

**Presentation to the Foreign Correspondents' Club
“Expanding Sharing of Consumer Credit Data:
Where Do You Draw the Line?”**

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The Dining Room, FCC, 2 Lower Albert Road, Central, HK

Sharing of Consumer Credit Data

To evaluate the credit standing of borrowers, credit providers in Hong Kong (typically banks) rely on a system of consumer credit data sharing through the use of a central credit database operated by a credit reference agency (“CRA”).

Consumer credit data refers to any personal data concerning an individual collected by a credit provider in the course of or in connection with the provision of consumer credit, or any personal data collected by CRA in the course of or in connection with the provision of their services.

Negative credit data generally refers to information on default in payments. Positive credit data refers to information on loans that are not in default, i.e. an individual’s overall credit exposure and payment pattern.

The Proposal to Expand Sharing

For a long time, credit providers have been sharing data for unsecured credit facilities as well as negative mortgage data for residential properties. With effect from 1 April 2011, positive mortgage data for

residential properties as well as both positive and negative mortgage data for non-residential properties (collectively Additional Mortgage Data) have also been shared.

The proposal to expand credit data sharing to include Additional Mortgage Data came from the financial services industry and has the support of the Hong Kong Monetary Authority (HKMA). It is intended primarily to facilitate comprehensive credit assessment of applicants for mortgage loans, thereby promoting responsible lending and prudent borrowing.

Consumer credit data are very private to the individuals concerned. Mortgage information is particularly personal and confidential. From a data protection perspective, more disclosure and use of personal data is tantamount to greater privacy-intrusion. Serious consequences to the consumers may arise through the mishandling of their credit information. As the Privacy Commissioner responsible for the protection of personal data privacy, how did I determine whether or not and how to permit the expanded sharing of mortgage data?

Public Consultation

As the issues involved were of immense public interest, I launched a public consultation. In a period of five weeks, we collected many views expressed by members of the public, Legislative Councillors, District Councillors, political parties, academics, members of the legal profession, consumer and privacy advocates, professional bodies and associations representing various trades and industries. In particular, we received 56 written submissions and completed face-to-face interviews with 877 randomly selected household representatives using a structured questionnaire.

Justifications: Better Terms and Interest Rates for Customers

To justify its proposals, the financial services industry explained that with more comprehensive data, they could conduct credit assessment on borrowers more reliably and hence offer more favourable terms and interest rates to those with a healthy credit profile.

More than half of the household interviewees agreed that the proposals would benefit consumers in terms of more favourable credit terms and interest rates. This finding reflects to a large extent public expectation that the financial services industry would honour their promise in offering consumers more favourable credit terms after the implementation of the proposals.

Proponents of the proposals noted that since the introduction of positive credit data sharing arrangement for unsecured credit facilities in 2003, customers with favourable credit records had been able to obtain loans at lower interest rates. Credit providers were able to offer credit worthy customers the transfer of their outstanding credit card balance to personal loans for which lower interest rates were charged.

However, dissenters argued that the lowering of interest rates for unsecured loans after consumer credit data sharing in 2003 was more likely due to increased liquidity in the banking sector.

More importantly, in the course of the consultation, a firm commitment from the credit providers was found lacking. Some of them actually admitted that the current interest rates were already very low and competitive and there was little room for further enhancement of customer benefits. They pointed out that there would be more room for adjusting mortgage interest rates should the present low interest rate trend reverse. However, these arguments could be academic as not a single credit provider volunteered a undertaking that the credit terms would definitely become more favourable with the implementation of the proposals. There was no guarantee that the benefits to them arising from sharing of Additional Mortgage Data would pass to the consumers.

I concluded that the financial services industry has not made out a convincing case that its proposals would benefit the consumers directly and tangibly.

Justifications: Wider Public Interests

Promote Responsible Borrowing and Lending

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

To conclude, I am convinced that the industry proposals will lead to responsible borrowing and lending.

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

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

In the household interviews, more than half of the respondents agreed that responsible lending and borrowing would curb property speculation, and lead to the long-term stability of the property market and the healthy development of the consumer lending market.

