring arrangement” means any scheme of arrangement in relation to debts owed by an individual consequent upon a default in the repayment of those debts.
- “Material default” means a default in payment for a period in excess of 60 days.
- “Review” means consideration by the AI of any of the following matters (and those matters only) in relation to existing credit facilities provided to the individual, namely: (i) an increase in the credit amount; (ii) the curtailing of credit (including the cancellation of credit or a decrease in the credit amount); or (iii) the putting in place or the implementation of a scheme of arrangement with the individual.

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- “Scheme of arrangement” means any restructuring, rescheduling or other modification of terms of whatsoever nature in relation to debts owed by an individual, whether as borrower or as guarantor, towards a single creditor or more than one creditors.
- “Transitional period” means the period of 24 months beginning on the effective date and ending on the day before the second anniversary of the effective date.

3. Comprehensive participation

- 3.1 The HKMA believes that a fully-fledged consumer credit database, including both positive and negative data, will be beneficial to AIs (in enabling them to be better informed and make more accurate assessment of customers’ creditworthiness) and consumers (in enforcing borrower discipline, reducing cross subsidisation among consumers with different credit profiles and improving access to bank funding). However, to realise such benefits, the database must be adequately comprehensive and AIs need to make full use of the database in their credit decisions.
- 3.2 In order to enable an adequately comprehensive database to be built up, which would help AIs better manage their consumer credit exposure, the HKMA expects all AIs that are involved in the provision of consumer credit to participate as fully as possible in the sharing and use of consumer credit data through a CRA within the framework laid down by the Code.
- 3.3 The HKMA also considers that using consumer credit data from a CRA for assessing credit applications and conducting credit reviews is an essential part of an AI’s credit management system unless there are satisfactory alternative arrangements for the comprehensive sharing of consumer credit data.
- 3.4 The HKMA would take into account the extent to which an AI participates in the contribution of consumer credit data to and makes full use of the same from a CRA in assessing the

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effectiveness of the AI's credit management system.

- 3.5 Where an AI does not, in the opinion of the HKMA, make appropriate use of the relevant facilities of a CRA, one option would be for the HKMA to require the AI concerned to mitigate the risk by restricting the amount of consumer credit business that it undertakes.
- 3.6 The senior management of AIs should ensure that sufficient priority and resources are devoted to enabling the computer systems of their institution to interface with those of the CRA in a timely and effective manner, in terms of contributing and making enquiry of consumer credit data.

4. Safeguards on information security


4.1 General

4.1.1 For any credit information sharing arrangement to be effective and credible, the data must be properly safeguarded. Otherwise, AIs would be subject to substantial legal and reputation risks. AIs should therefore adopt all reasonable procedures to ensure that consumer credit data disclosed to or obtained from a CRA are properly safeguarded, with regard to the confidentiality, accuracy, relevance and proper utilisation of the information.

4.2 Policies and procedures

4.2.1 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 requirements of the Code. The policies and procedures should be designed to:

- ensure the security, confidentiality and integrity of consumer credit data; and

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- guard against unauthorized access to or use of such information that could result in a breach of the Code and the data protection principles and relevant provisions under the PDPO.

4.2.2 These policies and procedures should be approved by the Board or a designated authority and be properly documented. They should be reviewed and updated regularly to ensure that they remain appropriate in the light of changes in relevant legislation and regulations. Any material amendments to the policies and procedures should be submitted to the Board or a designated authority for formal ratification and adoption.


4.2.3 AIs should ensure adequate management oversight, at an appropriate senior level, on the development, implementation, and maintenance of these policies and procedures. There should also be an effective mechanism in place to monitor compliance with them. Any non-compliance should be followed up, investigated, rectified and reported to management.

4.3 Access control

4.3.1 AIs should have written policies specifying who may authorize access to the CRA database, and the criteria that need to be met for making such access for review purposes. The policies should define clearly the circumstances under which an AI may initiate reviews.


4.3.2 Only designated persons authorized by management should be able to access the CRA database. There should be clearly defined procedures for the authorization of such designated persons. Such authorization, and any subsequent changes, must be documented.

4.3.3 AIs should maintain stringent control over the use of and changes made to the passwords for access to the CRA database. The passwords should only be made available to the designated persons who are authorized to access the

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CRA database. AIs should avoid using shared passwords (i.e. two or more persons sharing the same password). Under no circumstances should passwords be disclosed to unauthorized persons, e.g. IT maintenance or service contractors.

