

Personal Data (Privacy) Ordinance

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

**The Sharing of Mortgage Data for Credit Assessment
Consultation Document**

**Deadline for Submission of Comments:
8 February 2011**

This consultation document is issued by the Office of the Privacy Commissioner for Personal Data (“PCPD”) for the purpose of public consultation in accordance with section 12(9) of the Personal Data (Privacy) Ordinance (Cap.486).

The PCPD has appointed a consultant, Policy 21 Limited, to conduct the public consultation. If you wish to make a submission in response to this consultation document, please do so in writing in Chinese or English to the following address:

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Room 1101-02, 11/F, Times Tower, 928-930 Cheung Sha Wan Road,
Kowloon, Hong Kong
Tel: 2310 2737
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You may also make your submission online at <http://www.pcpd.org.hk> or by E-mail at Consultation2011@pcpd.org.hk. Should you have any enquiry about this matter, please contact Ms Kan of the PCPD at 3423 6683 or Mr Chua of Policy 21 Limited at 2310 2737.

Submissions should be made on or before 8 February 2011

Please mark your submission: **The Sharing of Mortgage Data for Credit Assessment**. If the submission is made by E-mail, please type **The Sharing of Mortgage Data for Credit Assessment** in the subject field.

The PCPD would like, either in discussion with others or any subsequent report, whether privately or publicly, to be able to attribute comments submitted in response to the consultation document. Any wish to remain anonymous in relation to all or part of a response will be respected, but if no such wish is indicated, it will be assumed that the party making the response may be named. Any personal data provided with a submission will only be used for the purpose of carrying out this public consultation exercise, including the preparation of amendments to the existing Code of Practice on Consumer Credit Data and any explanatory document or commentary in relation to it.

You have rights of access and correction with respect to your personal data. If you wish to exercise these rights with respect to personal data held by us, please contact the Administration Manager of the PCPD at:

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Office of the Privacy Commissioner for Personal Data

5 January 2011

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Part I – Executive Summary

Background

1.1 The Personal Data (Privacy) Ordinance (“the Ordinance”) provides for comprehensive control of the collection, holding, processing, security and use of personal data. Section 12(1) and (3) of the Ordinance empower the Privacy Commissioner for Personal Data (“Privacy Commissioner”) to issue any code of practice for providing practical guidance in respect of any requirements of the Ordinance imposed on data users and to revise the code of practice from time to time. Before revising any code of practice, the Privacy Commissioner is required under section 12(9) of the Ordinance to consult with such bodies representative of data users to which the code as so revised will apply and such other interested persons as he thinks fit.

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

1.3 The purpose of this consultation document is to consult with interested parties and the public in general on safeguarding consumer credit data in relation to the financial services industry’s proposal to expand the existing credit data sharing arrangement. The financial services industry intends the proposal to benefit both consumers and credit providers. A principal objective of the proposal is to promote responsible lending by credit providers and responsible borrowing by consumers and to reduce the risk of over-leveraging on residential or non-residential property mortgages as security for the consumers’ indebtedness.

1.4 If the proposal of the financial services industry is adopted, the Privacy Commissioner will revise the existing Code pursuant to section 12(3) of the Ordinance to specify the scope and extent of the additional credit data sharing by credit providers and any further safeguards to personal data privacy which are appropriate in light of the additional sharing arrangement.

1.5 A contravention of the Code does not of itself constitute a breach of the Ordinance. However, such a contravention may be used as evidence against the person concerned in proceedings before a magistrate, court, or the Administrative Appeals Board (Section 13(2) of the Ordinance refers), as well as in any case before the Privacy Commissioner.

Code of Practice on Consumer Credit Data

1.6 The Code was first gazetted in February 1998 and took effect on 27 November 1998. It deals with collection, accuracy, use, security and access and correction issues as they relate to personal data of individuals who are, or have been, applicants for consumer credit. The Code covers, on the one hand, CRA and on the other hand, credit providers in their dealing with CRA and debt collection agencies.

1.7 The current version of the Code (which was a second revision) was gazetted on 23 May 2003 and took effect on 2 June 2003. It established a new regime in respect of the sharing of “positive” and “negative” credit data amongst credit providers through the use of a central credit database operated by a CRA. Since the introduction of sharing positive credit data of primarily unsecured consumer credit, many credit providers have indicated that access to positive consumer credit data has helped strengthen their credit risk management, which in turn has enabled them to offer credit products with more competitive terms to consumers.

1.8 The current version of the Code imposed a twenty-four month transitional period during which credit providers were barred from accessing positive credit data in the course of renewal of existing credit facilities and even the access for the purposes of reviewing existing credit facilities were only restricted to certain prescribed circumstances. This transitional period has expired on 1 June 2005 and this means that there is now full usage of positive credit data of primarily unsecured consumer credit by credit providers subscribing to the CRA.

1.9 The permitted scope of credit data sharing under the current version of the Code includes negative mortgage data for residential properties. It does not cover positive data of mortgages. Only when there is a currently outstanding “material default”, which means a default in payment of a mortgage loan for a period in excess of 60 days, that the default data of the relevant consumer will be made available for sharing under the Code.

The industry’s proposal

1.10 The proposal to include the sharing of both positive and negative mortgage data in the Code is put forward by the Consumer Credit Forum (“CCF”) and supported by the Hong Kong Monetary Authority (“HKMA”). CCF is a joint forum of the Hong Kong Association of Banks, the Hong Kong Association of Restricted Licensed Banks and Deposit-taking Companies, HKSAR Licensed Money Lenders Association and the Finance Houses Association of Hong Kong.

1.11 CCF, as the representative of the financial services industry, proposes to expand the current credit data sharing arrangement to (i) allow limited sharing of positive credit data of mortgage loans on both residential and non-residential properties granted to consumers and (ii) extend the existing sharing of negative credit data of residential mortgage loans to cover non-residential mortgage loans.

1.12 Details on the proposal are set out in Part IV of this consultation document. In essence, the industry's proposal features :

- (a) disclosure to the CRA of (i) positive mortgage data (with limited items) in respect of residential and non-residential properties and (ii) negative mortgage data in respect of both residential and non-residential properties (as opposed to sharing of only negative mortgage data for residential properties as at present);
- (b) disclosure to the CRA of such data (referred to in (a) above) in respect of borrowers, guarantors and mortgagors (data disclosed at present relate to borrowers and guarantors only);
- (c) disclosure to the CRA with respect to pre-existing mortgages (at the time of implementation of the proposal) positive data for residential properties, and both positive and negative data for non-residential properties, with or without prior explicit notification to these customers, in preparation for access and use subject to (d) and (e) below;
- (d) (subject to the customers' written consent) use of the data immediately after the implementation date for credit assessment of applications for both mortgage loans and other credit facilities; and
- (e) (subject to the customers' written consent) use of the data not earlier than 24 months after the implementation date for review of the customers' general credit portfolio.

Considerations for public consultation

1.13 The current provisions of the Code provide a framework for the sharing of positive and negative credit data. It has been formulated with appropriate data protection safeguards and restrictions to protect the personal data privacy interests of consumers. A proposal to broaden the scope of credit data sharing would be an extension of that framework and, if allowed, would require a commensurate level of data protection safeguards and restrictions to be put in place to ensure the protection of the consumers'

privacy interests. Those data protection safeguards and restrictions would serve to ensure compliance with the provisions of the Ordinance.

1.14 The Privacy Commissioner notes that the proposal to share the positive mortgage data of consumers among credit providers has been made by the financial services industry as a measure that would help credit providers in enhancing the completeness and accuracy of their credit risk assessment, bringing benefits to the economy through a more efficient credit market and a reduced risk of asset bubble in the property market as a result of indiscriminate borrowing by consumers and inability of credit providers to identify borrowers with more indebtedness than they can repay.

1.15 The Privacy Commissioner further notes the public concern over the recent increases in property prices and the rising trend in the mortgage debt-to-income ratio. As pointed out by the industry, property prices are affected by internal factors like supply and demand, as well as external factors like the flow of hot money into Hong Kong. Any major correction in property prices may result in significant increases in defaults and bankruptcies, posing a serious threat to the financial health of borrowers, mortgagors, guarantors, credit providers and Hong Kong's economy as a whole.

1.16 On the other hand, the Privacy Commissioner wishes to point out that the industry's 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 individual concerned. In a lending and borrowing relationship, it is also acknowledged that the borrower has an equal share of responsibility and obligation to provide relevant information to enable prudent lending. The issue here is whether such information is necessary but not excessive for the purpose of use and, if so, what safeguards need to be put in place to ensure data privacy.

