

Personal Data (Privacy) Ordinance

Code of Practice on Consumer Credit Data

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INTRODUCTION

THIS CODE OF PRACTICE (“the Code”) has been issued by the Privacy Commissioner for Personal Data (“the Commissioner”) in the exercise of the powers conferred on him by PART III of the Personal Data (Privacy) Ordinance (Cap. 486) (“the Ordinance”). Section 12 of the Ordinance empowers the Commissioner to issue such codes of practice “for the purpose of providing practical guidance in respect of any requirements under this Ordinance imposed on data users”.

The Code was first notified in the Gazette on 27 February 1998. The related Gazette Notice, as required by section 12, specified that:

- (a) the Code was to take effect on 27 November 1998; and
- (b) the Code was approved in relation to the following requirements under the Ordinance: sections 19(1), 23(1), 26 and Data Protection Principles 1, 2, 3, 4 and 6 of Schedule 1.

The first revision of the Code was notified in the Gazette on 8 February 2002. The related Gazette Notice specified that such revision shall take effect on 1 March 2002.

The second revision of the Code was notified in the Gazette on 23 May 2003. The related Gazette Notice specified that such revision shall take effect on 2 June 2003.

The third revision of the Code was notified in the Gazette on 1 April 2011. The related Gazette Notice specified that such revision (save as such clauses as specified therein) shall take effect on 1 April 2011. Clauses 2.4.1A, 2.7B and 3.1.1A of the Code took effect on 1 July 2011.

The fourth revision of the Code was notified in the Gazette on 28 December 2012. The related Gazette Notice specified that such revision shall take effect on 1 January 2013.

The Code is designed to provide practical guidance to data users in Hong Kong in the handling of consumer credit data. 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 one hand, credit reference agencies, and on the other hand, credit providers in their dealing with credit reference agencies and debt collection agencies.

A breach of the Code by a data user will give rise to a presumption against the data user in any legal proceedings under the Ordinance. Basically the Ordinance provides (in section 13) that:

- (a) where a code of practice has been issued in relation to any requirement under the Ordinance;
- (b) the proof of a particular matter is essential for proving a contravention of that requirement;
- (c) the specified body conducting the proceedings (a magistrate, a court, the Administrative Appeals Board or the Chairman of the Administrative Appeals Board) considers that any particular provision of the code of practice is relevant to that essential matter; and if
- (d) it is proved that that provision of the code of practice has not been observed;

then that essential matter shall be taken as proved unless there is evidence that the

requirement under the Ordinance was actually complied with in a different way, notwithstanding the non-observance of the code of practice.

Aside from legal proceedings, a failure to observe a code of practice by a data user will weigh unfavourably against the data user in any case brought before the Commissioner.

PERSONAL DATA (PRIVACY) ORDINANCE CODE OF PRACTICE ON CONSUMER CREDIT DATA

I INTERPRETATION

Unless the context otherwise requires, the terms used in this Code have the following meanings:

- 1.1 “Account” means any account between a credit provider and an individual that involves the provision of consumer credit, and includes any new account created as the result of any scheme of arrangement involving one or more previous accounts;
- 1.2 “Account data” means the account data referred to in Schedule 2. For account involving the provision of consumer credit to another person for whom an individual acts as mortgagor or guarantor, the account data of such account is, in addition to being account data relating to that other person as the borrower, deemed to be also account data relating to the individual to such extent as to reveal the contingent liability of the individual as mortgagor or guarantor;
- 1.3 “Account general data” means the account general data referred to in Schedule 2;
- 1.4 “Account repayment data” means the account repayment data referred to in Schedule 2;
- 1.5 “Banking Code” means the Code of Banking Practice issued jointly by the Hong Kong Association of Banks and the DTC Association and endorsed by the Hong Kong Monetary Authority, including any revision from time to time in force;
- 1.6 “Commissioner” means the Privacy Commissioner for Personal Data;
- 1.7 “Consumer credit” means any loan, overdraft facility or other kind of credit provided by a credit provider to and for the use of an individual, or to and for the use of another person for whom an individual acts as mortgagor or guarantor. For credit involving leasing or hire-purchase,

- an individual acquiring motor vehicles, equipment or vessels financed by a credit provider by way of leasing or hire-purchase is deemed to be provided with credit by the credit provider to the extent of the value of those goods, any amount overdue under the lease or hire-purchase agreement is deemed to be an amount in default under the individual's account with the credit provider, and all related terms and expressions are to be construed accordingly;
- 1.8 “Consumer credit data” means any personal data concerning an individual collected by a credit provider in the course of or in connection with the provision of consumer credit, or any personal data collected by or generated in the database of a CRA (including the mortgage count) in the course of or in connection with the providing of consumer credit reference service;
- 1.9 “Consumer credit reference service” means the service of compiling and/or processing personal data (including consumer credit scoring), for disseminating such data and any data derived therefrom to a credit provider for consumer credit purposes and, for performing any other functions directly related to consumer credit transactions;
- 1.10 “Consumer credit scoring” means the process whereby personal data relating to an individual held in the database of a CRA is used, either separately or in conjunction with other information held in the system, for the purpose of generating a score (being information statistically validated to be predictive of future behaviour or the degree of risk of delinquency or default associated with the provision or continued provision of consumer credit) to be included in a credit report on the individual;
- 1.11 “CRA” means credit reference agency, which in turn means any data user who carries on a business of providing a consumer credit reference service, whether or not that business is the sole or principal activity of that data user;
- 1.12 “Creation”, in relation to consumer credit data held by a CRA, means the entering of such data into the database of the CRA;
- 1.13 “Credit provider” means any person described in Schedule 1;
- 1.14 “Credit report” provided by a CRA on an individual means a disclosure made by the CRA, in whatever form, of consumer credit data relating to such individual held in its database;
- 1.15 “DCA” means debt collection agency;
- 1.16 “DPP” means data protection principle;
- 1.17 [Omitted as spent on 1 April 2011];

- 1.18 “Hire-purchase, leasing or charge account” means an account involving the hire-purchase or leasing of, or the creation of a charge over, motor vehicles, equipment, vessels or other assets excluding real estate property;
- 1.19 “Loan restructuring arrangement” means any scheme of arrangement in relation to debts owed by an individual consequent upon a default in the repayment of those debts;
- 1.20 “Material default” means a default in payment for a period in excess of 60 days;
- 1.21 “Mortgage loan” means a loan secured or to be secured by residential (including uncompleted units and properties under the Home Ownership Scheme, Private Sector Participation Scheme, Tenants Purchase Scheme, and any other subsidised home purchase scheme offered by the Government of the Hong Kong Special Administrative Region from time to time), retail, commercial or industrial properties, unless otherwise specified and reference to “mortgage” shall be construed accordingly;
- 1.22 “Mortgage count” means the number of mortgage loans under which an individual is a borrower, mortgagor and/or guarantor;
- 1.23 “Ordinance” means the Personal Data (Privacy) Ordinance (Cap. 486);
- 1.24 “Prescribed consent” means the express consent of an individual given voluntarily but does not include any consent which has been withdrawn by notice in writing served on the person to whom the consent has been given (but without prejudice to so much of that act that has been done pursuant to the consent at any time before the notice is so served);
- 1.25 “Reporting period”, in relation to an account, means the period between 1 April 2011 and the date on which account data is provided by the credit provider to the CRA for the first time, and, thereafter, the period (not exceeding 31 days) between each successive instance of providing such data;
- 1.26 “Scheme of arrangement” means any restructuring, rescheduling or other modification of terms of whatsoever nature in relation to debts owed by an individual, whether as borrower, as mortgagor or as guarantor, towards a single creditor or more than one creditor;
- 1.27 “Suspected abnormal access” means the occurrence of access on five or more occasions within a period of 31 days made by the same credit provider seeking access to the consumer credit data of a particular individual held by a CRA, in connection with the review of existing consumer credit facilities pursuant to clause 2.9.1.2, 2.9A.2, 2.9A.4,

- 2.9A.5, 2.10A.2 , 2.10A.3 or 2.10A.4 of the Code;
- 1.28 “Transitional period” means the period of 24 months beginning on 1 April 2011 and ending on 31 March 2013.
- 1.29 “Termination of the account”, “account termination” or other word that connotes an account being terminated means closure for any further business between the credit provider and the borrower of the account after being fully repaid subject to the agreed terms and conditions then in force. For avoidance of doubt, any amount being written off in full or in part is not considered as repayment.