- 4.3.4 Where access to the CRA database is made through designated terminals, access to the CRA database through such terminals should be restricted only to designated persons, such as by way of password protection.
- 4.3.5 AIs should change the passwords for accessing the CRA database regularly, preferably at least quarterly.
- 4.3.6 AIs should maintain an access log on **all** instances of access to the CRA database. The access log should contain sufficient detail as evidence of compliance with the Code. It should, as a minimum, contain information about the purpose of the access, the date on which the access was made and the staff who made the access.
- 4.3.7 The AI's internal access log and billing records from the CRA should be regularly reviewed, at least on a monthly basis, for unusual access activities, such as an unusually high volume of access activities that is inconsistent with the AI's business. Such unusual access activities might suggest that the designated persons have abused the system. Alternatively, any unexplained shortfall in the number of instances of access in the AI's internal access records when compared with the CRA's billing records might suggest unauthorized access or breaches of the AI's access control.
- 4.3.8 AIs should undertake prompt investigation of any unusual access activities and take prompt remedial actions to follow up any irregularities. Such irregularities, and the reasons for them, should be brought to management's attention. As required by the Code, AIs should report any suspected breaches of the PDPO or the Code to the PC.


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4.4 Confidentiality and retention of CRA credit data

- 4.4.1 AIs should establish a policy on the safeguarding and retention of customer data obtained from the CRA. Specifically, the policy should provide that access to the CRA credit report should be on a need to know basis. There should also be restrictions on how such reports may be duplicated, copied or circulated.
- 4.4.2 Data Protection Principle 2 of the PDPO requires that personal data shall not be kept longer than is necessary for the fulfilment of the purpose for which the data are or are to be used. AIs may need to retain credit reports from a CRA as documentary support for the relevant credit decisions for which the credit reports were obtained, and as file records in the event of subsequent queries or disputes raised by customers. With the CRA database being updated regularly, there would be a breach of the Principles if 'out-of-date' information were to be retained and used for making subsequent credit decisions. AIs should ensure that they do not use out of date credit reports for making credit decisions.
- 4.4.3 Where a CRA credit report is obtained for the purpose of assessing a credit application and the AI subsequently refused the application, or when a customer ceases to have any borrowing relationship with the AI, the AI should destroy the relevant credit reports within a reasonable period unless such reports are to be used for other permitted purposes.

4.5 Data accuracy

- 4.5.1 AIs should take reasonably practicable steps to check the accuracy of their customers' credit data before passing them to the CRA. Clear procedures should be laid down on how changes to customers' credit data are to be implemented, verified and transmitted to the CRA. As for data updating, the Code requires AIs to update any account data previously provided to a CRA promptly or, in any event,

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by the end of each reporting period not exceeding 31 days, until the termination of the account, whereupon the AI shall promptly update the account data to indicate such termination. In addition, AIs should, as soon as reasonably practicable, update an individual's credit data upon the occurring of repayment or write-off in full or in part of any amount in default; a scheme of arrangement being entered into with the individual; or the final settlement of the amount payable pursuant to such a scheme of arrangement.


- 4.5.2 AIs should also advise their customers or any individuals, in respect of whom a CRA credit report has been obtained, on how to contact the CRA which provided the credit report for the purpose of making a data access and correction request under the PDPO. Where an AI provides consumer credit data which is being disputed by the consumer concerned to a CRA, it should clearly indicate to the CRA the existence of such a dispute and update the data as soon as reasonably practicable upon the settlement of the dispute.

4.6 Audit trail

- 4.6.1 The access log records, any investigation reports and follow up actions on irregularities or exceptions should be properly documented and kept for not less than 2 years. They should be maintained in such a manner that would facilitate compliance reviews and audits.

4.7 Compliance audit

- 4.7.1 AIs should conduct a compliance audit at least annually to verify whether their data management practices are adequate to ensure compliance with the requirements of the Code, this module and internal policies and procedures regarding the sharing of consumer credit data.
- 4.7.2 The audit report should be submitted to the AI's Board or a designated authority for review. This report should assess the overall effectiveness of the data management practices

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in ensuring compliance with the Code and this module. The reports should cover issues like security breaches or violations, management's responses and recommendations for improvement.

4.8 Staff training


4.8.1 AIs should provide appropriate guidance and training to staff who are involved in the sharing and use of consumer credit data through CRAs. In particular, staff involved in the handling of consumer credit data should familiarise themselves with the provisions of the Code, this module and controls to safeguard the confidentiality of such data.