1.17 In deciding to proceed with the consultation, the Privacy Commissioner considers there are three factors that are central to a solution that strikes a balance between the public interest and the data privacy interest of consumers, namely:

- (a) ***The broader public interest.*** The issues in question need to be placed in a broader context than that of the recent increases in property prices and the rising trend in the mortgage debt-to-income ratio. In essence, the public interest is best served if the proposed measures could help develop a healthy mortgage lending environment that preserves the stability of Hong Kong's financial markets and the economy more generally.
- (b) ***The relevance of additional mortgage data to be used in credit assessment.*** The collection of additional mortgage data by credit providers (through data sharing among credit providers via the credit database of the CRA) should not

be excessive in relation to the purpose of credit assessment. The fundamental principle applied to any situation in which personal data are collected can be simply stated: the collection of personal data should be kept to the minimum necessary for the purpose(s) for which they are to be used. In the present context, the relevance of the data needs to be assessed in terms of their value and contribution to the public interest.

- (c) ***The individual's rights to data privacy.*** The consumer, being the subject of the additional mortgage data concerned, should have the right to make an informed choice whether to allow his data to be shared. Informed choice should be made available to applicants before sharing their mortgage data when applying for a consumer credit facility. Consent to the sharing of the additional mortgage data, and the continued use of such data for future credit reference, is wholly desirable. This consent-based approach upholds the individual's rights to control his own data.

Details of the industry's proposal are set out in Part IV of this document, where the benefits of the proposal to the credit providers and the consumers as well as the wider public interest are explained. The privacy issues are explained in Part V of this document.

Privacy issues for consultation

1.18 In brief, there are 6 privacy issues as outlined below for consultation:-

- (a) 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);
- (b) 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;
- (c) 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;

- (d) 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;
- (e) Whether 24 months is an appropriate transitional period before access to the additional mortgage data is allowed for the purpose of general portfolio reviews of consumers' credit worthiness; and
- (f) 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.

1.19 The Privacy Commissioner is inclined to confirm in the positive for the second privacy issue. Prima facie and subject to a determination on the first privacy issue, the industry's proposed types of positive mortgage data to be contributed and accessed represent the minimum amount of data necessary for the purpose of credit risk assessment.

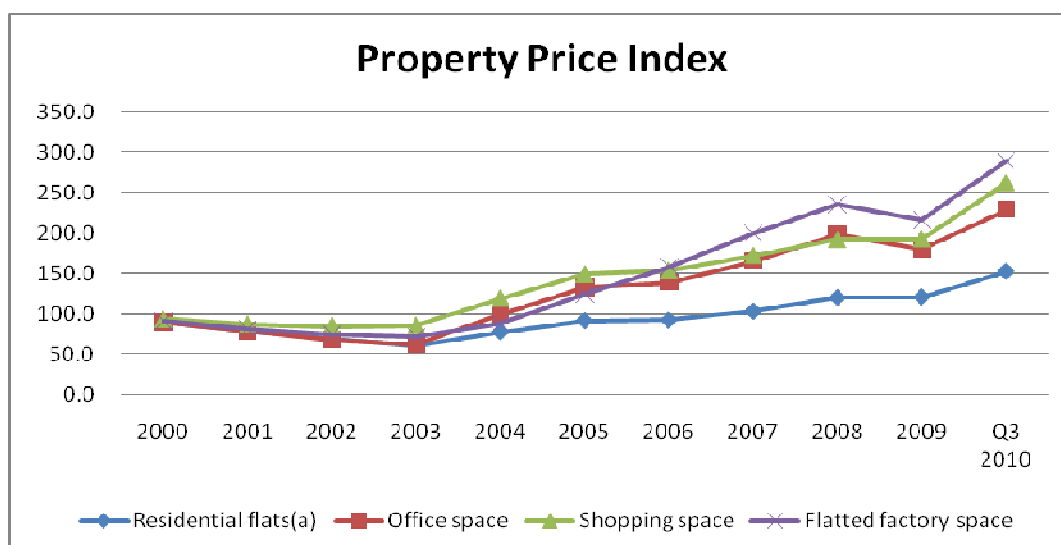
1.20 As regards the other 5 privacy issues, the Privacy Commissioner's position is reserved at this stage. Public views on the issues are invited and these will be duly taken into account before he finally makes a determination and amends appropriately the Code.

Part II – Developments Leading to the Proposed Revisions

Increases in property prices

2.1 In a review of the asset market in November 2010, the Economic Analysis and Business Facilitation Unit of the Financial Secretary’s Office noted that the property market was buoyant in the early part of the third quarter and in the first half of 2010, driven by exceptionally low mortgage interest rate and the ongoing economic recovery. The overall *residential flat* prices rose by 5% between June 2010 and September 2010, after an increase of 29% in 2009 and a further rise of 9% in the first half of 2010, exceeding the recent peak in 2008 by 22%.

2.2 For *office space*, overall prices in September 2010 increased by 4% over June 2010, and were higher than the recent high in 2008 by 10%. For *retail shop space*, overall prices increased by 7% between September and June 2010, and were higher than the recent high in 2008 by 30%. As to *flatted factory space*, prices in September 2010 increased by 8% over June 2010, exceeding the recent high in 2008 by 18%.¹ Changes in the price indexes of residential flats, office space, retail shop space and flatted factory space are depicted in the chart below.²



¹ Economic Analysis and Business Facilitation Unit, Financial Secretary’s Office (November 2010), *Third Quarter Economic Report 2010*, p.10, p.34 and p.39.

² Based on statistics contained in Economic Analysis and Business Facilitation Unit, Financial Secretary’s Office (November 2010), *Third Quarter Economic Report 2010*, p.114.

2.3 With exceptionally low mortgage interest rate, the home purchase affordability (i.e. the ratio of mortgage payment for a 45-square metre flat to the median income of households, excluding those living in public housing, assuming 70% loan-to-value ratio and a tenor of 20 years) rose to around 42% in the third quarter of 2010 from 36% in the third quarter of 2009, even though it was still below the long-term average of 53% over 1989 to 2008.³ However, if interest rates increase in the future, with property prices remaining at a high level, the home purchase affordability may climb further.

Measures to ensure healthy and stable development of property market

2.4 Recognizing 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 an influx of hot money into Hong Kong, increasing the risk of an asset bubble, the Financial Secretary, in his budget speech, announced in February 2010 four measures to ensure a healthy and stable development of the property market. These measures included increasing the supply of residential flats, enhancing the transparency of property transactions, raising the transaction cost of property speculation and preventing excessive expansion in mortgage lending.⁴

2.5 In April 2010, the HKMA conducted a new round of on-site examinations of the major mortgage lenders to ensure that prudential lending practices had been followed. The HKMA was also considering the inclusion of mortgage data in the positive credit data sharing arrangement to help banks access more comprehensive credit information for more effective management of credit risks.⁵

2.6 On 24 November 2010, in a written reply to a question raised by the Hon Chan Kin-por, the Secretary for Financial Services and the Treasury, Professor K C Chan, indicated that, in connection with the proposed positive mortgage data sharing scheme, having regard to the public interest involved and the degree of privacy intrusion, the intention was that the data to be shared would be confined to the number of outstanding mortgages held by a data subject.

³ Economic Analysis and Business Facilitation Unit, Financial Secretary's Office (November 2010), *Third Quarter Economic Report 2010*, p 34 and Economic Analysis and Business Facilitation Unit, Financial Secretary's Office (November 2009), *Third Quarter Economic Report 2009*, p 33.

⁴ "The 2010-11 Budget", speech by the Financial Secretary, the Hon. John C. Tsang, moving the Second Reading of the Appropriation Bill 2010, Wednesday 24 February 2010, para. 21 – 33.

⁵ Economic Analysis and Business Facilitation Unit, Financial Secretary's Office (May 2010), *First Quarter Economic Report 2010*, p.34 - 35.

Part III – Current Credit Data Sharing Arrangements

Provisions in the Code to safeguard data privacy

3.1 The Code is designed to provide practical guidance to data users in the handling of consumer credit data. It deals with collection, accuracy, use, security and access and correction issues as they relate to the personal data of individuals who are, or have been, applicants for consumer credit. The Code covers, on the one hand, CRA, and on the other hand, credit providers in their dealings with CRA and debt collection agencies.

Types of data available for sharing

3.2 Negative credit data are data relating to a failure by individuals to meet their obligations with regard to a financial liability. The data include for example, past defaults of an individual who fails to repay a loan. On the other hand, positive credit data generally refer to information relating to the financial circumstances of an individual that do not involve a failure to repay. The data include, for example, an individual's overall credit exposure and repayment pattern.