Words and expressions importing the masculine gender include the feminine, and words and expressions in the singular include the plural, and vice versa.

II THE HANDLING OF CONSUMER CREDIT DATA BY CREDIT PROVIDERS

Notification to customer by credit provider

Notification upon application for consumer credit

- 2.1 A credit provider who provides consumer credit data (excluding the data relating to mortgage loan) to a CRA or, in the event of default, to a DCA, shall, on or before collecting the personal data of an individual applicant for consumer credit, take all reasonably practicable steps to provide to such individual a written statement setting out clearly the following information¹:
 - 2.1.1 that the data may be so supplied to a CRA and/or, in the event of default to a DCA;
 - 2.1.2 that the individual has the right to be informed, upon request, about which items of data are routinely so disclosed, and his right to be provided with further information to enable the making of a data access and correction request to the relevant CRA or DCA, as the case may be;
 - 2.1.3 [Omitted as spent on 1 January 2013]
 - 2.1.3A that, in the event of any default in repayment, unless the amount in default is fully repaid or written off (otherwise than due to a bankruptcy order) before the expiry of 60 days from the date such default occurred, the individual shall be liable to have his account repayment data retained by the CRA until the expiry of 5 years from the date of final settlement of the amount in default;
 - 2.1.3B that, in the event of any amount being written off due to a bankruptcy order being made against the individual, the individual shall be liable to have his account repayment data retained by the CRA, regardless of whether the account repayment data reveal any material default, until the earlier of the expiry of 5 years from the date of final settlement of the amount in default or the expiry of 5 years from the date of the individual's discharge from bankruptcy as notified to the CRA by such individual with evidence; and
 - 2.1.4 that the individual, upon termination of the account by full

¹ If a credit provider fails to take all reasonably practicable steps to give to the individual applicant a written statement as described in clause 2.1, this will give rise to a presumption of contravention of DPP1(3) under section 13(2) of the Ordinance.

repayment and on condition that there has not been, within 5 years immediately before account termination, any material default on the account, will have the right to instruct the credit provider to make a request to the CRA to delete from its database any account data relating to the terminated account².

2.1A [Omitted as spent on 1 January 2013]

2.1B A credit provider who provides consumer credit data relating to mortgage loan to a CRA or, in the event of default, to a DCA, shall, on or before collecting the personal data of an individual applicant for mortgage loan, take all reasonably practicable steps to provide to such individual a written statement setting out clearly the information in clauses 2.1.1, 2.1.2, 2.1.3A, 2.1.3B and 2.1.4 above with respect to data relating to mortgage loan and in addition thereof, the credit provider shall state explicitly that the mortgage account general data (as defined in clause 2.4.4A) will be so supplied to the CRA for generating the mortgage count for sharing in the consumer credit database of CRA by credit providers³.

Notification upon default

2.2 [Omitted as spent on 1 January 2013]

2.2A Where the credit provider has provided consumer credit to an individual and the account is subsequently in default, the credit provider shall, as a recommended practice, give to such individual within 30 days from the date of default a written reminder stating that unless the amount in default is fully repaid or written off (otherwise than due to a bankruptcy order) before the expiry of 60 days from the date of the default, the individual shall be liable to have his account repayment data retained by the CRA until the expiry of 5 years from the date of final settlement of the amount in default or 5 years from the date of the individual's discharge from bankruptcy as notified to the CRA, whichever is earlier.

Notification upon account termination

2.3 Upon the termination of the account by full repayment (excluding payment by refinancing of the debit balance on the account by the credit provider), the credit provider shall, as a recommended practice, give to

² See clause 2.15 for the duty of the credit provider to make such a request to the CRA upon the individual's instructions.

³ If a credit provider fails to take all reasonably practicable steps to give to the individual applicant a written statement as described in clause 2.1B, this will give rise to a presumption of contravention of DPP1(3) under section 13(2) of the Ordinance.

the individual a written reminder of his right (on condition that there has not been, within 5 years immediately before account termination, any material default on the account) to instruct the credit provider to make a request to the CRA to delete from its database any account data or mortgage account general data relating to the terminated account⁴.

Providing of consumer credit data by credit provider to CRA

Scope of data to be provided

2.4 Where a credit provider has collected any consumer credit data in relation to an individual, subject to compliance with clauses 2.5 and 2.6, it may thereafter provide to a CRA any of following items of consumer credit data⁵:

Where the consumer credit data are not collected in relation to a mortgage loan

2.4.1 [Omitted as spent on 1 July 2011]

2.4.1A general particulars of the individual, being: name, address, contact information, date of birth, Hong Kong Identity Card Number or travel document number;

2.4.2 credit application data (being the fact that the individual has made an application for consumer credit, the type and the amount of credit sought) that do not relate to a mortgage loan;

2.4.3 account data as described in Schedule 2, provided that the credit provider shall not provide to the CRA :

2.4.3.1 account data of any account which has been terminated by full repayment (excluding payment by refinancing of the debit balance on the account by the credit provider) prior to 2 June 2003; or

2.4.3.2 account repayment data held by it prior to 2 June 2003 of any account which already existed prior to 2 June 2003 and continues to exist after that date, unless such account repayment data reveal an outstanding default on 2 June 2003, in which case,

⁴ See clause 2.15 for the duty of the credit provider to make such a request to the CRA upon the individual's instructions.

⁵ If, in the absence of any applicable exemption, a credit provider provides to a CRA any consumer credit data other than those permitted under this clause, this will give rise to a presumption of contravention of DPP3(1) under section 13(2) of the Ordinance.

the credit provider may provide to the CRA the default data relating to such default;

2.4.3.3 [Omitted as spent on 1 April 2011]

2.4.3A credit card loss data, being:

- 2.4.3A.1 notice that the credit provider, as card issuer, has suffered financial loss as the result of an unauthorized transaction carried out through the use of a credit card that has been reported lost, for an amount in excess of the maximum liability of the individual before notification to the card issuer of the loss of the card;
- 2.4.3A.2 the amount of such maximum liability and the amount of financial loss suffered by the card issuer;
- 2.4.3A.3 the reported date of the loss of the credit card, and the date of such report; and
- 2.4.3A.4 a description of the event (misplacement of wallet, theft, robbery, etc.) reported to have given rise to the loss of the credit card and any follow-up action including, where applicable, any report to the police, subsequent investigation or prosecution and result, finding of the lost card, etc.

2.4.4 [Omitted as spent on 1 April 2011]

Where the consumer credit data is collected in relation to a mortgage loan

2.4.4A mortgage account general data, being:

- (i) name of the individual;
- (ii) capacity of the individual (i.e. whether as borrower, mortgagor or guarantor);
- (iii) Hong Kong Identity Card Number or travel document number;
- (iv) date of birth;
- (v) address;
- (vi) account number;
- (vii) type of the facility;
- (viii) account status (active, closed, write-off, etc);
- (ix) account closed date,

provided that the credit provider shall not provide to the CRA:-

2.4.4A.1 the mortgage account general data of any account

relating to a mortgage loan which has been terminated by full repayment prior to 1 April 2011; or

2.4.4A.2 the mortgage account general data of any account relating to a mortgage loan which already existed prior to 1 April 2011 and continues to exist after that date unless:-

(i) the credit provider has obtained the prescribed consent of the individual to whom the data relates for disclosure of the mortgage account general data to the CRA; or

(ii) the repayment data of such account reveals a currently outstanding material default, in which case, the credit provider may provide to the CRA the account general data together with the default data relating to such material default;

2.4.4B mortgage application data (being the fact that the individual has made an application for mortgage loan) provided that the credit provider has obtained the prescribed consent of the individual; and

2.4.4C where there is any outstanding material default of a mortgage loan which is granted on or after 1 April 2011, the credit provider may provide to the CRA the account general data together with the default data relating to such material default.

Accuracy of data provided

2.5 Before a credit provider provides any consumer credit data to a CRA, it shall have taken reasonably practicable steps to check such data for accuracy. If subsequently the credit provider discovers any inaccuracy in the data which has been provided to the CRA, it shall update such data held in the database of the CRA as soon as reasonably practicable⁶.