Arguments for

The financial services industry has emphasized that effective risk management is the hallmark of any successful financial institution. In this regard, comprehensive data are necessary for the healthy development of

the consumer lending market and minimizing the risks associated with financing speculative activities.

It was pointed out that although the delinquency rate for mortgage loan repayment was presently at a historical low level, this is largely attributed to the exceptionally low interest rate environment. With interest rates expected to rise over time, the repayment ability of customers holding multiple mortgages would inevitably be affected, increasing the likelihood of default.

For example, if interest rate rises by 2% from 1% to 3%, the debt-to-income ratio (DTI) will be increased from the current cap of 50% to a level of 60%. If the interest rate further increases by 2% from 3% to 5%, the DTI will be increased from 60% to 72%. Further, the lower the monthly income of a consumer, the more significant will be the negative impact of the increase of interest rate on him.

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

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

Mortgage tenor: 20 years

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

Monthly income of borrower: HK\$9,200

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

It was pointed out that as of August 2010, residential property prices had surged about 47% since 2009, mainly due to record-low mortgage interest rates. HKMA anticipated that the proposals would help strengthen the credit risk management of credit providers and deter borrowers from overstretching themselves, and in turn would be conducive to the general stability of the banking system. It is important to guard against the risk of any property bubble forming and subsequently bursting, especially at

times when the asset bubble burst is coupled with a surge in interest rates. Banks with sizeable property exposures could create a domino effect on other banks and ultimately affect the confidence in the banking system. Hence, more comprehensive sharing of mortgage data should be of general long term benefit for the maintenance of the banking and financial stability of Hong Kong.

Further, the banks pointed out that with the introduction of extended sharing of consumer credit data since June 2003, overall loan delinquency and credit card bad debt situations have improved significantly.

Arguments against

On the other hand, dissenters have put forward many arguments against the proposals. First, they questioned the causal relationship between the expansion of consumer credit data sharing in June 2003 and the subsequent improvement in the overall loan delinquency and credit card bad debt. As the economy of Hong Kong improved alongside the world's economic recovery from its trough in 2003, it was natural that consumer credit default and bankruptcy rates would drop as well. Further, in US where positive consumer mortgage data sharing had been implemented for a number of years, the banks there still suffered huge losses from their mortgage loans in the 2008 financial crisis.

Secondly, they pointed out that there were many measures to control risks associated with increasing property prices, like limiting the proportion of bank deposit that could be used for mortgage loans, and setting a lower loan-to-value ratio for the mortgage. Stabilizing the property market and protecting the banking system should not be used as a pretext to shift the responsibility of credit management from credit providers to consumers by invading the latter's privacy.

Thirdly, the long-term stability of the property market depended on the government's land supply and housing policies. The proposals could only play a supplementary role. When the property prices are rising together with speculative activities, the sharing of positive consumer mortgage data would not be effective in abating increases in property prices and speculative activities if the speculators have cash and do not have to rely on mortgage loans.

Fourthly, mortgage is a low-risk business and there is no real need for credit providers to include Additional Mortgage Data in assessing customers' credit risks. Even in 2003 when the property prices crashed, with many mortgagors having negative asset values, the default rate for mortgage loans was very low. It should be noted that banks only provided mortgage loans up to 70% of the property value. Also, a mortgage loan could be distinguished from other loans in that it was secured by the value of the property to be mortgaged. Unlike an unsecured consumer credit loan, a mortgage loan is capable of giving the credit provider a source of rental income even after default of the loan had occurred. Thus, a credit provider's risk exposure would be contained and lessened.

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

In response to the comment that properties could generate rental income to offset the credit provider's risk exposure, HKMA clarified that very few repossessed properties were rented out to generate rental income. Banks were not in the business of managing a portfolio of properties for rental purposes. Under Section 88(1) of the Banking Ordinance, banks

not allowed to hold any interest in land in excess of 25% of their capital base. There was thus a strong incentive for banks to ensure repossessed properties would be disposed of in the market, rather than renting them out.