3.3 Under the Code, a CRA may collect from different credit providers credit data about an individual. Data collected from credit providers include general particulars of the individual being name, sex, address, contact information, date of birth, Hong Kong Identity Card number or travel document number, credit application data⁶, account general data such as approved credit limit or loan amount, repayment period or terms and account status (active, closed, write-off, etc.), account repayment data such as amount last due, amount of payment made during the last reporting period and default data and credit card loss data⁷. In addition, credit data relating to hire purchase or leasing arrangements about an individual are also included.

3.4 Apart from information collected from credit providers, a CRA may also collect information about an individual from official public records, which may include, for example, any legal action for recovery of a debt, judgments for monies owed, and any declaration or discharge of bankruptcy.

⁶ Credit application data refer to information on application(s) for consumer credit, the type and the amount of credit sought.

⁷ Credit card loss data relate to the financial loss arising from unauthorized transactions through the use of lost cards.

3.5 A CRA will compile consumers' credit information in its database and provide the information in the form of a report to a credit provider who has made an enquiry about individual consumer. For account involving the provision of consumer credit to another person for whom an individual acts as a guarantor, the account general and repayment data of such account is, in addition to being the data related to that other person as the borrower, deemed to be also account general and repayment data relating to the individual to such extent as to reveal the contingent liability of the individual as guarantor.

Restrictions on data access and use

3.6 Current provisions of the Code place restrictions on who can obtain access to an individual's credit data held by a CRA. Only credit providers falling within the meaning as defined in the Code may obtain access to the credit data. These include (a) an authorized institution or its subsidiary⁸ within the meaning of section 2 of the Banking Ordinance, (b) a licensed money lender under the Money Lenders Ordinance and, (c) a person whose business is that of providing finance for the acquisition of goods by way of leasing or hire purchase, such as finance houses. Real estate agents, employers, direct marketers and other retailers are not allowed to access the data.

3.7 The Code also limits the purposes for which a credit provider can use a credit report obtained from a CRA. The use of the information is restricted to assessing applications for credit lodged with a credit provider and other legitimate activities involved with giving credit, which include, for example, a review of existing credit facilities, renewal of those credit facilities, or where default has occurred. The use of the information for marketing purposes is not allowed.

3.8 In addition, the Code establishes the ground rules for the retention and deletion of credit data held by the CRA. The general provision is that the data may be held for 5 years for credit reporting and scoring purposes by the CRA. For example, any account default data may be retained for a period of up to 5 years after final settlement of the amount in default.

Data security and safeguards

3.9 Under the Code, a CRA is required to take appropriate measures to safeguard the security of consumer credit data and protect them from unauthorized access or change. These measures include a requirement on the part of the CRA to enter into a formal written agreement with subscribers (credit providers) that specifies in detail the controls and procedures to be applied when they seek access to the CRA's database.

⁸ Authorized institutions include licensed banks, restricted license banks and deposit-taking companies.

3.10 There are also controls to ensure that only data to which a subscriber is entitled are released, as well as a requirement to monitor and review on a regular basis usage of the credit database system so as to detect any unusual or irregular patterns of access or use. Furthermore, a CRA is required to maintain a log of all incidents involving a proven or suspected breach of security, which includes an indication of the records affected, an explanation of the circumstances and action taken.

Consumers' rights of access and correction

3.11 Credit providers are required under the Code to notify consumers that their personal data may be supplied to a CRA. The notification is usually given in the terms and conditions of a credit agreement or as a separate notice accompanying a credit application.

3.12 The Code also requires a credit provider, who has considered a credit report in connection with a credit application, to give notice to the consumer of its decision upon the application of the fact that a credit report has been considered. The credit provider should also inform the consumer how to contact the CRA that provided the credit report. This would ensure that consumers, who have been refused credit by a credit provider to whom a credit report has been referenced, are informed of their rights to make a data access or correction request on the data concerned.

3.13 The provision of this notification in no way compromises the consumers' right to make an access to their files kept by the CRA and to correct any wrong information they may contain. If a consumer alleges any inaccuracy in his data reported by a credit provider, and requests correction of such data, the CRA should seek verification from the credit provider. In the absence of any written confirmation or correction of the disputed data within 40 days of the date of the correction request, the relevant data should, upon the expiry of the 40 days, be deleted or otherwise amended as requested. This would help ensure that consumer credit data held by the CRA are accurate and complete.

Consumer Credit Reference Agency in Hong Kong

3.14 TransUnion Limited ("TransUnion"), formerly Credit Information Services Limited ("CIS"), is the main consumer CRA operating in Hong Kong. The business of a CRA is to compile a central credit database using the data supplied to it by its member subscribers, and then supply the processed credit data to its members in response to their requests pursuant to specific credit applications they have received.

3.15 The former CIS, and now the TransUnion, was formed with the co-operation of finance houses and banks⁹. This was the first centralized database in Hong Kong, marking a milestone in the financial services industry. The database was expanded in 1985 to collect negative credit data, greatly enhancing the ability of shareholders and members to manage consumer credit risk. Effective from June 2003, sharing of positive data of primarily unsecured credit and sharing of negative data of residential mortgage loans were made possible by amendments to the Code.

3.16 A credit provider may, through a credit report provided by the CRA, access consumer credit data held by the CRA on an individual in the course of the consideration of any grant of credit, the review of existing consumer credit facilities granted in connection with the consideration of an increase in credit amount, the curtailing of credit and the putting in place or implementation of a scheme of arrangement with the individual, and the renewal of existing consumer credit facilities granted to an individual as borrower or to another person for whom the individual proposes to act or acts as guarantor.

3.17 A credit provider may also access the consumer credit data held by CRA for the purpose of the reasonable monitoring of the indebtedness of the individual while there is currently a default of the individual as a borrower or a guarantor. In addition, a credit provider may at any time, for the purpose of providing or updating consumer credit data on an individual, access from the CRA such consumer credit data on the individual as were previously provided by it to CRA.

⁹ TransUnion was established in 1982 by 12 finance houses, which were the major players in the vehicle and equipment financing market. At that time, serious frauds were committed in relation to collateral financing and the need was seen for a centralized database to be created in order to curb double or multiple financing. Reference: <http://www.transunion.hk>.

Part IV – The Industry’s Proposal and Reasoning

4.1 This part is contributed by the CCF.

Key features of the industry’s proposal

4.2 The key features of the industry’s proposal are summarised below:

(a) Mortgage loan types

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

(b) Sharing of positive mortgage data

- i) Each credit provider that subscribes to the CRA will contribute to the CRA the following personal data on its records relating to each of the borrowers, mortgagors and guarantors with respect to mortgage loans granted to consumers with outstanding indebtedness (the “Contributed Data”):
 - (1) Name;
 - (2) Capacity (i.e. whether as borrower, mortgagor or guarantor);
 - (3) Hong Kong Identity Card number or travel document number;
 - (4) Date of birth;
 - (5) Gender;
 - (6) Correspondence address; and
 - (7) Account number, type of the facility, account status and closed date;
- ii) the Contributed Data are necessary to enable the CRA to identify accurately each individual involved in a consumer mortgage loan and compile the number of mortgage loans by reference to his capacity in which he is involved (i.e. the Mortgage Count);
- iii) when responding to an enquiry from a credit provider on an individual, the CRA will provide to the credit provider only the Mortgage Count attributed to that individual (and not the Contributed Data relating to that individual);

- iv) a credit provider will obtain an individual's written consent before making an enquiry with the CRA to access the individual's Mortgage Count;
 - v) a credit provider will request access to the individual's Mortgage Count for the purposes of considering granting of new consumer credit facilities or revising existing consumer credit facilities or in cases of debt restructuring, rescheduling or scheme of arrangement and, after a 24-month transitional period, general portfolio review of the individual's credit profile and repayment ability on an ongoing basis;
 - vi) in order to achieve the objective of a comprehensive credit assessment of an individual and understanding his total indebtedness under all consumer credit granted to him, a credit provider will request access to his Mortgage Count for considering, granting or revising all types of consumer credit facilities (and not only mortgage loans).
- (c) Sharing of negative mortgage data

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

Minimum data to be contributed and used

4.3 Having considered the possible concerns from consumers about their data privacy and whether too much consumer mortgage data than necessary are disclosed by credit providers to the CRA to the advantage of credit providers and disadvantage of consumers, the CCF has proposed that only limited data items are to be contributed by credit providers to the CRA and that only the Mortgage Count is to be disclosed by the CRA to a credit provider that makes an enquiry about a consumer. In fact, as shown in the table below, the scope of data sharing is much smaller than that in other economies like Singapore, Taiwan and Mainland China. The CCF considers sufficient attention has been given to limit the amount of consumer mortgage data to an absolute minimum to ensure transparency of credit exposure information, promoting prudent borrowing and lending.