Providing of disputed data

2.6 Whenever a credit provider provides to a CRA any consumer credit data disputed by the individual to whom such data relates, this shall be accompanied by an indication of the existence of the dispute. If at any

⁶ If a credit provider fails to have taken reasonably practicable steps to check the accuracy of the data before providing such data to a CRA, or if it fails to update the data held in the database of the CRA after discovering such accuracy, this will give rise to a presumption of contravention of DPP2(1) under section 13(2) of the Ordinance.

subsequent time the dispute has ended, the credit provider shall as soon as reasonably practicable update the data held by the CRA accordingly⁷.

Updating of account data

2.7 [Omitted as spent on 1 July 2011]

2.7A Without prejudice to the generality of clauses 2.4, 2.5 and 2.6, but subject to clause 2.7B, where a credit provider has provided any account data or mortgage account general data to a CRA:

2.7A.1 the credit provider shall thereafter continue to update such account data or mortgage account general data promptly or, in any event, by the end of each reporting period not exceeding 31 days, until the account is terminated or written-off, whereupon the credit provider shall promptly update the account data to indicate such termination or write-off; and

2.7A.2 in addition, the credit provider shall update as soon as reasonably practicable the account data or mortgage account general data held in the database of the CRA upon the occurring of any of the following events⁸:

2.7A.2.1 the repayment in full or in part of any amount in default;

2.7A.2.2 a scheme of arrangement being entered into with the individual;

2.7A.2.3 the final settlement of the amount payable pursuant to such a scheme of arrangement; or

2.7A.2.4 the write-off of any amount whether or not the amount has been in default or the subsequent repayment in full or in part of the written off amount.

2.7B In the event that the individual makes a request to the credit provider for updating under the circumstances in clauses 2.7A.2.1 to 2.7A.2.4 above,

⁷ If a credit provider provides to a CRA any consumer credit data disputed by the individual to whom such data relates without accompanying the data with an indication of the existence of such dispute, or if the credit provider, having accompanied the data with such an indication, fails to update the data held by the CRA as soon as reasonably practicable after the dispute has ended, this will give rise to a presumption of contravention of DPP2(1) under section 13(2) of the Ordinance.

⁸ If a credit provider fails to update any account data provided to a CRA in accordance with clause 2.7A, this will give rise to a presumption of contravention of DPP2(1) under section 13(2) of the Ordinance.

the credit provider shall update the account data or mortgage account general data of the individual held in the database of the CRA promptly but in any event not later than 14 days from the date of receiving the request⁹.

Access by credit provider to consumer credit data held by CRA

Access for updating

2.8 A credit provider may at any time, for the purpose of providing or updating consumer credit data on an individual, access from a CRA such consumer credit data on the individual as was previously provided by it to the CRA¹⁰.

Access through credit report

2.9 Without prejudice to the generality of clause 2.8 but subject to clauses 2.9A and 2.10A, a credit provider may, through a credit report provided by a CRA, access consumer credit data (except mortgage count) held by the CRA on an individual¹¹:

2.9.1 in the course of:

- 2.9.1.1 the consideration of any application for 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 mortgagor or guarantor; or

⁹ If a credit provider fails to update any account data provided to a CRA in accordance with clause 2.7B, this will give rise to a presumption of contravention of DPP2(1) under section 13(2) of the Ordinance.

¹⁰ If the credit provider accesses any of the consumer credit data held by a CRA in situations other than those provided for in clauses 2.8, 2.9, 2.9A or 2.10A, this will give rise to a presumption of contravention of DPP1(1) and/or DPP1(2) under section 13(2) of the Ordinance.

¹¹ For the consequence of a credit provider accessing the consumer credit data held by a CRA in situations other than those provided for in clauses 2.9 and 2.9A, see Note 10 to clause 2.8 above.

- 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, mortgagor or guarantor,

and for the purpose of clauses 2.9.1.2, 2.9A.2, 2.9A.4, 2.9A.5, 2.10A.2, 2.10A.3, 2.10A.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.
- 2.9A Without prejudice to the generality of clause 2.8 but subject to clause 2.10A, a credit provider may, with the written consent from the individual and through a credit report provided by a CRA, access the mortgage count held by the CRA on an individual¹² in the course of:
- 2.9A.1 the consideration of any application for grant of a mortgage loan;
 - 2.9A.2 the review of existing mortgage loans granted;
 - 2.9A.3 the consideration of any application for grant of consumer credit facilities (other than mortgage loan);
 - 2.9A.4 the review of existing consumer credit facilities granted (other than mortgage loan);
 - 2.9A.5 the review under the circumstances in clauses 2.10A.2, 2.10A.3 and 2.10A.4 for any existing consumer credit facilities granted;
 - 2.9A.6 the renewal of existing mortgage loans granted; or
 - 2.9A.7 the renewal of existing consumer credit facilities granted (other than mortgage loan),
- to the individual as borrower or to another person for whom the

¹² If the credit provider accesses the mortgage count held by a CRA in situations other than those provided for in clause 2.9A, this will give rise to a presumption of contravention of DPP1(1) and/or DPP1(2) under section 13(2) of the Ordinance.

individual proposes to act or acts as mortgagor or guarantor and for the purposes of clauses 2.9A.3, 2.9A.4 and 2.9A.7, the consumer credit facilities granted or to be granted shall be of an amount not less than such level or be determined by a mechanism as prescribed or approved by the Commissioner from time to time.

Access to Mortgage Count during transitional period

2.10 [Omitted as spent on 1 April 2011]

2.10A Notwithstanding clause 2.9A, a credit provider shall not, during the transitional period, be entitled to access the mortgage count of an individual through a credit report, unless the access is made with the written consent of the individual and under any of the following circumstances¹³:

2.10A.1 in the course of considering any application for grant of a mortgage loan to the individual, or to another person for whom the individual proposes to act as mortgagor or guarantor;

2.10A.2 in the course of the review of existing credit facilities currently in material default, with a view to putting in place a loan restructuring arrangement by the credit provider;

2.10A.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

2.10A.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.

Confirmation to CRA upon access

2.11 On each occasion of accessing any consumer credit data held by a CRA, the credit provider shall confirm to the CRA for its record¹⁴:

2.11.1 the circumstances provided for in clause 2.8, 2.9, 2.9A or 2.10A

¹³ If the credit provider accesses the mortgage count during the transitional period in circumstances other than those provided for in clause 2.10A, this will give rise to a presumption of contravention of DPP1(1) and/or DPP1(2) under section 13(2) of the Ordinance.

¹⁴ If the credit provider, on accessing any consumer credit data held by the CRA, fails to give to the CRA the confirmation referred to in this clause 2.11, or gives a confirmation that is not truthful, this will give rise to a presumption of contravention of DPP1(2) under section 13(2) of the Ordinance.

under which the access has been made; and

- 2.11.2 in the case where the access has been made in the course of the review of existing consumer credit facilities under clause 2.9.1.2, 2.9A.2, 2.9A.4, 2.9A.5, 2.10A.2, 2.10A.3 or 2.10A.4 above, the specific matter or matters provided for in clause 2.9.3, 2.9.4 or 2.9.5 above that has been considered upon such a review.

No access for direct marketing

- 2.12 A credit provider is prohibited from accessing the consumer credit data of an individual held by a CRA for the purpose of offering or advertising the availability of goods, facilities or services to such individual¹⁵. For the avoidance of doubt, this clause does not prohibit a credit provider from accessing the consumer credit data of its existing customers in the course of the review or renewal of existing consumer credit facilities under the circumstances as provided under clauses 2.9.1.2, 2.9.1.3, 2.9A.2, 2.9A.4, 2.9A.5, 2.9A.6, 2.9A.7, 2.10A.2, 2.10A.3 and 2.10A.4.

Notification to individual of access to consumer credit data

Notification of access for considering credit application

- 2.13 Where a credit provider has been provided by a CRA with a credit report on an individual and has considered such credit report in connection with an application for consumer credit by that individual, the credit provider shall, in its notification to the individual of its decision on the application, give notice of the fact that a credit report has been so considered. The credit provider shall also inform the individual how to contact the CRA who provided the credit report, for the purpose of making access to a copy of the credit report for free under clause 3.18 and, where appropriate, to make a data correction request under the Ordinance¹⁶. If a correction request made by the individual is subsequently complied with by the CRA, the credit provider shall, at the request of the individual, use a new credit report obtained from the CRA as a basis for its reconsideration of the credit application¹⁷.