Conclusion

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

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

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

In the end, I concluded that responsible borrowing and lending is, albeit to some extent only, conducive to stabilizing the property market and the banking system.

Overriding Privacy Issue

The question at issue is whether the sharing of Additional Mortgage Data is *necessary* and *not excessive* for the purpose of credit risk assessment.

I appreciate the strong arguments put forward by opponents of the proposal that the requirements of ‘*necessary* and *not excessive*’ are not met. They insisted that ample facts and figures must be produced to prove the case for sharing more mortgage data. Specifically, it was pointed out that evidence set out below has not been made available:

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

I do not agree with the opponents’ view that the sharing of Additional Mortgage Data could not be *necessary* for the purpose of credit risk assessment until real evidence is produced to prove the causal relationship between the absence of such information and the adverse consequences it will bring about.

In view of the wider public interest implications of the proposals, I consider that I should adopt an *anticipatory* approach in making a determination on this privacy issue. This is different from the *remedial* approach adopted in 2003 when the decision to allow credit providers to disclose and share their customers’ positive credit data for unsecured loans was made after a spate of delinquent consumer debts and personal bankruptcies caused by many consumers’ over-commitment in unsecured loans.

In coming to this view, I have taken particular note of HKMA’s portrayal of the risk of possible property bubble forming and subsequent bursting, and the results of the stress test conducted by the banks on the effect of interest rate increases on the consumer’s debt-to-income ratio.

Taking into account (a) the conclusion that sharing of Additional Mortgage Data would result in responsible borrowing and lending which in turn is conducive to stabilizing the property market and the banking

system and (b) the importance of mortgage loans in the Hong Kong's finance sector as they represent 40% of the banks' lending market and probably the most substantial part of a consumer's credit portfolio, the sharing of Additional Mortgage Data should *be necessary and not excessive*.

In adopting this view, I take comfort from the fact that in U.S.A., U.K. and Canada, both positive and negative mortgage data are being shared. In Australia, draft legislation to permit sharing of the additional positive data was released by the Government in January 2011 and scheduled for passing in 2012.

In all these four jurisdictions, non-residential mortgages are not considered as consumer credit loans and hence data-sharing are not regulated as such. The proposal of the financial services industry was to include non-residential mortgage data in consumer credit data sharing. I see no objection to this proposal, as both residential and non-residential mortgage data relate to the consumer's total indebtedness and there is no logical distinction between these two types of data for credit assessment purposes.

To conclude, I find that the sharing of Additional Mortgage Data is *necessary and not excessive* for the purpose of credit risk assessment. This determination has the support of more than half of the household interviewees and many respondents to the public consultation.

Subsidiary Privacy issue: How much Positive Data to be shared?

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

As regards positive mortgage data, the proposed credit providers' access to the CRA's database is restricted to information on the number of mortgages only. This is indisputably the absolute minimum.

The only objection to this arrangement was that the knowledge gained by the credit provider would trigger off further enquiries for details of the existing mortgage(s) from the customer applying for a new mortgage loan. I consider this inevitable development not unfair and in any event, the customer is free to choose whether or not to comply with the credit provider's request for information to evaluate his mortgage loan application.

On the other hand, some respondents have doubted the necessity for the CRA's proposed collection of 7 types of positive mortgage data from the credit providers¹, and suggested that except for the name and Hong Kong Identity Card ("HKID") number, collection of other types of personal data are excessive having regard to the purpose of collection. This is understandable as the whole purpose of CRA's data collection, as presented by the CRA in Hong Kong, is to identify the customer correctly in the data sharing process and HKID number, being unique, should *prima facie* suffice for this purpose. However, it is understood that an individual may supply his travel document instead of HKID to secure a mortgage loan and for some countries the travel document number does change when the document is renewed.

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

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

The accuracy of matching the two records to identify the customer will be enhanced if the address and the date of birth are also provided.