SN	Mortgage Data Contribution Fields	Hong Kong	Singapore	Taiwan	China
		Proposed Positive data to be contributed to CRA	Positive data shared	Positive data shared	Positive data shared
1	Individual name	Y	Y	Y	Y
2	Date of birth	Y	Y	Y	Y
3	Gender	Y	Y	Y	Y
4	Identification no. & Issuing country code	Y	Y	Y	Y
5	Address line	Y	Y	Y	Y
6	Contact number	N	Y	Y	Y
7	Individual disputes accuracy of data contributed	Y	Y	Y	N
8	Subscriber code	Y	Y	Y	Y
9	Account number	Y	Y	Y	Y
10	Account type	Y	Y	Y	Y
11	Account status	Y	Y	Y	Y
12	Currency code	N	Y	Y	Y
13	Opened date	N	Y	Y	Y
14	Closed date	Y	N	Y	Y
15	Credit limited/ Loan amount	N	N	Y	Y
16	Term/Tenor	N	N	Y	Y
17	Installment repayment amount	N	N	Y	Y
18	Paid amount	N	N	Y	Y
19	Outstanding balance	N	N	Y	Y
20	Old account info (before SOA)	N	N	N	N
21	Individual/ Commercial account	N	Y	Y	Y
22	Reported date	Y	Y	Y	Y
23	Opt out	Y	N	N	N
24	Name of co-borrower/ guarantor	Y	N	Y	N
25	Number of account holders liable for the account	N	Y	Y	N
26	Address of mortgaged property	N	N	N	Y
27	Maximum installment level of the account	N	N	N	Y
28	Joint/ Single type (Capacity)	Y	N	Y	N
29	Employer	N	Y	Y	Y
30	Occupation	N	Y	Y	Y
31	Marital Status	N	Y	Y	Y
32	Education	N	N	N	Y
33	Income	N	N	Y	Y
34	Loan Purpose	N	N	Y	N
	Total number of data items shared	15	19	29	27

Types of credit data that are shared and not yet shared

4.4 Consumer credit data relating to hire purchase and leasing accounts have been available to credit providers by the CRA since 1982. The coverage of the data sharing was progressively extended to credit card and other unsecured personal loans, and residential mortgage loans. Effective from June 2003, negative credit data for residential mortgage loans and positive credit data for unsecured personal loans could be shared by credit

providers through the CRA. Other than negative data for residential mortgage loans, consumer credit data relating to mortgage loans of residential, retail, commercial and industrial properties are not shared under the current data sharing arrangement. The major types of consumer credit data currently being shared are summarized in the table below.

Products (personal accounts only)	Loan Type	Positive Credit Data Sharing	Negative Credit Data Sharing
Credit cards	Unsecured	Yes	Yes
Installment loans	Unsecured	Yes	Yes
Revolving loans	Unsecured	Yes	Yes
Hire purchase/leasing	Secured	Yes	Yes
Residential mortgage loans	Secured	No	Yes
Non-residential mortgage loans	Secured	No	No

4.5 A predominant element of mortgage loans is residential loans which typically represent the largest borrowing of a private individual. In Hong Kong, there were about 480,000 residential mortgage borrowers, and the total value of outstanding residential mortgage loans as of 30 June 2010 exceeded HKD 679,545 million, or on average HKD 1.4 million per borrower¹⁰. Compared with credit card lending for the same period, for example, there were 13,050,000 credit card accounts, and the total amount of receivables exceeded HKD 74,463 million, or on average amount receivables of HKD 5,706 per account.¹¹

4.6 Although the focus on increase in property prices is, until recently, largely on residential properties, attention should also be given to the rise in non-residential property prices and the trend of consumers diversifying their investments from residential properties to both residential and non-residential properties. As mentioned in 2.2 above, the property price index movement over the last 10 years for flatted factory / shopping / office space exceeds that of residential flats. This gives rise to concern of potential market speculation on non-residential properties. The inclusion of mortgage data relating to non-residential properties will help promote responsible lending and borrowing by credit providers and consumers respectively.

Benefits of positive data sharing on unsecured lending in Hong Kong

Lower pricing for performing borrowers

4.7 Since the introduction of the positive credit sharing for unsecured lending, the Hong Kong consumer credit market has witnessed more financial product innovations,

¹⁰ Source: Survey of HKMA on residential mortgage loans for June 2010.

¹¹ Source: Survey of HKMA on credit card lending for Q2 2010.

providing a wider choice of consumer loans or credit to best suit customer needs. Consumers enjoy more favourable terms under risk based pricing in a more competitive environment.

4.8 Amongst the more popular types of non-card consumer credit, for example, tax loans were granted at Annualised Percentage Rates (“APRs”) as low as 1.62% - 2.66%, as reflected in the 2009 survey of the Consumer Council.¹² This compares favourably with the APRs of 3.2% - 8.16%¹³ that were offered prior to the introduction of the positive credit data sharing on unsecured lending.

4.9 A more comprehensive picture of the borrowers’ credit profile and commitments, which include their mortgage borrowing, will enable credit providers to migrate towards more sophisticated customer segmentation and continue the healthy development of the consumer credit market in Hong Kong.

Lower delinquency rate and loss rate

4.10 With the introduction of extended sharing of consumer credit data since June 2003, coupled with a highly competitive consumer credit market and an improving economy in Hong Kong, more individuals have been accessing consumer credit. Over the same period, overall loan delinquency and credit card bad debt situations have improved significantly, as shown in the table below.

	End-03	End-04	End-05	End-06	End-07	End-08	End-09	First Half -10
Amount of credit card borrowing /rollover ¹⁴ (HKD Billion)	27.80	24.40	24.60	25.00	24.60	23.77	21.07	19.61
% credit card charge-off	10.02	4.73	2.81	2.91	2.90	2.72	3.71	2.31
No. of individuals taken out consumer credit ¹⁵ (million)	3.08	3.14	3.25	3.37	3.50	3.65	3.74	3.80
Loans of retail banks overdue for 3 months (%) ¹⁶	2.04	1.05	0.68	0.54	0.36	0.48	0.59	0.44

Substantial drop in bankruptcy rate

4.11 The total number of personal bankruptcies has dropped from the peak of 26,922 cases in 2003, falling to a low of 9,933 cases in 2005 and has since stabilised at around

¹² The survey on tax loans published in December 2009 issue of the Choice Magazine showed that preferential APRs were available to specified customer groups such as civil servants, customers who previously successfully applied for tax loans, customers of specified professions, mortgage loan borrowers, etc.

¹³ The survey on tax loans published in December 2004 issue of the Choice Magazine.

¹⁴ Source: Survey of HKMA on credit card lending

¹⁵ Source: TransUnion

¹⁶ Source: HKMA publications at <http://www.info.gov.hk/hkma>

10,000 cases per year, except in 2009 when 15,784 petition cases were recorded due to the financial crisis in the first half of the year. Further, the average amount of indebtedness of the bankrupts declined from the peak of 41 times of monthly income in October 2003 and remained at a range between 25 to 35 times from January 2004 to August 2005.¹⁷ The records indicate that, notwithstanding an increase in the number of consumer credit borrowers and the amount of unsecured consumer credit granted by credit providers in recent years, the bankruptcy rate has remained stable.

Sharing of consumer credit data in other economies

4.12 Comprehensive consumer credit data sharing arrangements are considered to be an important part of the risk management infrastructure of more mature consumer markets in the US and the UK. Research findings showed that in the US, comprehensive consumer credit data sharing resulted in greater availability of credit, higher pricing flexibility and lower default rate.¹⁸

4.13 As shown in the table below on the sharing of *residential* mortgage data, other Asian economies such as Mainland China, Taiwan and Singapore have already launched a comprehensive bureau for mortgages. Seen in this context, Hong Kong as a leading consumer credit market in the region, may risk losing its competitiveness if it does not improve its general credit awareness.

(Year mortgage data shared)	U.S.A. (1982)	U.K. (1985)	Canada (2004)	Singapore (2002)	Australia (2002)	Taiwan (1993)	Mainland China (2007)*
Type of data shared	Positive and negative	Positive and negative	Positive and negative	Positive and negative	Negative	Positive and negative	Positive and negative
Date of account opened	√	√	√	√	√	√	√
Original loan amount	√	×	√	√ #	√	√	√
Original no. of installments	√	√	√	×	√	√	√
Installment payment amount	√	√	√	×	√	√	√
Repayment frequency	√	√	×	×	√	×	√
Outstanding loan balance	√	√	√	√ #	√	√	√
Date on which last payment made	√	√	√	√	√	×	√
Last payment due	√	√	√	√	√	×	√

¹⁷ Source: HKMA article titled “Benefits of sharing positive consumer credit data”, Chart 2.