¹⁵ If the credit provider accesses the consumer credit data of an individual held by a CRA for the purpose of offering or advertising the availability of goods, facilities or services to such individual , this will give rise to a presumption of contravention of DPP1(2) and/ or DPP3(1) under section 13(2) of the Ordinance.

¹⁶ If the credit provider fails to notify the individual of the fact that a credit report has been considered, or fails to inform such individual how to contact the CRA who provided the credit report, this will give rise to a presumption of contravention of DPP2(1) under section 13(2) of the Ordinance.

¹⁷ If, despite the request of the individual whose consumer credit data held by the CRA has been corrected, the credit provider fails to use a new credit report obtained from the CRA as a basis for its reconsideration of the credit application, this will give rise to a presumption

Notification of access for review

- 2.14 Where a credit provider accesses the consumer credit data of an individual held by a CRA for the purpose of the review of existing consumer credit facilities (whether within or outside the transitional period):
- 2.14.1 the credit provider shall, before making such access, take such steps as may be reasonably practicable in the circumstances to notify the individual of¹⁸:
- 2.14.1.1 the fact that his data is being so accessed upon the review of his existing consumer credit facilities; and
- 2.14.1.2 the specific matter or matters, as provided for in clause 2.9.3, 2.9.4 or 2.9.5, to be considered by the credit provider upon such a review,
- except that no such notification by the credit provider shall be necessary:
- 2.14.1.3 where the review of existing consumer credit facilities has been initiated by a request from the individual; or
- 2.14.1.4 where there is in place, at the time of the access, a loan restructuring arrangement in relation to debts owed by the individual to the credit provider; and
- 2.14.2 the credit provider shall, upon making such access, create, and thereafter keep for a period of 2 years, an internal record of the notification given to the individual pursuant to clause 2.14.1 or, where applicable, the specific matter as provided for in clause 2.14.1.3 or 2.14.1.4 which made such a notification unnecessary¹⁹.

of contravention of DPP2(1) under section 13(2) of the Ordinance.

¹⁸ If the credit provider, in situations other than those mentioned in clause 2.14.1.3 or 2.14.1.4, fails to take such steps as may be reasonably practicable in the circumstances to give prior notification to the individual of the matters provided for in clauses 2.14.1.1 and 2.14.1.2, this will give rise to a presumption of contravention of DPP1(2) under section 13(2) of the Ordinance.

¹⁹ If the credit provider, upon accessing the consumer credit data of an individual held by a CRA for the purpose of the review of existing consumer credit facilities, fails to create, or thereafter fails to keep for a period of 2 years, the internal record referred to in clause 2.14.2, this will give rise to a presumption of contravention of DPP1(2) under section 13(2) of the Ordinance.

Request to CRA for deletion of data after account termination

Request on instructions from individual

- 2.15 Where a credit provider has provided to a CRA any account data or mortgage account general data relating to an account, if within 5 years after account termination, the credit provider receives instructions from the individual to whom such account relates (or, if the account relates to more than one individuals, their joint instructions) to make a request to the CRA to delete such account data or mortgage account general data from its database, the credit provider shall, as soon as reasonably practicable upon the receiving of the instructions, check from its own records whether both of the following conditions are satisfied, namely:
- 2.15.1 that the account has been settled by full payment (other than payment by refinancing of the debit balance on the account by the credit provider); and
- 2.15.2 that there has not been, within 5 years immediately before account termination, any material default on the account (whether or not such default period fell entirely within those 5 years),

and shall, upon verifying that both conditions are satisfied, make the request to the CRA as soon as reasonably practicable, or alternatively, upon verifying that one of the said conditions is not satisfied, notify the individual as soon as reasonably practicable its rejection of the instructions, and the reason for such rejection²⁰.

Providing of consumer credit data by credit provider to DCA

Matters to be satisfied with before providing data

- 2.16 On or before providing any consumer credit data to a DCA for debt collection against an individual, a credit provider shall ensure that²¹ :
- 2.16.1 a formal contract has been executed to require, or written instructions have been issued under such a contract to require,

²⁰ If the credit provider fails to handle the instructions from the individual for the deletion of the account data in accordance with this clause 2.15, this will give rise to a presumption of contravention of DPP2(2) under section 13(2) of the Ordinance.

²¹ If the credit provider fails to ensure the matters set out in this clause before providing any consumer credit data to a DCA, this will give rise to a presumption of contravention of DPP2(3),DPP3(1)and/or DPP4(2)under section 13(2) of the Ordinance.

the DCA to (i) follow such conduct as stipulated by the Banking Code or similar industry codes (if any) in relation to debt collection activities; (ii) prevent any consumer credit data transferred to it from being kept longer than necessary for debt collection; and (iii) prevent unauthorized or accidental access, processing, erasure, loss or use of the data transferred to it for debt collection; and

- 2.16.2 the credit provider is satisfied with the reputation of such DCA, on the basis of previous dealings with the DCA or other reasonable grounds, that the agency will fully comply with the requirement as aforesaid.

Data to be provided

- 2.17 Subject to clause 2.16, if a credit provider engages a DCA for collection against an individual in default, it may provide to the agency only information relating directly to the individual consisting of the following²² :

- 2.17.1 particulars to enable identification and location of the individual, including address and contact information;
- 2.17.2 the nature of the credit;
- 2.17.3 amount to be recovered and details of any goods subject to repossession.

Accuracy of data provided

- 2.18 A credit provider shall only provide consumer credit data to a DCA after checking the data for accuracy. If the amount in default is subsequently repaid in full or in part, or if any scheme of arrangement is entered into with the individual, or if the credit provider discovers any inaccuracy in the data which has been provided to and which the credit provider reasonably believes is being retained by the DCA, the credit provider shall notify the DCA as soon as reasonably practicable of such fact²³.

²² If the credit provider provides to a DCA any consumer credit data relating to an individual other than those permitted under this clause 2.17, this will give rise to a presumption of contravention of DPP3(1) under section 13(2) of the Ordinance.

²³ If the credit provider fails to check the accuracy of the data before providing such data to a DCA, or if it fails to notify the DCA of any inaccuracy of the data that it has provided to the DCA after discovering such inaccuracy, this will give rise to a presumption of contravention of DPP2(1) under section 13(2) of the Ordinance.

Data security and system integrity safeguards by credit provider

Engagement of CRA

- 2.19 In deciding on the engagement of a CRA for the provision of consumer credit reference service, and in considering, from time to time, the continued engagement of such CRA, a credit provider shall treat as an important criterion the demonstration by the CRA of its compliance with the requirements under the Ordinance and the Code, including compliance with the recommended good practice laid down in clauses 3.14 to 3.17 below, regarding the security of consumer credit data²⁴.

Measures to take in preparation for subscription to consumer credit reference service

- 2.20 On or before a credit provider's subscription to the consumer credit reference service of a CRA, the credit provider shall take appropriate measures, including the following, to safeguard against any improper access to or mishandling of consumer credit data²⁵:
- 2.20.1 develop written guidelines and disciplinary procedures specifying the controls and procedures to be followed by its staff in relation to the access to and the use of a CRA's database;
 - 2.20.2 establish controls, including but not limited to password controls, to ensure that only authorized staff are allowed access to a CRA's database; and
 - 2.20.3 enter into a formal written agreement with the CRA whose consumer credit reference service is being subscribed for, which shall specify :
 - 2.20.3.1 the duty of both parties to comply with the Code in providing and in utilizing the consumer credit reference service;
 - 2.20.3.2 the conditions under which the credit provider may access consumer credit data held by the CRA; and

²⁴ If the credit provider, in deciding on the engagement of the CRA and in considering, from time to time, the continued engagement of such CRA, fails to treat as an important criterion the demonstration by the CRA of its compliance with the requirements under the Ordinance and the Code regarding the security of consumer credit data, this will give rise to a presumption of contravention of DPP4(1) under section 13(2) of the Ordinance.

²⁵ If a credit provider, in preparation for subscription to a consumer credit reference service, fails to take any of the measures required under clause 2.20 to safeguard against any improper access to or mishandling of consumer credit data held by it, this will give rise to a presumption of contravention of DPP4(1) under section 13(2) of the Ordinance.

