HONG KONG MONETARY AUTHORITY
香港金融管理局

Circulars

22 Feb 2002

Bankruptcy and Consumer Credit Lending

Our Ref.: B9/69C

22 February 2002

The Chief Executive
All authorized institutions

Dear Sir / Madam,

Bankruptcy and Consumer Credit Lending

This letter provides further guidance to AIs on the sharing of consumer credit data through a credit reference agency (CRA) following the recent release of the revised Code of Practice on Consumer Credit Data (Code) by the Privacy Commissioner for Personal Data. It also sets out a number of measures that AIs are recommended to take to help control abuses of the bankruptcy provisions. In addition, the attached Annex sets out a number of recommended best practices on the management of credit card operations.

(a) Greater scope of consumer credit data sharing

2. In the HKMA's letter of 20 September 2001 to all AIs, we recommended AIs to share consumer credit data to the fullest extent as allowed under the Privacy Commissioner's Code. Specifically, the HKMA recommended that AIs which provide consumer credit should:

i. make the fullest possible use of the enquiry facilities of a CRA for the purposes of credit assessment;
ii. report credit application data to a CRA including the date of application, the account type and, where appropriate, the amount of credit sought;
iii. begin to report account default data in relation to accounts that are 60 days or more past due; and
iv. extend their scope of data sharing with a CRA to cover all types of consumer credit, including, in particular, residential mortgage loans.

3. The above measures are intended to help enhance the comprehensiveness and thus the value of data maintained by a CRA. The Privacy Commissioner has recently revised the Code, inter alia, to extend the permissible retention period of credit application data and file activity data by a CRA to 5 years and to allow access by credit providers to such data held for 2 years[1]. The HKMA welcomes this relaxation, which will further improve the usefulness of the relevant data in facilitating AIs' ability to detect multiple applications for credit and

possible over-borrowing. Given the rising trend in personal bankruptcies, AIs should make full use of such data.

4. In this regard, I understand that the majority of AIs have made arrangements with Credit Information Services (CIS) to enable the reporting of credit application data and 60-day default data in respect of all types of consumer credit. AIs should begin to use this facility as soon as possible after it becomes available (expected to be in April 2002). If some AIs, for systems reasons, cannot immediately report in respect of all types of consumer credit, they should at least begin to do so in relation to credit card data and should extend this to other types of consumer credit as soon as possible. The HKMA will continue to monitor AIs' compliance with the above recommendations in the course of its normal supervision.

(b) Measures to help control potential abuses of the bankruptcy provisions

5. The Hong Kong Association of Banks (HKAB) has submitted to the Government proposals on reform of the bankruptcy system in Hong Kong including enhanced provisions relating to bankruptcy frauds, shortening the period between the filing of a bankruptcy petition and the granting of a bankruptcy order and mandatory credit counselling. While these proposals are still being considered by the Government, the HKMA believes that AIs should try to make the best use of the current system to control possible abuses of the bankruptcy provisions. There are a number of measures which can be adopted by AIs to this end without the need to amend the current legislation. These are described below.

Credit application stage

i. **AIs should seek more information about the existing financial commitments of credit applicants in the application form.**

   At present, credit applicants may not be asked for details of other credit cards or credit facilities held by them. While it is appreciated that an applicant may not provide a truthful answer and it is difficult for AIs to check the veracity of the information provided in the absence of positive data sharing, it would still be useful for AIs to seek such information in the application form from the point of view of fraud prevention. This is because if an applicant makes a false statement in the application about the extent of his financial liabilities, and subsequently defaults, it should be relatively simple to prove that an offence under section 71 of the Crimes Ordinance has been committed. It would be helpful therefore if the industry itself could establish a consensus on the additional information that should be included on the application form in order to facilitate prosecutions of cases of abuse.

   Bankruptcy proceedings

ii. **AIs should make use of the new enquiry facility on CIS, which provides early access to information about debtors who have lodged a petition for bankruptcy, with a view to avoiding extending further credit to such persons.**

   Concerns have been raised by some AIs that some debtors can continue to obtain fresh credit during the "twilight period" after they have filed for bankruptcy and before the bankruptcy order is made. This problem is partly attributable to the lack of accurate information about the identities of those individuals who have filed petitions for bankruptcy. To address this problem, the Official Receiver's Office has recently agreed to set up an arrangement, with CIS and the industry Associations, to enable AIs to match the names of bankruptcy petitioners with their truncated ID numbers. Once this new arrangement is available, AIs should make use of it to avoid extending further credit to those who have filed a petition for bankruptcy. AIs should also report cases of individuals obtaining or attempting to obtain credit after filing bankruptcy petitions to the Official Receiver's Office for investigation. The Official Receiver's Office has advised that behaviour of this kind could be regarded as an unsatisfactory conduct based on which the creditors or the Official Receiver could object to the automatic discharge of the bankrupt individual.

iii. **AIs should devote efforts to scrutinise the financial affairs of bankrupts to try to identify cases of potentially fraudulent behaviour and report such cases to the relevant authorities.**

A bankrupt's Statement of Affairs may be inspected by creditors and a copy obtained (subject to a fee) at the Official Receiver's Office. Until recently, it has apparently been quite rare for creditor institutions to make use of this facility. Particularly in cases of suspected abuse, AIs may find it useful to cross check the information contained in the Statement of Affairs with information that they have in their possession about the bankrupt's income, assets or other aspects of his financial affairs. Where this reveals discrepancies, which are indicative of fraudulent or abusive behaviour, they should notify the Official Receiver's Office and/or the Police.

(c) Best practices on credit card lending

6. Greater sharing of consumer credit data and action to deal with fraudulent bankruptcies should help to alleviate the problems of rising bankruptcies and increased defaults, but are not the only measures that should be taken. AIs also have a responsibility to ensure that they are issuing credit cards and advancing credit in a prudent manner. During the last year, the HKMA has reviewed and examined the credit card operations of a number of AIs. Based on this experience, the HKMA has drawn up a set of recommended best practices on credit card operations (see Annex). These recommendations are not being issued as a formal HKMA guideline, but they give an indication of what the HKMA would look for in a well-run operation. We would advise AIs who have not already done so, to work towards implementation of these recommendations to an extent which is consistent with the scale of their credit card operations.

7. In addition to the above, the HKMA will continue to pursue the issue of positive data sharing with the Privacy Commissioner and other interested parties.

Yours faithfully,

(D T R Carse)
Deputy Chief Executive

c.c. Chairman, Hong Kong Association of Banks
Chairman, The DTC Association
Financial Services Bureau (Attention: Miss Clara Tang)
Official Receiver

Encl. Best Practices for Credit Card Operations (PDF file, 178KB) (superseded by CR-S-5 of the Supervisory Policy Manual)

[1] AIs should be aware of the new requirement that access to such data should be only for the purpose of credit assessment or debt collection.

Last revision date : 13 May 2020