¹⁸ Barron, John M and Staten, Michael (2003), “The value of comprehensive Credit Reports: Lessons from the US Experience”.

Last payment amount	√	√	√	√	√	×	√
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*probably

negative data only

4.14 Information collected by the industry as of the issuing date of this consultation document indicates that credit bureaux in the Asian economies such as Mainland China, Taiwan and Singapore also share both positive and negative data in respect of non-residential mortgage loans.

Potential benefits of extending credit data sharing to additional mortgage data

Potential for more favourable terms and pricing on credit facilities

4.15 There are no published statistics on the overall mortgage lending to individuals in Hong Kong. Using residential mortgage lending as a reference, residential mortgage loans typically form a significant part of an individual's total borrowings. Further, as illustrated in the table below, the delinquency rate for residential mortgage loans is much lower than that for other consumer credit (e.g. credit card). The sharing of additional mortgage data will enable credit providers to conduct more comprehensive credit assessment on individuals based on more comprehensive data. Credit providers may in future factor the additional mortgage data into their respective credit scoring or risk pricing models for granting credit facilities. By capturing data that better reflect the individual's overall credit position, credit providers can conduct more effective credit assessment. In the experience with respect to unsecured lending, credit assessment based on more comprehensive data is expected to result in more favourable terms and pricing on credit facilities for borrowers.

	Average total credit card amount receivables	Outstanding residential mortgage loans
2000 Q1	HKD 40,301 million	HKD 478,457 million
2010 Q2	HKD 73,007 million	HKD 679,545 million
Delinquency	1.90% (2002 Q1)	1.43% (2001 April)
	0.25% (2010 Q2)	0.02% (2010 June)

Promoting long term stability of property market

4.16 As of August 2010, residential property prices have surged about 47% since 2009, mainly due to record-low mortgage interest rates. A drop in Hong Kong's property prices is likely to have significant impact on borrowers, mortgagors and guarantors. Although the current delinquency rate for mortgage loan repayment is relatively low, debt servicing ratio for high risk customers will increase substantially should interest rates move back to historical levels.

4.17 The sharing of more comprehensive mortgage data will benefit the economy by permitting credit providers to assess credit applications taking into account a customer's Mortgage Count. That in turn promotes responsible borrowing and lending and facilitates preventive action should an individual shows early signs of financial difficulties.

Promoting responsible lending and better risk management

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

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

Proposed scope of positive mortgage data to be shared

Types of mortgage loans to be covered by positive data sharing

4.20 The industry proposes that credit providers be allowed to expand the current credit data sharing arrangement to limited sharing of positive credit data of mortgage loans on residential and non-residential properties. Mortgage loans may include but are not limited to installment loans, term loans and revolving loans granted to consumers. The types of mortgage loans proposed to be covered are as follows:

- (a) Residential and non-residential mortgages that have been transferred or serviced by credit providers to the Hong Kong Mortgage Corporation ("HKMC"), subject to HKMC's consent;
- (b) Mortgages of residential, retail, commercial or industrial properties (including car parks);

- (c) Mortgages of residential properties as security for consumer credit under various government schemes, subject to approval from the government;
- (d) Residential and non-residential mortgages executed by a shell company together with personal guarantee; and
- (e) Term loans secured by residential, retail, commercial or industrial properties.

4.21 The inclusion of mortgages of car parks, term loans and mortgage loans secured by retail, commercial or industrial properties, in addition to mortgages of residential properties, will allow a more comprehensive credit assessment of a borrower and the subsequent calculation of the debt servicing ratio. This is consistent with the practices of other economies such as Singapore, Taiwan and Mainland China.

Aligning types of mortgage loans covered by negative data sharing

4.22 Under the existing Code, a credit provider can contribute and share the account data about a consumer's residential mortgage loan if the consumer has defaulted in repayment for a period in excess of 60 days. Upon the implementation of the proposal, the negative mortgage data contributed and shared will have to be aligned to cover other types of mortgages set out in 4.20 above in line with positive data contribution and sharing. In order to achieve the objective of a comprehensive credit assessment of an individual and understanding 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.

Types of additional mortgage data items proposed to be contributed and accessed

4.23 The industry fully recognizes and respects personal data privacy. The types of data items proposed to be shared will be limited to those that are relevant and not excessive for the purpose of promoting prudent borrowing and lending by customers and credit providers respectively. The industry emphasizes that the Contributed Data held by the CRA will not be shared amongst credit providers. Upon an enquiry from a credit provider regarding a customer, the CRA will only provide the credit provider with the Mortgage Count of the customer. The Mortgage Count will enable the credit provider to make further enquiries with the customer as appropriate to understand the total indebtedness of the customer and conduct a more comprehensive credit assessment in processing the customer's application for consumer credit.

4.24 In order to enable the CRA to compile the Mortgage Count for the individuals with mortgage loans which are not yet fully repaid on the implementation of the proposal, each credit provider subscribing to the CRA will contribute to the CRA the Contributed

Data (specified in 4.2(b)(i) above) on its records on all pre-existing mortgage loans which are not yet fully repaid^(Note). Similar steps were taken by credit providers and the CRA to enable sharing of positive credit data regarding unsecured consumer credit when data sharing was last expanded in 2003. At that time a credit provider was allowed to provide to the CRA the following data :

- (a) default data revealing a currently outstanding default of unsecured credit; and
- (b) account general data together with default data revealing a currently outstanding material default (i.e. defaulted in repayment for a period in excess of 60 days) of a residential mortgage loan.

4.25 Based on the legal advice from solicitors and Senior Counsel, the industry is of the view that the contribution of the Contributed Data by credit providers to the CRA ahead and in preparation of the access and use of the Mortgage Count by credit providers is within the ambit of data protection principle 3. According to the industry's view, the Contributed 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 the absence of case law, the industry believes a "directly related purpose" should be determined by whether it is directly related to the original purpose, without imposing a specific time frame for making that determination. Adopting such interpretation, the industry treats '*granting and maintaining the mortgage loan*' as original purposes and '*ensuring ongoing creditworthiness of the customer*' as a purpose directly related to those original purposes.

4.26 After implementation of the proposal, the credit provider will contribute to the CRA the Contributed Data relating to mortgage loans applications received by it on or after the implementation date.

4.27 For mortgages involving more than one borrower, third party mortgages, mortgage loans guaranteed by an individual or mortgage loans extended to shell companies and guaranteed by an individual, the industry proposes that the following Contributed Data will be contributed by credit providers to the CRA:

(Note) PCPD's note

Customers whose mortgage data are to be contributed to the CRA belong to two groups:-

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

Mortgage type	Contributed Data
Mortgage by joint individual borrowers (where borrowers are also mortgagors)	All Contributed Data in respect of each borrower with a remark that this is a joint mortgage loan
Third party mortgage (i.e. where the borrower is not the mortgagor)	All Contributed Data in respect of each borrower, guarantor and mortgagor
Mortgage loan guaranteed by individuals	All Contributed Data in respect of each individual as guarantor or surety
Mortgage loan extended to a shell company which is guaranteed by an individual	All Contributed Data in respect of each individual as guarantor

4.28 The following data will not be contributed to the CRA by credit providers:

- (a) Market value of mortgaged property;
- (b) Mortgaged property address;
- (c) Amount of loan outstanding;
- (d) Installment repayment amount;
- (e) Loan tenor;
- (f) Loan-to-value ratio;
- (g) Borrower/mortgagor/guarantor income or wealth; or
- (h) Interest applicable to loan.

Access of Mortgage Count by credit providers from the CRA

4.29 The following arrangement is proposed in accessing the Mortgage Count by credit providers from the CRA:

- (a) Customer consent

In order to avoid doubt and potential dispute in each case, the industry proposes that a credit provider will only access the Mortgage Count of a customer from the CRA if the credit provider has obtained written consent from such customer ON or AFTER the implementation date of the proposal to the effect that the customer agrees that the credit provider may access and use his data maintained with the CRA.