Further, public records (e.g. Court records) only contain individuals'

¹ Name; capacity(i.e. whether as borrower, mortgagor or guarantor); HKID or travel document number; date of birth; gender; correspondence address; and account number, type of facility, account status and closed date.

names and addresses. If “*CHAN Tai-man owed \$10,000 in delinquent taxes to the Government*” was found in public records, the CRA could not determine whether such public information refers to consumer A or B without including their addresses in the matching exercise.

It is therefore necessary for the CRA to use a combination of personal data in order to identify accurately the customer through data matching. Accuracy is important because it is the customer applying for credit who will suffer from a credit report wrongly compiled due to data mismatch. Needless to say, accuracy increases with use of all digits of the HKID number and use of more data in the matching exercise.

I have examined the CRA’s submission on its operational needs and am satisfied that the proposed collection of 7 types of positive mortgage data by CRA is not excessive.

Further, after due consultation with the CRA, I consider that ‘gender’ could be deleted from the data collection list as it contributes only marginal enhancement to the reliability of the CRA’s customer identification work.

Subsidiary Privacy Issue: Pre-existing Mortgage Data

Under the proposal of the financial services industry, credit providers would contribute to the CRA mortgage data of pre-existing mortgage loans and mortgage loan applications received before the implementation date of the proposals, with or without prior explicit notification to the customers. I have to determine whether this is legally acceptable.

Under the Personal Data (Privacy) Ordinance, personal data shall not, without the prescribed consent of the data subject, be used for any purpose other than the purpose for which the data were to be used at the time of the collection of the data, or a directly related purpose.

The industry, having consulted a Senior Counsel, was of the view that the contribution by a credit provider of Additional Mortgage Data of pre-existing mortgages to the CRA for sharing with other creditors was a lawful purpose directly related to the original purpose for which such data

were collected. Although the original purpose of use of the customer's personal data is to grant and maintain the mortgage loan, it should be within the reasonable expectation of the customer when applying for that loan that his personal data would be used for creating a credit profile to ensure the ongoing creditworthiness of the customer. Hence, even in the absence of prior notification there is no need to obtain the explicit consent of the customers for the use of the Additional Mortgage Data as proposed.

The banks stressed that if the mortgage count database was void of the pre-existing mortgage data and only reflected information relating to mortgage loans granted after implementation of the proposals, the effectiveness of their proposals, not only in facilitating more comprehensive credit assessment but also in prompting preventive measures where there were early signs of over-borrowing, would be significantly reduced and delayed.

The banks explained that as the tenor of mortgage loans typically lasted for 10 to 30 years, it might take up to 30 years (i.e. after all pre-existing mortgages were fully repaid) for the database on the number of outstanding mortgage loans to build up to serve its intended purpose. This would significantly impede the effectiveness of the database in enhancing the overall financial stability in Hong Kong.

The Commissioner's Determination

I noted the overwhelming objection from the legal profession and the human rights activists to the interpretation of the law by the financial services industry. I also noted that the layman's view, as gauged from the household surveys, was also overwhelmingly against the industry proposal. It was argued that the customer's personal data were provided to the credit provider concerned in connection with the processing of the original mortgage loan application. The customer could not have contemplated that his/her personal data would be contributed to the CRA and shared by other credit providers. To do so without the prescribed consent of the customer amounted to a violation of mutual trust between the credit provider and its customer.

In this connection, I have sought advice from another Senior Counsel. I agree with his advice that the purpose of data collection from the customer by the credit provider is to enable the credit provider to consider the original mortgage application, not to enable the credit provider to supply the same whether directly or indirectly to another credit provider in the future for the latter to consider whether to grant any credit to the same customer. Accordingly, the use of the pre-existing mortgage data as proposed by the industry is not in accordance with the law, unless the prescribed consent of the customer is obtained.

I do share the concern of the financial services industry and HKMA that the exclusion of the pre-existing positive mortgage data would render the credit database significantly less useful in the immediate future. However, I cannot act beyond the bounds of law to address this deficiency. Given time for the CRA to collect new mortgage data, the effectiveness of the credit database will definitely be enhanced.