2.20.3.3 the controls and procedures to be applied when the credit provider seeks access to the CRA's database.

Measures to take in daily operations

2.21 A credit provider shall take appropriate measures, including the following, to safeguard against any improper access to or mishandling of consumer credit data in its daily operations²⁶:

2.21.1 the credit provider shall maintain a system whereby its senior management is provided with regular reports regarding instances of access to a CRA's database made during the period since the last report, to facilitate overall monitoring and to enable the detection of anomalous trends in access, if any;

2.21.2 in case any anomalous trends in access have been identified, or upon receiving from a CRA a report of suspected abnormal access pursuant to clause 3.13.1, the credit provider shall as soon as reasonably practicable conduct an internal investigation to ascertain whether such anomalous trends in access or suspected abnormal access (as the case may be) has been the result of:

2.21.2.1 improper access or other mishandling of data by any person (including but not limited to its staff), in contravention of the requirements under the Ordinance or of the Code; or

2.21.2.2 any defect in its system of handling consumer credit data which may have enabled or facilitated such improper access or mishandling;

2.21.3 if as the result of the investigation, the credit provider discovers any improper access, mishandling or defect as aforesaid, the credit provider shall, as soon as reasonably practicable, take appropriate action to prevent any further improper access or mishandling or to rectify the defect, as the case may be (including but not limited to disciplinary action against its staff, or reporting any case of suspected contravention of the Ordinance or other laws to the Commissioner or other relevant authorities, as the case may be);

2.21.4 the credit provider shall maintain a log of:

2.21.4.1 all instances of anomalous trends in access identified

²⁶ If a credit provider, in its daily operations, fails to take any of the measures required under clause 2.21 to safeguard against any improper access to or mishandling of consumer credit data held by it, this will give rise to a presumption of contravention of DPP4(1) under section 13(2) of the Ordinance.

- by it, and all reports of suspected abnormal access made to it by a CRA;
- 2.21.4.2 the actions taken by it as a result of the above, including a description of the investigation undertaken, the result and any action taken consequent thereon; and
- 2.21.4.3 attempts made by it to access account data or mortgage count held by a CRA for the purpose of the review of existing consumer credit facilities, including the specific matter or matters provided for in clause 2.9.3, 2.9.4 or 2.9.5 that has been considered upon such a review;
- and shall keep such log for not less than two years for examination by the Commissioner if and when required; and
- 2.21.5 the credit provider shall review on a regular and frequent basis its password controls which help to ensure that only authorized staff are allowed access to a CRA's database.

III THE HANDLING OF CONSUMER CREDIT DATA BY CREDIT REFERENCE AGENCIES

Collection of consumer credit data by CRA

Scope of data to be collected

3.1 A CRA may, for the consumer credit reference service which it provides, collect the following items of personal data²⁷:

3.1.1 [Omitted as spent on 1 July 2011]

3.1.1A general particulars of an individual as follows: name, address, contact information, date of birth, Hong Kong Identity Card Number or travel document number;

3.1.2 consumer credit data as permitted to be provided by a credit provider to the CRA under clause 2.4, including the identity of the credit provider and the date of the providing of such data;

3.1.3 [Omitted as spent on 1 January 2013]

3.1.3A public record and related data, being data in official records that are publicly available relating to any action for the recovery of a debt or judgements for monies owed entered against the individual, and any declaration or discharge of bankruptcy appearing on official records or as notified to the CRA by the individual pursuant to clauses 3.3.2 and 3.4B.2;

3.1.4 watch list data, being a list of credit providers who wish to be notified and provided information to assist in debt collection if an individual in default has reappeared in the system;

3.1.5 file activity data, being record of a credit provider accessing an individual's personal data held by the CRA under the consumer credit reference service provided;

3.1.6 credit score data, being the score that results or resulted from applying consumer credit scoring to an individual;

3.1.7 notification by the Transport Department under clause 3.10.2;

²⁷ If a CRA, for the consumer credit reference service which it provides, collects personal data other than those permitted under clause 3.1, this will give rise to a presumption of contravention of DPP1(1) under section 13(2) of the Ordinance.

and

- 3.1.8 any other type of personal data as described in Schedule 3 subject to the conditions therein mentioned, as may from time to time be amended by the Commissioner.

Retention of consumer credit data by CRA

Retention of account general data or mortgage account general data

- 3.2 Where a CRA has collected from a credit provider any account general data or mortgage account general data, the CRA may thereafter retain the same in its database for so long as there remain in such database any account repayment data relating to the same account or until the termination of the account, whichever is later²⁸.

Retention of account repayment data revealing material default

- 3.3 Where a CRA has collected from a credit provider any account repayment data relating to an individual that reveals a material default, the CRA may thereafter retain the account repayment data in its database until the earlier of²⁹:

- 3.3.1 the expiry of 5 years from the date of final settlement of the amount in default (or final settlement of the amounts payable pursuant to a scheme of arrangement with the credit provider); or

- 3.3.2 the expiry of 5 years from the date of the individual's discharge from bankruptcy, as notified to the CRA by such individual and evidenced by the relevant certificate of discharge issued by the Court of First Instance or by a written notice from the Official Receiver stating that the Official Receiver has no objection to a certificate of discharge being issued to the individual,

irrespective of any write-off by the credit provider of the amount in default in full or in part at any time after such default occurred (if such be the case).

²⁸ If a CRA retains in its database any account general data or mortgage account general data beyond the period permitted under this clause 3.2, subject to clause 3.7, this will give rise to a presumption of contravention of DPP2(2) under section 13(2) of the Ordinance.

²⁹ If a CRA retains in its database any account repayment data described in this clause 3.3 beyond the period permitted for the retention of such data under this clause, subject to clause 3.7, this will give rise to a presumption of contravention of DPP2(2) under section 13(2) of the Ordinance.

Retention of account repayment data not revealing material default

- 3.4 [Omitted as spent on 1 January 2013].
- 3.4A Subject to Clause 3.4B, where a CRA has collected from a credit provider any account repayment data that does not reveal a material default, the CRA may thereafter, in respect of each individual item of data collected, retain the same in its database for a period of 5 years from the date of creation of such data, provided that if the account is in the meantime terminated, then subject to clause 3.5.2, the CRA may continue to retain the account repayment data in its database until the expiry of 5 years after account termination³⁰.
- 3.4B Where the account general data or mortgage account general data relating to an individual reveals a status of write-off due to a bankruptcy order being made against the individual, the CRA may retain in its database the account repayment data at the time of write-off until the earlier of³¹:
- 3.4B.1 the expiry of 5 years from the date of final settlement of the outstanding amount at the time of write-off (or final settlement of the amount payable pursuant to a scheme of arrangement made through the Official Receiver with the credit provider); or
- 3.4B.2 the expiry of 5 years from the date of the individual's discharge from bankruptcy, as notified to the CRA by such individual and evidenced by the relevant certificate of discharge issued by the Court of First Instance or by a written notice from the Official Receiver stating that the Official Receiver has no objection to a certificate of discharge being issued to the individual.

Deletion of data after account termination pursuant to individual's request

- 3.5 [Omitted as spent on 1 January 2013]
- 3.5A Notwithstanding clause 3.4A, if a CRA has collected any account data or mortgage account general data from a credit provider and within 5 years after the termination of the account the CRA receives from the

³⁰ If a CRA retains in its database any account repayment data described in this clause 3.4A beyond the period permitted for the retention of such data under this clause, subject to clause 3.7, this will give rise to a presumption of contravention of DPP2(2) under section 13(2) of the Ordinance.

³¹ If a CRA retains in its database any account repayment data described in this clause 3.4B beyond the period permitted for the retention of such data under this clause, subject to clause 3.7, this will give rise to a presumption of contravention of DPP2(2) under section 13(2) of the Ordinance.

credit provider a request under clause 2.15 for the deletion of the account data or mortgage account general data from its database, the CRA shall:

3.5A.1 verify from its database as soon as reasonably practicable that there has not been, within 5 years immediately before account termination, any material default (whether or not such default period fell entirely within those 5 years); and

3.5A.2 having thus verified from its database, delete as soon as reasonably practicable from its database any account data or mortgage account general data relating to such terminated account³²,

provided that if the CRA discovers from its database that there has apparently been a material default within 5 years immediately before account termination, the CRA shall then clarify the matter with the credit provider as soon as reasonably practicable. The CRA shall, in the meantime, be under no obligation to delete the account data or mortgage account general data until it shall have clarified the matter with the credit provider³³.