5. Notification of access for review and right to opt-out

5.1 The Code requires credit providers to take practicable and reasonable steps to give prior notification to customers of their intention to access the CRA's database for the purpose of a review unless the review is initiated by the customer, or relates to an obligation of an existing loan restructuring arrangement concerning debts owed by the customer.

5.2 The Code also requires credit providers to give notification to borrowers at the time of application for credit of the choice to opt-out of the positive credit data reporting system in respect of closed account data. The Code also recommends that credit providers should give a written reminder to the borrower –

- (a) within 30 days of the occurrence of a default by the borrower, that unless the amount in default is fully repaid before the expiry of 60 days from the date of the default, the individual shall be liable to have his account data to be retained by the CRA for 5 years as specified by the Code; and
- (b) as soon as practicable upon repayment in full of the credit facility, of his right to opt-out of the positive credit data reporting system.


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- 5.3 Als should ensure that sufficient prominence is given to such notifications. Also, Als should establish clear and comprehensive written procedures for making such notifications to their customers. These procedures should set out clearly when the notification should be made, the manner in which the notification is to be made and the type of information to be included in the notification. As required by the Code, Als should keep proper internal records of notifications of access for review for two years as evidence of compliance with the requirements of the Code.
- 5.4 Als should take appropriate steps to ensure that the CRA is promptly notified of any “opt-out” requested by their former borrowers once the conditions for the opt-out are met by such borrowers.

6. Access during the transitional period

- 6.1 Subject to certain exceptions, the Code provides that a credit provider shall not, during the transitional period, be entitled to access any account data through a credit report, unless the access is made under any of the following circumstances:
- considering a grant of new consumer credit (but excluding increase in any existing credit amount)¹ to the individual, or to another person for whom the individual proposes to act as a guarantor;
 - reviewing existing credit facilities currently in default for a period in excess of 60 days, with a view to putting in place a loan restructuring arrangement by the credit provider;
 - reviewing existing credit facilities, for the implementation of an existing loan restructuring arrangement between the individual and the credit provider (whether or not other parties are involved) by the credit provider; or

¹ It is the policy intention of the PCO that such grant of new consumer credit must be in response to an application by the consumer concerned.

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- reviewing existing credit facilities, with a view to putting in place a scheme of arrangement with the individual initiated by a request from the individual.

6.2 The Code further provides that unless the review access is made in relation to an on-going debt restructuring arrangement that was organised prior to the effective date of the Code or was customer initiated, credit providers should give prior notification to customers for all other debt restructuring related reviews conducted during the transitional period.

6.3 AIs should keep documentary evidence of compliance with the above requirements for a period of 2 years for compliance audit purposes.


7. Engagement of CRA

7.1 AIs that use the service of a CRA should enter into a formal contractual agreement with the CRA that requires the CRA to have effective control systems to ensure compliance with all relevant requirements of the PDPO and the Code. AIs should have effective procedures to monitor regularly the performance of the CRA, particularly in respect of its ability to comply with the requirements of the PDPO and the Code.

7.2 An AI should consider whether to terminate its relationship with the CRA if it is aware of unacceptable practices of the CRA, or serious breaches of the requirements of the PDPO or the Code. The contract with the CRA should specify that account data provided by the AI shall remain the property of the AI and that the AI has the right to remove its data on the termination of its contract with the CRA.

8. Hong Kong Approach to Consumer Debt Difficulties

8.1 When the information obtained from the CRA reveals that a customer has incurred a level of indebtedness that may be unmanageable and the customer might have genuine difficulty in

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repaying the loans, AIs should follow the guidelines set out in the “Hong Kong Approach to Consumer Debt Difficulties” to deal with such borrowers.

- 8.2 AIs should consider such cases sympathetically and discuss with the customer concerned to work out a solution that is mutually beneficial for both the customer and the AI concerned. In doing so, the customer should be made aware of the possibility of solving the problem by a Debt Relief Plan.
- 8.3 Where the AI does not have a prior credit relationship with the individual who has applied for credit, the AI should suggest that the individual discuss the problem with the financial institution with which the individual has the major credit relationship as soon as possible.
- 8.4 AIs should not hastily demand immediate repayment of loans or reduce credit lines or actively recommend transfer of the balance. Instead, AIs should follow the framework and procedures which are laid down in the Agreement on Debt Relief Plans, and the framework and procedures for Individual Voluntary Arrangements, and work out a mutually acceptable solution with the customer as far as possible.

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