Meanwhile, I note that even if the contribution of pre-existing mortgage data is allowed, the banks would only make arrangements on a best-effort basis, subject to the data being electronically available on their systems. I opine that if the credit providers have the will to work together to improve the reliability of credit assessment, they do have means other than sharing pre-existing data through the CRA as the industry originally proposed, albeit less operationally convenient.

In short, on grounds of compliance with the law, **I do not support the industry proposal of sharing pre-existing mortgage data for positive mortgage data.**

[As it turned out, the HKMA has agreed with the banking industry to set up an arrangement whereby declarations made by mortgage loan applicants about their pre-existing mortgages when they apply for new mortgages need to be verified with other credit providers through the CRA, after obtaining the applicants' consent.]

Subsidiary Privacy Issue: Additional Mortgage Data to be used for Non-mortgage credit facilities?

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

The banks emphasized that in order to achieve the principal objectives of the proposals of promoting responsible lending and borrowing and reducing the risk of over-borrowing by consumers, it was necessary for a credit provider to understand the overall credit position of a consumer. They further elaborated that credit providers had to consider a number of factors in assessing the credit worthiness and repayment ability of their clients. Whether there was over-leveraging or over-borrowing was not determined by the amount of a single loan in an isolated case, but rather having regard to the total indebtedness and repayment ability of an individual.

The Commissioner's Conclusions

This issue relates back to the requirements under the Personal Data (Privacy) Ordinance as regards whether the Additional Mortgage Data collected would be excessive for the further proposed purposes of assessing new non-mortgage credit applications as well as review and renewal of the consumers' existing credit facilities.

The industry argued that this was a non-issue as credit assessment had to take into account the overall indebtedness of the customer irrespective of the amount of credit being applied for or reviewed. According to the

statutory guideline issued by HKMA, they had to make full use of the database in their credit decisions.

In this regard, I noted that well over half of the household interviewees did not find it objectionable for the Additional Mortgage Data to be used for such purposes, with the understanding that their written consent would be sought in advance.

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

I noted that under the current credit assessment practice, credit providers generally did not require detailed financial data (such as mortgage data) in processing applications for some credit facilities (such as tax loan).

Further, overall loan delinquency and credit card bad debt had since 2003 improved significantly without the benefit of sharing positive mortgage data. Also, both the number of personal bankruptcies and the average amount of indebtedness had dropped.

I concluded therefore that sharing of positive mortgage data for credit assessment of non-mortgage related credit facilities, irrespective of the amount of the credit, would be excessive.

I consider that a threshold amount of the credit facility involved should be set under which no access to positive mortgage data by the credit provider should be allowed. I have asked for the industry's proposal to define such a threshold but in vain. Pending the industry's submission of such a threshold to the satisfaction of HKMA and my Office, I would restrict the sharing of positive mortgage data to mortgage loan application and review of existing mortgage loans only.

Final Remarks

Ladies and gentlemen, I trust you will appreciate it has not been an easy job for me to make determinations on the privacy issues arising from the proposals of the financial services industry to expand mortgage data sharing. The views expressed for and against the proposals were mostly strong and well-argued. As the Privacy Commissioner, my role is to protect personal data. However, the right of individuals to privacy is not absolute and my responsibility is to balance this privacy right against other rights and public and social interests. I have to explore into grey areas, make interpretations on words prescribed in the Personal Data (Privacy) Ordinance like “necessary but not excessive”, “directly related”, and “practicable in all the circumstances of the case”, and assess the reasonable privacy expectations of the man in the street in specific circumstances.

I believe I have safeguarded personal data privacy in this exercise to the fullest extent as provided under the law. To tie in with the sharing of Additional Mortgage Data, I have also amended the Code of Practice on Consumer Credit Data to enhance the data protection measures to be adopted by the credit providers and the CRA. Among other things, the CRA is required to arrange an independent post-implementation compliance audit and regular IT security audits based on the industry’s best practice standards. Are all these adequate and meeting your expectations? I’ll let you have the floor to comment.

Thank you very much.