Retention of other consumer credit data

3.6 Where a CRA has collected any consumer credit data other than account data or mortgage account general data, it may thereafter retain such data in its database for the following periods³⁴ :

3.6.1 public record and related data under clause 3.1.3A, except data relating to a declaration or discharge of bankruptcy: the period of 7 years from the date of the event shown in the official record;

3.6.2 public record and related data under clause 3.1.3A relating to a declaration or discharge of bankruptcy: the period of 8 years

³² If the CRA, having received instructions from the credit provider, fails to verify from its database as soon as reasonably practicable that there has not been, within 5 years immediately before account termination, any material default on the account, or, having so verified, fails to delete the account data or mortgage account general data as soon as reasonably practicable from its database, this will give rise to a presumption of contravention of DPP2(1) and/or DPP2(2) under section 13(2) of the Ordinance.

³³ If the CRA, having discovered from its database that there has apparently been a material default on the account within 5 years immediately before account termination, fails to clarify the matter with the credit provider as soon as reasonably practicable, this will give rise to a presumption of contravention of DPP2(1) under section 13(2) of the Ordinance.

³⁴ If a CRA retains in its database any consumer credit data described in this clause 3.6 beyond the period permitted for the retention of such data under this clause, subject to clause 3.7, this will give rise to a presumption of contravention of DPP2(2) under section 13(2) of the Ordinance.

- from the relevant declaration of bankruptcy;
- 3.6.3 credit application data under clause 2.4.2 or mortgage application data under clause 2.4.4B: the period of 5 years from the date of the reporting of the application;
- 3.6.4 credit card loss data under clause 2.4.3A: the period of 5 years from the date of report of the loss of the credit card;
- 3.6.5 file activity data under clause 3.1.5: the period of 5 years from the date of creation of such data;
- 3.6.6 credit score data under clause 3.1.6: until the end of the next business day following the date of creation of such data;
- 3.6.7 general particulars of an individual: for as long as there are other consumer credit data related to the individual contained in the database of the CRA.

Retention of exempted data

- 3.7 For the avoidance of doubt, notwithstanding any provision to the contrary in the Code, in a situation where exemption from DPP3 under section 62 of the Ordinance applies to certain consumer credit data held by the CRA (including, for example, such data used or to be used by the CRA for the development of a consumer credit scoring model intended to be of general application), the data may continue to be retained by the CRA for so long as such exemption applies.

Use of consumer credit data by CRA

Providing of credit report

- 3.8 In response to the seeking of access by a credit provider to consumer credit data relating to an individual pursuant to clause 2.9, 2.9A or 2.10A, a CRA may provide to the credit provider a credit report on the individual. The credit report may contain any of the consumer credit data relating to the individual permitted to be collected and retained by the CRA, subject to the following constraints which apply to particular categories of consumer credit data³⁵:

- 3.8.1A in respect of consumer credit data relating to mortgage loans, only:

³⁵ If, in the absence of any applicable exemption, a CRA uses any consumer credit data otherwise than in a way permitted under clause 3.8 or 3.10, this will give rise to a presumption of contravention of DPP3(1) under section 13(2) of the Ordinance.

3.8.1A.1 the mortgage count;

3.8.1A.2 mortgage application data under clause 2.4.4B; and

3.8.1A.3 account general data and material default data under clauses 2.4.4A.2(ii) and 2.4.4C,

may be accessed by or provided to the credit provider;

3.8.1 credit application data under clause 2.4.2, credit card loss data under clause 2.4.3A and file activity data under clause 3.1.5: confined to such data created for not more than 2 years;

3.8.2 account data under clause 2.4.3 and the derivatives deriving directly from such account data :

3.8.2.1 the credit report shall not reveal the identity of the credit provider who provided such account data or the account number, unless the credit report is to be provided to that same credit provider;

3.8.2.2 [Omitted as spent on 1 January 2013]

3.8.2.2A the credit report shall not contain:

3.8.2.2A.1 in relation to a terminated account, any account repayment data created more than 2 years before the account termination date; or

3.8.2.2A.2 in relation to an account other than a terminated account, any account repayment data created more than 2 years before the date of providing the credit report;

unless there has been any material default or write-off due to a bankruptcy order being made against the individual within 5 years before the providing of the credit report, in which case, the credit report may contain, in addition to the account repayment data described in clause 3.8.2.2A.1 or 3.8.2.2A.2 (as the case may be), also the default data relating to such material default or material defaults and/or the outstanding balance at the time of such write-off;

3.8.2.3 [Omitted as spent on 1 April 2011]

3.8.2.4 [Omitted as spent on 1 April 2011]

- 3.8.2.4A the credit report, if provided at any time during the transitional period, shall not contain the mortgage count unless the credit report is provided to a credit provider who has confirmed to the CRA, pursuant to clause 2.11 above, that the access has been made under any of the circumstances set out in clauses 2.10A.1, 2.10A.2, 2.10A.3 or 2.10A.4 above;
- 3.8.2.4B the credit report, if provided at any time after the transitional period, shall not contain the mortgage count unless the credit report is provided to a credit provider who has confirmed to the CRA, pursuant to clause 2.11 above, that the access has been made under any of the circumstances set out in clause 2.9A above; and
- 3.8.2.4C [Omitted as spent on 1 January 2013]
- 3.8.2.4D without prejudice to the generality of clauses 3.8.1A, 3.8.1, 3.8.2.1, 3.8.2.2A, 3.8.2.4A and 3.8.2.4B above and for the avoidance of doubt, in the case of the individual being a mortgagor or guarantor to the repayment of a consumer credit provided to another person, the credit report of such individual may contain, in addition to the consumer credit data relating to the individual as borrower, also the account general data, mortgage count and the remaining available credit or outstanding balance of the guaranteed credit facility or the mortgage loan relating to that other person.

Disclosure of disputed data

- 3.9 If any consumer credit data provided by a credit provider to a CRA is accompanied by an indication of the existence of a dispute over the data, then, in subsequently disclosing such data in a credit report, the CRA shall also reveal in the credit report the existence of the dispute³⁶.

Other uses of consumer credit data

- 3.10 In addition to disclosure in a credit report pursuant to clause 3.8, a CRA may, in providing a consumer credit reference service, use any

³⁶ If a CRA, in disclosing in a credit report any consumer credit data known to be subject to a dispute, fails to reveal in the credit report the existence of such dispute, this will give rise to a presumption of contravention of DPP2(1) under section 13(2) of the Ordinance.

consumer credit data relating to an individual held in its database³⁷:

- 3.10.1 to provide notice and information to a credit provider on a watch list, when new data of the individual in default has appeared in the system, to assist in debt collection action;
- 3.10.2 to provide notice to a relevant credit provider and to the Transport Department where an individual who has received credit in relation to a motor vehicle has been the subject of advice from the Department that it has received an application from the individual for a duplicate vehicle registration document;
- 3.10.3 to provide a report to insurers in relation to insurance cover for property related to a consumer credit transaction;
- 3.10.4 for reasonable internal management purposes, such as the defence of claims and the monitoring of the quality and efficiency of its service; or
- 3.10.5 to carry out consumer credit scoring, provided that the CRA shall not, in carrying out such scoring, take into account:
 - 3.10.5.1 [Omitted as spent on 1 January 2013]
 - 3.10.5.1A in relation to an account other than a terminated account, any account data created more than 5 years before the carrying out of the scoring; or
 - 3.10.5.2 in relation to a terminated account, any account data created more than 5 years before account termination.