A credit provider will seek to obtain the written consent from a customer to access his Mortgage Count under specific circumstances:

- i) when a customer applies to the credit provider for any new consumer credit or revising any existing consumer credit on or after the implementation date of the proposal - for the purposes of assessing the application and subsequent general portfolio review of the customer's credit profile and repayment ability on an ongoing basis; or

- ii) when a customer has indicated to the credit provider or the credit provider becomes aware of or has reasonable grounds to suspect that the customer is in financial difficulties - for the purposes of considering putting in place any debt restructuring, rescheduling or other modification of the terms of the facilities and continuous general portfolio review of the customer's credit profile and repayment ability on an ongoing basis.

The consent wording will seek to benefit the credit provider obtaining consent only and not all credit providers in general.

(b) Cooling-off period

In any event, within a period of 24 months commencing from the implementation date of the proposal, credit providers will not access a customer's Mortgage Count for review of existing credit facilities within the meaning specified in clauses 2.9.2, 2.9.3, 2.9.4 and 2.9.5 of the existing Code (these clauses of the existing Code are set out in 4.35 below for ease of reference). During and after the cooling-off period, the requirement of customer consent referred to in (a) above is applicable.

(c) Credit providers permitted to access Mortgage Count

Only a credit provider which has obtained the written consent from an individual is permitted to access the Mortgage Count of the individual from the CRA.

Data protection safeguards and compliance

4.30 There are measures under the existing consumer credit sharing arrangement to protect data privacy. These measures are principally specified in the Code issued by the Privacy Commissioner under section 12 of the Ordinance, the Supervisory Policy Manual IC-6 ("SPM IC-6") issued by the HKMA in the form of a statutory guideline under the Banking Ordinance, Cap. 155, and the Code of Banking Practice jointly issued by Hong Kong Association of Banks and DTC Association.

4.31 The Code introduces measures to safeguard the security and accuracy of consumer credit data contributed to the CRA. The key features of these measures are:

- (a) Credit providers are required to notify customers at the time of application for consumer credit of the consumer credit sharing arrangement between credit providers and the CRA;

- (b) The scope of consumer credit data to be contributed by credit providers to the CRA is restricted by the Code;
- (c) Credit providers may only obtain credit reports from the CRA under specified circumstances in accordance with clause 2.9 of the Code (this clause is set out in 4.35 below for ease of reference);
- (d) Credit providers are prohibited from obtaining consumer credit data for the purpose of direct marketing;
- (e) Credit providers and the CRA are required to put in place measures to safeguard the security and accuracy of consumer credit data;
- (f) Credit providers and the CRA are required to follow specified rules on the retention and deletion of consumer credit data;
- (g) Customers have the right to access their data and require the CRA to correct any inaccurate data held by the CRA;
- (h) Credit providers are required to maintain a log of all incidents involving a proven or suspected improper access of customer credit data and record the actions taken by them as a result.

4.32 There are also comparable security and data protection measures in the SPM IC-6 where credit providers supervised by the HKMA (i.e. authorized institutions (“AIs”)) are required to put in place measures to ensure that consumer credit data disclosed to or obtained from the CRA are properly safeguarded. Further, the SPM IC-6 requires AIs to participate as fully as possible in consumer credit data sharing within the framework laid down by the Code, thereby facilitating the implementation of the Code.

4.33 In addition to complying with SPM IC-6, AIs are required under the Code of Banking Practice to comply with the Ordinance and relevant codes of practice governing the collection, use and holding of customer information at all times. The HKMA expects all AIs to comply with the Code of Banking Practice and monitors compliance as part of its regular supervision.

4.34 Through the existing robust measures, the additional measures to be implemented with respect to additional mortgage data sharing together with the collective effort of credit providers and the CRA to implement the proposal, the industry firmly believes that the Contributed Data will be contributed and Mortgage Count used by the credit providers appropriately benefiting all parties concerned.

Provisions of the existing Code for ease of reference

4.35 Clause 2.9 of the existing Code provides :

2.9 Without prejudice to the generality of clause 2.8 but subject to clause 2.10 regarding access to account data during the transitional period, a credit provider may, through a credit report provided by a CRA, access consumer credit data held by the CRA on an individual:

2.9.1 in the course of:

2.9.1.1 the consideration of any grant of consumer credit;

2.9.1.2 the review of existing consumer credit facilities granted; or

2.9.1.3 the renewal of existing consumer credit facilities granted,

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

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

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

2.9.3 an increase in the credit amount;

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

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

4.36 Clause 2.10 of the existing Code provides :

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

circumstances:

- 2.10.1 in the course of considering a grant of new consumer credit (excluding increase in any existing credit amount) to the individual, or to another person for whom the individual proposes to act as guarantor;*
- 2.10.2 in the course of the review of existing credit facilities currently in default for a period in excess of 60 days, with a view to putting in place a loan restructuring arrangement by the credit provider;*
- 2.10.3 in the course of the review of existing credit facilities, where there is in place a loan restructuring arrangement between the individual and the credit provider (whether or not other parties are also involved), for the implementation of the said arrangement by the credit provider; or*
- 2.10.4 in the course of the review of existing credit facilities, with a view to putting in place a scheme of arrangement with the individual initiated by a request from the individual, provided that nothing in this clause above shall affect any access made by a credit provider during the transitional period to the following account data (the access to which may be made under circumstances other than that provided for in clause 2.10.1, 2.10.2, 2.10.3 or 2.10.4 but in accordance with clause 2.9) :*
- 2.10.5 account data (comprising of account general data and account repayment data) relating to a hire-purchase, leasing or a charge account;*
- 2.10.6 account data (comprising of account general data and account repayment data) relating to an account, other than an account mentioned in clause 2.10.5, which reveal a material default that remains outstanding at the time of access; or*
- 2.10.7 account general data together with default data which reveal a material default, relating to an account other than an account mentioned in clause 2.10.5 or 2.10.6 where there had been a material default prior to the time of access.*

Part V – The PCPD’s Considerations and Issues for Consultation

Overview

5.1 PCPD’s fundamental responsibility to society is to supervise compliance with the provisions of the Ordinance, thereby protecting the personal data privacy rights of individuals. In effect, this means, among other things, monitoring data users’ operating principles, policies and strategies to ascertain if they meet the explicit and implicit requirements made by those provisions. Notions such as fairness, non-excessive collection, purpose of collection, use, and security punctuate the data protection principles, and it is these fundamental notions that give substance to good personal data management practices.

5.2 In any given jurisdiction that has privacy legislation, there is an operating rule that where there is a need to collect personal data, that data should be kept to the absolute minimum necessary to fulfill the purpose(s) for which they were collected. There is also the in-built protection that the data user must inform the data subject of the purpose(s) for which his personal data are to be used. In addition, the express and voluntary consent of the individual must be obtained before there can be any change of use of his personal data. These requirements provide data subjects with the ability to make decisions regarding their personal data upon the basis of informed choice.

5.3 Against the above data protection principles, the industry’s proposal to allow credit providers to provide the CRA more consumer credit information for subsequent and separate assessment of credit applications and credit reviews would have to be duly evaluated.

5.4 In approaching the proposals made by the industry, the PCPD considers that a fair and reasonable balance has to be struck between the public interest and the privacy interests of individuals so that the former is not fostered unduly at the expense of the latter. Determining the exact nature of that balance will require the co-operation and concerted effort of various players in the consumer credit market and careful consideration of the following factors:-

- (a) **The “borrowing” side of consumer credit.** A borrower of credit facilities from the credit lending market has a responsibility to the market in terms of managing his financial affairs prudently and an obligation to the lender to provide relevant information to enable prudent lending assessment. The acid test is whether such information is necessary but not excessive for the purpose of use, and if so, what safeguards need to be put in place to ensure data privacy.

- (b) **The “lending” side of consumer credit.** In every category of lending, the prudent assessment of credit risks is critical to the growth of the market. A lender has a responsibility to the market in terms of exercising prudence in lending and an obligation to the borrower to use the information obtained only for the purposes for which the information was collected. The data-sharing model provides the information platform for use in better credit risk management. However, the effectiveness of this mechanism could be hampered if lenders, for commercial reasons, choose to ignore the information available and continue to make decisions that increase the associated risks.
- (c) **Regulatory authorities.** Relevant authorities such as the HKMA and the PCPD have responsibilities to ensure a level playing field exists and an efficient market for consumer credit while personal data privacy is respected. Supervisory guidance is needed to ensure good commercial practices are followed, that privacy solutions are enforced, and that there is adequate data protection.