Data security and system integrity safeguards by CRA

Measures to take in preparation for providing consumer credit reference service

- 3.11 On or before providing consumer credit reference service to a credit provider, a CRA shall take appropriate measures, including the following, to safeguard against any improper access to or mishandling

³⁷ For the consequence of a CRA using any consumer credit data in its database otherwise than in a way permitted under clause 3.10, see Note 35 to clause 3.8 above.

of consumer credit data held by it³⁸:

- 3.11.1 enter into a formal written agreement with the credit provider as subscriber for such service, which shall specify:
 - 3.11.1.1 the duty of both parties to comply with the Code in providing and in utilizing the consumer credit reference service;
 - 3.11.1.2 the conditions under which the credit provider may access consumer credit data held by the CRA; and
 - 3.11.1.3 the controls and procedures to be applied when such credit provider seeks access to the CRA's database;
- 3.11.2 establish controls to ensure that only data to which a subscriber is entitled is released;
- 3.11.3 train staff in relation to the Ordinance and the Code and, in particular, good security practice;
- 3.11.4 develop written guidelines, and disciplinary or contractual procedures in relation to the proper use of access authorities by staff, external contractors or subscribers; and
- 3.11.5 ensure that adequate protection exists to minimize, as far as possible, the risk of unauthorized entry into the database or interception of communications made to and from the database.

Measures to take in daily operations

- 3.12 A CRA shall take appropriate measures in its daily operations, including the following, to safeguard against any improper access to or mishandling of consumer credit data held by it³⁹:
 - 3.12.1 review on a regular and frequent basis its password controls which help to ensure that only authorized staff are allowed access to its database;
 - 3.12.2 monitor and review on a regular and frequent basis usage of the

³⁸ If a CRA, in preparation for providing a consumer credit reference service, fails to take any of the measures required under clause 3.11 to safeguard against any improper access to or mishandling of the consumer credit data held by it, this will give rise to a presumption of contravention of DPP4(1) and /or DPP4(2) under section 13(2) of the Ordinance.

³⁹ If a CRA, in its daily operations, fails to take any of the measures required under clause 3.12 or 3.13 to safeguard against any improper access to or mishandling of the consumer credit data held by it, this will give rise to a presumption of contravention of DPP4(1) under section 13(2) of the Ordinance.

database, with a view to detecting and investigating any unusual or irregular patterns of access or use;

- 3.12.3 ensure that practices in relation to the deletion and disposal of data are secure, especially where records or discs are to be disposed of off-site or by external contractors; and
- 3.12.4 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.

Log of access etc. by credit provider

3.13 Without prejudice to the generality of clause 3.12 above, a CRA shall⁴⁰:

- 3.13.1 in the case of there being any suspected abnormal access by a credit provider, report such suspected abnormal access as soon as reasonably practicable to the senior management of the credit provider and to the Commissioner;
- 3.13.2 maintain a log of all instances of access to its database by credit providers, which log shall include:
 - 3.13.2.1 the identity of the credit provider seeking access;
 - 3.13.2.2 the date and time of access;
 - 3.13.2.3 the identity of the individual whose data was so accessed;
 - 3.13.2.4 the circumstances provided for in clause 2.8, 2.9, 2.9A or 2.10A under which the access has been made (as confirmed by the credit provider pursuant to clause 2.11.1);
 - 3.13.2.5 in the case where the access has been made in the course of the review of existing consumer credit facilities under clause 2.9.1.2, 2.9A.2, 2.9A.4, 2.9A.5, 2.10A.2, 2.10A.3 or 2.10A.4, the specific matter or matters provided for in clause 2.9.3, 2.9.4 or 2.9.5 (as confirmed by the credit provider pursuant to clause 2.11.2); and
 - 3.13.2.6 instances of reporting by the CRA of suspected abnormal access to the senior management of a credit provider and to the Commissioner,

⁴⁰ For the consequence of a CRA failing to take any of the measures described in this clause 3.13, see Note 39 to clause 3.12.

and shall keep such a log for not less than 2 years for examination by its compliance auditor and/or by the Commissioner, as the case may be.

Compliance audit of CRA

Compliance audit

- 3.14 As a recommended practice, a CRA shall engage, at its expense, an independent compliance auditor as may be approved (or, at the election of the Commissioner, to be nominated) by the Commissioner, to conduct regular compliance audits on the way in which the CRA provides the consumer credit reference service, including the security of consumer credit data held by the CRA in its database, and the adequacy and efficiency of the measures taken by it to comply with the requirements under the Ordinance and the Code.
- 3.14A As a recommended practice, the compliance audit on the security of consumer credit data held by a CRA mentioned in clause 3.14 shall include an audit on the IT security arrangement of the CRA covering the control objectives of the ISO/IEC 27002 Best Practice on Information Security Management (or its equivalent as approved by the Commissioner).

Regular compliance audit

- 3.14B The CRA shall continue to arrange for compliance audits as referred to in clause 3.14 to be conducted at intervals not exceeding 12 months and, in each instance, for audit reports to be provided to the Commissioner for his consideration and/or comments within 3 months from the commencement of the compliance audit.

The first compliance audit on the sharing of consumer credit data relating to mortgage loans

- 3.15 The first of such compliance audit on the sharing of consumer credit data relating to mortgage loans shall commence after 6 months (in any event no later than 7 months) from 1 April 2011, with a view to having the compliance auditor submit its audit report to the Commissioner for his consideration within 3 months from the commencement of the compliance audit. Such compliance audit shall address, in particular, the compliance with the provisions of the Code and the adequacy of the data handling system of the CRA as far as the sharing of consumer credit data relating to mortgage loans is concerned.

Commissioner's approval of report on the first compliance audit on the sharing of consumer credit data relating to mortgage loans

- 3.16 If the Commissioner does not approve the first compliance audit report on the sharing of consumer credit data relating to mortgage loans provided to him, he may, by written notice to the CRA, direct the CRA to take such steps as may be considered necessary for ensuring better compliance with the requirement under the Code and/or the Ordinance, thereafter to arrange for a further compliance audit on the sharing of consumer credit data relating to mortgage loans to be carried out, and for such further audit report to be submitted to the Commissioner for his reconsideration within such period as the Commissioner may specify.

Regular audits after Commissioner's approval

- 3.17 Upon the receipt of a notice from the Commissioner under clause 3.16, the CRA shall duly comply with the Commissioner's directions, and clause 3.16 shall continue to apply to the CRA until the Commissioner gives his approval to a compliance audit report submitted. From the date of such approval onwards, the compliance audits on the sharing of consumer credit data relating to mortgage loans shall be conducted together with the regular audits referred to in clause 3.14B above.

Data Access and Correction Request to CRA

Compliance with data access request

- 3.18 As a recommended practice, a CRA shall seek to respond promptly to a data access request without charge in respect of personal data held by it brought by an individual who advises that he has been refused credit by a credit provider to whom a credit report on him has been provided by the CRA. Where such an access request is made at the office of the CRA, the copy of the data held shall, if practicable, be provided forthwith to the individual, or else be dispatched by mail to the individual not later than 3 working days from the date of the request.

Verification with credit provider

- 3.19 Upon receiving a request for correction of consumer credit data provided by a credit provider, the CRA shall promptly consult the credit provider. If the CRA does not receive from the credit provider any written confirmation or correction of the disputed data within 40 days from the correction request, the relevant data shall upon expiry of the 40

days be deleted or otherwise amended as requested⁴¹.

Verification of public record data

- 3.20 Upon receiving a request for correction of consumer credit data being public record data, the CRA shall wherever practicable verify the accuracy of such data by checking the relevant public records. If no such verification is obtained within 40 days from the date of the correction request, the public record data shall upon expiry of the 40 days be deleted or otherwise amended as requested, except where the individual alleges any inaccuracy in the data which is not apparent on the face of the public records, it shall in that case be incumbent on the individual to provide proof of such inaccuracy⁴².

No transfer of personal data outside Hong Kong

- 3.21 A CRA shall not transfer consumer credit data held by it to a place outside Hong Kong unless the purpose of use of the data transferred is the same as or directly related to the original purpose of collection of the data⁴³.

⁴¹ If a CRA fails to respond to a data correction request in accordance with clauses 3.19 or 3.20, this will give rise to a presumption of contravention of section 23 under section 13(2) of the Ordinance.

⁴² For the consequence of a CRA failing to respond to a data correction request in accordance with this clause, see Note 41 to clause 3.19.

⁴³ If a CRA transfers consumer credit data held by it to a place outside Hong Kong for a purpose other than the original collection purpose or its directly related purpose, this will give rise to a presumption of contravention of DPP3(1) under section 13(2) of the Ordinance.