Merits of the industry’s proposal for sharing mortgage data

The public interest

5.5 As pointed out above, the property market was buoyant in the early part of the third quarter and in the first half of 2010, driven by exceptionally low mortgage rate and the ongoing economic recovery. Prices of residential flat, office space, retail shop space and flatted factory space have risen significantly.¹⁹ It is also noted that the Chief Executive in his recent Policy Address stated that “the mortgage-to-income ratio in the second quarter was 41%, which, even though lower than the average ratio of 53% over the past 20 years, is on a rising trend”.²⁰

5.6 As cautioned by the Financial Secretary, since the fourth quarter of 2008, the amount of inflow of funds has exceeded \$640 billion, increasing the potential risk of creating asset-price bubbles. Capital flows could reverse or interest rates rebound, making asset prices very volatile. This in turn may affect the stability of the financial system and the true recovery of the economy.²¹ To ensure the healthy and stable development of the property market, the government has introduced a number of measures including increasing the supply of residential flats, enhancing transparency in property transactions, raising the transaction cost of property speculation and preventing excessive expansion in

¹⁹ Based on statistics contained in Economic Analysis and Business Facilitation Unit, Financial Secretary’s Office (November 2010), *Third Quarter Economic Report 2010*, p.114.

²⁰ The 2010-11 Policy Address, “Sharing Prosperity for a Caring Society”, p.4.

²¹ “The 2010-11 Budget”, speech by the Financial Secretary, the Hon. John C. Tsang, moving the Second Reading of the Appropriation Bill 2010, Wednesday 24 February 2010, para. 21.

mortgage lending.²²

5.7 It may be worth noting that in terms of the amount of loans and advances made by credit providers, those used for the purchase of residential flats amounted to HKD 698 billion in 2009, as compared with only about HKD 69 billion for credit card advances.²³ By the 2nd quarter of 2010, the amount of loans and advances used for the purchase of residential flats jumped to HKD 734 billion, while the amount of credit card advances stagnated at around HKD 68 billion.²⁴

5.8 Given that the size of mortgage loans far exceeds that of credit card advances, the need for prudent borrowing on the part of mortgage loan applicants and prudent lending on the part of credit providers should warrant as close, if not closer, attention as that for credit card advances by regulatory authorities from the public interest point of view.

5.9 The PCPD understands that the industry's proposal, when implemented with appropriate safeguards, would contribute to creating an environment in which the transparency of credit information would become of greater value to lenders and borrowers, thereby facilitating a responsible lending/borrowing relationship. In turn, this would prevent the provision of too much credit to those individuals with inadequate repayment ability, thus safeguarding their financial health.

Information transparency as a value contributing to the public interest

5.10 In any developed economy, the individual consumer is the engine of economic growth. The credit market has been a key ingredient in making that growth a reality. In Hong Kong, there has been a significant expansion in the amount of available credit over the last decade. This has been central to the growth of Hong Kong's economy.

5.11 As pointed out by the industry, transparency of credit exposure information, such as the number of all active loans on hand, including mortgage loans, enables the aggregate exposure of an individual to be determined. The industry has emphasized that provided appropriate safeguards are put in place, transparency of information confers value upon both the lender and borrower in the following ways.

- (a) **Informed decision in credit assessment.** With a more comprehensive picture of individual credit risk profiles, including their outstanding loans, credit decisions will be based upon fair and complete assessments;
- (b) **A good credit record is an important personal asset.** For good borrowers, a

²² "The 2010-11 Budget", speech by the Financial Secretary, the Hon. John C. Tsang, moving the Second Reading of the Appropriation Bill 2010, Wednesday 24 February 2010, para. 21 – 33.

²³ Census & Statistics Department (2010), Hong Kong Annual Digest of Statistics 2010, p. 249.

²⁴ Census & Statistics Department (2010), Hong Kong Monthly Digest of Statistics, November 2010, p. 155.

good credit record will be a lifetime asset that is objectively determined and totally under their control. Transparency in relation to this information would benefit the great majority of borrowers in terms of future applications for credit, that is, securing favourable conditions and charges attached to that borrowing.

5.12 In the absence of consumer mortgage data sharing, credit providers could still ask applicants of credit to provide information on their outstanding mortgage loans and repayment amounts. In cases where applicants fail to provide full information on their outstanding mortgage loans, credit providers may not be able to conduct a fair and accurate assessment of the repayment ability of the applicants and may have to build in a risk premium in the interest rate for the credit facility in order to protect the credit providers' interests. Consequently, as pointed out by the industry, those who provide full information on their outstanding mortgage loans will suffer from an increase in credit facility interest rate, as credit providers are not in the position to distinguish applicants who have provided full information on their outstanding mortgage loans from those who fail to do so. The sharing of consumer mortgage data will help ensure a level playing field for all mortgage loans applicants for credit and credit providers, thereby creating an efficient market for consumer lending and borrowing.

5.13 Indeed, as noted in a review of privacy in connection with credit reporting conducted by the Australian Law Reform Commission, information asymmetry resulting from the credit providers' inability to know the full extent of an applicant individual's credit history will lead to adverse selection on the part of credit providers by pricing credit based on the average credit risk of individuals. This will create an incentive for high risk applicants to apply, as the price is too low to them, and low risk applicants to reject credit, as the price is too high for them. Information asymmetry may also create moral hazard, with a credit applicant obtaining credit fraudulently by failing to disclose his or her credit history.²⁵

5.14 In summary, the extension of consumer credit data sharing to cover mortgage data would contribute to greater transparency of information and serve the purpose of making credit assessment more rigorous and effective. This would result in responsible lending and borrowing and help safeguard the overall financial stability of Hong Kong, particularly in view of the increasing pressure on the property market due to the unfavourable global financial environment of low interest rates and excessive liquidity.

²⁵ Australian Law Reform Commission (2006), *Review of Privacy – Credit Reporting Provisions: Issues Paper*, p.24 - 25.

The Consumer's viewpoint

5.15 Mortgage information are highly personal and confidential. From a data protection perspective, more disclosure and use of personal data is tantamount to greater privacy-intrusion. Consumers are inevitably concerned about their data privacy and protection, and in particular over whether too much consumer mortgage data than necessary are disclosed by credit providers to the CRA to the advantage of credit providers and disadvantage of consumers. They may also raise questions as to the effectiveness of the industry's proposal in bringing about more favourable terms and pricing to consumers.

5.16 From a data protection perspective, sharing of personal data, particularly when the data are collected from different sources, may adversely affect an individual's privacy interests. The implications of extending consumer credit data sharing to mortgage data are twofold:-

- (a) **Data Concentration.** First, the inclusion of a substantial amount of information on credit users would expand the storage and retention of personal information in a single centralized source. Any citizen who has a consumer credit record, no matter whether it is "good" or "bad", may become the subject of a centralized credit reference database. The richness of data on the database may give rise to opportunities for function "creep" and increase the risks of the data being misused for purposes other than the original purposes of collection.
- (b) **Profiling/Stigmatization.** Secondly, there is an issue relating to consumer credit scoring. Credit scoring is a process whereby credit data relating to a borrower are used, either separately or in conjunction with other information, for the purpose of generating a score that purports to be representative of the borrower's credit-worthiness. The process is akin to profiling individuals and placing them in categories that would span the range from "low risk borrowers" to "high risk borrowers". This gives rise to a labeling effect on the individual concerned. Dependent upon the scoring mechanism, the types of data used and the accuracy of the data, the process may result in the individual being given an inappropriate "credit label", thus adversely affecting his credit standing.

5.17 For the issue relating to data concentration, the operational desirability of having all relevant consumer credit data available in one centre for the purposes of facilitating prudent borrowing and lending cannot be disputed. A more positive approach to tackle the privacy concern of data concentration is to take all necessary measures and safeguards sufficient to ensure the integrity and security protection of the data, and to ensure no misuse of the data.

5.18 As regards profiling and stigmatization, the industry is of the view that a fair assessment by credit providers on the credit history and repayment ability of consumer credit applicants will facilitate the granting of credit on terms that will be commensurate with their credit-worthiness. The industry considers that it is to the benefit of both credit providers and credit applicants that the information available from the CRA will not result in a “mislabeling” of credit applicants due to incompleteness of information stored in the CRA.

5.19 The industry maintains that in the light of experience with respect to unsecured lending, credit assessment for credit facilities based on more comprehensive data is expected to result in more favourable terms and pricing for borrowers. It is incumbent upon the industry to demonstrate how the benefits of sharing mortgage data will be passed on to consumers.

5.20 Notwithstanding the pledges of confidentiality that are central to bank/client relationships and the assurances put up by the CRA, the PCPD is of the view that any relaxation in the sharing of credit data should be protected by more stringent privacy safeguards. These safeguards must apply to any mortgage data to be contributed by credit providers to the CRA and used subsequently. The controls should apply not merely to the credit database system but to those staff of the credit providers and the CRA who interface with the system.