IV GENERAL

No effect on duty of confidentiality

- 4.1 For the avoidance of doubt, nothing in Parts I to III of the Code affects the application of the law of confidentiality in relation to consumer credit data. In particular, in a situation where, under the general law, a credit provider or a CRA owes a duty of confidentiality to an individual in respect of the consumer credit data relating to such individual, none of the provisions in Parts I to III of the Code shall have, or purport to have, the effect of abrogating, limiting or otherwise modifying such duty under the general law.

SCHEDULE 1

Credit providers

- (1) an authorized institution within the meaning of section 2 of the Banking Ordinance (Cap. 155)
- (2) a subsidiary of an authorized institution within the meaning of section 2 of the Banking Ordinance (Cap. 155) (the term “subsidiary” shall have the same meaning as in section 2 of the Companies Ordinance, Cap. 32)
- (3) a money lender licensed under the Money Lenders Ordinance (Cap. 163)
- (4) a person whose business (whether or not the person carries on any other business) is that of providing finance for the acquisition of goods by way of leasing or hire-purchase

SCHEDEULE 2

Account data as described in clause 2.4.3

(A) Account general data, being:

- identity of the credit provider;
- account number;
- capacity of the individual (whether as borrower, mortgagor or guarantor);
- account opened date;
- account closed date;
- type of the facility and currency denominated;
- approved credit limit or loan amount (as appropriate);
- repayment period or terms (if any);
- account status (active, closed, write-off, etc.);
- facility maturity date (if any);
- details of any scheme of arrangement, including:
 - the date of the arrangement, the number and frequency of installments, the installment amount, etc.; and
- in the case of a hire-purchase, leasing or charge account, including:
 - account expiry date, type of security, investigation date, installment amount, etc;
 - particulars for the identification of the motor vehicles, equipment, vessels or the asset secured by the charge, and notification of termination of the charge.

(B) Account repayment data, being:

- amount last due;
- amount of payment made during the last reporting period;
- remaining available credit or outstanding balance;
- default data being:
 - amount past due (if any) and number of days past due;
 - date of settlement of amount past due (if any);
 - date of final settlement of amount in material default (if any).

SCHEDULE 3

Types of personal data a credit reference agency may collect under clause 3.1.8 and the conditions (if any) subject to which such collection may take place

APPENDIX I
Personal Data (Privacy) Ordinance
Schedule 1
DATA PROTECTION PRINCIPLES

1. Principle 1 - purpose and manner of collection of personal data

- (1) Personal data shall not be collected unless-
 - (a) the data is collected for a lawful purpose directly related to a function or activity of the data user who is to use the data;
 - (b) subject to paragraph (c), the collection of the data is necessary for or directly related to that purpose; and
 - (c) the data is adequate but not excessive in relation to that purpose.
- (2) Personal data shall be collected by means which are-
 - (a) lawful; and
 - (b) fair in the circumstances of the case.
- (3) Where the person from whom personal data is or is to be collected is the data subject, all practicable steps shall be taken to ensure that-
 - (a) he is explicitly or implicitly informed, on or before collecting the data, of-
 - (i) whether it is obligatory or voluntary for him to supply the data; and
 - (ii) where it is obligatory for him to supply the data, the consequences for him if he fails to supply the data; and
 - (b) he is explicitly informed-
 - (i) on or before collecting the data, of-
 - (A) the purpose (in general or specific terms) for which the data is to be used; and
 - (B) the classes of persons to whom the data may be transferred; and
 - (ii) on or before first use of the data for the purpose for which it was collected, of-
 - (A) his rights to request access to and to request the correction of the data; and
 - (B) the name or job title, and address, of the individual who is to handle any such request made to the data user,

unless to comply with the provisions of this subsection would be likely to

prejudice the purpose for which the data was collected and that purpose is specified in Part VIII of this Ordinance as a purpose in relation to which personal data is exempt from the provisions of data protection principle 6.

2. Principle 2 - accuracy and duration of retention of personal data

(1) All practicable steps shall be taken to ensure that-

- (a) personal data is accurate having regard to the purpose (including any directly related purpose) for which the personal data is or is to be used;
- (b) where there are reasonable grounds for believing that personal data is inaccurate having regard to the purpose (including any directly related purpose) for which the data is or is to be used-
 - (i) the data is not used for that purpose unless and until those grounds cease to be applicable to the data, whether by the rectification of the data or otherwise; or
 - (ii) the data is erased;
- (c) where it is practicable in all the circumstances of the case to know that-
 - (i) personal data disclosed on or after the appointed day to a third party is materially inaccurate having regard to the purpose (including any directly related purpose) for which the data is or is to be used by the third party; and
 - (ii) that data was inaccurate at the time of such disclosure, that the third party-
 - (A) is informed that the data is inaccurate; and
 - (B) is provided with such particulars as will enable the third party to rectify the data having regard to that purpose.

(2) All practicable steps must be taken to ensure that personal data is not kept longer than is necessary for the fulfillment of the purpose (including any directly related purpose) for which the data is or is to be used.

(3) Without limiting subsection (2), if a data user engages a data processor, whether within or outside Hong Kong, to process personal data on the data user's behalf, the data user must adopt contractual or other means to prevent any personal data transferred to the data processor from being kept longer than is necessary for processing of the data.

(4) In subsection (3) -

data processor (資料處理者) means a person who -

- (a) processes personal data on behalf of another person; and
- (b) does not process the data for any of the person's own purposes.

3. Principle 3 - use of personal data

(1) Personal data shall not, without the prescribed consent of the data subject, be used for a new purpose.

(2) A relevant person in relation to a data subject may, on his or her behalf, give the prescribed consent required for using his or her personal data for a new purpose if—

(a) the data subject is—

- (i) a minor;
- (ii) incapable of managing his or her own affairs; or
- (iii) mentally incapacitated within the meaning of section 2 of the Mental Health Ordinance (Cap. 136);

(b) the data subject is incapable of understanding the new purpose and deciding whether to give the prescribed consent; and

(c) the relevant person has reasonable grounds for believing that the use of the data for the new purpose is clearly in the interest of the data subject.

(3) A data user must not use the personal data of a data subject for a new purpose even if the prescribed consent for so using that data has been given under subsection (2) by a relevant person, unless the data user has reasonable grounds for believing that the use of that data for the new purpose is clearly in the interest of the data subject.

(4) In this section—

new purpose (新目的), in relation to the use of personal data, means any purpose other than-

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

4. Principle 4 - security of personal data

(1) All practicable steps shall be taken to ensure that personal data (including data in a form in which access to or processing of the data is not practicable) held by a data user are protected against unauthorized or accidental access, processing, erasure, loss or use having particular regard to-

- (a) the kind of data and the harm that could result if any of those things should occur;
- (b) the physical location where the data is stored;
- (c) any security measures incorporated (whether by automated means or otherwise) into any equipment in which the data is stored;
- (d) any measures taken for ensuring the integrity, prudence and competence of persons having access to the data; and
- (e) any measures taken for ensuring the secure transmission of the data.

(2) Without limiting subsection (1), if a data user engages a data processor, whether within or outside Hong Kong, to process personal data on the data user's behalf, the data user must adopt contractual or other means to prevent unauthorized or accidental access, processing, erasure, loss or use of the data transferred to the data processor for processing.

(3) In subsection (2)-

data processor (資料處理者) has the same meaning given by subsection (4) of data protection principle 2.

5. Principle 5 - information to be generally available

All practicable steps shall be taken to ensure that a person can-

- (a) ascertain a data user's policies and practices in relation to personal data;
- (b) be informed of the kind of personal data held by a data user;
- (c) be informed of the main purposes for which personal data held by a data user is or is to be used.

6. Principle 6 - access to personal data

A data subject shall be entitled to-

- (a) ascertain whether a data user holds personal data of which he is the data subject;
- (b) request access to personal data-
 - (i) within a reasonable time;
 - (ii) at a fee, if any, that is not excessive;
 - (iii) in a reasonable manner; and
 - (iv) in a form that is intelligible;
- (c) be given reasons if a request referred to in paragraph (b) is refused;
- (d) object to a refusal referred to in paragraph (c);
- (e) request the correction of personal data;
- (f) be given reasons if a request referred to in paragraph (e) is refused; and
- (g) object to a refusal referred to in paragraph (f).