Other matters to be considered by the PCPD

5.21 The Privacy Commissioner recognizes that his jurisdiction is restricted to matters that relate to personal data privacy protection and that he can only act on those matters for which he is empowered under the provisions of the Ordinance. Some of the issues raised above are not data privacy-related and hence fall outside the PCPD’s remit. Nevertheless, they are important matters that the Privacy Commissioner feels obliged to highlight in order to convey a complete picture for the relevant privacy matters to be considered.

Effective use of credit information in prudent lending

5.22 A primary argument advanced by the industry is that credit providers are handicapped by the lack of mortgage data for assessment of consumer credit applications. It should be noted that information confers value only when it is effectively utilized to promote better decision making.

5.23 On a more cautionary note, it must be recognized that, given the diversity of credit providers, it is unlikely that credit risk management procedures will be homogeneous. The PCPD is not in any position to mandate credit providers in terms of precisely how they will apply consumer mortgage data to credit assessment and credit risk management. It is the responsibility of the industry to demonstrate to the public that they will best utilize the data to facilitate prudent lending for the collective benefit of the borrowers, the credit providers and the economy as a whole.

Issues for consultation

5.24 The following are the privacy issues for consultation arising from the industry's proposal of greater sharing of mortgage data for general credit assessment:

- (a) Issue 1 – Types of mortgage loans to be covered;
- (b) Issue 2 – Types of data to be contributed by credit providers to the CRA and to be accessed by credit providers: Positive and Negative;
- (c) Issue 3 – Contribution of pre-existing mortgage data by credit providers to the CRA;
- (d) Issue 4 – Use of Mortgage Count for general credit assessment on or after implementation;
- (e) Issue 5 – Transitional period; and
- (f) Issue 6 – Implementation safeguards.

Members of the community are invited to submit their views regarding these issues, which are explained below.

Issue 1 – Types of mortgage loans to be covered

5.25 Views are invited on 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, retail, commercial and industrial properties in respect of borrowers, mortgagors and guarantors (as opposed to sharing of only negative mortgage data for residential properties with respect to borrowers and guarantors as at present).

5.26 At present, mortgage data available for sharing by credit providers in the CRA are residential mortgage data of consumers who have material defaults in payment (i.e. a default in payment for a period in excess of 60 days). The 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. From a data protection perspective, consideration has to be given as to whether the inclusion of additional mortgage loan types 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.

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

Positive Mortgage Data

5.27 Views are invited on the proposed items of Contributed Data to be provided by credit providers to the CRA and the access of the Mortgage Count by credit providers from the CRA.

5.28 According to the industry's proposal, the Contributed Data in relation to mortgage loans and mortgage loan applications to be provided by credit providers to the CRA are:

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

5.29 According to the industry, the above Contributed Data are necessary to enable the CRA to identify accurately each individual involved in a consumer mortgage loan and compile the Mortgage Count. The industry proposes that credit providers will have access to the Mortgage Count only (and not the Contributed Data) from the CRA.

Negative Mortgage Data

5.30 As for the sharing of negative data of non-residential mortgages, the industry proposed that credit providers will share the same items of negative credit data as currently permitted under the Code for residential mortgages, i.e. account general data (as stated in Schedule 2 of the Code) and default data (being the amount past due (if any) and number of days past due; and date of settlement of amount past due (if any)). Such data will only be provided by credit providers if there is a material default in payment of the mortgage loan. (i.e. a default in payment for a period in excess of 60 days).

5.31 Subject to the determination on the types of mortgage loans to be covered under Issue 1, the Privacy Commissioner is of the view that 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.

5.32 To align with the treatment under the existing Code, it is recommended that:-

- (a) CRA may retain the data covered in paragraph 5.28 and 5.29 above in its database until the expiry of 5 years after account termination subject to the request from the consumer during the 5 years for deletion of the account data from its database as stated in clause 3.5.2 of the existing Code provided that there has not been any material default (default in payment in excessive of 60 days) within 5 years immediately before account termination.
- (b) CRA may retain the data covered in paragraph 5.30 above in its database until the expiry of 5 years from the date of final settlement of the amount in default (including settlement of the amounts payable pursuant to a scheme of arrangement with the credit provider) as stated in clause 3.3 of the Code.

5.33 In view of the proposed expansion of types of data to be contributed by credit providers to the CRA and to be accessed by credit providers, clause 2.4.3.3 and Schedule 2 of the existing Code will have to be amended to cover the types of positive and negative data illustrated under paragraphs 5.28, 5.29 and 5.30 above. Consequential changes will have to be made to the relevant provisions of the existing Code to give effect to the above amendments.

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

5.34 According to the industry, customers whose mortgage data are to be contributed to the CRA belong to two groups:-

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

5.35 Views are invited on the contribution to the CRA database by credit providers of mortgage data (see paragraphs 5.28, 5.29 and 5.30 under Issue 2) of pre-existing mortgage loans and mortgage loan applications received before the implementation date of the proposal, with or without prior explicit notification to the customers.

5.36 In this regard, the industry is of the view that even in the absence of prior notification, there is no need to obtain the explicit consent of the customers as the

additional mortgage data are used for a lawful purpose directly related to the core activity of credit providers and the original purpose for which they were collected. The industry believes a “directly related purpose” should be determined by whether it is directly related to the original purpose, without imposing a specific time frame for making that determination. Adopting such interpretation, the industry treats ‘*granting and maintaining the mortgage loan*’ as original purposes and ‘*ensuring ongoing creditworthiness of the customer*’ as a purpose directly related to those original purposes.

5.37 The PCPD notes the industry’s view but feels that the industry’s interpretations of “directly related purpose” would have implications for privacy, particularly in cases where the borrower/mortgagor/guarantor was not explicitly informed by the lending institution of the use and transfer of his personal data including contribution to the CRA database, before or at the time of applying for mortgage loan, and it would therefore be uncertain if he could have reasonably contemplated that his mortgage data would subsequently be contributed and used for sharing on a credit database. Nevertheless, the PCPD is also aware of the increasing public concern about rising property prices and that if mortgage data prior to the implementation of the proposal are not shared, the intended effectiveness of mortgage data contribution by credit providers to the CRA after the implementation of the proposal will not be realized until some years after implementation, thus thwarting the purposes of extending the coverage of consumer credit data sharing to mortgage data.

5.38 The Privacy Commissioner 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. He will form a definitive view taking into account stakeholder and public views collected during the consultation exercise. Views are therefore sought from relevant mortgagors, guarantors and borrowers, among others, on whether it was within their reasonable contemplation that their personal data in relation to pre-existing mortgages and mortgage loan applications would be disclosed to the CRA for consumer credit data sharing and on whether they support the disclosure on grounds of public interest that the industry and the HKMA advocates.

Issue 4 – Use of Mortgage Count on or after implementation

5.39 Although the additional data contributed by the credit providers to the CRA relate to mortgage, data access would be allowed 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 applications for new credit facilities or renewal of existing credit facilities, or general portfolio review after customer’s written consent is obtained. This means that mortgage data provided by borrowers, mortgagors or guarantors in connection with their applications for mortgage loans will 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 from credit providers by the borrowers, mortgagors or guarantors.

5.40 While the desirability of having comprehensive credit information about their borrowers on the part of credit providers is understandable, it is worth noting that the size of non-mortgage credit facilities to be considered by credit providers is relatively smaller compared with the size of mortgage loans. This begs the question of whether the availability of mortgage data is absolutely necessary for the purposes of processing, for example, an application for credit cards involving a relatively small amount of credit facilities compared to mortgage loans. Public views are sought in this regard.

Issue 5 - Transitional period

5.41 Views are also invited on the industry's proposed length of the transitional period, that is, 24 months following the implementation date for the sharing of consumer mortgage data. The concept of a transitional period is that during the period, credit providers are prevented from accessing and using these data for the purposes of review of existing credit facilities of borrowers except for those circumstances where immediate access is required because the customer is in financial difficulties and in need of debt restructuring.

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

5.43 The benefits of a transitional period are clear. The question is whether the proposed length of the transitional period is reasonable. Public views are sought.

Issue 6 – Implementation safeguards

5.44 The PCPD considers that a privacy compliance audit is a useful tool that should be deployed by the CRA to review and check whether data management practices are adequate to comply with the requirements of the Code.

5.45 At present, the CRA is required to carry out compliance audit annually and audit report has to be submitted to the Privacy Commissioner for consideration and/or comments.

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

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

5.47 Views are invited from the general public on whether any additional privacy safeguards should be introduced and any other controls should apply to the credit database system and to the staff of the CRA and the credit providers that interface with the system to prevent abusive access.